Nat Hentoff

A Black Response to Black Bigotry

When I was young, and antisemitism was as common in Boston as Saturday night baked beans, there were Jewish leaders who advised the rest of us to say nothing: "If we publicly criticize the antisemities, we will cause more antisemitism." But silence encouraged the bigots, as I found out when I was punched in the face one night.

When some Jews prepared to picket the NAACP's June summit meeting—with Louis Farrakhan the prize guest—Carl Rowan accused them of overreacting, adding that such actions serve "to increase rather than diminish antisemitism in black America."

Rowan is hardly alone in advising Jews to be more restrained. Still, it is hard to be silent when among the publications available at some of the gathering places of the Nation of Islam are: "Jews and Their Lies" and that perennial model of calumny, "The Protocols of the Elders of Zion."

So when Minister Farrakhan says, as he did at the summit, "We don't get in your family business, you stay out of ours"—silence is unnatural when part of his business is to make Jews appear to be eternally diabolic.

But Farrakhan—and those at the NAACP summit who consider him worth legitimizing—hardly speak for all blacks. Elaine Jones is Director-Counsel of the NAACP Legal Defense and Educational Fund (which is not part of the NAACP). The LDF is the most vigorous and skillful protector of civil rights in the country—appearing often before the Supreme Court and lower courts. It has had considerable success in voting rights, employment discrimination, housing and capital punishment cases.

Speaking in June before the Anti-Defamation League's 81st annual National Commission meeting, Elaine Jones cited Khalid Muhammad's work as the Johnny Appleseed of undiluted bigotry—as well as Minister Farrakhan's sharing of those views. Elaine Jones said:

SWEET LAND OF LIBERTY

"Every one of us in the civil rights movement has a moral obligation to denounce antisemitism. . . . The cause for which Martin Luther King fought, and to which the Legal Defense Fund is committed, is the grand moral principle that every American—no matter his or her race, country of origin, creed or gender—should have equal rights under the law and enjoy an equal degree of respect, acceptance and opportunity in our society.

"I could not credibly denounce racial discrimination against African Americans unless I was opposed with equal fervor to any other form of invidious discrimination."

She read to the Jewish group a letter she wrote about black antisemitism that was printed in the Amsterdam News, a black newspaper in New York: "In the face of injustice, silence bespeaks an insidious form of assent, a tacit sanction that combines vital support with a patina of easy self-denial. Over time, silence converts bystanders into accomplices."

The Amsterdam News is not silent in these matters, being an admirer of Minister Farrakhan. The headline on its account of Elaine Jones's speech before the Anti-Defamation League was: "NAACP splinter group's head attacks Farrakhan."

In real life, these days is the "splinter group" the Legal Defense Fund or the NAACP?

Elaine Jones then spoke to whether Jews should have refrained from openly criticizing Khalid Muhammad's speech: "I implore you to ignore that sort of advice. Nothing can give greater license to a program of bigotry than the suggestion that the victims really don't mind. That was what the slave owners said of the slaves, and what segregationists said about 'their' Negroes."

She also said it was time for Jews and blacks to again work together in projects "to try to define the nation's agenda" instead of continuing on their separate ways.

A frequent charge against Jews from many blacks—not all of them by any means members of the Nation of Islam—concerns what strikes them as unified Jewish opposition to affirmative action. Elaine Jones told the Anti-Defamation League:

"A generation ago our differences were framed in somewhat abstract terms. Today we have a quarter-century of experience to inform our views, and a considerable body of Supreme Court decisions which narrow the terms of the debate. I believe that where we are able to arrive at a shared analysis of the relevant facts, we would often be able to reach agreement on what sorts of affirmative action are and are not appropriate."

It's up to Jewish organizations to make the next move. When A. Philip Randolph, Roy Wilkins and Whitney Young were still here, they forged black-Jewish alliances of equal respect. Elaine Jones is willing.

Nation

Housing secretary outlines attack on race discrimination

By Sonya Ross
ASSOCIATED PRESS

WASHINGTON – Housing Secretary Henry Cisneros is proposing a broad attack on racial discrimination in housing and mortgage lending as the focal points of his urban reform plan.

The one-year campaign, to be announced tomorrow, is the type of approach that has put Cisneros at odds with some of President Clinton's advisers, who prefer solutions to urban problems that are based on economics, not race.

Cisneros contends he cannot do his job without dealing with racism.

He has forged ahead on that philosophy, most recently by sending investigators to monitor public housing integration in his home state of Texas, and disciplining housing officials in Vidor, Texas, for maintaining an all-white housing project.

"I have set personal priorities that specify what I hope we can achieve while in office," Cisneros said in a note accompanying his plan.

"These priorities comprise the benchmarks against which the success of my tenure . . . can be measured," he added.

The White House last month cited Cisneros' fair-housing work on a fact sheet of "the many examples of steps President Clinton has taken to fight for the country's future."

This list was released in conjunction with the Congressional Black Caucus' annual meeting, and amid a chorus of complaints from black activists that the president is doing too little about racism.

HUD's plan includes stringent enforcement of fair-housing laws and aggressive attacks on mortgage and insurance redlining "in order to combat the spatial separation by race and income that now polarizes many of America's cities." Redlining refers to the practice of refusing to do business in certain neighborhoods.

The plan also calls for a National Fair Housing Summit, by Jan. 1, 1994, to develop a fair-housing agenda.

The deadline for implementing the bulk of the plan is Sept. 30, 1994. By then, HUD plans to:

- Find ways to close pending fair-housing cases.
- Improve the way it processes housing discrimination complaints.
- Cut the number of discrimination cases closed administratively by 10 percent.
- Create a new unit to deal with insurance redlining, and hold a public hearing on the subject.
- Create a mortgage discrimination unit, with policy and proposed regulations in place.
- Develop a pilot program to test an anti-segregation strategy for HUD programs.
- Increase aid for poor people and small, disadvantaged businesses.
- Build a new policy to address the needs of American Indians, migrant workers and those in rural areas.

HEADLINE CLINTON-BRINGING DIVERSITY TO THE BENCH AT A RECORD PACE
Byline: KEITH C. EPSTEIN - Newhouse News Service
DATE 10/16/94
SOURCE PORTLAND OREGONIAN (POR)
Edition: FOURTH
Section: WIRE STORIES
Page: A10
(Copyright (c) The Oregonian 1994)

Summary: More women and minorities are filling federal judgeships than ever before, but the appointments draw charges of a quota system

President Clinton is naming women and minorities to federal judgeships at a record-setting pace -- more than three for every five vacancies, a far greater proportion than any president in history.

But he has yet to appoint a woman to a judgeship in 15 states where the federal bench remains exclusively male. Nor has he named a black in any of 26 states with an all-white federal judiciary.

"There's a revolution under way," said Cincinnati appeals court Judge Nathaniel Jones, who is black, "but there are parts of the country that haven't been touched. Like the Maginot line -- almost impenetrable."

Even so, last week's nomination to a northern Ohio judgeship of Kathleen O'Malley -- relatively inexperienced and, at age 37, unusually young -- was one for the record books.

With it, Clinton became the first president to name more than 40 women to judgeships, the number President Carter appointed. And Clinton is well on his way to nominating more blacks than anyone else.

Clinton is thus reforming the composition of the federal judiciary, which gets less attention than the Supreme Court even though a decision by any of its hundreds of judges is more likely to be felt by the average American.

- Rapid change

Only three decades ago, this corps of district and appellate judges included only two women, one black man and one Hispanic man. Today 120 of 821 federal judges are women, 64 are black, 38 are Hispanic, five are Asian, and one is an American Indian.

If Clinton continues at this pace, the proportion of women among judges would increase from 14 percent to 19 percent, approaching the 22.9 percent of lawyers who are women, though far short of the 40 percent of law school students who are women.

One in 10 judges would be black, far greater than the 2.7 percent of lawyers who are black, but less than the 12 percent black representation in the general population. Hispanics would make up 5 percent of the judiciary, which exceeds the percentage of Hispanic lawyers.

"To a large extent, the old boys' network is being broken," said University of Massachusetts Professor Sheldon Goldman, who tracks judicial selections and compiled the data in this article.

Goldman says the statistics show that Clinton -- though not quite two years into his term -- already is "surging past even Jimmy Carter's record."

One-third -- 33.6 percent -- of Carter's selections broke from

Postal Service Seen as Crippled by Animosity

GAO Report Details Confrontational Labor Relations, High Number of Employee Grievances

By Bill McAllister
Washington Post Staff Writer

Sally Whipp Culpepper says she is just the type of employee that the Postal Service needs at its troubled Southern Maryland mail processing plant in Capitol Heights. But Culpepper won't be found on the loading docks of the bulk mail center this week.

She has been suspended for seven days, accused of telling her male supervisor that he was "not man enough" to direct her to a union official and for taking 30 minutes to report for a new assignment at the big mail center. Culpepper, who has worked for the agency for six years, denies both charges, saying they are the products of a dictatorial, male-dominated bureaucracy that cannot tolerate bright, assertive women.

Yesterday the General Accounting Office issued a detailed, two-volume report on labor relations in the Postal Service that contains charges similar to many of Culpepper's. In the view of GAO investigators, the federal government's largest civilian agency is crippled by a "dysfunctional organizational culture" that has produced an "us versus them" mentality more dependent on harsh discipline than cooperation to move the nation's mail.

"The GAO report is bad news for the Postal Service, its employees and the American public," said Sen. Carl M. Levin (D-Mich.), who requested the report with Sen. David Pryor (D-Ark.) following the 1991 shooting at a postal facility in Royal Oak, Mich., that left four supervisors and one former worker dead. "The history of labor-management relations in the Postal Service is one of mutual distrust, differing priorities and abandoned initiatives," said Pryor in a statement.

Postal spokesmen played down the GAO report, terming it "a somewhat outdated snapshot in time." "Relations between postal management and its labor unions have never been more cooperative," an agency statement read.

But the GAO found the relations acrimonious and confrontational, the product of "an autocratic management style, adversarial employee and union attitudes." That unrest is best reflected by the 51,827 appealed grievances that workers had on file against their supervisors in 1993, the GAO found.

By the GAO's count, that meant one in 12 postal union members had a complaint that could not be resolved in their workplace. Resolving those disputes costs the agency $200 million a year, the GAO said.

Nowhere do those tensions seem higher than in the large mail processing centers, like the Southern Maryland facility. Culpepper said in an interview yesterday that her problems at Southern Maryland began within two hours of her arrival there, when a supervisor tried to fire her, claiming too many workers had been hired already.

Since then, Culpepper said she has filed hundreds of complaints, including one protesting a two-week suspension she received for having to perform jury duty. "Management is a bunch of power freaks whose only concerns are their own welfare," she said.

Postal spokesmen declined to comment on Culpepper's allegations, citing the Privacy Act. Much of what she and the GAO said reflect Postmaster General Marvin T. Runyon's complaints about the difficulties of changing the huge bureaucracy's ingrained "culture."

The GAO applauded the postmaster general for his efforts to revamp labor relations but said those efforts have yet to trickle down to field operations. "No clear framework or strategy exists for moving agreed-upon values and principles down to the first-line supervisors and employees working at processing plants and post offices," the GAO said.

It called on Runyon and postal unions to develop a long-term agreement on ways to improve employee relations and to designate test sites where new ways of resolving employee disputes could be tested. The GAO urged Congress to seek a progress report on such an agreement within a year and suggested that Congress might want to revise the law that allowed collective bargaining for postal workers if no progress has been made after two years.

That recommendation alarmed Moe Biller, president of the 360,000-member American Postal Workers Union. He charged that the GAO "went beyond its charter in recommending specific changes in collective bargaining agreements."

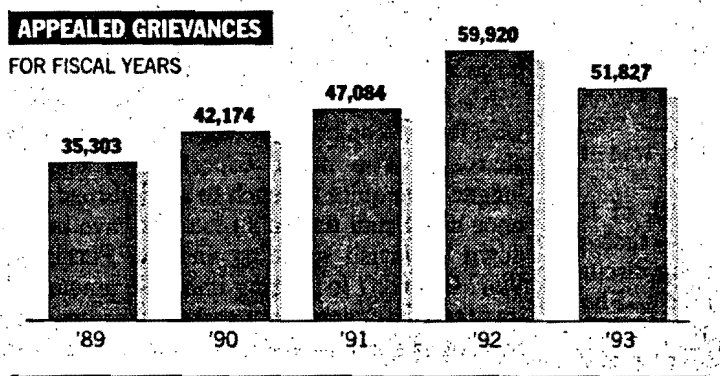
"The grievance system, regardless of its original merits, is simply not working in today's Postal Service," said Pryor. "The failure of the Postal Service to resolve its labor-management disputes in a fair and timely manner contributes to the tense atmosphere found in plants and post offices around the country."

The report also noted that there is a sharp difference between the job satisfaction expressed by rural and city letter carriers. Rural carriers, whose salaries are based on the nature of their routes, are given much more freedom than urban carriers, who work on a standard 40-hour week, are subject to much closer supervision and have filed 11 times more grievances than their rural counterparts, the GAO noted.

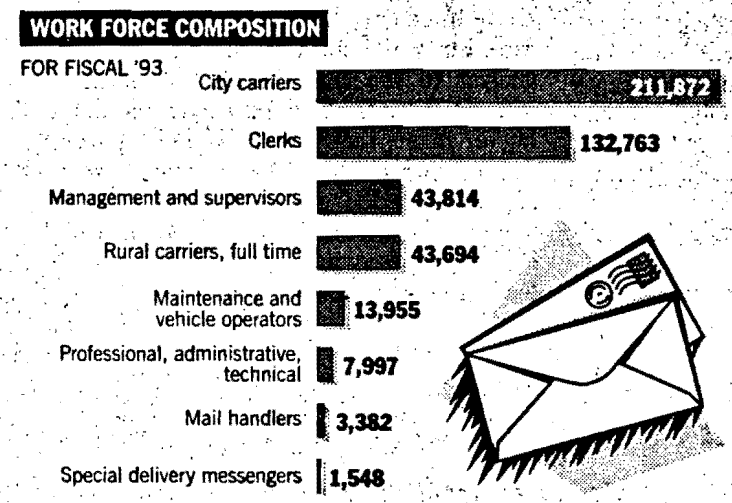
"City carriers' performance standards tend to discourage carriers from doing their best and completing work quickly," the GAO said.

DISGRUNTLED WORKERS

A report finds that postal workers engage in acrimonious relations with management, reflected in thousands of appealed grievances ...



... and that city carriers, the biggest single group of workers, file an unusually large number of grievances.



SOURCE: General Accounting Office

THE WASHINGTON POST

THE WASHINGTON POST ... WEDNESDAY, OCTOBER 26, 1994

Deval Patrick and the 'Great Moral Imperative'

Justice Dept., a Transformed Civil Rights Division Has Conservatives Crying 'Quota'

By Pierre Thomas
Washington Post Staff Writer

Deval L. Patrick, new to Washington, stepped up to the podium last spring after being sworn in as the head of the Justice Department's Civil Rights Division. A slight man with glasses who looks like a college freshman, Patrick began speaking quietly, almost professorially, about restoring the "great moral imperative" of civil rights.

Gradually, his voice rose and Patrick revealed his personal stake: "To understand civil rights," he declared, "you must understand how it feels. How it feels to be hounded by uncertainty and fear about whether you will be fairly treated. How it feels to be trapped in someone else's stereotype."

Jesse L. Jackson, waiting anxiously in the audience of 400, found himself in tears. "We've not had a clear civil rights voice for 12 years," said Jackson. The Reagan and Bush administrations "either were insensitive or simply didn't care about civil rights. Now there is someone there committed to protecting and enforcing the law. Deval brings feeling and tremendous legal insight."

To some in the conservative community, however, Patrick's words have sounded alarms. Clint Bolick, litigation director for the Institute of Justice, a nonprofit law firm, calls Patrick "a crusading activist, an ideologue" taking the Justice Department in a "radical" direction on matters of outright preference for racial minorities.

This much is sure: In six months under Patrick, the 250-lawyer Civil Rights Division has gone from the enemy of traditional civil rights groups to their ally.

Patrick has taken the department in a "180-degree turn contrary to the previous administrations," said Charles J. Cooper, a former Justice Department official who served in the Reagan administration. "That's their right, that's what we did."

Under Patrick, the Civil Rights Division settled the largest public accommodations discrimination lawsuit in history when it persuaded the Denny's restaurant chain to

See PATRICK, A10, Col. 1

PATRICK, From A1

pay $45 million for alleged racial discrimination. It brought the full weight of the Justice Department against an Alabama school principal who made what some consider racially derogatory remarks.

It settled a discrimination suit against Chevy Chase Federal Savings Bank, aggressively interpreting federal law in alleging the thrift failed to adequately serve predominantly African American communities in the region. It formed a task force to ward off legal challenges to specially designed voting districts in which most voters are racial minorities.

And, in by far his most controversial action, Patrick switched the department's position in a "reverse discrimination" lawsuit by a white teacher in Piscataway, N.J.

The Bush administration had supported the teacher, who said she was illegally laid off because she is white. Patrick sided with the Piscataway school board, which had chosen to retain an equally qualified black teacher instead, for the sake of faculty diversity.

The Piscataway decision could not be allowed to stand because it was sending a nationwide message that employers could never voluntarily use diversity as a factor in personnel decisions, Patrick said. His decision was approved by Attorney General Janet Reno and forwarded to the White House. Administration sources said some White House officials worried about the political impact.

Indeed, Rep. F. James Sensenbrenner Jr. (R-Wis.) accused Patrick of moving to "radically expand the use of racial quotas." Patrick also came under fire in newspaper opinion pages. Bill Maxwell, an African American columnist for the St. Petersburg Times, called the teacher's layoff "unconscionable," saying, "Fairness is more than bean counting."

Patrick said the "climate for . . . great national debate, whether it is race or anything else, is so charged and overheated right now that doing what's right under the law is hard to do. The job brings . . . difficult choices . . . because they're not always obvious choices under the law."

"He's not as skittish as new people typically are," said Barbara Arnwine, executive director of the Lawyers' Committee for Civil Rights Under Law. "I've watched him cringe" when told of the specifics of various forms of discrimination, she said.

"A lot of the work and a lot of the law I'm responsible for has affected my own mind," said Patrick.

Patrick, the son of the late jazz saxophonist Pat Patrick, grew up on Chicago's South Side, a tough area of the city that he recently told an audience of black lawyers was the kind of "place many of you wouldn't be caught dead."

His father, who played with Thelonious Monk and Sun Ra in the 1950s, separated from Patrick's mother when he was 4. Patrick spent a short stint on welfare, at one point so poor that he rotated with his mother and sister sleeping on the family's two beds.

Early on, he said, he learned how it felt—and still feels—to be stared at when he is the only black person in a room and how the looks sometimes "bubble" up to "differences in treatment" and occasionally "hostility."

Patrick eventually was awarded a scholarship from the "A Better Chance" program to attend Milton Academy, an elite Massachusetts preparatory school.

One night he and the housemaster went on a burger run to a local McDonald's. "I remember . . . this incredible scene where the kids in the parking lot started banging on the window and shouting and chanting, 'Nigger! Nigger! Get out of here!' " Patrick said. " . . . The housemaster was nervous and was trying to hustle us out of there. . . . We got in the car and of course he didn't know what to say."

Patrick, then 15, felt a "a rush of emotion. I mean it's a lot that you feel: angry, you feel terrified, you feel helpless," he said. "The worst that happened was that someone, a couple people, threw their cigarette butts at me. Nobody actually hit me, but you still feel wounded. And if you're not real careful, you can feel ashamed too. . . . You feel ashamed of who you are—and what you are—which is a disaster."

Cont'd 192

PRESERVATION PHOTOCOPY

But such practices need not necessarily be abandoned. They are nonetheless permissible, despite their disparate impact, where they are supported by a "business necessity." The point of that defense is to rebut the inference of discrimination (even unconscious discrimination) that the disparate impact tends to demonstrate. If business necessity is shown, we can assume that the practice in question was established because of that necessity, not merely as a product of stereotyping.

Of course, in the equal protection context the requirements for proving discrimination are far stricter. There, Washington v. Davis, 426 U.S. 229 (1976), requires precisely the sort of smoking gun evidence of conscious discriminatory motive and purpose that Grigg's more layered approach obviates.[4] Today's majority essentially holds ADEA plaintiffs to a Washington v. Davis standard. I see no reason for such a departure.

III.

The majority offers two reasons for its result. The first comes from ADEA sec. 4(f)(1), 29 U.S.C. sec. 623(f)(1). That provision provides an affirmative defense to employers for actions taken "where ... the differentiation is based on reasonable factors other than age." Judge Easterbrook, dissenting in Metz, suggested that this language precluded the availability of disparate impact liability in ADEA cases. Metz, 828 F.2d at 1212-13. And today's majority agrees.

But it seems to me that the disparate impact method already provides a defense for factors that are determined to be based on reasonable factors other than age—the business necessity defense. While as a general matter, it is true that we ought to interpret statutes to avoid rendering language superfluous, it seems clear to me that sec. 4(f)(1) simply codifies the business necessity defense. It does not preclude the availability of disparate impact liability.

The second reason the majority offers to support its conclusion is the Supreme Court's decision in Hazen Paper. But I believe that the disparate impact theory of liability is designed as a means to detect employment decisions that reflect "inaccurate and stigmatizing stereotypes." 113 S. Ct. at 1706. This is precisely the determination that Hazen Paper says the ADEA is intended to outlaw. I do not believe its use is in any way incompatible with ADEA liability. The basic practical difficulty with the majority's result is that it provides an opportunity for employers to exclude older applicants from lower-level jobs simply by declaring the applicants "overage" (i.e. entitled to earn an excessive salary for the job they seek.).

---

[1] "The courts and the EEOC have indicated that the impact analysis of Griggs v. Duke Power Co. is applicable to the ADEA." Mack A. Player, Employment Discrimination Law, 8 6.10, at 525 (1988). See Geller v. Markham, 635 F.2d 1027 (2d Cir. 1980), cert. denied, 451 U.S. 945 (1981); Maresco v. Evans Chemetics, 964 F.2d 106, 115 (2d Cir. 1992); EEOC v. Westinghouse Electric Corp., 725 F.2d 211 (3d Cir. 1983), cert. denied, 469 U.S. 820 (1984); Abbott v. Federal Forge, Inc., 912 F.2d 867, 872 (6th Cir. 1990); Wooden v. Board of Educ., 931 F.2d 376, 379 (6th Cir. 1991); Leftwich v. Harris-Stowe State College, 702 F.2d 686 (8th Cir. 1983); EEOC v. Borden's Inc., 724 F.2d 1390 (9th Cir. 1984); Shutt v. Sandoz Crop Protection Corp., 934 F.2d 186, 188 (9th Cir. 1991); Allison v. Western Union Tel. Co., 680 F.2d 1318 (11th Cir. 1982); MacPherson v. University of Montevallo, 922 F.2d 766, 770-71 (11th Cir. 1991).

[2] Commentators on the subject have also offered divergent views. See Note, Age Discrimination and the Disparate Impact Doctrine, 34 Stan. L. Rev. 837 (1982) (theory unavailable); Note, Disparate Impact and the Age Discrimination in Employment Act, 68 Minn. L. Rev. 1038 (1984) (theory available); Steven J. Kaminshine, The Cost of Older Workers, Disparate Impact, and the Age Discrimination in Employment Act, 42 Fla. L. Rev. 229 (1990) (purporting to offer "a more balanced approach").

[3] The majority takes issue with the suggested parallel between Title VII and the ADEA. As noted in footnotes 1 and 2, this parallel cannot be characterized as novel. Title VII's appeal as persuasive authority in ADEA cases is not altered by the fact that the present case deals with "applicants" for employment. Whether or not subsection (2) of the unlawful practices section excludes applicants for employment is not as self-evident as the majority maintains. 29 U.S.C. sec. 623(a)(2). See Geller, 635 F.2d 1027 (2d Cir. 1980) (recognizing a disparate impact claim under the ADEA for an applicant in a position parallel to that of Johnson). There is also a good argument for the availability of disparate impact analysis under subsection (1). 29 U.S.C. sec. 623(a)(1). See Colby v. J.C. Penny Co., Inc., 811 F.2d 1119, 1127 (7th Cir. 1987) (holding that plaintiff had stated a valid disparate impact claim under subsection (1) of Title VII's unlawful practices section, 42 U.S.C. sec. 2000-e-2).

[4] An exception, however, is recognized for jury selection challenges. The "impact-inference" standard applicable in that setting, see Casteneda v. Partida, is functionally indistinguishable from the type of disparate impact analysis set out in Griggs.

End of Text

End of Section

Published by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037

PRESERVATION PHOTOCOPY

292

To Civil Rights Division Leader

Encounters such as the one at McDonald's have fueled Patrick's conviction that an active Civil Rights [illegible]ion is a necessity, not an option. [illegible]duate of Harvard Law School [illegible] experience in private practice and at the NAACP Legal Defense and Educational Fund, he has brought in assistants with backgrounds as civil rights advocates, and has given priority to cracking down on discrimination against minorities and disabled persons in housing, lending and education.

He plans to expand programs in which Justice officials pose as renters to determine if apartment managers treat minorities unfairly. He expects to call in the nation's top banking executives to discuss lending practices.

Last summer, when an opinion piece in the Wall Street Journal criticized the Justice Department's settlement with the Chevy Chase Federal Savings Bank for alleged redlining under the headline "Banking by Quota," Patrick responded that the settlement had nothing to do with a "quota." He called the word "a derisive and divisive term that . . . is used to try to discredit civil rights enforcement." Discrimination in [illegible] exists, and he could not "sim[illegible]k the other way," Patrick wrote.

In his swearing-in speech, Patrick said, "I know that the business of the Civil Rights Division has opened up jobs to black workers . . . opened up apartments to Hispanic families . . . opened up whole new vistas of active life for people with disabilities."

The work of his division, according to Patrick, is a measure of the country's progress toward granting all Americans "equality, opportunity and fair play." But the difficulty, he acknowledges, is that there is sometimes little agreement on how to ensure these values.

"Patrick has handed the division over to the liberal wing of the Democratic Party," said Bolick, a lawyer in the Civil Rights Division during the Reagan years. He and others object to Patrick's conception of the division's role.

Cooper, who was head of the Office of Legal Counsel in 1985-88, [illegible] "Our position is that the civil [illegible] laws were not written to address all social issues. . . . You had to deal with specific acts of discrimination. . . . The statutes were not written to encourage quotas and race-based preferences."

Patrick called the criticism "tiresome" and said he reminds himself the verbal attacks are not personal, although it "sounds personal and it reads personal." He acknowledges his sensitivity to matters of race but said, "This job, when you finish it all, is a law enforcement job. It's not a crusade."

Ralph Neas, executive director of the Leadership Conference on Civil Rights, said Patrick is simply trying to enforce civil rights laws rather than undermine them. But in this explosive environment, some "conservatives . . . will attempt to make simple compliance with the law a radical act," Neas said.

Sources within the division say privately that Patrick has created an environment in which they can more aggressively pursue enforcement than in the Reagan-Bush years.

"We haven't always had someone who understands civil rights," said John Wodatch, chief of the division's public access section. "Deval is his own civil rights story and wants to communicate that."

For those who think that the need to do such enforcement is over, Patrick said, "It's nuts to think that we could reverse the effects of 300 years of deprivation by a few court decisions and a few good statutes."

"The job brings . . . difficult choices," says Deval L. Patrick.

Boost for Minority Businesses Urged

At Trade Fair, Suppliers Pitched Wares and Executives Pitched Support

By Kirstin Downey Grimsley
Washington Post Staff Writer

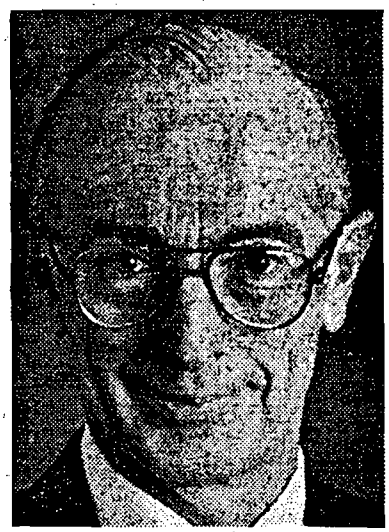
Three business executives yesterday urged corporations to work more aggressively to promote business opportunities for minorities, particularly by being their customers.

Speaking at the National Minority Supplier Development Council's annual conference and trade fair here, the executives stressed steps that their companies and others are taking to help share the wealth.

Patrick J. Maher, chairman and chief executive of Washington Gas Light Co., called on companies to increase their spending by 25 percent a year on goods and services provided by minority-owned firms.

Hugh L. McColl Jr., chairman and chief executive of NationsBank Corp., based in Charlotte, N.C., said companies need to do what his is doing—not just buying from minority-owned businesses but actively promoting and helping finance new start-ups. "It seems clear that the status quo has not worked for minority businesses," McColl said, and he added that a wider economic base in the country means more money for everyone.

And Arthur C. Martinez, chairman and chief executive of Illinois-based Sears Merchandise Group, announced a $250,000 grant to the development council to help establish a training center for minority entrepreneurs. Martinez said that such steps are necessary because while minorities make up about one-quarter of the U.S. population, they own only about 9 percent of the businesses and account for 4 percent of total gross receipts.



PATRICK J. MAHER
... urged 25% increase in contracts

Martinez said minority-owned firms are at particular risk today because of heightened competition for all businesses. Companies under financial stress typically seek to simplify their purchasing patterns by buying from fewer vendors, which means that small firms are at a comparative disadvantage, he said.

The development council describes itself as a link between 3,500 corporate members and 15,000 minority-owned businesses. The conference gave some minority business owners a chance to pitch their services and wares to major companies at the trade show.

Yla Eason, president and founder of New York-based Olmec Toys, which makes African American and Hispanic-inspired dolls and action figures, said she found the networking excellent. "We're finding customers who have bought our dolls and customers who want to buy our dolls," said Eason, who started her company in 1985 after her 3-year-old son told her he could never be a He-Man action hero because his skin was black and all the dolls were white.

L.B. Ketchum, president of Red Man, an Oklahoma-based pipe and supply company, and chief of the 9,000-member Delaware Indian tribe, used the event as an opportunity to display a new line of reusable heavy plastic packaging his company has developed as an environmentally friendly substitute for cardboard boxes.

"We think the show has done for us what we'd hoped it would," Ketchum said. "... We've got to get the Native American into the American economic mainstream."

But some entrepreneurs questioned whether the establishment companies at the trade show were sincere in their commitment to minority-owned businesses. Lawrence T. Walker, president of L.T. Walker Co., a Paramount, Calif., firm that makes children's and women's apparel, said he would be more impressed if he saw more chief executives actually working at the trade show booths and reaching out to the minority-owned companies directly.

"This is so much better than so many of the things that are happening, but I think we're hardly scratching the surface," Walker said.

Los Angeles Times

DATE: 6-14-95

PAGE: A1

Clinton Vows He'll Fight to Retain Affirmative Action

■ Discrimination: The hurdle that the Supreme Court ruling raised 'is not insurmountable,' President says. His action virtually assures a drawn-out battle over programs.

By DAVID G. SAVAGE and MAURA DOLAN, TIMES STAFF WRITERS

WASHINGTON—President Clinton vowed Tuesday to fight to preserve federal affirmative action programs that give preferences to blacks, Latinos and other minorities—a declaration that puts him at odds both with the Supreme Court and Republican leaders in Congress.

A day after the Supreme Court cast doubt on the legality of most such programs, Clinton said the court "has raised the hurdle, but it is not insurmountable."

"Despite great progress, discrimination and exclusion on the basis of race and gender are still facts of life in America. I have always believed that affirmative action is needed to remedy discrimination and to create a more inclusive society."

By choosing to stand firm, the President virtually assures a drawn-out battle in the courts and Congress. That fight in turn will affect an already acrimonious debate in California, where voters may be called upon next year to decide the matter if an initiative derailing state affirmative action laws makes the ballot.

The Supreme Court decision of Monday, as powerful as it is, does not automatically dismantle federal race-based preference programs.

That can only be done through legislation or a series of supporting court rulings that come in response to specific lawsuits.

Rather, the justices simply declared that programs employing "racial classifications" generally are unconstitutional and they left it to lower courts to apply that strict standard in future cases.

The Administration had the choice of quietly acquiescing to the court opinion. But after nearly 24 hours of debate among themselves—following months of ruminating on the subject—White House officials have chosen to fight. The Justice Department will be responsible for defending federal affirmative action programs in court.

"It is regrettable that already, with the ink barely dry, many are using the Court's opinion as a reason to abandon that fight" for affirmative action programs, Clinton added. "The constitutional test is now tougher than it was, but I am confident that the test can be met in many cases."

By contrast, Republican leaders said the ruling gives them momentum to their push to abolish racial preferences.

It is "one more reason for the federal government to get out of the race-preference business. . . . It's now our responsibility in Congress to follow the court's lead and put the federal government's own house in order," said Senate Majority Leader Bob Dole (R-Kan.), the front runner for the Republican presidential nomination.

Monday's 5-4 decision came in the case of Adarand vs. Pena, involving a federal highway program that awarded a road repair contract to a Latino firm in Colorado which had submitted a slightly higher bid than a white contractor.

The high court declared that the Constitution makes "all racial classifications" by federal agencies "presumptively invalid." In rare instances, government can prefer some persons over others but only if the preference is a "narrowly tailored remedy" for specific "prior discrimination," not a broad-based government policy to redress societal inequities.

Writing for the court, Justice Sandra Day O'Connor suggested, however, that the government might adopt "race-neutral" policies that would help "socially and economically disadvantaged individuals."

Judges must now apply that ruling whenever a white person files a suit contending that he or she lost something—a job, a contract or a broadcast license, for example—because a federal agency gave a preference to minority applicants.

The ruling serves as a powerful indicator of the high court's leaning on the issue of affirmative action.

But Supreme Court rulings, no matter how clear, are not self-executing.

For example, it took nearly a decade after 1954 before the ringing and unanimous ruling outlawing segregation began to open the school doors to black students in all parts of the South.

Even then, Presidents Dwight D. Eisenhower and later John F. Kennedy were forced to use federal marshals to clear the way.

Critics of affirmative action, while cheered by Monday's opinion, also seemed resigned to a drawn out battle.

"Nothing will be swept aside overnight. It is very expensive and very time consuming to challenge these programs," said Richard Samp, legal director for the Washington Legal Foundation.

Samp speaks from experience. Last month his organization won a final ruling striking down a University of Maryland scholarship program that was limited to blacks only. But the victory came after five years of litigation.

Similarly, defenders of programs that reserve some contracts for minority-owned firms called Monday's ruling a setback, but not a final defeat.

Evidence of continuing "marketplace discrimination. . . is more than sufficient" to prove that blacks and Latinos still need the benefit of special set-aside programs, said Anthony W. Robinson, president of the Minority Business Enterprise

cont'd

Legal Defense Fund.

Lawyers who have been through this battle before point to the 1989 ruling in Richmond vs. Croson. Then, O'Connor, also speaking for a 5-4 majority, ruled that state and local programs that give preferences to minorities may not stand unless they pass the same "strict scrutiny" test imposed on federal programs Monday.

Six years later, lawyers and government officials in California and around the country note that some local programs that reserved a percentage of contracts for minorities have been scrapped, but most of have survived in one form or other.

When the U.S. Supreme Court handed down Croson, "It had an immediate impact," said Deputy Los Angeles City Attorney Christopher M. Westhoff.

Before Croson, bidders had to meet numerical goals for women and minorities if they expected to win a contract from the city. After the Croson decision, the city dropped the numerical goals, but ordered up a study that would demonstrate a clear pattern of past discrimination, and began requiring contractors to make a good faith effort to hire minority and women-owned subcontractors.

"As a result . . . we saw a slight dip (in minority participation) but it wasn't great. . . ," Westhoff said.

A contractor subsequently challenged the outreach requirement in court, forcing Los Angeles to suspend it for a year. But The California Supreme Court upheld the program in December.

Westhoff said city officials are satisfied with the outreach program.

"I think our outreach was pretty successful, and that may be where we end up ultimately—with an outreach program," Westhoff said.

Los Angeles attorney Bernard S. Kamine, who represented the contractor who challenged the city outreach program, said municipalities in the state have been able to maintain the programs by doing studies that demonstrated clear patterns of discrimination.

He said the Supreme Court ruling will have a major impact unless the federal government does the studies that will allow it to keep the programs.

Savage reported from Washington and Dolan from San Francisco.

The Washington Times

DATE: 6-14-95
PAGE: A10

Clinton concurs on hiring decision

By J. Jennings Moss
THE WASHINGTON TIMES

A day after the Supreme Court questioned the constitutionality of federal affirmative-action programs, President Clinton said yesterday that the court's ruling was "not inconsistent" with his some of his own standards.

The administration's 4-month-old review of federal programs giving preferences to women and minorities now will be revised in terms of the court's 5-4 ruling, Mr. Clinton said in a statement.

The president said he has always supported affirmative action but added that it "must be carefully justified and must be done the right way." He said the court's decision "is not inconsistent with that view. . . . [It] has raised the hurdle, but it is not insurmountable."

At issue in the case before the Supreme Court was the charge by a white contractor in Colorado that it was unfair for the federal government to award a contract to a Hispanic-owned company even though he would have charged less.

In sending the case back to the state courts, the high court said the federal government could keep such set-asides only to fulfill a "compelling government interest."

The politics of affirmative action already is being hotly debated, not only between the White House and Congress, but also among candidates for the 1996 Republican presidential nomination.

For example, Pat Buchanan said yesterday in Pittsburgh that Mr. Clinton and Congress should now "eradicate racial and gender discrimination, root and branch, from all federal agencies, practices, policies and programs."

The administration had been under attack by supporters of affirmative action for not moving quicker to commit Mr. Clinton as a firm backer of the traditional interpretation of affirmative action.

Analysts are split over what the political impact of the Supreme Court's decision will be for the administration. Some suggested it provides a cover to liberal critics who called for a return to traditional standards; others were not sure.

"It provides them with time. In terms of political cover, it might actually make it more difficult," said one civil rights official.

Mr. Clinton sought to point out that the court's decision only refines the game. "Exaggerated claims about the end of affirmative action — whether in celebration or dismay — do not serve the interest all of us have in a responsible national conversation about how to move forward together and create equal opportunity," he said.

Christopher Edley Jr., an Office of Management and Budget official who is a key member of the administration's review team, said the court ruling "doesn't mean back to square one."

"We're obviously going to take the guidance with which we've been workng and now work with the Justice Department to verify that the policy test we've been using will in fact meet the details of the test outlined by the Supreme Court," Mr. Edly said on National Public Radio's "Morning Edition."

Ed Kilgore, a senior fellow with the Progressive Policy Institute, said the court has created a "structure" for the administration to finish its review. The institute is the research arm of the centrist Democratic Leadership Council.

The New York Times

DATE: 6-14-9
PAGE: A17

Ruling Leaves Kansas City Uncertain on Schools' Fate

By DIRK JOHNSON

KANSAS CITY, Mo., June 14 — In a pockmarked neighborhood a few miles and a world away from the spiffy Country Club Plaza shopping district, a 10-year-old boy, Joseph Gause, read the troubled expression on his mother's face.

Penney Gause told her son she was upset about the ruling that the United States Supreme Court handed down on Monday. The ruling, which said that Federal courts had improperly ordered the state to finance improvements in the city schools and pay raises for its teachers, would mean less money for inner-city schools like his, she said.

"But I thought everybody liked my school," Joseph said. "What's the problem?"

Ms. Gause drew a breath and set her jaw.

"Not enough white boys and girls come to your school," she said. "That's the problem."

The Supreme Court ruling appears likely to jeopardize the future of the Kansas City magnet-school program, which has sought to attract white students from the suburbs and from private schools to top-shelf schools and programs in the city system.

Critics of the program say that the schools have failed to attract many whites, and that test scores did not improve enough, despite the infusion of more than $1 billion over a decade. The State of Missouri has been seeking a release from the Federal court order that requires it to help pay these costs.

It was unclear precisely what the ruling would mean for city schools. Officials for the district have been negotiating with state officials since February on a new system of financing. The Missouri Attorney General, Jay Nixon, who has been highly critical of the city program, hailed the ruling as a way to "stop the inequity." He said that 45 percent of Missouri education spending goes for 9 percent of the state's students, those in Kansas City and St. Louis. Those expenses are largely for programs, ordered by Federal courts, that are intended to eliminate discrimination against blacks.

Mr. Nixon said that the city schools were taking more than their share of state money and that "this inequity has got to end."

The Supreme Court stopped short of ordering the Kansas City plan dismantled, but the majority opinion seemed to encourage the lower Federal courts, which have been handling the case.

Arthur A. Benson, a lawyer for the school district, said he hoped that the state would not abandon city schools. "We are on the verge of truly outstanding educational accomplishments for an urban, mostly minority school district," he said. "A scorched-earth school policy would benefit no one in the state."

The school district of 37,000 students is about one-fourth white and three-fourths members of minorities, mostly black. About 2,000 suburban students are enrolled in city magnet schools.

The magnet program has been in effect since 1985. Since then, test scores for elementary students have improved, but those for high school students have remained well below national averages.

"That shows we need more time," said Calvin Williford, a spokesman for the Kansas City school district. "The children in elementary schools entered schools that were no longer segregated, and they have reaped the benefits. The high school students, many of them, started school under the old conditions, where they didn't have an equal opportunity."

Text

CALIFORNIA EXECUTIVE ORDER TO END PREFERENTIAL TREATMENT SIGNED BY GOV. PETE WILSON (R) JUNE 1, 1995

EXECUTIVE DEPARTMENT STATE OF CALIFORNIA

EXECUTIVE ORDER TO END PREFERENTIAL TREATMENT AND TO PROMOTE INDIVIDUAL OPPORTUNITY BASED ON MERIT

EXECUTIVE ORDER W-124-95

WHEREAS, basic fairness is at the core of the American dream and the American character; and

WHEREAS, it is government's duty to promote the belief that Americans who work hard and play by the rules can, on the basis of their individual merit, win for themselves and their families the deserved rewards of excelling in an honest competition for a job, (or a contract, or for a place in an institution of higher education; and

WHEREAS, government must promote equal opportunity regardless of race or gender; and

WHEREAS, we must have zero tolerance for discrimination of any kind and must vigorously and conscientiously enforce the laws that protect against discrimination to achieve our goal of a truly color-blind society; and

WHEREAS, numerical quotas for hiring and contracting processes merely replace one form of discrimination with another; and

WHEREAS, the continuation of race- and gender-based preferential treatment progress which benefit an individual who has not suffered discrimination at the expense of an individual who has not engaged in discrimination is divisive, inconsistent with the principle of basic fairness, and fundamentally wrong; and

WHEREAS, state government must award contracts and make hiring decisions on the basis of merit to the maximum extent allowable by law; and

WHEREAS, state governmental programs and practices which grant special preference based on race and gender in employment and contracting (hereinafter referred to as "preferential treatment") have expanded beyond even the requirements of current law;

NOW, THEREFORE, I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby issue this order to become effective immediately:

1. Executive Orders R-34-71, B-85-81, and D-20-83 are repealed in their entirety.

2. No state agencies, departments, boards, or commissions shall discriminate in employment on the basis of race, gender, creed, color, religion, national or ethnic origin, age, marital status, or physical or mental disability.

3. To ensure equal opportunity, all state agencies, departments, boards, and commissions shall take appropriate measures to ensure that qualified applicants are recruited from all segments of the relevant work force and shall monitor their hiring practices to assure that they are operating in a non-discriminatory manner and without any barriers to equal opportunity.

4. To the maximum extent allowable by law, decisions in public employment and contracting shall be based upon merit.

5. In the interest of promoting an equal opportunity and truly color-blind society and eliminating excessive state regulations and requirements, the following motions shall be taken immediately by state agencies, departments, boards, and commissions to the maximum-extent allowable by law;

(a) eliminate all state preferential treatment requirements that exceed federal statutory or regulatory, or state statutory requirements, including but not limited to those concerning hiring and layoffs and state contractors or grantees;

(b) terminate any consultant contracts, disband any advisory committees, and abolish any performance recognition awards, where those contracts, advisory committees, and recognition awards foster or encourage preferential treatment;

(c) quantify and report to the Governor within 75 days the cost to state taxpayers of implementing federal and state requirements, which grant preferential treatment; and

(d) draft 1995/96 state employment goals and timetables required by the Government Code so as to be based on the employment pool possessing the necessary qualifications for the particular job classification at issue, rather than on general work force parity.

6. The State Personnel Board is directed to re-examine current regulations implementing state preferential treatment employment statutes. In promulgating further regulations, the Board shall limit the scope of such regulations to the extent compelled by law, and in that connection, appointment and layoff processes which grant preferential treatment based on race or gender should be eliminated except to the extent compelled by law.

7. State Constitutional Officers, the University of California, the California State University, the California Community Colleges, the State Board of Education and state agencies, departments, boards, and commissions not directly under the authority of the Executive Branch are requested to take all necessary action to comply with the intent and the requirements of this executive order.

8. Nothing in this executive order shall be construed to require an action that would result in a violation of a court order or a loss of federal funding.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 1st day of June 1995.

Governor of California
ATTEST:
Secretary of State

End of Text

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

ing, defended the new policy and emphasized its commitment to "zero tolerance" of discrimination in hiring.

"Affirmative action was never supposed to lower standards," she insisted.

In response to a question of whether the executive order would provoke more "reverse" discrimination lawsuits, Gutierrez said only that her department would investigate and prosecute any discrimination in hiring.

FEHD has asked for funding for 41 new enforcement positions in the 1995-96 budget, she added.

(Text of Wilson's executive order appears in Section E.)

—By *Thomas Gilroy*

End of Section

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0-$1.00

Modern Mature tip

THE NEW CIVIL RIGHTS

By Joseph P. Shapiro Photos by Alon Reininger

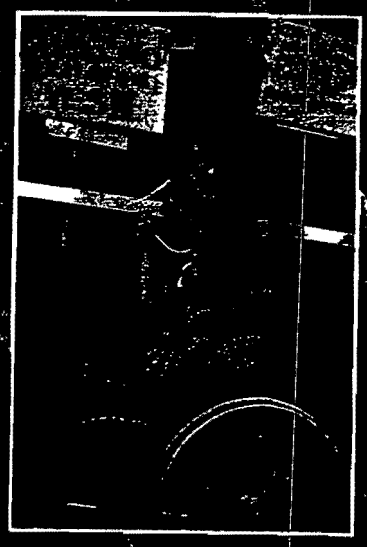
The disability movement initiated a new generation of activists who seek the right to define their own limitations—and possibilities.

The Americans With Disabilities Act has unlocked the door; now it's time to open it

MM REPORT

The California breeze blew exceptionally warm that fall day in 1962 as Ed Roberts, a postpolio quadriplegic, was lifted out of his wheelchair, carried up a mountain of steps, and situated in Room 201 of Cal Hall at the University of California at Berkeley. "It was a perfect day. A wonderful day, an exceptional day," says Roberts. "It was the first day of class, the first day of my freedom, and the first day of my life as a self-sufficient person."

That same school semester James Meredith, escorted to class by U.S. marshals, integrated the University of Mississippi. "We both had to sue to get into school," notes Roberts. "The only difference: I didn't need soldiers



to protect me." But just as surely as Meredith ushered in a new chapter of the civil rights movement, Roberts was starting a civil rights movement of his own—one that would eventually remake the world for Americans with disabilities.

Taking their cues from the civil rights movements of blacks, women and other minorities, Roberts and fellow disability rights leaders would challenge widely held myths that people with disabilities were incapable of being educated, working, caring for themselves, or becoming contributing members of society. They would challenge the notion that they led tragic or lesser lives. And they would proudly call themselves "disabled."

But it would take almost another 30 years, until 1990, before this new self-identity was reflected in law with the passage of the Americans With Disabilities Act, a far-reaching federal statute that prohibits discrimination against 49 million Americans.

Birth of a movement

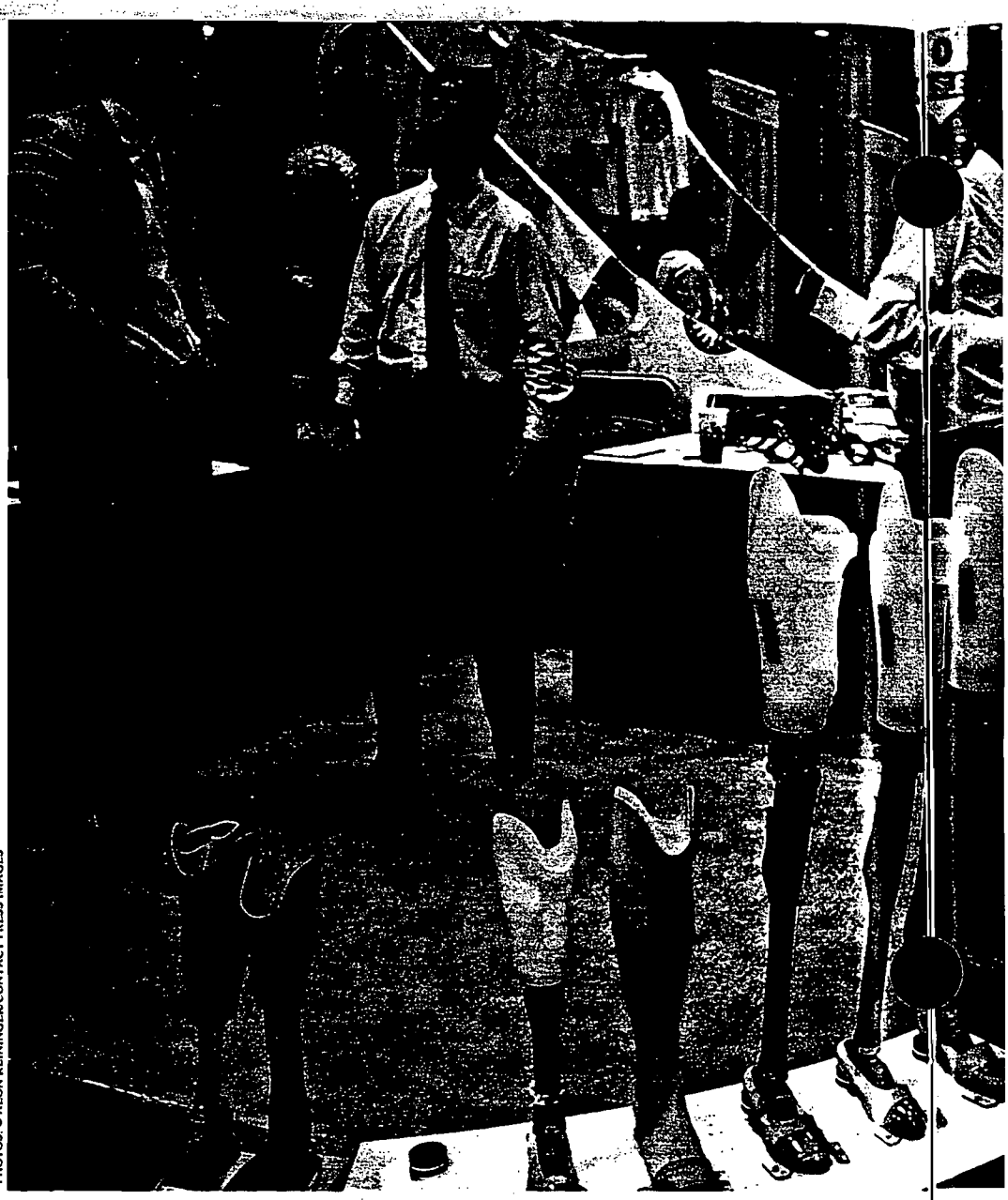
The disability rights movement, which won that law, began the day Roberts—who was so severely disabled that he spent most of his day in an iron lung—arrived on the Berkeley campus. He needed someone, often his brother, who was also a student, to help him get out of bed, dress, eat, and open his books. "Helpless Cripple Attends UC Classes . . . ," said one newspaper headline of the Berkeley experiment.

But Roberts saw school as one place where he could compete. "I'm paralyzed from the neck down, not from the neck up," he would say. Still, because few people with disabilities even tried to go to college, as Roberts points out, "there were very few role models." So he became one. And within a few years a dozen other students with severe disabilities, heartened by Roberts's example, followed him to the Berkeley campus.

In the beginning Roberts himself wasn't sure a "crippled" man belonged on a college campus like Berkeley. Limited opportunities "did not seem like discrimination," he says, only something to be expected. "We had such strong feelings of self-hatred and inadequacy."

On the Berkeley campus, however, Roberts watched as black students

continued on page 30



PHOTOS: © ALON REININGER/CONTACT PRESS IMAGES

Independent living, with help and accommodations that include everything from wheelchair ramps to prostheses, is the ultimate goal of the new civil rights movement.

The author writes on social policy issues for U.S. News & World Report *and* The Washington Post. *He received the Alicia Patterson Foundation Fellowship to study the disability rights movement, which is the subject of his book,* No Pity: People With Disabilities Forging a New Civil Rights Movement *(Times Books, 1993). He also writes for* The Progressive, The Disability Rag & ReSource *and many other publications.*

It's okay to be disabled

Most nondisabled people just don't get it!

At least that's what some disability rights activists think. During a recent White House gathering to celebrate the fourth anniversary of the Americans With Disabilities Act and rally for the President's health-care plan, Hillary Rodham Clinton spoke of the importance of disease prevention and biomedical research. Some of the estimated 1,000 people with disabilities assembled on the South Lawn took exception to her words. They interpreted her message this way: Health-care reform would prevent people from becoming disabled or prevent them from being born in the first place. "She was saying it would be better if disabled people didn't exist!" says Cyndi Jones, publisher of the disability magazine *Mainstream*. "But that's not where we're coming from. There's a growing understanding in the disability community that it's all right to be disabled, that it's a natural part of life."

The idea that being disabled is a good thing may seem bizarre, far-fetched at best. But the celebration of being disabled is the very core of the new disability rights movement. Wouldn't Jones eagerly swallow a magic pill that would eradicate the lingering paralysis of her childhood polio and allow her to walk again? "No!" she says emphatically. And many others share her viewpoint. That's not to deny that being disabled is difficult. For Jones, there is the likelihood that her muscles will further deteriorate with age. Yet as she sees it, "The main thing disabled people need to do is claim their disability, to feel okay about it. Even if you don't like the way society treats you, it's part of your experience, of how you come to be who you are."

In another sign of militancy among the disabled, many now disdain the traditional role model of the heroic disabled person. Rejected are the super-performers who surmount great challenges, like the paraplegic climber who scales a Yosemite mountain or the blind sailor who attempts to solo the Atlantic Ocean. Many people who have disabilities tend to derisively dismiss such overachievers as "super-crips." Fawning media and movie portrayals of them, Jones complains, suggest that disabled people are deserving of society's respect only when they can put others at ease by making their disabilities seem irrelevant. They argue that such extraordinary feats, although laudable, do not reflect the day-to-day challenges most disabled people face—challenges that may be as simple as finding a bus with a wheelchair lift in order to get to work.

Worse, society's glorification of such exceptions suggests that disabled people deserve pity—instead of respect—unless they prove themselves capable of overcoming their physical limitations in an equally spectacular manner.

People with disabilities instead are redefining themselves and saying it's okay to be disabled. Mary Johnson, former editor of *The Disability Rag & ReSource*, the outspoken magazine of the disability rights movement, says the best analogy may be with gay rights. Just as homosexuals in the early 1970s rejected the "stigma" of being gay, she says, disabled people are saying there is nothing sad or shameful about their condition. They are taking pride in their identity as being disabled—parading it instead of closeting it.

Even wheelchair design reflects this new self-pride. Marilyn Hamilton became a paraplegic in a hang-gliding accident and then co-founded Quickie, a company that revolutionized wheelchairs. The firm made the chairs high-performance, lightweight, colorful, and fully customized instead of heavy and institutional. That stylishness says reassuringly that it's okay, it can even be cool, to be in a chair. "If you can't stand up," Hamilton likes to say, "stand out."

—*J.P.S.*

and women students challenged similar assumptions about their own assumed inferiority. "When women talked about being objects, I understood," he recalls. When blacks and women talked about the power of language, "underneath I got more and more angry at the way people perceived me as a vegetable with no future." Adds Roberts, "We were all talking about the same issues."

The Rolling Quads, as the students with disabilities called themselves, quickly found the campus full of barriers that seemed to mock their every desire to succeed. So Roberts and his pals, with the help of a small federal grant, started the Physically Disabled Students' Program dedicated to solving any problem that stood between the student with a disability and academic achievement. That meant finding attendants to help them get to class; scouting accessible apartments; even establishing a 24-hour emergency wheelchair-repair service, since a broken wheelchair sent back to a dealer could keep a student out of class for weeks. "The most revolutionary part of the whole thing was that we did it ourselves," says Roberts.

This seemingly simple program reflected a revolution in the way people with disabilities were coming to see their lives. Rejected was the poster-child or recipient-of-charity model that perpetuated the treatment of people with disabilities as sick, incapable and dependent. Doctors had up to that time measured independence by how far one could lift a leg or walk after an illness or accident. Roberts redefined independence as the quality of one's life with accommodations, like attendant care or a ramp. And he argued that people with disabilities knew better than doctors or rehabilitation counselors what they could achieve and what they needed.

In 1972 Roberts and his friends, who had by then begun to leave

continued on page 32

The cost of modification

Businesses with 15 or more employees must provide reasonable accommodation to employees or prospective employees with disabilities (mandated as of July 26, 1994, by the Americans With Disabilities Act); businesses with 25 or more employees have been required to do so since July 26, 1992. And as of January 26, 1992, the ADA also required that all businesses serving the public be accessible.

So why *aren't* they?

Oh sure, there are ramps. In some places. But how many stores and restaurants are stepless or have aisles wide enough for wheelchairs? How many dressing rooms, parking structures, offices, public parks, universities, etc., are *truly* accessible?

And what's the holdup? Money. Business owners are afraid of what it will cost them to provide real access and accommodation. Are their fears well founded? Not according to statistics collected by the Job Accommodation Network, a federally funded consulting service that provides free information to employers and people with disabilities. Its research shows that 15 percent of recommended accommodations would cost nothing. Nothing! And 52 percent would cost between $1 and $500. Only 22 percent would cost more than $1,000.

In fact, the government offers incentives to businesses to make the needed changes. IRS Code Section 190, the Architectural Barrier Removal Deduction, applies to businesses of any size and buildings of any age; it allows up to $15,000 a year for expenses involving the removal of barriers. Section 44, the Disabled Access Credit, applies to small businesses (less than $1 million gross annual receipts or 30 or fewer full-time employees during the preceding taxable year); it allows up to $5,000 a year that can be used not only for barrier removal on buildings built since 1990 but also for other accommodations.

Still, many business owners insist that providing accommodation will cause them "undue hardship," which the ADA defines as "significant difficulty or expense." Although this is a vague definition at best, factors considered include the net cost of modifications after deductions, credits, and any other payment (e.g., funds provided by a state department of vocational rehabilitation). The size, structure and resources of the business are also thrown into the equation.

Companies are always ready to spend money on anything they think will give them a business edge: new technology, training for their employees, etc. Yet what many firms don't realize is that modifying their facilities to serve people with disabilities is also good business; it opens the doors to a whole new contingent of dedicated and well-trained employees—and enables a whole new contingent of paying customers to patronize their establishments.

—Barrett Shaw

***The author is editor of* The Disability Rag & ReSource.**

school, took their student-program concept a step further and started the Center for Independent Living. Its mission: to find jobs, homes and other accommodations and services for graduates with disabilities in the Bay Area. Today there are some 300 of these centers around the country.

The nonprofit centers, which were among the first disability programs to be run by people with disabilities themselves, initiated a whole new generation of political activists. And the laws and programs those activists fought for had at their core the philosophy of accommodation Roberts had so valiantly set out at Berkeley. He was, after all, a perfect example of that philosophy: someone who, with help, far exceeded the expectations others had for him. In fact, counselors for California's Department of Rehabilitation had at first opposed helping Roberts go to Berkeley, arguing it "infeasible" that he would ever be able to work.

In 1975 Roberts became the head of that very same state agency. "We should never define people's limits. Each of us has to define our own limits," says Roberts, who constantly explores his own outer edges. In the last few years, for example, the ventilator-using quadriplegic has studied karate and gone swimming with whales off the coast of Hawaii. "In the beginning it was, 'Why me?' Now it's, 'Why not?' "

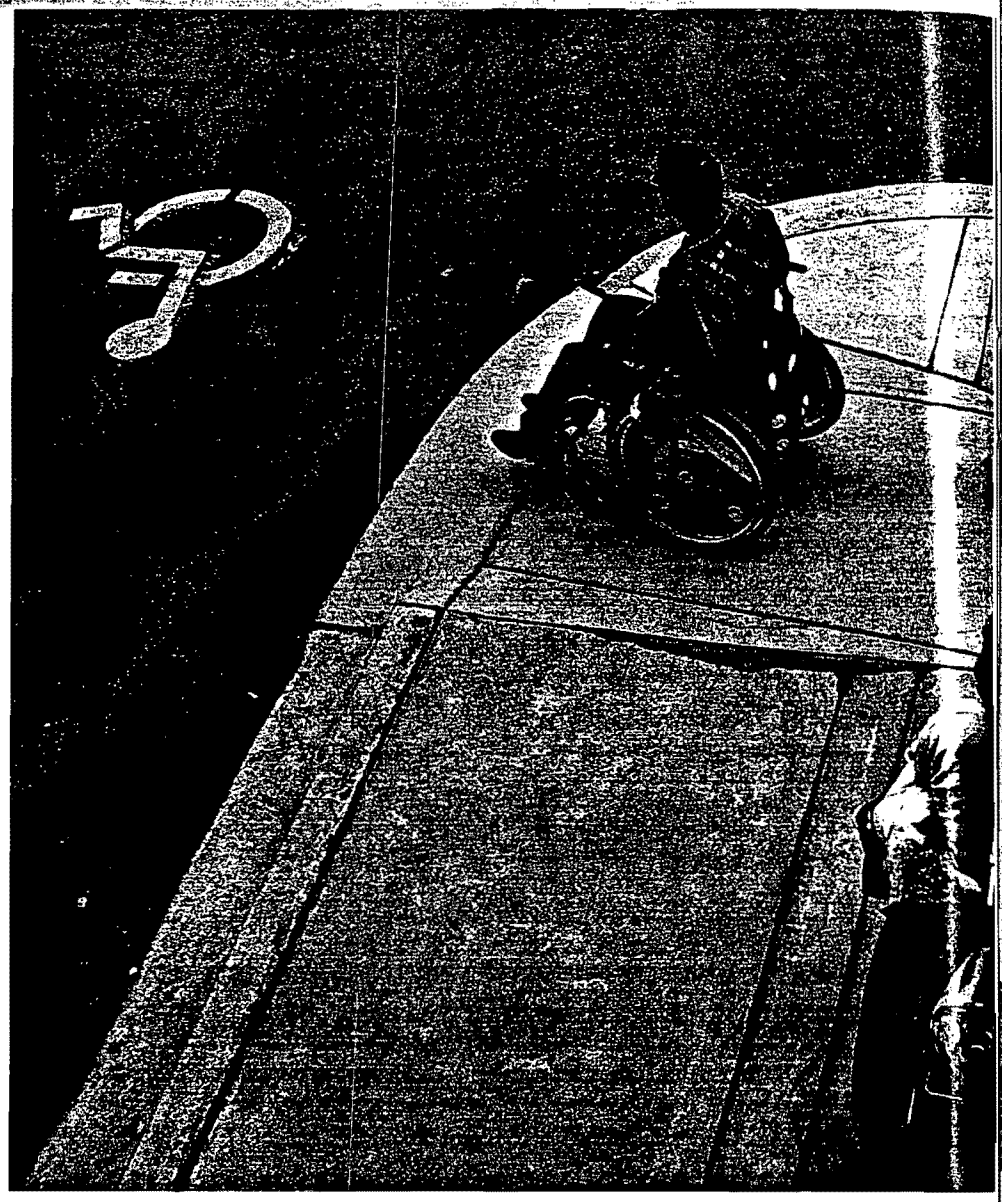
Accommodation, not pity

The ultimate expression of the independent-living philosophy is the Americans With Disabilities Act. This sweeping piece of legislation, most of which went into effect starting in 1992, not only banned outright discrimination against people with disabilities but also made providing accommodations, like ramps and wheelchair-height desks in the workplace, the law.

It was a worthy punctuation of the movement's insistence that there is nothing tragic and pitiable in having a disability. "Disability only becomes a tragedy for us when society fails to provide the things we need to lead our lives—job opportunities or barrier-free buildings, for example," explains disability rights leader Judith Heumann, who moved from New York City to California in 1973 to work with Roberts after having to sue the New York City Board of Education to gain the certification she needed to work as an elementary-school speech pathologist. Today, as a United States Assistant Secretary of Education, Heumann oversees federal special education, rehabilitation, and disability-research programs.

The power of the movement also came from the fact that people with disabilities represent the one minority anyone can join at any time. Fewer than 6 percent of Americans with disabilities were born with their disabili-

continued on page 34



Members of groups like ADAPT act to bring attention to the needs of the disability community.

A place called disability

The struggle for rights in America is a very old story. Many groups claim such a struggle as an integral part of their American heritage. If only we disabled people could somehow tell a similar story about our arrival here in America, about our attempts to become part of this society, then maybe our struggle for rights would be easier:

- We all came on the boat from the Old Country to escape persecution in Europe. The king had decreed that there would be no ramps.
- We were brought to the New World to work as wheelchair slaves. We did the jobs that required no reaching or lifting.
- Oh yes, we'll always remember the Old Country where everyone could sign for the deaf, and the meat was already cut up into bite-size pieces. All people with cerebral palsy looked like Daniel Day-Lewis and the paraplegics looked like Tom Cruise or Joan Crawford.

Of course that place does not exist for us. If there is an Old Country for people in wheelchairs it's right here in America. It's a place with no windows and bad linoleum that's run by a big angry nurse. It's a place with stairs and no ramps, narrow doors, and people who won't help us in or out of our chairs.

What a lot of people don't realize is that civil rights for the disabled, even though not a national or racial struggle, is integral to the concept of civil rights for all. Our struggle for inclusion in this society is a test of whether American society truly wants diversity and freedom for all.

We, the disabled, are a diverse group to begin with. Each of us has arrived on the scene with individual experiences fully realized. Each of us has made the world work for us as best we could. It is in this world that we celebrate our victories with legal symbols like the Americans With Disabilities Act. We also signify our struggle by those who've made it: the role models. But we should never forget that symbols and role models are not enough. Just as white America sees Michael Jordan as a symbol of African-American success, the able-bodied world latches on to success stories among the disabled. There's no need to endorse *real* change as long as we occasionally check in to see how these crips are doing. And if a few of them are doing well, they must all be doing well. Right?

Wrong.

In the case of disability the difference between the symbolic and the real is vast. While one disabled person's success may be indicative of the whole group's success, real success only comes when another ramp is installed, when one more person learns how to sign, when a new service is provided. Then and only then does our world—everyone's world—open wider.

I've traveled all over the globe, to the worst places and the best. My wheelchair and I have been hauled in and out of a Somali land-cruiser decked out with machine guns, an Iranian helicopter that needed a repair job, and through assorted uprisings in Zaire, Afghanistan and Gaza. One thing I learned is that most of the rest of the world lives in a place that physically doesn't work, where the people are forced almost daily to remake their communities to fit their basic needs. The survivors are the ones who tolerate, who can adapt.

So it is with the disabled community. We are survivors. If society as a whole ignores and excludes our expertise, they do it, in the long run, at their own peril.

America needs to finally start answering the question it has been avoiding for more than 200 years. What is a truly inclusive society? Forget the theory and the Supreme Court and the legislative process—they deal only in abstracts. Real inclusion is not measured in laws and lawsuits, but instead by what the community builds together in order to bring *everyone* together. Inclusion is a subway everyone can use, a building everyone can enter.

There is no single definition of inclusion, but you'll know it when you see it. —*John Hockenberry*

The author is a correspondent for ABC News. His forthcoming book, Moving Violations: Discovering America, the Middle East and the Virtues of Advanced Wheelchair Repair *(Hyperion), is due out in the spring of 1995.*

The age-disability connection

An elderly man crossing a street and a young woman making her way to class in a bright-red wheelchair. What do these individuals have in common? More than you might imagine.

The growing needs of people with disabilities, combined with the concerns of an aging society, raise certain questions: How should government and public policy view the needs of the older disabled person? How should the interests of two important constituencies—people who now have disabilities and older people who may someday face disabilities—be addressed? Historically, disparate policy approaches set down by government agencies have unwittingly put these two groups at separate ends of the legislative process.

The 1990 census revealed that 12 percent of the U.S. population—roughly 31 million people—are 65 or older. More than half have disabilities that limit their daily activities. Among minority groups the number increases to more than 60 percent.

These dry and impersonal statistics graphically illustrate that it is in the interest of older individuals and organizations concerned with aging to be part of a broader disability agenda.

The disability movement has taken great legal and social strides. Two sweeping examples are the Rehabilitation Act of 1973, which maintains the independence of physically disabled people, and the ADA, which prohibits discrimination against disabled people. Conversely, the disability community has learned much from the aging community. In fact, the Census Bureau's and ADA's very definition of disability is broad enough to cover not only the obvious issues of physical disability, but also other conditions such as arthritis and Alzheimer's disease.

And that's just a beginning. The current Administration is fully committed to promoting a partnership between the aging and disability communities. President Clinton and Secretary [of Health and Human Services] Donna Shalala are meeting their mutual interests through efforts that provide all individuals with disabilities, regardless of age, a variety of home- and community-based services.

We at the Administration on Aging are prepared to assist older people in maintaining their self-sufficiency. To better serve people with disabilities, we have formed partnerships with such agencies as the Administration for Children and Families, the Health Care Financing Administration, the Social Security Administration, and the Department of Education.

We realize that behind every statistic, whether it indicates age or disability, there is a person struggling to keep his/her independence, remain an active member of society, and fulfill his/her potential. ***—Fernando Torres-Gil, M.S.W., Ph.D.***

The author, Assistant Secretary for Aging in the Department of Health and Human Services, is a person with a disability. He is on leave from the University of California at Los Angeles.

ties, which usually result from accidents, diseases or complications of aging. "Disability knows no socioeconomic boundaries," emphasizes Patrisha Wright, who led the fight for the ADA as the Washington lobbyist for the Disability Rights Education and Defense Fund, a legal group that started at Berkeley's Center for Independent Living. "You can become disabled from your mother's poor nutrition while she carried you or from falling off your polo pony."

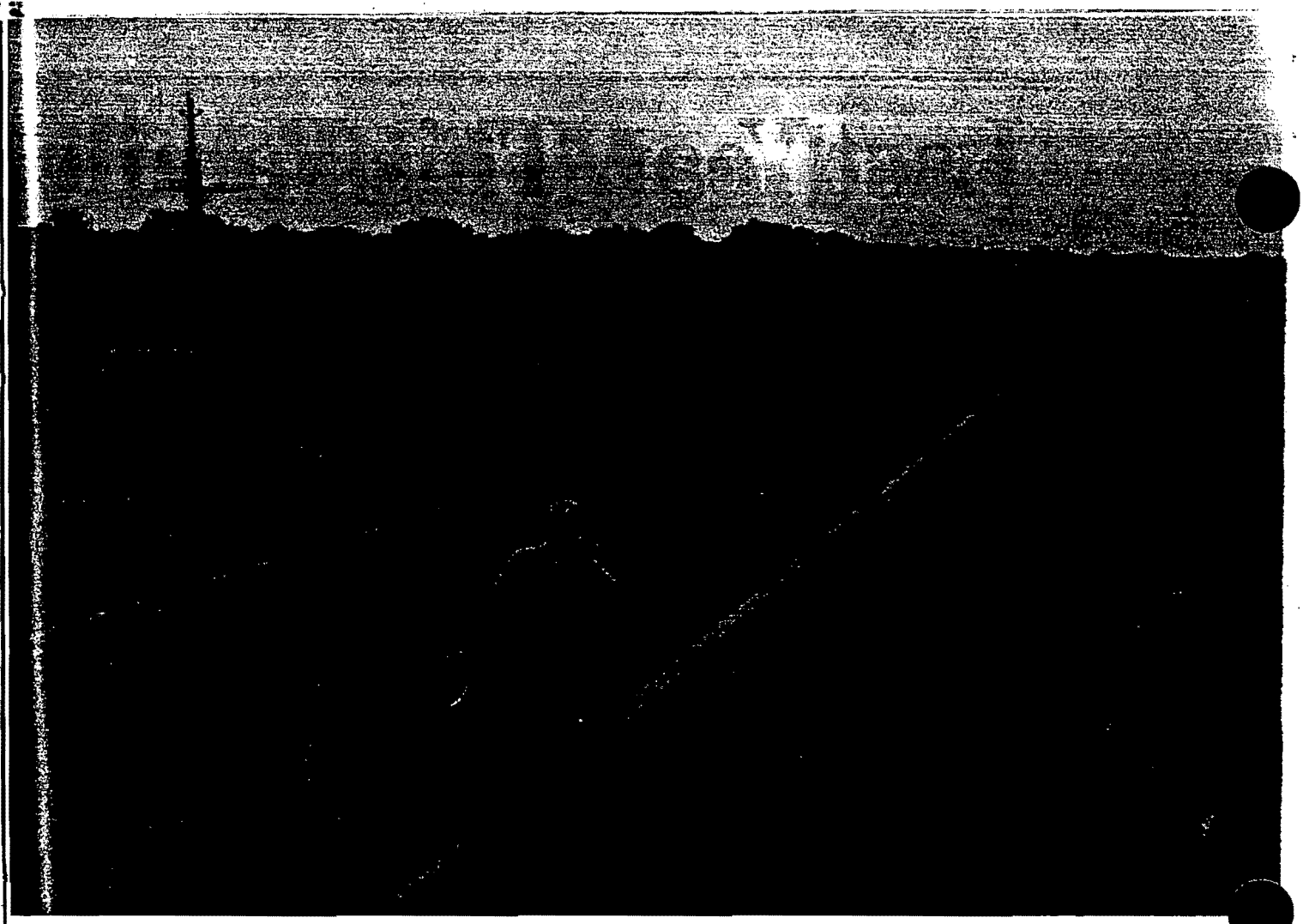
Former Representative and now chairman of the President's Committee on Employment of People With Disabilities Tony Coelho, who has epilepsy, also attributes passage of the ADA to the "hidden armies" of people in positions of power who claim personal experience with disability.

But it also took people banding together in groups like ADAPT (then the acronym for American Disabled for Accessible Public Transit, now for American Disabled for Attendant Programs Today). Its members took a variety of direct actions, including blocking inaccessible buses, to bring attention to the need for wheelchair lifts, now a requirement. "Black people had to fight for the right to ride in the front of the bus," notes Mark Johnson, an ADAPT leader. "We fought for the right to get on."

The schools, as in other movements, were another key battleground. In 1975 parents of youngsters with disabilities brought lawsuits to win the first federal guarantee that their children would go to school. Before then, a million children in this country received no education—almost every one a child with a disability. Today there are approximately 5 million special-education students.

All for one . . .

In fighting for the ADA, people of all disability types—physical, sensory and mental—came together in a



A lot of ground has been covered by the disability movement, a lot of rights won. But there is still a long way to go before people with disabilities can become full participants in their communities.

mighty coalition to argue that they have one thing in common: All face discrimination and the low expectations of others. Sometimes prejudice is crude, like that of the New Jersey private-zoo owner who refused to admit children with Down's syndrome because, he claimed, they upset his chimpanzees; or of the airline employee who placed a 66-year-old double amputee on a baggage dolly rather than help him into a wheelchair.

More often the bias is subtle, as in the most serious problem—employment discrimination. According to a 1994 Louis Harris study commissioned by The National Organization on Disability, two-thirds of people with disabilities ages 16 through 64 are unemployed. A full 79 percent of them say they want to work. Arizona State University health economics professor William Johnson, Ph.D., and East Carolina University assistant professor of economics Marjorie Baldwin, Ph.D., found that even when people with disabilities do hold jobs, they make less than other workers and are less likely to be promoted.

It's discrimination like this that makes it necessary to keep the movement strong. Because, in the end, gains made in the name of people with disabilities benefit everyone.

Changes in social policy have been similarly influential. Attendant-care programs, for example have offered new options for staying in one's own home instead of going to a nursing home. For such changes Ed Roberts, who now runs a disability think tank, claims the disability rights movement has made some of "the most profound social changes ever seen."

Profound, yes. But what happens when Congress grants a new minority group rights and society has little understanding of those rights, why they were awarded, or even why they are needed? As the newly recognized minority of people with disabilities asserts those rights, there will be many breakthroughs for equality. But there will also be clashes, misunderstandings, even a backlash.

Because of their movement's successes, people with disabilities are a protected class in civil rights legislation, empowered by law as well as united against discrimination. Their mission now is to convince a nation and the world that they and their fellows want neither pity-ridden paternalism nor overblown admiration. What they do want is common respect and the opportunity to build bonds to their communities as fully accepted participants in daily life. ■

Fanfare

Rainbow Coalition Targets Black Hiring, Grad Rates

The National Rainbow Coalition plans a campaign of boycotts, pickets and possible lawsuits against colleges that don't hire adequate numbers of black coaches and do a poor job graduating black athletes.

Black students account for roughly half of all Division I football and men's basketball players, but just 6.2 percent of head coaches and athletic administrators are black, according to NCAA figures.

To correct that inequity, the Rainbow Commission for Fairness in Athletics, an arm of Jesse Jackson's Washington-based Rainbow Coalition, plans to rate colleges according to a "Fairness Index." It will be based on factors such as graduation rates and the number of women and minorities among coaches, faculty and administrators.

Colleges that score poorly will be targeted for action.

"We are looking at lawsuits, boycotts and picketing," said Charles S. Farrell, the commission's national director. "By boycotts, we mean we're going to be going out and talking with recruits to discuss their choice for schools and single out those schools we feel are detrimental to the health and safety of African Americans."

Already, letters have been mailed to top basketball recruits in the Washington area. Jackson will follow up with visits to the homes of high-profile recruits.

"We're urging them to ask questions about graduation rates, whether graduates are getting employed, about black faculty, whether they'll be able to keep scholarships if they get hurt," Farrell said. "Imagine the impact it would have if a top recruit says, 'I was going to go to this school, but after a conversation with the Rainbow Coalition, I'm going here.'"

OPM Revamps System Of White-Collar Hiring

Written Exam for Most Job Seekers Eliminated

By Stephen Barr
Washington Post Staff Writer

The Office of Personnel Management, in a move to streamline federal hiring practices, announced yesterday that job seekers no longer will have to take a written examination in order to apply for most professional and administrative positions in the government.

Effective Nov. 20, the Administrative Careers With America (ACWA) test will not be required for about 110 federal occupations, such as economist, criminal investigator, claims examiner and contract specialist. Under the new procedures, job seekers will apply for specific openings instead of taking the exam and then waiting for their names to be plucked off a list.

"Ridding our system of obstacles will make it easier on job applicants, while allowing government to expedite the hiring of employees," OPM Director James B. King said in a statement.

The ACWA exam was introduced about four years ago as part of a judicially approved consent decree that dates to 1982. ACWA replaced the Professional and Administrative Careers Examination, which court plaintiffs believed was having an adverse effect on minority hiring.

But ACWA never lived up to expectations, according to reports issued by the General Accounting Office (GAO) and the Merit Systems Protection Board earlier this year. Agencies found other hiring methods that better met their needs and college graduates criticized the government's recruitment efforts because they were required to take a test that had little to do with whether they were hired.

OPM said 250 people were hired through ACWA last year, while more than 35,000 people remain on central job lists awaiting referrals to agencies. GAO found that agencies filled many vacancies by reassigning, transferring or promoting employees or by hiring through more direct appointments, such as the outstanding scholar program or the bilingual/bicultural program.

Under ACWA, applicants for jobs would take one of six written exam administered by OPM, depending c occupation type. OPM schedule testing sessions in major cities, scored the answer sheets and maile the results to applicants. Applicant scoring at least 70 points out of 10 were placed on central job lists.

When an agency wanted to fill vacancy, it would ask OPM to pre pare a list of people with high score who were interested in working i the area where the job was located.

But many applicants were no lon ger available for the jobs when final ly contacted, and OPM was spendin about $190,000 a year testing appli cants who were seldom selected, of ficials said.

By some accounts, substantia numbers of applicants never even heard back from the government. "At 97 percent, I thought I migh get a nibble, and got nix! Zippo!" one applicant told the GAO. "I felt a though, after I passed the test, my name was thrown into a black hol never to surface again," another ap plicant said.

Under the system starting next week, OPM will announce specific job vacancies, which applicants can find out about by calling 1-912-757-3000. Job seekers will be asked if they want to receive application material through the mail, an swer a questionnaire and send it back with a résumé attached. OPM will forward the applicant's job ranking to hiring agencies within two weeks. Agencies then have the option of requiring an applicant to take a written test.

The revamped system, however, comes at a time when the government is taking on fewer people. In 1984, the government hired 60,231 new employees for full-time, white-collar jobs. By 1992, that number had been cut by half, and last year the government's new hires totaled 21,489. The number should be even less this year and next, as the Clinton administration seeks to downsize the government by roughly 12 percent.

OPM officials noted that the new hiring practice complies with the terms of the court decree. Agencies will continue to give preference to veterans over nonveterans, OPM said.

THE NEW YORK TIMES

THURSDAY, NOVEMBER 17, 1994

Women Made Gains

To the Editor:

Your Nov. 11 front-page article on the impact of gender on the 1994 election does not focus on gender in statewide elections, which would give a more realistic portrait of the gains women are making.

While it is true that all six women candidates for governor lost, just 20 years ago no woman had been elected in her own right. Today, eight states have elected women as governors. That six women ran for the post is progress.

The voter defines the jobs and function of senator and governor differently and along gender lines. Studies show that the job of senator, which involves acting and making decisions with others, is viewed as more legitimate for women candidates than the job of governor. Governors are perceived as leaders who act independently on difficult, technical issues like budgets, taxes, investments and pension plans — issues still defined as male domains.

Thus, this election's issues of crime and taxes were experienced by men and women as issues better dealt with by male candidates.

You do not mention the record number of women nominated for statewide office since 1990: 16 for lieutenant governor, 17 for secretary of state and 14 for state treasurer. The office of state treasurer is being used nationwide as a steppingstone and training ground by women who eye the governorship.

More women than ever are running for state legislatures. Once women constitute 20 percent of a chamber, their impact on employment access, family issues, credit and pension policies will increase.

Women in both parties understand that political change is incremental and that the issues angering most of the electorate do not know any gender.

ELLEN S. CANNON

Chicago, Nov. 11, 1994

The writer is professor of political science, Northeastern Illinois U.

★ METROPOLITAN TIMES THURSDAY, NOVEMBER 17, 1994

RICHMOND

ACLU says curfew may be discriminatory

The Virginia chapter of the American Civil Liberties Union says a new juvenile curfew passed by the Richmond City Council might be unconstitutional.

In a letter to the mayor and council members, the ACLU says the policy could potentially be used to discriminate against black people and violates the rights of children to assemble peaceably.

Under the law, which takes effect Dec. 1, children under 18 must be off the streets by 11 p.m., except in limited circumstances. Parents can be fined up to $500 for the violations.

ROTC Still Draws Protests, but Issue Now Is Bias Against Gay Students

By Kathryn Wexler
Special to The Washington Post

LOS ANGELES—Nearly three decades after students picketed Reserve Officers Training Corps buildings to protest the Vietnam War, demonstrators are again challenging ROTC on the tree-lined paths at the University of California at Los Angeles.

But unlike protesters of the late 1960s who wanted to shut down the corps, today's demonstrators want to open its doors wider so homosexuals can be accepted unconditionally into the program.

Almost every Tuesday this quarter, dozens of students have gathered near the red-brick ROTC building on the concrete square in the heart of campus to chant demands for change. "Last time we were trying to get people out of ROTC. This time we're trying to get people in it," said David Mixner, who back in the '60s helped organize some of the biggest marches on Washington to protest the Vietnam War.

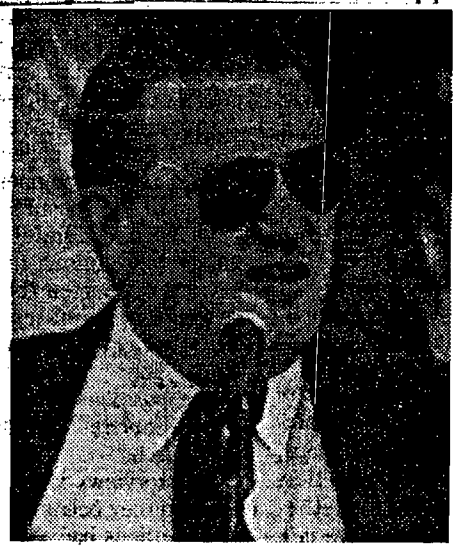
Harkening back to those earlier turbulent times, Mixner has helped mobilize the campaign against bias at UCLA by enlisting former anti-military activist and current state Sen. Tom Hayden. He told cheering students at a recent rally he would work to deny the university "hundreds of thousands of dollars" in ROTC funding if the corps does not scrap restrictions on homosexuals.

At issue is President Clinton's "Don't Ask, Don't Tell" policy. The rule does not require enlistees or cadets to reveal their sexual orientation, but it allows the military to investigate and discharge homosexuals. In the case of ROTC students, it demands repayment of scholarship money from those discharged.

One former ROTC cadet here, who still walks with a military gait two years after he quit the program over his homosexuality, said he never accepted a military scholarship because he feared he eventually would be found out and forced to repay his taxpayer-financed education. Speaking on condition of anonymity, the former cadet said, "I didn't like myself for being deceitful and living a double life."

In the last few years at least 12 ROTC students have been investigated and expelled nationwide, according to the Washington-based Servicemembers Legal Defense Network.

Although they are conducting one of the loudest and highest-profile campaigns, UCLA's students are not the first to raise anew the ROTC issue. For the past four years as campus gay activism has grown, faculty and student governments at dozens of schools have decried ROTC's policy. Critics contend the military enforces a fear-induced silence about homosexuality that



In '60s, David Mixner organized Vietnam protests; in '90s, he advocates gay rights.

"Last time we were trying to get people out of ROTC. This time we're trying to get people in it."

— David Mixner

flies in the face of freedom of expression and contradicts school policies that prohibit discrimination on the basis of sexual orientation.

But efforts to terminate campus contracts with ROTC have largely fizzled across the country. No one keeps an exact count, but interviews with ROTC and university officials indicate that while chancellors at more than a dozen schools have threatened to end their partnership with ROTC, only a handful have eliminated course credit granted for ROTC classes, and four—all on the West Coast—have gone so far as to evict ROTC.

One is California State at Sacramento, where the university president decided in April to phase out the units after pressure from the faculty senate. Cadets there have recently mounted their protest to condemn the disassembling of the program that has largely paid their way through college and given them a chance to serve their country at the same time.

There were 470 ROTC units on American campuses last year, enrolling 58,340 students, 16,651 on scholarship. Some 6,514 officers were commissioned from the program, the military's prime source of officers.

ROTC officials here say they are powerless to enact their policies regarding homosexuals because campus units are bound by the overarching policy of the military. The only alternative is for ROTC to close down the UCLA units that have enrolled about 150 students this year.

Military officials say that while they are ready to leave if they are not wanted, having ROTC as an option on campus creates more student diversity. In return, they say, the university seeds the military with more liberally minded officers.

Complicating the issue is that state schools like UCLA, which benefited from a federal land grant program dating from Civil War times, are required by the federal government to offer "military science."

Those on both sides of the protests agree the bottom line is money. Schools fear losing large grants from the Department of Defense that fund research, while at the same time alienating conservative alumni. In addition, for the 1993-94 school year, the military spent $133 million on scholarships for the program.

"If they want to evict ROTC off campus, they should appeal to the Department of Defense," said Patricia Teston, 22, who attests to the importance of ROTC to her life. A senior in the program and whose ethnic origin is Filipino, Teston says the program has enabled her to dispel "the myths of the capabilities of women, especially from my ethnic background [where] women are always seen as just a little less than men." She adds, "If they evict ROTC out of campus, they will eliminate people like me—minorities."

But Hayden and other activists say the homosexual minorities are being discriminated against when they are excluded from a program funded with public dollars. "It raises a lot of constitutional questions about the use of taxpayer money," he said.

Even with the publicity and financial backing, the protesters appear a long way from winning the changes they are demanding. University officials here insist they have no plans to eliminate ROTC or discontinue credit for classes taken at the unit.

Campus activists say they are also up against student apathy and ignorance. Unlike the Vietnam War, discrimination is a subtle issue, they say, and enlisting mainstream students is much harder than in the '60s, when lines were more sharply drawn. Part of the problem, Mixner said, is that students who might have supported the cause "have a fear of being perceived as gay or lesbian, which should give them an idea about what it's like to be a homosexu-

Cont'd 192

ROTC

242

al." Julio Rosa, a UCLA senior who is a leader in the campaign, said students passing by the demonstrators are not willing to cross the line and join the protest. "After the last rally, I realized how hard this is going to be," he said.

But although the weekly rallies with activists yelling anti-ROTC and pro-gay slogans have failed to attract mainstream students, they have drawn some strong community support.

Mixner's Freedom Project-Los Angeles, which he founded and helped fund last year to address the issue of ROTC discrimination at UCLA, initiated a petition campaign that garnered signatures from 2,000 community members, including members of Congress, state legislators and local officials, as well as celebrities such as Whoopie Goldberg and Lily Tomlin. In May, the group placed a full-page ad in the New York Times demanding UCLA end its partnership with ROTC.

Mixner said he has been contacted by students around the country who want information on how to mount similar protests. Some organizers envision the campaign here as a model for other schools.

Ousting the Trainers

By Mike Causey
Washington Post Staff Writer

Once the Republicans take control of the purse strings, federal agencies may find it difficult, if not impossible, to continue paying outsiders to come in and give diversity training sessions to workers.

Ethnic and cultural diversity training has become a cottage industry here. Both old-line training companies and new outfits have developed programs few agencies would feel equipped to handle.

Because diversity training and AIDS awareness sessions have been mandated by the White House, agencies must find ways to pay for them. Some of the trainers, who have been called politically correct versions of Beltway Bandits, are booked months ahead.

A few had to contract out to meet agency deadlines. Their business is booming while some defense contractors are laying off people. But that could change early next year.

Some federal officials privately complain that money must be diverted from more traditional training programs directly related to agency missions, such as tax collecting, law enforcement and air safety, to pay diversity trainers.

Conversations with many workers indicated their evaluations of the training sessions range from "excellent" to "absurd."

Glitches in training programs are headline grabbers. The Federal Aviation Administration paid big bucks to a company to conduct more than 45 workshops for 4,000 employees in the Midwest. At one of the workshops, male employees were forced to run a gantlet of women. One participant said the women were told to "show the men what it was like at Tailhook," the Navy convention in Las Vegas where several female officers said they were manhandled and humiliated.

Publicity from the FAA sessions, and other controversial programs in other agencies, have drawn the attention of politicians looking for ways to cut waste. Groups represe[illegible] federal managers, supervis[illegible] and executives also have protested some sensitivity sessions they believe are anti-male and anti-supervisor.

The Clinton administration has told federal agencies that a major chunk of the jobs eliminated by downsizing should come from the supervisory ranks, jobs paying $35,000 to more than $100,000, which are dominated by white men.

Lobbyists for some of the managerial groups said they have been told by the Republican leadership that "not one nickel" will be appropriated for diversity training.

If that prediction holds true, agencies will have to abandon such programs, continue them under a different heading or run them with volunteers and with employees choosing, rather than being forced, to take such training as part of career development.

Miracle Worker

John Berry, longtime aid[illegible] Rep. Steny H. Hoyer (D-Md.), has moved over to Treasury, where he will be deputy assistant secretary for law enforcement.

Although he isn't a household name among federal workers, his prints are all over dozens of bills that benefited civil servants.

Hoyer and Rep. Frank R. Wolf (R-Va.) set up a bipartisan alliance to give them more clout on behalf of their federal worker and retiree constituents. Wolf minded the Republican side of the House Post Office and Civil Service Committee, leaving Hoyer free to fend off bad bills or improve pay and perks via the Treasury-Postal Service-General Government appropriations process.

Berry was a master of outfoxing Democratic and Republican presidents and politicians who had designs on federal pay and perks.

Reporters covering the federal scene knew that when Berry went underground duri[illegible] a legislative crisis, he somehow would emerge eventually with a Hoyer bill, amendment or compromise that would save the neck—and the pocketbooks—of federal workers.

Leading the News

Affirmative Action

PATRICK PRESENTS LEGAL SUPPORT FOR AFFIRMATIVE ACTION TO HILL PANEL

In a lengthy, but low-key presentation that steered clear of much of the emotion surrounding the affirmative action debate, Deval Patrick, the assistant attorney general for civil rights, defended the legal basis for the concept to a crowded House hearing March 24.

Affirmative action is "one among a range of remedies available to address illegal discrimination" that have been used by the department and endorsed by the courts, Patrick told the Employer-Employee Relations Subcommittee of the House Economic and Educational Opportunities Committee.

"In our view as law enforcement officers, affirmative action is not always right. But neither is it always wrong. Rather, it is a tool that must be matched to the job that it is designed to do," he said.

Deflecting questions about the direction of the Clinton administration's ongoing review of affirmative action, Patrick focused instead on the legal ramifications of the preference policy, designed to increase workforce participation among minorities and women, observing that the U.S. Supreme Court's consistent support for the concept has been "lost in the current political debate."

President Clinton told a group of college newspaper editors earlier last week that the administration's review of federal programs was intended to examine which programs worked, which might have a reverse discrimination impact, and whether "others in need" should be included in the programs. That review is expected to be completed in April, according to officials involved in the process.

Fawell Urges Re-examination Of Concept

Republicans on the subcommittee, led by Chairman Harris Fawell (Ill), expressed concern over the impact of preferential treatment and called for a re-examination of the concept. "We are at a crossroad in civil rights policy," Fawell said, questioning whether the "paradoxical remedy" of affirmative action may have outlived its usefulness.

"Seventeen years after *Bakke* [17 FEP 1000], we should ask if it is time to consider whether we have passed that period of 'transitional inequality' and should begin to move away from our reliance on affirmative action," said Fawell, who told Patrick that he was "wrestling with the abuses" that might result from affirmative action.

For example, Fawell said, he found it "very hard to understand" the *Piscataway* case pending before the U.S. Court of Appeals for the Third Circuit—where the Clinton administration changed sides in a reverse discrimination case in which it had initially supported the side of a white high school teacher who challenged her race-based discharge (16 DLR A-5, 1/25/95). Cases like *Piscataway* and situations that involve set-asides "are the kind of things that bother people," he said.

Patrick characterized the *Piscataway* case as a "unique and narrow" situation. "On the strength of our analysis, we determined that the school district did not break the law and the federal government had no right to step in," he said.

He later urged legislators to put the issue of reverse discrimination "in context," noting that those claims constitute "less than 2 percent" of the approximately 90,000 charges the Equal Employment Opportunity Commission receives annually and citing the recent Labor Department-commissioned research on the limited impact of reverse discrimination (56 DLR AA-1, E-1, 3/23/95).

As panel members questioned him about the administration's views on affirmative action and the need for change, however, Patrick repeatedly returned to the current state of the law.

"The courts have given us a lot of guidance," he said in response to a question by Rep. Dale Kildee (D-Mich). "My responsibility is to pay attention to that. I don't want to get ahead of the president."

"Are today's laws enough?" Kildee pressed.

"We have a lot of what we need," Patrick said. "But we have to concentrate on the rules and not the myth. The myth is that a lot of unqualified minorities and women are getting the jobs. That's not the case."

'Discrimination In The Name of Diversity'

Appearing on a panel following Patrick's presentation, former Justice Department official Terry Eastland, who is a fellow with the Ethics and Public Policy Center, said that the Clinton administration already has set out its affirmative action position through the *Piscataway* litigation and that the policy amounts to "discrimination in the name of diversity."

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TOP OF THE NEWS

Compiled by the Office of Communications & Legislative Affairs

Selected News Articles

for

March 25-27, 1995

"Good communication liberates us to do our job better."

Noting that the school board's affirmative action plan was not a remedy for past discrimination, he said that the board's layoff of white teacher Barbara Taxman—solely on the basis of race—"flies in the face of the language of Title VII."

The federal government's support of the school board "would license public employers to regulate their workforces with respect to layoff decisions on the basis of diversity . . . If the Justice Department is willing to authorize diversity regulation by government at the layoff stage, why, but for the new politics of affirmative action, would it not also seek to authorize the same thing, if it had the chance or could create the chance, at the promotions or hiring state?"

Conservative economist Glenn C. Loury of Boston University said there is "no sound social-scientific basis" for concluding that existing economic differences between the sexes and among racial groups "has been caused by, or reflect the extent of, employment discrimination. . . "

"Gross statistical disparities are inadequate to identify the presence of discrimination because individuals differ in many ways likely to affect their earnings capacities which are not adequately measured when group outcomes are compared. Moreover, based on my review of the statistical evidence, there is no basis for the assertion that affirmative action policies have had anything but a marginal effect on these differences," he testified.

Based on his analysis of socio-economic trends affecting minority groups, Loury said it was his opinion that "long-term interests of minorities in this society will be helped, not harmed, by a rational reassessment and reform of current preferential policies."

Theodore Shaw, of the NAACP Legal Defense Fund, called for an expansion of affirmative action programs.

"We could fill the halls of congress with those who have benefited" from affirmative action programs, he said, decrying as "myths" the allegations that affirmative action amounts to quota hiring, that the programs benefit the unqualified, and that affirmative action has not helped the economically disadvantaged. "Affirmative action needs to be implemented on a broader scale," he said.

The panel also heard testimony from Linda Chavez, former director of the U.S. Commission on Civil Rights, who focused on affirmative action policies affecting educational institutions. Chavez also expressed opposition to the concept, which she said "encourages double standards by replacing discrimination with a form of group preference, based on race, ethnicity, and gender." Ward Connerly, a regent of the University of California, took a similar position.

The hearing was the first of a series planned by the subcommittee, according to Fawell.

(Statements by Patrick, Loury, and Eastland appear in Section E.)

—By *Nancy Montwieler*

End of Section

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

California Acting on Affirmative Action

By B. DRUMMOND AYRES Jr.

LOS ANGELES, March 25 — While the rest of the country mostly talks of doing something about affirmative action programs, opponents and proponents of such plans in California are moving rapidly to action.

Legislative bills have been drawn. Petitions are being readied. Fund-raising appeals have been mailed. Political consultants are being hired. Television advertisements are being filmed. Grass-roots coalitions are forming and holding rallies.

As a result, it now seems likely that by the fall of 1996, and maybe well before then, affirmative action will face an up-or-down vote in California, possibly at the legislative level, but more probably in a plebiscite.

And if polls mean anything, a plebiscite might very well make California the first state to outlaw programs that extend special economic and educational privileges on the basis of sex or race.

The latest surveys show that about 2 of every 3 of the state's voters favor a ban.

Sooner or later, Congress and the legislatures in some other states may get around to acting on the issue. In Washington on Friday, there was a hearing on affirmative action programs on Capitol Hill. On Thursday President Clinton reiterated that White House aides are reviewing programs for him.

But in California, action is superseding talk, meaning that once again the country's most populous and politically powerful state is forging to the fore on a major national issue, much as it did on changes on property taxes and term limits.

"There's a tremendous lot of serious stirring out there now," said Tom Wood, a conservative academic from Berkeley who, along with another San Francisco Bay area professor, Glynn Custred, inspired the drive. They gained instant prominence early this year when they proposed that California take the lead in a rollback of affirmative action programs by holding a voter-initiated referendum on the issue.

"We've got fund-raising letters out," Mr. Wood said. "We've got a political organizer on board. We're opening offices. Everything is go."

Opponents of the rollback are equally active, forming coalitions, drawing up strategies and hiring consultants.

"We're preparing for a fight to the death," said Elizabeth Toledo, the head of the California branch of the National Organization for Women. "We've just printed 40,000 fliers to mail out. We've just finished filming a commercial. We're lobbying like crazy. We're forming coalitions everywhere."

Again, California is a test state for a contentious political issue.

On Thursday, one coalition of a dozen organizations representing women, blacks, civil rights activists, unions and churches held a "No Retreat!" rally in downtown Los Angeles. Speakers warned the state's elected officials that a vote against affirmative action would be followed by political retribution.

"Angry white men — please!" one demonstrator implored.

In the California capital, Sacramento, no fewer than 10 bills against affirmative action now await action by legislative committees in both the Senate and the Assembly. Hearings on several are set for April 4.

Some of the bills propose passage of laws that would forbid state and local officials from extending special employment and education privileges to anyone on the basis of race or sex. Others seek to have the Legislature put affirmative action on the next election ballot for a statewide vote of approval or disapproval.

From their office in Berkeley, Mr. Wood and Mr. Custred are working with several political consultants and a number of conservative groups, mostly Republican, to come up with a strategy to win passage of at least one of those bills.

Initially they plan to lobby the State Senate and Assembly to approve a statewide vote on the issue. But as the Senate leader, Bill Lockyer, put it the other day, that approach is "a real hard uphill climb" because ballot initiatives require approval by two-thirds of the membership of each house.

Of course, by simple majority votes the Senate and Assembly could pass a state law to ban affirmative action programs. But the Wood-Custred forces say they are wary of that approach because the law would be subject to various crippling amendments as it made its way through both houses.

So, if they fail to get the kind of action they want out of the California Legislature, Mr. Wood and Mr. Custred are prepared to gather enough petition signatures to put the affirmative action issue to a vote.

That approach — they call it the California Civil Rights Initiative — was actually what they initially had in mind before deciding to attempt instead the cheaper, less labor-intensive legislative approach.

Arnie Steinberg, a Los Angeles political consultant who is working with Mr. Wood and Mr. Custred, outlined the group's thinking this way: "We know it's iffy that we'll get the two-thirds vote we need to push a ballot initiative through both houses but we've got to try.

"It'll cost a million dollars to gather the 700,000 or so valid signatures needed to go the petition route. We can do that. After all, we've got the polls on our side and we can raise money not only in California but all over the country. So if we can pull it off, why not save our money and our organizing power for the campaign leading up to the vote?"

Presidential politics is adding to the confusion and heat to the debate. If the issue is decided by plebiscite, when should the vote occur?

California voters are next scheduled to go to the polls statewide on March 26, 1996, primary day. But some opponents of affirmative action are lobbying to have the issue placed on next year's November ballot.

Their reasoning: It would then probably be a factor in the outcome of the Presidential race, causing particular trouble for the Democrat-

AFFIRMATIVE ACTION

THE EDUCATION OF DEVAL PATRICK

Justice's civil-rights chief is drawing fire from the Right

Deval L. Patrick didn't see it coming. In one of his first major moves as chief of the Justice Dept.'s Civil Rights Div., Patrick forced Chevy Chase Federal Savings Bank this summer to spend $11 million to open up branches and offer low-interest loans in black neighborhoods it had refused to service. Bankers were outraged because the thrift hadn't discriminated against any loan applicants. They denounced the case as extremist and complained that Justice was overstepping the law. "Patrick was surprised by our strong reaction," says industry official Kenneth A. Guenther.

To assuage his critics, the Civil Rights chief invited 10 top bankers to discuss the controversial case. A rare droll moment in the 2½-hour meeting in mid-October came when a squeaky cart rolled by the meeting room. One of the executives joked that it was the body of another banker going by.

TREADING LIGHTLY. So goes the painful political education of Deval Patrick. And the 38-year-old former corporate lawyer is likely to face a lot more rough spots in the months ahead. At his post barely eight months, Patrick must delicately implement a civil-rights agenda without making the already vulnerable Clinton Administration look like it's bending over backwards for minorities. Upcoming issues are potentially explosive, such as one challenging college scholarships reserved for minorities (table). "Anything that can smack of quotas could get Patrick caught up in a tempest," notes John P. Relman, a public-interest civil-rights lawyer in Washington.

Patrick knows he has to tread lightly. But he's optimistic that civil rights can flourish, particularly in areas such as voting rights, lending discrimination, and bias against the disabled. "We view ourselves as a law-enforcement office, not a law-reform office," Patrick says. After the conservative sweep in November, Patrick sent his staff an inspirational E-mail message telling them not to despair. But some aides are worried. "[The Administration] doesn't want us to do anything that will turn into a bumper sticker in 1996," grumbles one Justice lawyer.

The political climate is so dicey that a watchdog of sorts is overseeing Patrick's office. Since this fall, Deputy White House Counsel Joel I. Klein has been reviewing significant affirmative-action cases now before the government. He says the Administration is trying to work out "a consistent, coherent view" of affirmative action that could distance the President from the dangerous "quota" label. Some controversial cases may reach the Supreme Court during the 1996 Presidential election campaign. "The line between quotas and forms of legitimate actions can be thin," says White House Counsel Abner J. Mikva. "It's important that they be separated out." Patrick declines comment on Klein's new watchdog role.

PATRICK: *"Being a lightning rod takes getting used to"*

The Civil Rights chief is certainly viewed more moderately than Clinton's first choice for the civil-rights post, University of Pennsylvania law professor Lani Guinier. Her nomination in 1993 was dropped after conservatives labeled her a "quota queen" for her academic writings. With Patrick, who was sworn in in April, the Clintonites got a clean-cut, moderate-sounding Boston corporate lawyer with a compelling life story. He grew up poor on Chicago's South Side after his saxophone-player father ran off to join jazz musician Sun Ra when Patrick was just 4 years old. He went to the prestigious Milton Academy on scholarship and then to Harvard College and Law School. He worked a short stint as a civil-rights advocate at the NAACP Legal Defense & Educational Fund before joining Boston law firm Hill & Barlow.

"OUTRAGEOUS." But nothing in his background prepared him for the Washington limelight. GOP lawmakers already are calling for hearings on several of Patrick's decisions. Some of his moves "appear to be outrageous," railed incoming Senate Judiciary Committee Chairman Orrin G. Hatch (R-Utah) in a recent TV interview.

Exhibit No. 1 for conservatives is Patrick's friend-of-the-court brief filed in an affirmative-action case at the U. S. Court of Appeals

HOT AFFIRMATIVE-ACTION CASES

MINORITY CONTRACTS The U.S. Supreme Court is taking up the case of white-owned Adarand Constructors. Adarand contends that a federal program encouraging contractors to subcontract to minority-owned companies is unconstitutional.

HIRING AND FIRING A district court ruled that the Piscataway (N.J.) education board acted inappropriately in 1989 when it laid off an equally qualified white teacher instead of an African American teacher. The Clinton Administration supports the board's action. An appeal will be heard in January.

RACE-BASED SCHOLARSHIPS The Fourth Circuit Court of Appeals ruled in favor of a white Hispanic student who was denied a scholarship for African Americans at the University of Maryland. The school is seeking a rehearing.

135

in Philadelphia. Patrick reversed the Bush Administration's position in support of a white teacher who was fired by the Piscataway (N.J.) school board in favor of a black teacher who had the same seniority and qualifications. Patrick argued that employers should be free to use affirmative-action goals to determine which of two equal candidates to terminate. Otherwise, private employers could be prevented from voluntarily integrating their workforces. "Piscataway is not a quota case," says Patrick.

But the decision has set off a furor on the right. "It suggests this Administration is back to playing the numbers game in civil rights," charges Clint Bolick, vice-president of the conservative Institute for Justice. If the charge sticks, Patrick's moves could give conservatives more ammunition. According to a poll last spring by the National Opinion Research Center, 54% of Americans are against special treatment for minorities, while only 16% are clearly for it. Even though Clinton and Patrick both oppose quotas, the Republicans are still likely to try to score points on the issue.

BRAVE FACE. There already are signs that the Administration is getting more cautious. Two days after the election, it declined to support the University of Maryland's scholarship program for black students. The university wants a rehearing of an appellate court decision that ruled the program unconstitutional. Initially, the Education Dept. recommended siding with the university, says a Justice attorney. But the Administration hasn't backed up the university's request for a rehearing—a move that school advocates contend is aimed at pleasing middle-class voters. "If there was a decision not to pursue the case, it was a political one," says Janell M. Byrd, a lawyer for the NAACP Legal Defense & Educational Fund. Patrick declines comment on the case.

Despite Patrick's brave public face, friends say that he was stung by the fallout from the Piscataway case. But they insist that he can withstand the shifting political currents. Days after the election, Patrick called Hatch and joked that he had barely had time to congratulate the senator on his new committee chairmanship before the attacks against him began. Still, Patrick is keenly aware that he's in a hot spot. "Being a lightning rod takes getting used to," he concedes. "If I walked on water, certain of my critics would still say that Patrick can't swim." If he wants to avoid sinking, Patrick will have to keep not only the law but also politics foremost in his mind.

By Catherine Yang in Washington

The Washington Times ★★ SATURDAY, MARCH 25, 1995

Civil rights enforcer defends preferences

By Nancy E. Roman
THE WASHINGTON TIMES

Deval Patrick, assistant attorney general for civil rights, defended affirmative action yesterday, arguing that race and sex preferences do not promote unqualified candidates over qualified white men.

"That is a myth," Mr. Patrick said during the first congressional review of affirmative action. In any case, he said, the law forbids such preferences to compromise merit.

Of the 91,000 people who filed complaints with the Equal Employment Opportunity Commission, Mr. Patrick said, 2 percent charged reverse discrimination, "and many of those were dismissed as meritless."

Meanwhile, he said, discrimination persists.

"If you could sit at my desk for one week, you would be astonished and saddened by incidents of discrimination, unfairness and even violence motivated by race, ethnicity or gender," Mr. Patrick said.

Three men were indicted in Lubbock, Texas, three weeks ago after they drove into town "hunting African-Americans," he said. They lured three black men into their car and shot them with a short-barreled shotgun.

"This is simply to say that while some progress has been made, barriers remain," Mr. Patrick said.

Rep. Harris W. Fawell, Illinois Republican, began the questioning by telling Mr. Patrick that Americans do not accept that race-based firing is permissible.

"This is very hard for people to understand," Mr. Fawell said, referring to a case in Piscataway, N.J., in which a white business teacher was picked to be laid off based on her race.

Mr. Patrick said he does not evaluate the law, only enforces it. He said the Justice Department investigated whether the Piscataway school board broke federal law when it fired the white teacher in order to keep a black one.

"We had to conclude that the Piscataway school board did not discriminate," he said, explaining that the two teachers were equal in seniority and performance.

Members of the House Economic and Educational Opportunities employer-employee relations subcommittee pressed Mr. Patrick on the administration's position on affirmative action in general and certain race and quota policies in particular.

Mr. Patrick said he could not respond until the administration completes its review of affirmative action.

Rep. Mel Reynolds, Illinois Democrat, noted that affirmative action played a role in Mr. Patrick's acceptance at Harvard College in 1974 and Harvard Law School in 1979.

"Do you feel unqualified for your position?" Mr. Reynolds asked.

"Some days," Mr. Patrick joked, getting a laugh from the audience. He added: "Of course I don't. I've accomplished what I've been able to accomplish on merit, but everyone gets a leg up — someone gives you a break on your first job."

Mr. Reynolds urged the administration not to back off affirmative action. "I warn the administration as they begin their review that they are not perceived as reacting to conservatives who use the wedge issue of race," he said.

Mr. Patrick said the administration is "committed to the goal of expanding opportunity for all Americans. ... There will be no retreat from that commitment."

The president is in a tough spot now that affirmative action has worked its way from living-room conversation into political dialogue.

An ABC News-Washington Post poll released yesterday found that three-fourths of Americans oppose programs that give preferences to minorities to make up for past discrimination. The results were about the same on sex preferences.

Republicans have latched onto that frustration. Senate Majority Leader Bob Dole of Kansas, who hopes to win the presidency next year, has said he will introduce legislation to repeal affirmative action this year.

A panel of five testified yesterday that preferences that exclude qualified men and whites from jobs, scholarships or other benefits contribute to a perception that women and minorities do not deserve what they achieve.

Ward Connerly, a regent for the University of California, said affirmative action has outlived its usefulness.

"We are becoming a nation of a thousand tribes, not one nation under God, indivisible, with liberty and justice for all," said Mr. Connerly, who is black.

He noted that both U.S. senators from California are women and that blacks hold positions as mayors and state legislators. "At some point we have to take the training wheels off and see if we can ride without them," he said.

Glen C. Loury, an economics professor at Boston University, said blacks made their greatest economic and political strides from the 1940s to the 1960s — before affirmative action.

He said federal programs that target minority-owned businesses are a way to channel money to special interests.

"We have to develop the competitive capacities of those minorities who present themselves in the marketplace without the possibility of winning on the merits," said Mr. Loury, who is black.

The hearing was charged, with five members of the Congressional Black Caucus, including Mr. Reynolds and caucus Chairman Donald M. Payne, sitting on the subcommittee that questioned Mr. Patrick.

Mr. Payne, New Jersey Democrat, said white men make up a third of the population but 80 percent of Congress, 80 percent of tenured university faculty, 90 percent of the Senate and 92 percent of the executives of the Forbes 400.

"I am kind of confused when we hear about the assault on affirmative action and how it discriminates against white males," he said.

Dentist cited in refusal to treat AIDS patients

A federal court has ruled that a Louisiana dentist who refused to treat patients with AIDS violated the law protecting disabled Americans, in what the Justice Department termed a landmark case.

The decision Thursday by the U.S. District Court in New Orleans prohibits the dentist, Dr. Drew Morvant, from discriminating against patients with AIDS by refusing to treat them or referring them to other dentists.

"This landmark decision underscores that the law does not tolerate such egregious discrimination against persons with AIDS," said Deval Patrick, assistant attorney general for civil rights. The court will determine damages at a later date, the department said in a statement.

From wire dispatches and staff reports

The Washington Times

Clinton enlists party conservatives on affirmative action

Congress' Coalition considers invitation to form task force on issue

By Nancy E. Roman
THE WASHINGTON TIMES

The president sat down to lunch with 19 conservative Democrats two weeks ago and asked them to form a task force on affirmative action and meet regularly with the White House.

Some Democrats who attended the lunch said President Clinton was looking for cover on a red-hot issue that divides their party. Minorities want affirmative-action programs kept in place, while many in a group of so-called New Democrats want to see an end to race and sex preferences.

"The president brought it up," said Rep. Collin C. Peterson, Minnesota Democrat. "He asked us to form a task force, and we said we would consider it. He was figuring that we would take the lead and take some flak on this."

On Wednesday the Coalition, a group of 23 conservative Democrats who banded together earlier this year, will decide whether to accept the president's invitation to jump into the issue.

Rep. W.J. "Billy" Tauzin, Louisiana Democrat, said the president needs their help.

"If ever there was a minefield, that was one," Mr. Tauzin said. "He asked outright for our help. He wants a position that he can support that will not totally alienate him from his Democratic base."

Mr. Tauzin said Coalition members indicated they would stay in touch with the White House on affirmative action.

The president is in a tough spot now that affirmative action has worked its way into the political arena.

A Washington Post-ABC News poll released last week found that three of four Americans surveyed oppose affirmative-action programs that give preferences to minorities to make up for past discrimination. Seventy-three percent said they feel the same about preferences for women.

Republicans have latched onto that frustration. Senate Majority Leader Bob Dole of Kansas says he will introduce legislation this year to repeal affirmative action. The issue will certainly be part of the 1996 presidential campaign.

Republicans undertook the first congressional review on Friday, when members of the House Economic and Educational Opportunities Committee questioned Deval Patrick, assistant attorney general for civil rights, on affirmative action.

The House Judiciary Committee's subcommittee on the Constitution is scheduled to hold hearings on affirmative action Wednesday.

In response to the flurry of activity on the Republican side, Mr. Clinton suggested a bipartisan commission to study affirmative action.

"The White House only announced that decision when it was clear that something was going to be done on it," Mr. Tauzin said. "It's as much an attempt to look for cover on it as anything."

Rep. Scotty Baesler, Kentucky Democrat, said he isn't so eager to for the Coalition to become embroiled in whether and how to reform affirmative action.

"I'd be a little surprised if we do," he said.

Mr. Baesler, who said he believes there is a place for some affirmative-action programs, noted that Coalition members are not likely to be of one mind on the issue.

He said he did not perceive Mr. Clinton as looking for cover.

"He understands that this is an issue that is going to have a lot of opinions in the Democratic Party alone," he said.

Rep. Gary A. Condit, California Democrat and Coalition member, also expressed reservations about getting involved in the issue.

"The Coalition is not going to automatically get involved in every issue that comes before Congress," he said, refusing to speculate about whether the Coalition would form a task force.

Rep. Mike Parker, Mississippi Democrat, also thought the president was genuine in seeking out ideas.

"The only thing I heard him say was that he wanted us to be looking at affirmative action from the standpoint of giving him ideas."

Mr. Parker said he welcomes the opportunity to discuss the issue with Mr. Clinton.

"It's important that he hear from the conservative wing of the Democratic Party," he said. "He just hasn't been listening."

292

Pulling the Plug? PCS Auction Sparks Affirmative-Action Flap

Continued From First Page

tions Inc., a PCS start-up in Boardman, Ohio, bluntly adds: "Who could have predicted there was such pent-up frustration in white males?"

The roots of this tangled plot go back to the mid-1980s, when the Republicans started pushing to auction the right to offer new wireless services, rather than hand out licenses free by lottery, as the FCC had done for cellular-phone firms. Rural telephone companies and small wireless firms opposed the idea, arguing that larger companies would outbid them. But by 1993, they acquiesced and had a new demand: Give us a bidding edge.

They found a receptive audience at the Senate Commerce Committee, which was – and is – dominated by rural-state senators. Hispanic and black lawmakers got interested, and, with nary a Republican objection, they added women and minorities to the protected list for spectrum auctions.

The only real debate was how these "designated entities," as they came to be known, should be protected. So lawmakers left that vague, slipping a single 45-word sentence into the 398-page 1993 budget bill. It instructed the FCC to "ensure" that small, rural, minority- and female-owned firms got to bid in the auctions and to "consider the use of tax certificates, bidding preferences and other procedures."

'A Mind Game'

At the FCC, the 45 words produced thousands of pages of comments and proposed regulations. Ultimately, just the official definition of a designated entity ran on for more than a dozen pages as the agency tried to discourage big investors from hiding behind such entities. "It almost became a mind game. The rules just became incredibly complicated," says Brian Fontes, former FCC chief of staff.

The agency tried to devise different bidding terms for each group based on that group's traditional lack of access to capital, but each time the FCC gave in to one faction's demands, others saw an opportunity to get more for themselves. Rural telephone companies, for instance, won the ability to bite off a small piece of a larger market; minorities sought the same right. A firm controlled by Eskimos won an exemption for Indian tribes on outside-investment rules; TEC demanded a similar exemption for rural phone companies.

Instead of decrying the escalating preferences, Republicans joined right in. Sen. Frank Murkowski of Alaska and Majority Leader Dole, the Kansas senator who has been embroiled in the attack on affirmative action, pushed the FCC late last year to extend preferences to yet another group: the disabled. Three paraplegic brothers in Alaska had made the request, but the FCC turned it down. Undaunted, Sen. Murkowski in January summoned three top FCC officials to his office, where they agreed to consider any new arguments for including the disabled.

As the preferential terms multiplied, so did the platoons of rookies hoping to bid – often with no experience, few fresh ideas and sometimes curious backing.

Quentin Breen, a white lawyer, ran an "applications mill" in the free cellular lottery of a decade ago and says he handled 20% of all applicants. Now he is the "bidding agent" for PCS 2000, a partnership in Old San Juan, Puerto Rico. He says his female and minority partners make PCS 2000 eligible for special breaks. But he refuses to name them and won't provide a prospectus disclosing financing.

In Control?

South Seas Satellite Communications Corp. is a tiny start-up that just won a PCS license to serve Pago Pago and other areas of American Samoa in the main auction that ended two weeks ago. The company is said to be controlled by two women, so now it wants special privileges in the set-aside auction.

The company's president is Lynnea Bylund Dalton, a white woman. But her "consultant," and an authorized bidder for the firm, is her husband, Marcus Dalton – a white man linked to several bidders who defaulted in an FCC auction late last year. Mr. Dalton denies a direct tie to those bidders, adding: "Unlike some wives, mine is a bona fide telecom entrepreneur."

Nancy Douglas runs Charming Hostesses, the moonlighting flight-attendant concern. In 1993, she won 10 dispatch-radio licenses in a lottery, and last year she spent more than $1 million to buy interactive video licenses. She has yet to build a single system. Now she insists PCS is her new love: "I want to bring telecom to the masses."

Supporters say the current situation has obscured the FCC plan's strong points. Minorities and women say they are far more attractive to investment firms and big backers – or at least they were until the TEC lawsuit. And some bidders have dreamed up unique services.

Quentin L. Kenan, a black former sales director at Ameritech Corp. in Chicago, wants to offer prepaid PCS service to inner-city minorities with bad credit histories. "Bigger players and white firms won't offer such services because they only want to go after low-hanging fruit," says Mr. Kenan, who formed QTel Wireless Inc. in Farmington Hills, Mich. "I can now put a stake in the ground that says blacks can be credible" in the wireless industry.

Mateo Camarillo, part-owner of several Hispanic radio stations, is president of Opportunities Now Enterprises Inc. in San Diego. He hopes to raise $4 million for the PCS auction, aiming to offer wireless phone, data and e-mail service to Asian and Hispanic customers on the West Coast.

Sandra Goeken, a bidder who runs an air-phone business, plans to sell PCS to the elderly and stay-at-home moms. A medical device could monitor an elderly person's blood pressure and transmit data to a doctor's office. "Baby Beep" would hang around a toddler's neck and signal a parent when the child strays too far.

And FCC Chairman Reed Hundt says other bidders' lack of industry experience isn't particularly important, since PCS is a new industry. "What matters is that they get an opportunity to participate in the communications revolution, and that they have access to capital," which only special bidding terms can provide, he says. Still, fearing a delay could kill the auction entirely and leave the new industry with less competition, the FCC is entertaining possible settlements that would scrap special credits based on color and gender.

That's what a few black telecommunications entrepreneurs had urged in the first place. Michael Walker, who heads a group of minority-owned PCS hopefuls, says he tried last year to persuade the FCC to hold set-aside auctions based only on size. Had it done so, he says now, "we wouldn't have this problem today."

retroactive to March 13, calls for a 3 percent wage increase the first year, 2 percent in the second, and 3 percent in the third year, Rodriguez said. The general labor rate in the first year will be $5.82 per hour, he said, although employees in several classifications earn more.

The settlement also calls for nine paid holidays, including the birthday of UFW founder, the late Cesar Chevez, on March 31.

The union is especially pleased with two particular contract gains, Rodriguez said. The company agreed to pay the salary of a full-time union staff person who will administer the contract at the grower's property.

'Citizen Participation Day'

Another provision called "citizen participation day" stipulates that for one Sunday during the year the company will pay all employees on the payroll at the time the equivalent of a day's salary. However, the money will go to the union's political action fund.

Bear Creek employees voted for UFW representation on Dec. 16. Rodriguez noted that the company and the union were able to reach an agreement in only three months, when normally first contracts take substantially longer to negotiate.

The agreement includes a new seniority system and adjustments to the piece rate.

Bear Creek officials were unavailable for comment on the contract. The company, which produces 36 percent of the country's commercial roses, is headquartered in Medford, Ore. It is is a subsidiary of the Japanese-based Yamanouchi Pharmaceutical Co.

With the addition of the Bear Creek workers, the United Farm Workers now have a membership of about 23,700, all in California, Rodriguez said. It has an additional 10,000 associate members in other parts of the country for whom it provides a range of services but does not bargain contracts.

Affirmative Action

SENATE PASSES HEALTH DEDUCTION BILL; NO AFFIRMATIVE ACTION OBJECTIONS RAISED

The Senate March 24 passed by voice vote a bill (HR 831) to make permanent the health deduction for self-employed taxpayers. The measure also would repeal a tax program designed to encourage minority ownership of broadcast facilities.

An agreement to forego all amendments on the Senate floor facilitated quick advancement of the bill, which consumed only five hours of debate.

Senate Democrats relented from making an issue of the bill's repeal of Internal Revenue Code Section 1071—the tax certificate program used by the Federal Communications Commission to encourage minority ownership of broadcast facilities.

According to Senate Minority Leader Thomas A. Daschle (D-SD), proponents of affirmative action policies who opposed the repeal of Section 1071 likely would not have fared any better in the full Senate than they did when the issue was debated in the House and in committees. The bill was approved in the House on a 381-44 vote Feb. 21 (36 DLR A-16, 2/23/95).

During each of those earlier stages proposals were offered to modify, not repeal, Section 1071, all of which were rejected. It was agreed, Daschle said, not to resurrect the debate and endanger the health-care tax deduction, which is necessary for taxpayers facing the April 17, 1995 filing deadline.

The bill approved by the Senate, however, contained several modifications from the House-passed plan, meaning a conference with the House will be needed, unless the House agrees to accept those changes.

Among those modifications made by the Senate Finance Committee was an increase the health deduction from 25 percent for 1994 to 30 percent beginning in 1995.

The additional credit amount was offset by certain changes made to the revenue offset that denies earned income tax credit benefits to individuals with $2,450 in aggregate income from interest, tax-exempt interest, dividends, net rents, and royalties.

Another key difference between the House and Senate versions was the inclusion in the Senate bill of a provision to impose a tax on wealthy U.S. citizens who relinquish their citizenship. This issue will be explored by the House Ways and Means Oversight Subcommittee at a March 27 hearing.

The central parts of the bill—permanent extension of the health deduction financed by a repeal of Section 1071—were left intact.

Regulations

DEMOCRATS SEEK 'CONSTRUCTIVE DEBATE' AS REGULATORY FREEZE MOVES TO FLOOR

As the Senate begins discussion of a Republican-sponsored regulatory moratorium March 27, Democrats are hoping for a "constructive debate" on a bipartisan alternative that would give Congress the authority to veto executive branch regulations, Minority Leader Thomas Daschle said March 24.

The alternative was crafted by the leaders of the Democratic and Republican Policy Committees

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

Despite 129 Clinton Appointments, GOP Judges Dominate U.S. Bench

By Joan Biskupic
Washington Post Staff Writer

During his first two years, President Clinton has appointed 129 judges to the federal bench and ended a record buildup of vacancies in the nation's courthouses. He has made a priority of diversity: more than half his selections were women or racial minorities.

He became the first Democrat in 26 years to name a Supreme Court justice. And he filled another Supreme Court opening in his second year.

Nonetheless, Clinton's appointments so far have hardly made a dent in the 846-member, Republican-dominated judiciary. Almost half of those he named replaced retiring Democratic appointees.

When Clinton took office in January 1993, about 70 percent of the federal judges were appointees of Richard M. Nixon, Gerald R. Ford, Ronald Reagan and George Bush. Today that number is slightly more than 60 percent.

"It's going to take probably a second Clinton term to really have an impact," said Sheldon Goldman, political science professor at the University of Massachusetts-Amherst.

"When [Dwight D.] Eisenhower became president [in 1953] and faced a bench that was more than 80 percent Democratic, only after two terms did he get the political balance down to 50-50, Democrat and Republican," Goldman said.

Fifty-nine of Clinton's life-tenured judges replaced Democratic appointments, 46 succeeded retiring GOP judges, and 24 individuals went to new positions.

Nan Aron, executive director of

See JUDGES, A21, Col. 1

the liberal-leaning Alliance for Justice, said the White House could lessen the conservative grip on the nation's bench more quickly if it concentrated on key vacancies on the powerful courts of appeals.

"They have to be more strategic in filling these vacancies," said Aron, who praised the diversity of Clinton's selections but noted that all 13 appeals courts still operate with a majority of GOP appointees.

The appellate courts, divided into geographical circuits, have jurisdiction over trial court rulings and review orders from administrative agencies. Because the Supreme Court rarely intervenes, they have the final word on more than 95 percent of the cases they handle.

If Clinton is able to fill the two openings on the 6th U.S. Circuit Court of Appeals, based in Cincinnati, he would have made equal the number of GOP and Democratic appointees. The 9th Circuit, based in San Francisco and handling some of the nation's knottiest criminal law and discrimination cases, also is close to equal in representation: 15 judges are Republican appointees, 11 are Democratic and there are two vacancies.

But whether the White House wants to maneuver judges like chess pieces is another question.

White House deputy counsel Joel Klein said Friday that Clinton is not trying to fashion his own version of the ideological imprint Reagan left on the courts.

"We don't see the courts as a vehicle for social change," Klein said. "It's enough to put people of demonstrated quality on the bench. We've done this across gender, race and national origin lines. And that is a legacy that the president is proud of."

While Senate Republicans did not contest the vast majority of Clinton's nominations, aides to GOP senators do not agree with Klein's suggestion that all of Clinton's appointees are free of the liberal judicial activism Republicans oppose. Yet the GOP mustered floor fights against only two nominees, Rosemary Barkett of Florida and H. Lee Sarokin of New

1 of 2

Clinton Has Made Diversity a Priority in Filling Federal Judicial Vacancies

Jersey, both of whom eventually were confirmed to appeals courts.

For Reagan, and to a lesser extent Bush, the courts were agents of a conservative agenda. The Reagan administration systematically screened the judicial philosophy of candidates, looking for people who would read narrowly constitutional protections, defer to elected lawmakers and embrace a general social conservatism that critics contend favors government's interest over an individual's rights.

Most of Clinton's judges have only recently donned their robes, so any pattern in their rulings is impossible to detect.

"The judiciary moves so incrementally. The results of change cannot be seen immediately," said Thomas Jipping, director of the conservative-oriented Free Congress Foundation's judicial selection monitoring project. "But as more Reagan judges retire [and Democrats replace them], we'll probably see more conflicts in the circuits' " interpretation of the law.

When Clinton was sworn in as president in January 1993, 113 vacancies existed. The administration moved slowly and about 70 more seats opened up as the months passed. Chief Justice William H. Rehnquist and appeals court judges began warning that the shortage of judges and burgeoning caseload were imperiling justice.

At the U.S. courthouse in lower Manhattan, frustrated officials put up an 8-foot directory in a public hallway listing the dozens of vacancies in the 2nd Circuit. At one point, 10 of the 28 authorized trial court judgeships for the Southern District of New York were open and at another time four of the eight Connecticut District seats were unfilled.

But earlier this year the selection process got rolling. With the help of the Senate Judiciary Committee, Clinton was able to cut dramatically the vacancy rate. The 101 confirmed judicial appointments this year were the most made by any president since 1979.

Clinton has named two Supreme Court justices, 19 appeals court judges and 108 trial court judges, and the overall vacancy rate on the bench has dropped from 14 to 6 percent.

At the Manhattan courthouse, circuit administrator Steven Fladers took down the directory of vacancies last week. "The Clinton administration has caught up," he said with relief.

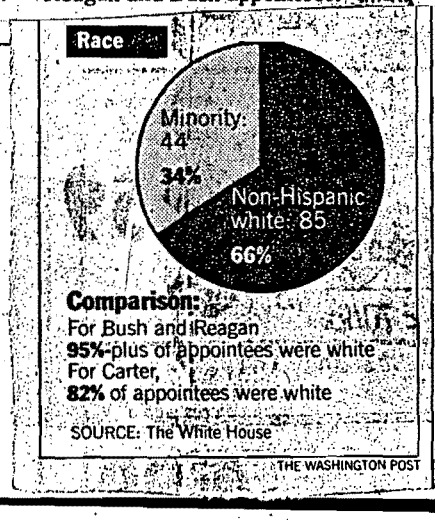
Close to 60 percent of the Clinton appointments have been women or racial minorities, compared with 13 percent women and minorities during the Bush years, 8 percent during Reagan and 27 percent during Carter, according to White House figures.

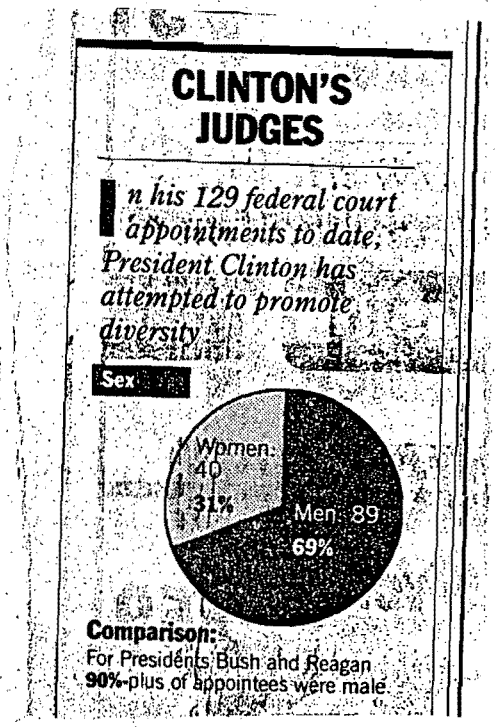
Clinton named 31 blacks, 11 Hispanics, 1 Asian and 1 Native American. Forty women were appointed.

"This development is significant," said Goldman, who has been tracking judicial appointments since 1962. "Women and racial minorities historically have faced tremendous obstacles to becoming lawyers and federal judges." He said that before 1961, only two women and one black had been appointed to the federal courts.

Now, women make up about 15 percent of the federal bench, blacks 8 percent and Hispanics 5 percent, according to figures from the White House and Goldman.

According to Goldman's other data, the average age of a Clinton judge is 50, about a year older than Reagan and Bush appointees. About 60 percent received the highest rating from the American Bar Association, which is slightly higher than the percentage of the most highly rated Reagan and Bush appointees.





2 of 2

The Washington Post

DATE: 10/26/9
PAGE: A1

Deval Patrick and the 'Great Moral Imperative'

At Justice Dept., a Transformed Civil Rights Division Has Conservatives Crying 'Quota'

By Pierre Thomas
Washington Post Staff Writer

Deval L. Patrick, new to Washington, stepped up to the podium last spring after being sworn in as the head of the Justice Department's Civil Rights Division. A slight man with glasses who looks like a college freshman, Patrick began speaking quietly, almost professorially, about restoring the "great moral imperative" of civil rights.

Gradually, his voice rose and Patrick revealed his personal stake: "To understand civil rights," he declared, "you must understand how it feels. How it feels to be bounded by uncertainty and fear about whether you will be fairly treated. How it feels to be trapped in someone else's stereotype."

Jesse L. Jackson, waiting anxiously in the audience of 400, found himself in tears. "We've not had a clear civil rights voice for 12 years," said Jackson. The Reagan and Bush administrations "either were insensitive or simply didn't care about civil rights. Now there is someone there committed to protecting and enforcing the law. Deval brings feeling and tremendous legal insight."

To some in the conservative community, however, Patrick's words have sounded alarms. Clint Bolick, litigation director for the Institute of Justice, a nonprofit law firm, calls Patrick "a crusading activist, an ideologue" taking the Justice Department in a "radical" direction on matters of outright preference for racial minorities.

This much is sure: In six months under Patrick, the 250-lawyer Civil Rights Division has gone from the enemy of traditional civil rights groups to their ally.

"The job brings . . . difficult choices," says Deval L. Patrick.

Patrick has taken the department in a "180-degree turn contrary to the previous administrations," said Charles J. Cooper, a former Justice Department official who served in the Reagan administration. "That's their right, that's what we did."

Under Patrick, the Civil Rights Division settled the largest public accommodations discrimination lawsuit in history when it persuaded the Denny's restaurant chain to pay $45 million for alleged racial discrimination. It brought the full weight of the Justice Department against an Alabama school principal who made what some consider racially derogatory remarks.

It settled a discrimination suit against Chevy Chase Federal Savings Bank, aggressively interpreting federal law in alleging the thrift failed to adequately serve predominantly African American communities in the region. It formed a task force to ward off legal challenges to specially designed voting districts in which most voters are racial minorities.

And, in by far his most controversial action, Patrick switched the department's position in a "reverse discrimination" lawsuit by a white teacher in Piscataway, N.J.

The Bush administration had supported the teacher, who said she was illegally laid off because she is white. Patrick sided with the Piscataway school board, which had chosen to retain an equally qualified black teacher instead, for the sake of faculty diversity.

The Piscataway decision could not be allowed to stand because it was sending a nationwide message that employers could never voluntarily use diversity as a factor in personnel decisions, Patrick said. His decision was approved by Attorney General Janet Reno and forwarded to the White House. Administration sources said some White House officials worried about the political impact.

Indeed, Rep. F. James Sensenbrenner Jr. (R-Wis.) accused Patrick of moving to "radically expand the use of racial quotas." Patrick also came under fire in newspaper opinion pages. Bill Maxwell, an African American columnist for the St. Petersburg Times, called the teacher's layoff "unconscionable," saying, "Fairness is more than bean counting."

Patrick said the "climate for . . . great national debate, whether it is race or anything else, is so charged and overheated right now that doing what's right under the law is hard to do. The job brings . . . difficult choices . . . because they're not always obvious choices under the law."

"He's not as skittish as new people typically are," said Barbara Arnwine, executive director of the Lawyers' Committee for Civil Rights Under Law. "I've watched him cringe" when told of the specifics of various forms of discrimination, she said.

Cont'd

"A lot of the work and a lot of the law I'm responsible for has affected my own mind," said Patrick.

Patrick, the son of the late jazz saxophonist Pat Patrick, grew up on Chicago's South Side, a tough area of the city that he recently told an audience of black lawyers was the kind of "place many of you wouldn't be caught dead."

His father, who played with Thelonious Monk and Sun Ra in the 1960s, separated from Patrick's mother when he was 4. Patrick spent a short stint on welfare, at one point so poor that he rotated with his mother and sister sleeping on the family's two beds.

Early on, he said, he learned how it felt—and still feels—to be stared at when he is the only black person in a room and how the looks sometimes "bubble" up to "differences in treatment" and occasionally "hostility."

Patrick eventually was awarded a scholarship from the "A Better Chance" program to attend Milton Academy, an elite Massachusetts preparatory school.

One night he and the housemaster went on a burger run to a local McDonald's. "I remember . . . this incredible scene where the kids in the parking lot started banging on the window and shouting and chanting, 'Nigger! Nigger! Get out of here!' " Patrick said. " . . . The housemaster was nervous and was trying to hustle us out of there. . . . We got in the car and of course he didn't know what to say."

Patrick, then 15, felt a "a rush of emotion. I mean it's a lot that you feel: angry, you feel terrified, you feel helpless," he said. "The worst that happened was that someone, a couple people, threw their cigarette butts at me. Nobody actually hit me, but you still feel wounded. And if you're not real careful, you can feel ashamed too. . . . You feel ashamed of who you are—and what you are—which is a disaster."

Encounters such as the one at McDonald's have fueled Patrick's conviction that an active Civil Rights Division is a necessity, not an option. A graduate of Harvard Law School with experience in private practice and at the NAACP Legal Defense and Educational Fund, he has brought in assistants with backgrounds as civil rights advocates, and has given priority to cracking down on discrimination against minorities and disabled persons in housing, lending and education.

He plans to expand programs in which Justice officials pose as renters to determine if apartment managers treat minorities unfairly. He expects to call in the nation's top banking executives to discuss lending practices.

Last summer, when an opinion piece in the Wall Street Journal criticized the Justice Department's settlement with the Chevy Chase Federal Savings Bank for alleged redlining under the headline "Banking by Quota," Patrick responded that the settlement had nothing to do with a "quota." He called the word "a derisive and divisive term that . . . is used to try to discredit civil rights enforcement." Discrimination in lending exists, and he could not "simply look the other way," Patrick wrote.

In his swearing-in speech, Patrick said, "I know that the business of the Civil Rights Division has opened up jobs to black workers . . . opened up apartments to Hispanic families . . . opened up whole new vistas of active life for people with disabilities."

The work of his division, according to Patrick, is a measure of the country's progress toward granting all Americans "equality, opportunity and fair play." But the difficulty, he acknowledges, is that there is sometimes little agreement on how to ensure these values.

"Patrick has handed the division over to the liberal wing of the Democratic Party," said Bolick, a lawyer in the Civil Rights Division during the Reagan years. He and others object to Patrick's conception of the division's role.

Cooper, who was head of the Office of Legal Counsel in 1985-88, said: "Our position is that the civil rights laws were not written to address all social issues. . . . You had to deal with specific acts of discrimination. . . . The statutes were not written to encourage quotas and race-based preferences."

Patrick called the criticism "tiresome" and said he reminds himself the verbal attacks are not personal, although it "sounds personal and it reads personal." He acknowledges his sensitivity to matters of race but said, "This job, when you finish it all, is a law enforcement job. It's not a crusade."

Ralph Neas, executive director of the Leadership Conference on Civil Rights, said Patrick is simply trying to enforce civil rights laws rather than undermine them. But in this explosive environment, some "conservatives . . . will attempt to make simple compliance with the law a radical act," Neas said.

Sources within the division say privately that Patrick has created an environment in which they can more aggressively pursue enforcement than in the Reagan-Bush years.

"We haven't always had someone who understands civil rights," said John Wodatch, chief of the division's public access section. "Deval is his own civil rights story and wants to communicate that."

For those who think that the need to do such enforcement is over, Patrick said, "It's nuts to think that we could reverse the effects of 300 years of deprivation by a few court decisions and a few good statutes."

242

Minority Contracts

document that they made a "good faith" effort to find minority subcontractors.

Michael J. Miller, vice president of Concrete General Inc., in Gaithersburg, said his business has a tough time finding black-owned companies to subcontract work in such areas as installing highway guardrails or signing and lighting. "There are no minorities in the areas that I need," he said. "We're not meeting the goals now. Expanding it now will make it worse."

But many black contractors and legislators argue that such complaints are a smoke screen for businesses that do not want to share a bigger piece of the economic pie with companies that they say have faced discrimination. Such groups as the Legislative Black Caucus are playing a tough brand of politics to get the bill through the General Assembly.

Last week, the veteran lobbyist for the Maryland Highway Contractors Association asked to be excused from lobbying on the issue after, legislative sources said, members of the caucus warned him that his other bills would be killed if he did not stop.

Del. Joanne C. Benson (D-Prince George's), chairwoman of the black caucus, said the group had not pressured lobbyists. But she also said the group has warned opponents that they cannot expect the caucus to support them on other issues if they don't support the caucus on an issue of such importance.

Staff writer Charles Babington contributed to this report.

Washington Times 3/4/95

Clinton hedges on action review

He wants to keep some preferences

By J. Jennings Moss
THE WASHINGTON TIMES

President Clinton yesterday raised a question about the effectiveness of the programs setting aside some federal contracts for minority companies, but he renewed his general support for the concept of affirmative action.

Mr. Clinton, who has called for a White House review of affirmative-action programs, also indicated that he backs affirmative-action programs geared to help economically disadvantaged Americans, and he defended his own administration's hiring practices.

The focus on affirmative action, which is quickly becoming one of the more contentious and complex issues on the political landscape, came during the president's first full-scale press conference of 1995.

The last time Mr. Clinton subjected himself to questions from the White House press corps was the day after Republicans swept Democrats out of the majority in the House and Senate. Yesterday, Mr. Clinton made a plea to Republicans — namely presidential contenders — to lay off politics, but he did so while he took jabs at the GOP.

Also yesterday, Mr. Clinton said that he still has confidence in Russian President Boris Yeltsin, that his administration maintains high ethical standards despite various controversies surrounding Cabinet secretaries and others, and that he did not expect a Democratic challenge for the presidency.

On the question of federal affirmative-action programs, which several Republicans have targeted for elimination, Mr. Clinton renewed his broad support for such initiatives and said his administration's review was designed to find out what worked.

see CLINTON, *page A14*

"First of all, our administration is against quotas and guaranteed results," Mr. Clinton said. "The American people want an end to discrimination. They want discrimination where it exists to be punished. They don't want people to have an unfair break that is unwarranted."

Asked whether it is necessary to keep federal rules that set aside certain numbers of federal contracts to go to minority firms, Mr. Clinton said he wanted to see how they were implemented.

"For one thing, if you look at the rules and what they mean, it's difficult to draw a conclusion about whether they even do what they were supposed to do in the first place," Mr. Clinton said.

At several points, the president said he supports affirmative-action programs based on a person's need, but he did not clarify whether he was talking about education, employment or some other type of program.

Several backers of affirmative-action reform, including some Republicans, have advocated changing the standard away from race or sex and turning it so that the standard becomes whether someone is disadvantaged. Business representatives argue such a standard would be unworkable for hiring and promoting workers.

"So I would say to you, where we can move ahead based on need we ought to move forward and we shouldn't move backward," Mr. Clinton said.

White House spokesman Michael McCurry cautioned later that Mr. Clinton was not making a blanket statement in support of affirmative-action programs based on need. "We still have a ways to go, and nothing is set in stone," he said.

The president also said his administration used an affirmative-action program similar to the U.S. military's when it came to filling senior administration and judicial positions, and he proclaimed that it had no quotas to fill.

Early in his presidency, administration officials made it clear that one of the big four Cabinet posts would be held by a woman, and they targeted the Justice Department. Attorney General Janet Reno ultimately was selected after two other female candidates stalled before confirmation hearings.

Mr. Clinton avoided discussing affirmative action in political terms yesterday, but he did give some political caution to such Republican presidential rivals as Senate Majority Leader Bob Dole of Kansas and Sen. Phil Gramm of Texas.

cont'd 192

Washington Times 5/4/95

CLINTON

"I can see right now, every day, everybody that wants to run for this job is going to be trying to make some remark or some move that runs everybody else halfway up the flagpole," Mr. Clinton said. "We've got enough politics in this town on a regular basis without injecting that into it. I wish — I want everybody to relax, take a deep breath, and go back to work."

Yet before he issued the call for politics to be set aside, he took a swipe at how Republicans controlled the White House for 20 of the last 26 years and how those administrations quadrupled the federal debt while his Democratic administration has lowered unemployment, cut government and lowered inflation.

Mr. Clinton also sent a political message to his fellow Democrats, namely those who might be thinking of challenging him for the presidential nomination next year.

"I hope there won't be one. I think it would be a mistake for the Democratic Party. And, again, I would say, What would the issue be? ... The country is in better shape than it was two years ago," he said.

Expressing his continued confidence in Mr. Yeltsin, Mr. Clinton also dismissed calls of some critics who have said his administration should not link itself too closely with the embattled Russian president.

"Boris Yeltsin has been elected the president of a country that has a constitution and a democratic system," he said.

Mr. Clinton also said he does not envision sending U.S. troops to Croatia at the end of the month to help with the withdrawal of U.N. peacekeepers from the warring Balkan states. "I have worked very hard to avoid the long-term commitment of American ground troops in that region and I will continue to do that," he said.

Also yesterday, Mr. Clinton:

- Defended himself and several of his Cabinet secretaries who have been questioned on ethical grounds. Mr. Clinton said that with the exception of former Agriculture Secretary Mike Espy, all of the questions deal with activities that occurred before the officials took office.

"I want to just point out again, if you look at the work that people have done in their public capacity since I have been president, you would be hard pressed to cite examples that constitute abuse of authority," he said.

- Said that one way to bring down the deficit is to reform health care, a goal he tried to achieve last year but failed.

Reverse-bias lawsuit brought by Justice

White House denies link to politics

REUTERS NEWS AGENCY

The Clinton administration, with political controversy escalating over affirmative action, said yesterday it has sued Illinois State University for discriminating against white male candidates for janitors.

The announcement of the case occurred just days after President Clinton launched a White House review of affirmative-action programs designed to help minorities and women. Republicans in Congress have attacked the programs as a form of reverse discrimination against white males.

The Justice Department said it filed the lawsuit Thursday in U.S. District Court in Springfield, Ill., charging the state-supported school with refusing to hire white men as applicants for a janitorial learning program.

It charged that the Normal, Ill., school considered only minorities and women for the program, in violation of the nation's civil rights laws.

Justice Department spokesman Myron Marlin denied that the timing of the lawsuit is in any way connected to the current political debate over affirmative action.

He said the case had been under investigation for years before the current review got under way.

"Cases involving employment discrimination against white men are rare, but no less important than cases involving minorities and women," Assistant Attorney General Deval Patrick said in a statement.

"When the facts show a violation under the law, the Department of Justice will act," said Mr. Patrick, the head of the agency's civil rights division.

Mr. Patrick stirred controversy in September when the Justice Department switched sides in a white teacher's discrimination case from New Jersey.

The department in that case said employers should be free to use racial diversity as a determining factor in deciding between two employees with the same qualifications and seniority.

In the Illinois case, the program at issue was established in 1982, and 60 participants from 1987 to 1991 became janitors.

A white Illinois man who was rejected from the program in 1989 filed a complaint with the Equal Employment Opportunity Commission.

The agency's investigation found discrimination and referred the matter to the Justice Department.

The department attempted to negotiate a settlement first in 1993 and in another round of talks late last year but was unable to reach an agreement with the university.

The lawsuit seeks a court order requiring the university to stop discriminatory practices and provide relief, including job offers and monetary awards, to any victims.

WASH. TIMES
3/6

7-Eleven's English-only policy found to be biased

ASSOCIATED PRESS

Arlington's Human Rights Commission has ruled that 7-Eleven stores in the Washington area are wrongly discriminating against foreign-born employees by forbidding them to converse among themselves in their native language while customers are present.

The commission urged Southland Corp. to soften its English-only policy for employees at 800 7-Eleven stores in Virginia and Maryland. The commission said Southland can require its employees to speak in English to customers but cannot order them to use English in private conversations.

If Southland chooses not to change the policy, county officials can go to court to seek compliance.

The unwritten policy, in effect at area 7-Eleven stores since 1989, allows employees to use foreign languages while on break and when the store is empty, but they must speak English when customers are present.

Michael F. Marino, a lawyer representing Southland's Chesapeake division, and store managers said at a commission hearing Saturday that it is a "business necessity" that clerks use English anytime customers are in the store because some are intimidated when they hear a language other than English being spoken.

Tae Keune Kim, 38, of Burke was criticized by his Arlington store manager for speaking Korean to a coworker in April 1993. After Mr. Kim protested to company executives, he was switched to an evening shift and then fired when he failed to show up.

"English is the language we speak in the workplace," said Otis Peaks, market manager for 72 stores in Northern Virginia. Mr. Peaks said Mr. Kim was the only employee ever formally reprimanded under the policy.

The commission rejected the 7-Eleven policy Saturday, but it awarded Mr. Kim no damages because it found he suffered no financial harm.

Robert V. Ritter, an attorney for Mr. Kim, attacked the management's argument. "This is an English-supremacy argument, if you will, and it's not very different from white-supremacy arguments of the past," he said.

Federal Times
1 of 2

Affirmative Action Battle Is Brewing

By Christy Harris
Federal Times Staff Writer

Women and minorities are banding together to fend off attacks on agency affirmative action programs.

President Clinton and several Congress members are considering changing laws and regulations that give preferences based on race, sex or ethnic background.

More than 30 women's and civil rights groups and other organizations have joined forces to respond to criticisms of affirmative action.

Federally Employed Women Inc. and the National Alliance of Postal and Federal Employees are among groups scheduled to participate in a March 3 hearing on the issue, sponsored by Blacks in Government.

The groups hope to dispel myths about affirmative action, said BIG President Oscar Eason Jr.

"For too long, the public dialogue on affirmative action has been defined and dominated by disinformation," Eason said.

The groups' statements will be sent to Clinton, Congress and other interested parties.

Sen. Phil Gramm, R-Texas, a candidate for the Republican presidential nomination, has said his first act as president would be to eliminate preferences based on race and sex.

Sen. Robert Dole, R-Kan., also a candidate for the Republican nomination, has said some affirmative action programs probably should be ended because they are no longer needed.

Rep. John Boehner, R-Ohio,

See ACTION, Page 20

Fed. Times
2 of 2

Anti-Bias Efforts Debated

ACTION, From Page 1
chairman of the Republican Conference, said Feb. 6 the House will review affirmative action to assess its "real effect."

"Personally, I believe that we shouldn't be giving anyone special rights," Boehner said.

The president has ordered a comprehensive review of affirmative action, including equal employment opportunity programs, saying he wants to preserve those that are working.

"I think that it is time to look at all these programs which have developed over the last 20 to 25 years, and ask ourselves, do they work? Are they fair? Do they achieve the desired objectives?" Clinton said Feb. 24.

"We ought to have a national conversation not only about affirmative action, but about what our obligations are to make sure every American has a chance to make it," Clinton said.

But he said he does not want the debate to degenerate into another "cheap, political, emotional wedge issue," that would divide the country.

Clinton said he believes most Americans want the government to continue guaranteeing equal opportunity.

"But we shouldn't be defending things that we can't defend," he said.

'I think that it is time to look at all these programs . . . and ask ourselves, do they work? Are they fair?'

President Clinton

Thousands of Bias Complaints

Agency affirmative action hiring and employment policies date back to the 1960s.

The executive order on affirmative action in federal employment was a precursor to the 1964 Civil Rights Act, according to a Congressional Research Service overview of affirmative action laws and regulations.

In addition to the Civil Rights Act and its amendments, the Equal Employment Opportunity Act Amendment of 1972, the 1978 Civil Service Reform Act, four other sections of the U.S. Code, an executive order and two parts of the Code of Federal Regulations govern equal employment opportunity in the federal work force.

The Equal Employment Opportunity Commission, which enforces nondiscrimination in federal employment, is "very much involved" in the president's review, communications director Claire Gonzales said.

EEOC can order agencies to hire or reinstate people with or without back pay in cases of discrimination under the 1972 amendments to Title VII of the Civil Rights Act.

In addition, federal agencies and departments, unlike most other employers, are required to submit annual equal employment opportunity plans for employees and applicants to EEOC.

The plans must include a minority recruitment program to eliminate minority underrepresentation in specific job categories, the research service report says.

Businesses with more than $50,000 in federal contracts also must file affirmative action plans with the Labor Department's Office of Federal Contract Compliance Programs.

Other employers may voluntarily adopt affirmative action plans, or courts may order them as remedies to egregious discrimination.

EEOC helps agencies develop their equal employment opportunity plans, and reviews them, Gonzales said. But the commission does not enforce the plans, and cannot take sanctions against agencies based on their plans, she said.

EEOC Chairman Gilbert Casellas wants people to recognize bias still exists and affects employees, as evidenced by the commission's backlog of more than 100,000 complaints, Gonzales said.

Federal employees filed 19,106 discrimination complaints in 1992, the last year for which a total number is available.

"Discrimination continues to be a problem in today's workplace," Gonzales said.

The majority of the backlogged cases are from the private sector, but several thousand federal sector cases are included.

Common Sense

The debate about affirmative action is driven by a misunderstanding about what it is, said David Shaffer, an attorney who represents black agents at the Bureau of Alcohol, Tobacco and Firearms in their discrimination lawsuit.

Affirmative action is not, in practice or in law, a way to promote people who are unqualified or less qualified because of their race or sex, Shaffer said.

It's a way of eliminating artificial barriers that weed out women and minorities in disproportionate numbers, he said.

A Treasury Department test used for law enforcement officers is an example of an artificial barrier, Shaffer said. The test had not been validated since 1950, and did not relate to the job, he said.

ATF had acknowledged since 1984 that the test was a barrier to hiring minorities, but continued using it until 1992, he said.

The ATF case, which covers more than 200 current and former agents, is scheduled for trial in August. The agents are suing over alleged discrimination in hiring, promotions, discipline, training, transfers and other aspects of their jobs.

If obstacles to hiring minorities and women are eliminated over time, their numbers in the work force and in management should reflect their populations, Shaffer said.

"Affirmative action is common sense if it's done right," he said.

If not, affirmative action can appear to promote minorities and women over more qualified white males, he said.

Simply promoting a few women and minorities to make it look as if those groups are not underrepresented is a short-term fix, Shaffer said. Those promoted eventually will leave or retire and disparities will continue unless agencies address the reasons for the disparities, he said.

The Washington Times ★ SUNDAY, MARCH 5, 1995

Clinton handling a 'time bomb'

■ The president's review of affirmative-action programs could have political repercussions.

By J. Jennings Moss
THE WASHINGTON TIMES

President Clinton, in reviewing the nation's affirmative-action programs, has embarked down a path that could anger the Democratic Party's core constituency and deliver a ripe political issue to Republicans.

"It's a delicate and volatile issue," said Will Marshall, president of Progressive Policy Institute, which is connected with the centrist Democratic Leadership Council. "This president ought to make it clear that the party and this nation are not going to renege on society's obligation to provide real opportunities for poor black citizens who have not reaped the benefits of our civil rights laws," Mr. Marshall said.

Clint Bolick, litigation director for the conservative Institute for Justice, said affirmative action could be the most significant populist issue in the 1996 presidential campaign. "The issue of racial preferences has been a ticking time bomb for Democrats in the last 10 years. It's an issue that could very well explode next year," he said.

Mr. Clinton said Friday that his review was "almost done," although White House officials involved in the analysis said last week that the affirmative-action task force was still compiling information. The internal debate about which programs work and which need to be changed has yet to take place.

"I don't think it's monolithic in its thinking," said an administration official when asked if the task force had a range of opinions among its members.

Heading up the task force is senior adviser George Stephanopoulos. Also involved are White

see CLINTON, page A1

CLINTON

Continued from page A1

House Counsel Abner Mikva, legislative affairs director Patrick Griffin, domestic policy aide William Galston and Assistant Attorney General for Civil Rights Deval Patrick. The administration's recommendations could be made by the end of the month.

During a press conference on Friday, Mr. Clinton offered his most extensive remarks about the subject. While he reaffirmed his broad support for the concept of affirmative action, he said he would like to see such programs built around economic need rather than race and gender. White House officials later tempered the president's remarks by stressing that no decisions had been made.

Mr. Clinton said, for example, he was not backing away from the goal of looking for qualified job applicants who are reflective of the nation's diversity. But he did lay out what he called a "narrow question" when it comes to analyzing affirmative-action programs.

"If we're not for quotas in results and we are for developing everybody's capacities, what do we do with all those rules and regulations and laws that really are in a gray area . . . where there is, let's say, a minority scholarship or a contracting set-aside . . . that really is often got around because of the way they are written?" Mr. Clinton asked.

During the 1992 presidential campaign, Mr. Clinton never discussed the need for a review of affirmative-action programs. He did proclaim his support for the 1991 civil rights law, his opposition to quotas and his support for a federal law protecting homosexuals from discrimination.

But affirmative action promises to eclipse all of those items during next year's presidential election. Republicans on Capitol Hill already are discussing repealing most if not all affirmative-action programs because they argue they have outlived their usefulness and now lead to reverse discrimination.

Recent public-opinion polls show that a vast majority of Americans believe affirmative-action programs no longer are needed. In a CNN-USA Today poll last week 57 percent said such programs were no longer needed for women; 56 percent gave the same response for racial minorities.

When Mr. Clinton first talked about his affirmative-action review during a press conference in Canada Feb. 24, he said he did not want the matter to become a "political wedge issue." During Friday's session with reporters, he avoided a discussion of politics.

President Clinton takes questions from reporters at a news conference Friday in which he discussed his review of affirmative-action programs.

"I want to stress that first and foremost we want to get the substance and the policy right. We can figure out the politics of it down the road," White House spokesman Michael McCurry said last week.

The outside forces pulling Mr. Clinton reflect largely the same coalitions that influenced the congressional civil rights debates in 1990 and 1991. In that instance, President George Bush signed into law a bill that made it easier for workers to bring and win anti-discrimination suits.

On one side is the established civil rights community and organized labor. "We urge him not simply to lose time reviewing and retreating but to act and assert and to be bold," Jesse Jackson said at a press conference last week at which he and other leaders argued that a rollback in preference programs would seriously hurt women.

On the other side are business groups who argue that they are committed to the goals of affirmative action but that it's time for the government to stop mandating programs.

"The way this administration has looked at things in the past, I would imagine that they're looking to shore up some of the larger affirmative action programs, some of the more salient ones . . . and look to put some of the smaller ones on the back burner or cast them off completely," said Peter Eide of the U.S. Chamber of Commerce.

3/4/95 Washington Post

Glendening Pushes Rise in Minority Contracting

By Michael Abramowitz
Washington Post Staff Writer

ANNAPOLIS, March 3—As the country seems ready to retreat from affirmative action, Maryland Gov. Parris N. Glendening is charging in the opposite direction with a proposal to expand the amount of state business targeted exclusively for minority-owned companies.

Not without reason is the new governor marching to the beat of a different drummer. Glendening owes his narrow victory last fall, the only one by a new Democratic governor east of the Rocky Mountains, in large part to overwhelming voter support from majority-black Prince George's County and Baltimore.

And Glendening got substantial financial backing from black- and other minority-owned businesses.

Glendening says he regards the minority contracting program as an economic development tool, one that could have the side effect of lessening the need for expensive social programs and welfare.

"The importance that we see is to have a mechanism to assist these businesses and not to have quotas or anything of that type, which I object to very strongly," Glendening said this week.

As county executive in Prince George's for 12 years, Glendening enthusiastically supported preferences that gave minority entrepreneurs up to 30 percent of the county's procurement dollars. But Glendening faces a somewhat different political landscape in trying to repeat his efforts statewide.

The General Assembly's Republican minority, emboldened by gains in last fall's election, has signaled that it may try to strip the contracting program of its racial preferences and replace them with provisions to give preference to economically disadvantaged businesses, regardless of race.

Many female business owners, who are lumped together now with other minorities in the program, have objected to Glendening's plan to set up separate systems for women and racial minorities. Some women fear that it could limit their access to the state market. And many moderate Democratic legislators are nervous about the chance that expanding the program could expose them to charges that they are out of step with mainstream voters and put the minority initiative at risk.

"I hope that we're not going to entertain a bill that so arouses the emotions of people that we end up going in an extreme direction," said Del. D. Bruce Poole, a Western Maryland Democrat who is chairman of a House subcommittee with oversight responsibility for the minority contracting program.

Arnold Jolivet, president of the Maryland Minority Contractors Association, expressed confidence that Glendening would follow through and perhaps even toughen his legislative proposal on minority contracting. "The present governor did an excellent job in Prince George's," Jolivet said. "We would hope that he could generate the same kind of progress at the state level."

Under a bill introduced by the Glendening administration, the state would raise its overall goal for minority contracting from 10 percent to 18 percent of total state contracting dollars. In construction contracts, the bill would set separate sub-targets, with 5 percent targeted for women-owned businesses and 13 percent for other minorities.

The new goals would require a stronger state effort to contract with minority companies. In the last fiscal year, for instance, minority- and women-owned companies won Maryland government contracts totaling about $250 million, or about 14 percent of total state procurement.

In an interview this week, Glendening said the goals are derived from a study that was carried out for the state last year to help provide legal support for the state's contracting program. The U.S. Supreme Court has ruled that governments with minority contracting programs must demonstrate statistical evidence of discrimination and must fashion remedies narrowly tailored to address that discrimination.

The state's study concluded that, in fact, minority-owned companies continue to face discrimination and were "underutilized" by state agencies—that is, they did not receive contracts in proportion to their numbers in the market.

"That study came up with the 18 percent figure," Glendening said. "If we deviate too far from that, we get in the crazy situation that the law may not be sufficient to meet the guidelines established by the court."

From Republican-controlled Capitol Hill to several state capitals, notably in California, pointed questions are being asked about the continued wisdom and usefulness of affirmative action programs established to redress past discrimination by actively trying to provide opportunities for minorities in business and education.

Legislative leaders here said Glendening's minority procurement initiative could be one of the "sleeper" issues of the 1995 session, with the prospect of an acrimonious debate that mirrors the national reevaluation of affirmative action in other states. Although Glendening and his allies say their proposal would not provide for "set-asides" or "quotas," some white contracting companies have complained that there is a coercive element to the current program and that in many cases they are unable to find qualified minority companies to meet the goals.

The current law requires contractors on state highway projects to use a certain percentage of minority subcontractors, with the number varying depending on the area and the type of project. That requirement may be waived if contractors can

cont'd 142

MARYLAND'S MINORITY BUSINESS ENTERPRISE PROGRAM

Fiscal year	Total state procurement	Amount going to minority- and women-owned companies	Percent
1991	$1.3 billion	$133 million	10%
1992	$1.6 billion	$217 million	14
1993	$2.0 billion	$223 million	11
1994	$1.8 billion	$249 million	14

SOURCE: Governor's Office of Minority Affairs

THE WASHINGTON POST

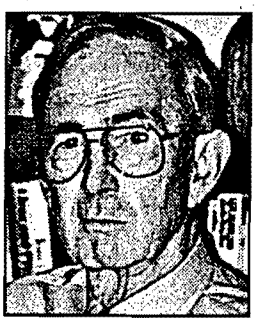
USA TODAY · TUESDAY, MARCH 7, 1995

Voices: When is affirmative action appropriate?

The debate over affirmative action is mounting in Congress, courts and campaigns for the presidency. Civil rights groups are organizing counterattacks to Republicans in Congress who oppose affirmative action. The Clinton administration is reviewing federal affirmative action policies. USA TODAY asked readers their opinions about the issue.

Margaret Porter, 36
Writer
Alton Bay, N.H.

It's appropriate when it creates a broad range of qualified job applicants, encouraging minorities and women not to feel shut out. Given how minorities were treated in our country, affirmative action policies were a step in the right direction. But it's tricky to legislate.



Andrew Patten, 66
Retired pilot
Albuquerque, N.M.

I don't think it's appropriate in any case today. There may have been a case for it in earlier days, but not anymore. It pushes quotas, forcing employers to hire unqualified people. That's not the intent of the law, but that's the effect of the law.

Melicent Scott, 27
AmeriCorps worker
Ocean Township, N.J.

I can't think of a time when it's not appropriate. It's a plan to have more women and minorities in company positions. Discrimination still exists. Affirmative action will be needed until minorities reach a more equal billing and they aren't called minorities anymore.

Patricia Savani, 47
Real estate co. mgr.
Annapolis, Md.

The only affirmative action should be that everyone has a chance to compete fairly. Then, the most qualified person should be hired. Preferences shouldn't be given to a minority or a majority. The way the system works now, it never should have been put in place.

Mike Maguire, 53
Benefits consultant
Rogers, Minn.

If employers want to hire minorities or women, that's fine. But it's not right for government to tell them they have to do it. There was a time when women and minorities were grossly discriminated against. People are more enlightened these days.

TUESDAY, MARCH 7, 1995 THE WASHINGTON POST

Dole Requests Hearings to Review Affirmative Action

Senate Majority Leader Robert J. Dole (R-Kan.) called on chairmen of committees with jurisdiction over affirmative action programs to hold hearings on the programs, including whether there are "other, more equitable ways to expand opportunities" for minorities and women.

Dole, who earlier ordered a review of all federal programs, rules and orders that grant preferences to individuals on the basis of race, gender or other factors, did not propose any specific changes.

Instead, he asked Labor and Human Resources Committee Chairman Nancy Landon Kassebaum (R-Kan.) and Small Business Committee Chairman Christopher S. Bond (R-Mo.) to hold wide-ranging hearings on programs within their panels' purview. "The bottom line is that no federal program should be immune from congressional scrutiny," he said.

In letters to the two senators, Dole suggested that the hearings cover such questions as whether original purposes of the programs have been achieved, whether the programs have "operated to discriminate on the basis of race or ethnic background" and whether the government should be "in the business of 'presuming' that members of certain racial and ethnic groups are 'socially disadvantaged.'"

A key question in both letters asked whether there are "other, more equitable, ways to expand opportunity for all Americans, without resorting to strategies that rely on providing preferences for individuals simply because they belong to certain groups."

In the House, the Small Business Committee held a hearing yesterday on minority contract set-asides, and the Judiciary Committee plans to hold hearings on civil rights enforcement by the Justice Department.

— Helen Dewar

Rush on for citizenship

By Sandra Sanchez
USA TODAY

SAN ANTONIO — A burst of citizenship applications from long-time legal residents is being seen in states along the Mexican border.

"Anti-immigrant sentiment ... has been propelling" the trend, says Arturo Vargas of the National Association of Latino Elected and Appointed Officials.

Californians approved Proposition 187, which denies services to undocumented workers, in November.

Since then, Immigration and Naturalization Service offices have been swamped with requests from residents:

▶ In Texas, Oklahoma and New Mexico, applications rose 75% in January to 4,844 from 2,769 a year earlier.

▶ In California, applications rose 166% to 26,696 from 10,016 in January 1994.

Many applicants see citizenship — and the voting rights that come with it — as a way they can help curb anti-immigrant sentiment.

"If we don't vote then we don't have a voice or rights," said Guatemalan Roberto Sola, 49, as he was applying for citizenship. "We have to voice our opposition."

▶ No longer at ease, 3A

cont'd
192

292 USA Today 3/7/95

Immigrants say bias is 'swift kick' to citizenship

By Sandra Sanchez
USA TODAY

SAN ANTONIO — When Eduardo Flores moved to Texas in 1981, he was content straddling two cultures: working in the United States but retaining his Mexican citizenship.

Now, the anti-immigrant sentiment spawned by California's Proposition 187 is making him have second thoughts: Flores wants a claim on the rights available in his adopted land.

Legal immigrants like Flores throughout the Southwest have been applying for citizenship at record levels, and many say they want the right to vote to stop the spread of laws like Proposition 187. If implemented, the law would deny education and certain medical services to undocumented aliens.

Flores says he's changed his view of U.S. citizenship for reasons both tangible and not.

Flores' son Jesus racked up straight A's in high school but couldn't accept a scholarship to Texas A&M, where he wanted to study computer engineering, because he's not a citizen. Instead, Jesus, now 21, is a meat cutter at a grocery store.

Flores also feels intangible prods toward U.S. citizenship.

Although he's lived in the United States for more than 14 years, Flores says he has begun to feel vulnerable since California voters adopted the Proposition 187 initiative.

He fears hostility toward immigrants could escalate to a point where police would check anyone who looks Latino for citizenship credentials.

"Proposition 187 can affect all of us," says Flores, 46, a school janitor who immigrated from Matamoros, Mexico. "They'll stop and investigate us just because of the color of our skin."

"We have folks who have made this their home for years and who now are afraid of what is happening," says Arturo Vargas of the National Association of Latino Elected and Appointed Officials.

"If you want to be in the safe line, get your citizenship," adds Puerto Rican-born Enrique Birriel, at a citizenship swearing-in ceremony for his Nicaragua-born wife, Candida Rosa Birriel. "I told her and told her she needs to become a citizen, and after (Proposition) 187, she finally listened."

Legal residents wouldn't be affected by Proposition 187. But many aren't reassured.

"(Immigrants) have been exploited, taken advantage of, and people have gotten away with it because they haven't been able to vote or express their rights," says Vargas. "It (Proposition 187) has been a real swift kick in the butt for the Hispanic community."

While noting the extra business, INS officials hesitate to attribute it to Proposition 187.

They cite a Green Card Replacement Program that requires legal residents who have been in the USA since 1978 to renew their cards by March 20. Instead of paying the $75 fee, many apply for citizenship for $95.

In addition, hundreds of immigrants who gained permanent residency through the Amnesty Program in the 1980s now are eligible for citizenship.

However, "there are other people who are kind of rushing the service to naturalize," says INS spokesman Ray Dudley. "They have been misled by certain people in the press who are creating a sort of fear."

In San Antonio, citizenship ceremonies are held monthly and average 250 people. But because of the increase in applicants, additional ceremonies have been scheduled.

"We can't handle the numbers of people we're getting per ceremony now," says the INS' Wiley Blakeway, who coordinates the ceremonies for applicants in a 78-county area.

At a February ceremony, U.S. District Judge Orlando Garcia waved a voter registration card before the crowd and urged all to take advantage of their new rights. "It's the single most important thing, next to the Holy Bible, that you will ever have."

Meanwhile, Jose Luis Gonzalez, 46, was preparing to teach free citizenship classes starting Monday behind the Pico de Gallo restaurant. Classes — three nights a week for 12 weeks — were expected to attract 80 restaurant employees and their family members for drills on 100 possible questions they could be asked during a citizenship test.

"You literally have to grab them by the hand, pull them out of the kitchen and sit them down and teach them how to be U.S. citizens," says Gonzalez, a former Marine.

Jacinto Hernandez, 37, a restaurant parking lot attendant, has enrolled.

"We work hard, but we don't get anything back from the government," says Hernandez, who immigrated from Mexico City in 1983. "I could vote for people that could do something to stop the discrimination."

By Darren Carroll

SWORN IN: Enrique Birriel urged his wife, Candida, to apply for U.S. citizenship. 'After (Proposition) 187, she finally listened.'

More immigrants seek citizenship

Citizenship applications in January rose sharply this year in some Immigration and Naturalization Service districts in Texas and California:

District	1994	1995	Increase
Los Angeles	4,259	17,094	301%
Dallas	617	1,468	138%
San Diego	957	1,905	99%
Harlingen, Texas	148	262	77%
El Paso	502	872	74%
Houston	1,048	1,748	67%
San Francisco	4,800	7,697	60%
San Antonio	454	494	9%

Who can apply for U.S. citizenship

Applicants for citizenship must be married for three years to a U.S. citizen or be a legal resident for five years, or must have served in the U.S. military for three years.

Source: Immigration and Naturalization Service

Justice Department Sues To Get White Men Hired
By MICHAEL J. SNIFFEN
Associated Press Writer

WASHINGTON (AP) - The Justice Department has accused Illinois State University of refusing to hire white men for janitorial jobs.

In a lawsuit, the department's civil rights division alleged the university discriminated on the basis of race, national origin and sex in violation of the Civil Rights Act of 1964.

"Cases involving employment discrimination against white men are rare, but no less important, than cases involving minorities and women," Assistant Attorney General Deval L. Patrick said Friday. "This administration is committed to protecting the civil rights of all Americans and this case is no exception."

In a complaint filed Thursday in U.S. District Court in Springfield, Ill., the government sought a court order requiring the university to stop its alleged discriminatory practices and provide job offers and monetary relief to any identifiable victims.

No affirmative action, such as increasing recruiting or hiring goals, was sought, "because we can identify the victims," said Justice spokesman Myron Marlin. "We only seek affirmative action when we can't identify the specific victims of the discrimination."

The Clinton administration is reviewing its policies on affirmative action in response to criticism from Republicans that such measures unfairly discriminate against groups like white men in trying to remedy past discrimination against women or minorities. That review had no effect on this case, Marlin said.

The government said the university, located in Normal, Ill., engaged in a pattern of discrimination when it considered applicants for the Building Service Worker Learner program.

The program, established in August 1982, includes 20 people at any one time. It runs six months and certifies its learners as probationary building service workers, who are primarily responsible for janitorial duties. Six months later, they can become full-fledged building service workers without taking the exam that is required of applicants for janitorial jobs who do not enter the learner program.

Sixty people became building service workers under this program between May 1987 and January 1991.

An Illinois resident who was rejected from the program in 1989 complained to the U.S. Equal Employment Opportunity Commission. The commission concluded the university had discriminated and referred the case to the Justice Department.

Justice reached the same conclusion and tried to negotiate a settlement beginning in November 1992. The suit was filed after two rounds of negotiations failed.

Marlin said the department's last case involving discrimination against men was resolved by a consent decree in June 1993 with the Nassau County, N.Y., Police Department, which had allegedly denied male employees child care leave on the same basis as it gave such leave to women.

The last case filed involving discrimination against white men was resolved by a consent decree in October 1991 with the Port Authority of Allegheny County, Pa., Marlin said. The government alleged a hiring plan reserved some jobs for minority applicants.

Marlin said neither the Nassau County nor Allegheny County cases m[illegible] use of affirmative action.

was found ineligible for an office because he had not met the attendance requirements, purposefully did not attend meetings in order to protest the requirement, the judge said.

97 Percent Of Members Ineligible

More than 97 percent of the 11,990 members of the local union were ineligible for offices in the election because of the meeting attendance rules, and of the 339 members that were eligible, 305 were already union officers or stewards, Rothstein said.

For an election to be voided, the Labor Department must demonstrate that the meeting attendance requirement is not a "reasonable qualification" and is a violation of the statute, the judge said. In addition, it must be shown that the violation may have affected the outcome of the election.

Rothstein decided the requirement was not reasonable, saying "courts have uniformly held that meeting attendance requirements are unreasonable when they exclude a high percentage of membership from eligibility." In *Doyle v. Brock*, 821 F.2d 778 (D.C.Cir. 1987), the court rejected as unreasonable an attendance requirement that disqualified 97 percent of union members from candidacy, Rothstein noted.

Considering the "plain language of the statute," the Machinists' meeting attendance requirement may have affected the outcome of the election, since the bylaws prevented more than 97 percent of union members—and Hardeland—from running for office, the judge said.

Disabilities

TEACHER'S PANIC ATTACKS DON'T REQUIRE ACCOMMODATION UNDER REHABILITATION ACT

A high school math teacher who claims he developed an anxiety disorder connected with his classroom work after a student filed misconduct charges against him has failed to show that federal disability law requires his school district to assign him to nonclassroom work, a federal judge in Nevada ruled (*Mustafa v. Clark County School District*, DC Nev, No. CV-S-95-016, 2/8/95).

Judge Philip M. Pro of the U.S. District Court for the District of Nevada denied Muin Mustafa's request for a preliminary injunction ordering the Clark County School District to place him in a nonteaching position. The judge said Mustafa had not shown either that he was likely to win his Rehabilitation Act case on the merits or that he would suffer irreparable injury if the injunction was not granted.

The judge observed that Mustafa had recently been working as a substitute teacher—without any sign that doing so triggered the panic attacks.

Student Charges Lead To Disorder

Mustafa worked for the school district for 18 years, mainly as an advanced-placement and college preparatory math and computer sciences teacher. In January 1994, he was suspended without pay after a former student alleged sexual misconduct by Mustafa. In March, an arbitrator ruled the charges were unsubstantiated, and Mustafa was reinstated with full back pay.

Mustafa asked to be returned to his old high school teaching position, but was told that because criminal charges were still pending against him in the misconduct matter and because it was the middle of the semester he would be placed temporarily as a consultant with the district's Math Institute. In June he was reassigned to another high school to teach basic math, starting in August.

Mustafa missed the start of the fall semester due to unrelated surgery and recuperated for five weeks. During that time he sought psychiatric help for anxiety that he said he developed after the misconduct allegations were brought against him. He continued to use accrued sick leave to seek counseling and treatment, and at the end of November 1994, at the district's request, Mustafa submitted his doctor's psychological evaluation of him. The evaluation said Mustafa would be ready to return to the classroom, but that there was nothing inappropriate in his extended absence from school on grounds of emotional instability.

The district assigned Mustafa to a substitute teaching position until another position became available. A short time later, Mustafa was assigned to teach basic math at a Las Vegas middle school starting in January 1995.

Mustafa filed for a preliminary injunction to block the school district's teaching assignment. He invoked the Rehabilitation Act of 1973, saying the school district violated Section 504 of the act by refusing his reassignment request to a nonclassroom position, which would reasonably accommodate his disability.

Injunction Denied, Evidence Scant

In order to grant an injunction request, the court said Mustafa must show that he would in all likelihood win his case on the merits or that failing to receive the injunction would cause him irreparable injury.

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

The Washington Times

DATE: 3-24-95
PAGE: A-19

Penetrating the cloud cover over Mena

R. EMMETT TYRRELL JR.

As I noted late last year, President Clinton's rubicund good looks went ghostly during an Oct. 7 press conference when a member of the Washington press corps mentioned the word "Mena."

Mena is the site of an airport in rural Southwestern Arkansas. It has frequently been reported that during the 1980s the CIA covertly shipped supplies from Mena to Nicaragua's anti-communist Contras. It now appears that the planes returned, much to the embarrassment of American intelligence officials, with vast quantities of drugs secreted within them. A civil suit in federal court in Arkansas is now producing testimony that will explain Mr. Clinton's pale condition upon hearing Mena mentioned.

The lawsuit involves Terry Reed, a pilot who claims to have trained Contra pilots in Arkansas. He [illegible]es that one Buddy Young, [illegible] with others, conspired to [illegible]ge Mr. Reed with the alleged theft of his own aircraft, and a coverup after he reported it stolen. According to the suit, Mr. Young was acting in his official capacity as an Arkansas state trooper assigned to security at the governor's mansion. His immediate superior was Gov. Bill Clinton. The suit alleges that the conspiracy was designed to discredit Mr. Reed's allegations that drugs were being sent back to the United States with government knowledge and complicity. For years, people have poohpoohed the allegations contained in Mr. Reed's incondite book, "Compromised." The book is admittedly so badly written that it could pass for one of those mangled compositions turned out by university professors, but the testimony coming out of this case is fast con[illegible]ming Mr. Reed's charges.

According to Trooper Patterson, Mr. Young said, "If you know what's good for you... you will keep your mouth shut."

[illegible]ave an especial interest in the [illegible]mony of one of the Arkansas troopers being deposed. He is Trooper Larry Patterson, who testified in one of the American Spectator's troopergate stories, which I, of course, as editor of the American Spectator, published.

Several days ago, Trooper Patterson testified that it was Mr. Young's threats against him that provoked him to go to the Los Angeles Times and the American Spectator with his reports on Mr. Clinton's unruly ways. According to Trooper Patterson, Mr. Young, while on the governor's staff, said, "If you know what's good for you, if you know what's good for your family, you will keep your mouth shut." Mr. Young made this threat on three occasions. Trooper Patterson warned him not to reiterate his threat. Then after Mr. Young's superior was elected president and Mr. Young had been appointed director of Federal Emergency Management in Denton, Texas, Mr. Young made yet another threat to Trooper Patterson. "That's when I called the people, and said hey, I'm ready to go forward." "The people," Trooper Patterson testifies, "were Bill Remple with the Los Angeles Times and the little guy with the American Spectator." "The little guy" was David Brock, and they used to say the same thing about Napoleon Bonaparte.

From what I know about the story, this testimony rings true. So does much of the other testimony now being gathered, and it is very damaging to Mr. Clinton's decaying credibility. During the presidential campaign, he dismissed Mena as "bull." That fantasy was discredited by Time magazine. In his Oct. 7 press conference, he said he knew nothing about Mena. Now Trooper Patterson, speaking in sworn testimony before a court reporter, says he and Mr. Clinton heard quite a lot about Mena. Together they heard troopers discussing "that there was [sic] large quantities of drugs being flown into Mena airport, large quantities of money, large quantities of guns, that there was an ongoing operation training foreign people in that area." Asked "Were any of these conversations in the presence of Gov. Bill Clinton," Trooper Patterson replied: "Yes, sir."

Another deposition is equally damaging to Mr. Clinton. Bill Duncan, a former Internal Revenue Service investigator, Criminal Intelligence Division, and later a special investigator for the House Subcommittee on Crime, has rendered testimony in this case that confirms the outline of Mr. Reed's depiction of Mena. What is even more arresting, he testifies that while investigating Mena and an adjunct base at Nella, Ark., for the House subcommittee, "Jack Blum, who was chief counsel as I recall for the Senate Foreign Relations Committee at some time in the latter part of the investigation, came down and told Russell Welch [a fellow investigator] and myself at Mena that Panamanian Defense Forces were being trained. ... There were reports from other law enforcement personal [sic] ... that had found large amounts of ammunition hulls, large caliber, 50-caliber and up, stored in a remote shack not far from Nella airstrip." Mr. Blum told Mr. Duncan "it was sanctioned at high levels of the United States government."

And Mr. Duncan has something else to add. After he left the House investigation he was hired by the newly elected Arkansas attorney general to continue investigating Mena. Once there, he put some 7,000 documents that he had gathered while investigating Mena and Nella in his computer. He was the only person who had the pass code to access that information. Somehow someone broke his pass code. He fears his documents have now been compromised. For the record, he testified the other day, "There was sensitive information in a portion of those documents." Mr. Duncan did not close down his investigation until 1992. This is not an "old Arkansas story."

R. Emmett Tyrrell Jr. is editor-in-chief of the American Spectator.

The Washington Post

DATE: 3-24-95
PAGE: A-1

Americans Vent Anger At Affirmative Action

By Richard Morin
and Sharon Warden
Washington Post Staff Writers

Americans don't merely talk about affirmative action. They shout.

"Blacks . . . walk around with a chip on their shoulder, like we owe them something," said Shirley Powell, 61, a housewife in Angleton, Tex. "I don't feel that we do."

"We don't have a level playing ground and I believe affirmative action is a feeble attempt to create a level playing ground," said Leander Woods, 49, a manufacturing executive living in Lake Hopatcong, N.J.

"They talk about a glass ceiling for women and minorities," said Ira Linville, 52, a technical specialist for the Environmental Protection Agency in Conyers, Ga. "There's a glass ceiling for middle-aged white male managers too."

These voices echo the anger, ambivalence and deep frustration felt by millions of people on both sides of the national debate on affirmative action, a new Washington Post-ABC News national poll discloses.

Three out of four Americans surveyed said they opposed affirmative action programs that give preference to minorities to make up for past discrimination, and a virtually identical proportion felt the same way about programs for women, according to the survey. And more than two out of three said those programs should be changed—or eliminated.

The survey found that affirmative action, like most racial issues, sharply divides whites and blacks. And within communities of color, a debate about affirmative action also rages: Nearly half of all African Americans interviewed said they opposed affirmative action programs giving preference to minorities.

The poll of 1,524 randomly selected Americans and subsequent in-depth interviews with 40 survey participants and others suggest that the debate over affirmative action is shaped by divergent views about the nature, extent and even the existence of racial and sex discrimination in contemporary American life.

The survey comes as the debate over affirmative action that began in the late 1960s enters a new and critical phase.

Some Republicans in Congress, with the support of many Democrats, have vowed to end all preference programs. The battle to guarantee equal rights for all citizens has been fought and won, they argue, and it is not the job of government, business or the educational system to guarantee equal outcomes or favor one group over another.

"I think it's equaled out, there's really no need for that anymore," said Joseph L. Ruhnke, 31, a testing technician in Gilbert, Ariz. "It just makes me upset when this subject gets thrown down your throat. I'm a white single male and they try to make you feel guilty because they're not getting jobs and that it's our fault. It's not my fault that somebody can't get a job."

But to many supporters of affirmative action, race and sex discrimination is not ancient history.

"We [Asians] do not have the same opportunities as whites," said Maria Divina Jocson, 47, a word processing manager who lives in Alexandria, Va. "If we are discriminated against, we keep quiet—we don't have a voice. . . . You accept what their decision is. You are content with what you have."

Affirmative action is needed "because of the serious disadvantages that blacks and other minorities have suffered in the workplace and in education, even today," said Woods, who is black. "You have white managers in the majority of the high-level management positions making decisions on promotions, pay raises and management positions. In my experience, they tend to hire and promote and favor those who are most like them either in ethnic background or in educational background."

Last week, the Glass Ceiling Commission reported that 97 percent of senior managers at the Fortune 1,000 corporations were white males. Two-thirds of the overall population and 57 percent of the nation's work force is female or a minority or both.

Many supporters of affirmative action preference programs say that it is a question of fairness: These modest advantages to minorities and women are no more than payback for hundreds of years of discrimination that benefited whites and men at the expense of blacks and women. "There should be some type of reparations for 300 to 400 to 500 years of discrimination of all types of minorities, not just blacks," said Graig Gillis, 25, an African American college student who lives in Matteson, Ill. After slavery, "justice wasn't done." And even today, "I think a higher standard is held for minorities. I think they are discriminated against psychologically."

"If women are carrying the same credentials and everything is equal to that point, I think they should get a little bit extra push," said Katherine Cranage, 51, a reference librarian in Freedom, N.H. "This is the 75th year of our right to vote as women—that's not a long time . . . considering that men have run the world since the beginning of time."

But many opponents of affirmative action angrily dismiss suggestions that preferences are needed to make up for past discriminatory practices.

"There is absolutely no reason to try to get even with what happened to past generations," said Jack Landwehr, 39, a production supervisor in an industrial paint factory in Racine, Wis. "People make of life what they put into it."

"The blacks think we owe them something for going getting them [from Africa]," said Philip Lang, 45, who owns a small grocery store in Cheraw, S.C. "I didn't go get anybody. That was 200 years ago. Why should I suffer so they can have a better chance in jobs or anything for that matter."

Many women and blacks are torn over affirmative action, the survey disclosed. Two out of three women opposed affirmative action preference programs for women, compared to three out of four men. And while 52 percent of those blacks interviewed said they supported preference programs for minorities, nearly as many—46 percent—did not.

Many minorities expressed concern that white preoccupation with affirmative action blinds whites to qualifications of minorities and women, who become lumped together as "preference hires" even when they had won jobs or promotions by hard work or

20

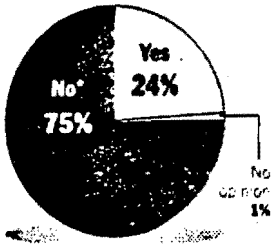
Cont'd

PREFERENCES OR NOT

RESULTS OF A WASHINGTON POST-ABC NEWS POLL

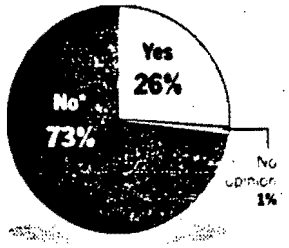
Q: Do you think blacks and other minorities should receive preference in hiring, promotions and college admissions to make up for past discrimination?

Preference for minorities:



*Blacks: 46%; whites: 81%

Preference for women:



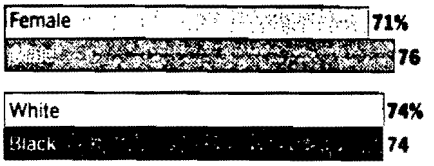
*Women: 69%; men: 76%

AFFIRMATIVE ACTION

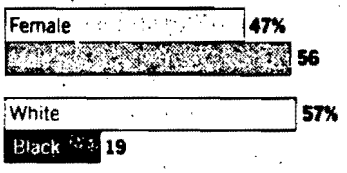
RESULTS OF A WASHINGTON POST-ABC NEWS POLL

Q: Do you think affirmative action programs giving preference to women, blacks and other minorities . . . (Percent who said yes)

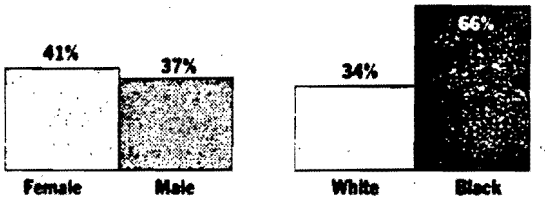
. . . have increased opportunities for those groups?



. . . result in less opportunity for white men?

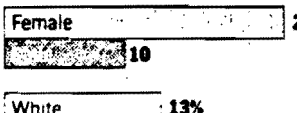


Q: If these programs result in less opportunity for white men, is that a price worth paying? (Percent who said yes)



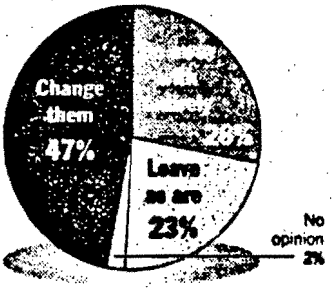
Q: Do you personally feel that you have ever been denied a job or promotion because of . . . (Percent who said yes)

. . . your sex?



. . . your race?

Q: What's the best thing to do with affirmative action programs: Leave them as they are, change them or do away with them entirely?



NOTE: Figures are from a Washington Post-ABC News national telephone poll of a random sample of 1,524 adults March 16-19. The poll included 105 blacks, 1,264 whites, 732 males and 792 females. Margin of sampling error for the overall results and the white subsample is plus or minus 3 percentage points. It is plus or minus 4 percentage points for males and females and 10 percentage points for blacks. Sampling error is, however, only one of many potential sources of error in this or any public opinion poll. Interviewing was conducted by Chilton Research of Radnor, Pa.

—*Compiled by Sharon Wal*

THE WASHINGTON POST

merit. Some also agreed with critics who said affirmative action sometimes produced reverse discrimination.

"Affirmative action to me was supposed to be used to equal things out. Now it's used as an excuse," said Bryant J. Williams, 20, an Army specialist living in Herlong, Calif. "The whole minority-majority affirmative action thing really bothers me. . . . I am equal if not superior to, so just to consider me in a category of minority is not right."

Ernie Sandoval, 20, a Hispanic college student in Paradise, Calif., said he fears that backlash to affirmative action is hurting relations between the races. "I consider affirmative action to be reverse discrimination, and I think affirmative action is counterproductive," he said. "I think it helped the African American community throughout the '70s for a while and women. But at this point it is dividing the races."

The poll found Americans deeply divided over whether affirmative action hurts white males. Half of those interviewed—51 percent—said white men had been adversely affected by preference programs, while 46 percent disagreed.

These views varied sharply by race. Fifty-seven percent of all whites interviewed and 63 percent of all white males thought affirmative action had hurt white men, a view shared by just 19 percent of all blacks.

Allen Hamblin, 20, a Mormon missionary in Bristol, Va., wants to go to college but is having trouble finding the money. He sees himself blocked from applying for scholarships that are open to needy blacks but not to equally needy whites. "I'm not going to be able to get a college education as easy and I'm not going to be able to get a job as easy with affirmative action in place, and without a college education there's no way I'm going to get a job in a field that I like," Hamblin said.

Despite these widespread fears, the survey found that only 10 percent of all white males interviewed said they had been denied a job or promotion because of their gender and 17 percent said they had faced employment discrimination because of their race.

Supporters and opponents of affirmative action generally agree on one thing: They're dissatisfied with existing affirmative action programs.

But what changes should be made? Make sure preferences are used only

Cont'd

to boost minorities or women who otherwise meet requirements, many said. And end hiring practices that amount to quotas, a view that echoed results from surveys conducted over the past 10 years.

"Minorities should get a certain preference, but not to the extent that companies are hiring just to fill quotas," said Darren Sakai, 20, a legal assistant living in the District of Columbia. "I don't doubt that affirmative action has helped me somewhat. . . . [But] I am competitive. I can keep up with my white Caucasian counterparts."

"There are people qualified in all groups," said Ira Linville, the EPA technical specialist. "I would put more emphasis on qualifications rather than just direct goals to meet quotas."

Others said America needs to look inward and across the racial divide. "We all need to live as a family instead of a racial group," said Hamblin, the Mormon missionary.

That's a good theory, affirmative action supporters might say. But until human nature is perfected, many argue the country will need affirmative action programs.

"I can't see doing away with it, not until there's a utopia," said Donald Smith, 48, a senior medical technologist in Princeton, W.Va. "I wish we didn't have to fool with it period. . . . But I don't guess we'll ever reach that goal. I don't think man will ever get to the point where he's not going to be selfish and nonprejudiced."

The Washington Post

DATE: 3-24-95
PAGE: A-1

Clinton Defends Programs

Vows Fairness to All; Review Continues

By Ann Devroy
Washington Post Staff Writer

President Clinton yesterday gave a vigorous defense of government affirmative action programs but said he has asked his team reviewing the subject to probe reverse discrimination, fairness to non-minorities and whether unqualified candidates are getting government jobs or contracts.

Clinton said yesterday that his review, considered by many in the White House as the most politically sensitive undertaking of the year, is not complete. Originally, the White House had intended for Justice Department civil rights division chief Deval L. Patrick to outline the administration's affirmative action position in congressional testimony today. Instead, Patrick has been instructed to give what a senior official called "a holding statement" while the review continues, with an April completion date now projected.

Some officials and legislators who have talked with Clinton about the subject expect the review to largely mirror the position he outlined in yesterday's remarks.

"My take on it is he is going to broadly support affirmative efforts but revamp set-aside programs in some of the departments or at least propose revamping them," said a Democratic senator who spoke to Clinton on the subject in past days. Set-aside programs generally earmark a percentage of federal contracts to go to businesses owned by minorities or women.

Another official who has been privy to a Clinton discussion on the issue said, "The president is engaged in this and sees the outcome of what he wants to do. It is pretty clear to me that this is not a critique of basic principles of affirmative action but a weeding out of indefensible programs and an effort to see if more programs can be modeled after affirmative action programs used by the military.

Some 50 officials around the government are involved in the effort, described by one as "empirical analysis" followed by political assessment.

Republicans have pledged to sharply limit or overturn many of the government affirmative action programs, arguing they discriminate against white males and others and belie the goal of a color-blind society. Republican presidential candidates have attacked sharply or questioned the programs, while liberal Democrats, groups representing minorities, women and others—an important part of the president's political base—have lobbied the White House furiously to retain most, if not all, of the programs. Some have argued the White House should not even be conducting a review.

At a White House news conference staged for college journalists, Clinton yesterday said he has asked his team to study whether the programs "work and do they have a positive effect?" If they do work, he said, "are they sometimes unfair to others? Could you argue that in some cases there is reverse discrimination and if so, how?"

Clinton said he also asked his team to answer the question of whether "there are those in need not covered by affirmative action" and whether the government can address that, and finally, to show him models of what "clearly works."

The president cited the military's program for promotions, where all receive extensive training and then at each promotion level, attempts are made to have the pool of those eligible reflect the diversity of the rank below.

Clinton said he also had asked his aides to define for him where discrimination still exists among people who are not "economically distressed" and what the government should do about that. Last month, Clinton suggested that economic disadvantage, rather than race or gender, might be a way of determining who should benefit from affirmative action programs.

But yesterday, Clinton suggested that would be insufficient, since government and other studies have shown evidence of discrimination against women no matter their economic status.

"I am against discrimination," Clinton concluded, "I'm against giving people opportunities who are unqualified." He said the government's goal should be to develop the capacities of all Americans and that white males—the group that has expressed the largest grievance over affirmative action—should agree with that goal.

The first direct test of a Clinton effort to preserve the basics of affirmative action and weed out the politically indefensible may come as the Senate takes up legislation that would include the cancellation of a program that gives tax deductions to firms that sell broadcast stations to minorities. One Clinton aide described that program as an "appropriate sacrifice" in order to save more worthy affirmative action programs.

Clinton, in an answer to a question on the progress of his review, gave what amounted to a short speech. Speaking to a student audience that he said probably has no memory of how recently legal discrimination was in place, the president spoke of a South where restrooms were still segregated and poll taxes for blacks were still imposed.

"The point I want to make to you is that we have made a lot of progress in this country," Clinton said, "because we tried to take action to open up more opportunities to people without regard to their race or gender and all of us, including white males, are better off because of that."

The New York Times

DATE: 3-24-95
PAGE: A-23

Defending Hiring Preferences, Clinton Details Plan to Review Them

By TODD S. PURDUM

WASHINGTON, March 23 — President Clinton today offered his most articulate defense yet of the concept of affirmative action — and his most extensive explanation of his review of existing Federal programs to determine whether to drop some preferences based on race or sex.

Mr. Clinton said he wanted to find out which programs work, whether even some of those that do have resulted in reverse discrimination, and whether some economically disadvantaged groups are not adequately covered by current preferential treatment for women and minorities in hiring, promotion and Government contracts. But over all, he argued, such programs have greatly benefited American society since the mid-1960's.

"I'm against discrimination," Mr. Clinton told a group of college newspaper reporters in a question-and-answer session at the White House. "I'm against giving people opportunities who are unqualified. But we all have an interest — including white males — in developing the capacities of all of us to relate to one another, because our economy will grow quicker, it'll be stronger, and in a global society our diversity our greatest asset.

"We must not let this debate be another cheap political wedge issue to divide the American electorate."

Mr. Clinton also sharpened his vow to oppose Republican efforts to cut back college loan programs, saying, "The veto pen is always there."

Since Mr. Clinton announced the review of affirmative action last month in response to Republican calls to roll back preference programs, the White House has been under growing pressure from historically Democratic constituencies like blacks and women's groups to explain its purpose and to resist backing away from such programs.

On Friday, Deval L. Patrick, the Assistant Attorney General for civil rights, is to testify at a House subcommittee hearing on the subject. The White House had said for days that Mr. Clinton would find some opportunity before then to outline his views and set the tone, and he took the occasion of a friendly full-dress news conference with about 100 college journalists in the East Room to do so.

Reporters from Georgetown University (where Mr. Clinton went to college), Yale University (where he attended law school) and the University of Arkansas (where he taught at the law school) had seats of honor in the front row. Jeff Glasser of Yale asked the first question, and it brought satisfied smiles from senior White House aides standing at the side of the room.

"How do you plan to stop Congress from capping direct loans or cutting Pell Grants or paying the interest on loans taken out during college?" Mr. Glasser asked about various Republican proposals to trim popular college loan and grant programs. "Are you willing to veto legislation if it comes across your desk?"

Mr. Clinton replied: "Well, of course, I am in the areas of education, which are so important to me. But let me say again, what my first choice has been all along is to try to prevail in the debate in the Congress."

The President also said he thought Speaker Newt Gingrich's notion of making laptop computers more available to the nation's poor children as an educational aid was sound (though Mr. Gingrich himself allowed that his proposal for tax credits to do so might be "nutty").

But it was a question on affirmative action that seemed to animate the President most, as he summarized the history of the civil rights movement, recalling the days when restrooms were segregated and there were "no women in any number of jobs" where "we take it for granted that women will be."

"We have made a lot of progress because we tried to take action to open up more opportunities to people without regard to their race or gender," Mr. Clinton said. "It is in everyone's interest to see that everybody gets the best chance to live up to the fullest of their abilities. On the other hand, it is in no one's interest to see that people get positions if they are completely unqualified to hold them. So the question is, How do we now go forward?"

Mr. Clinton said he had no answers yet, but he listed the questions he has asked his aides: "I have said first of all how do these programs work, and do they have a positive effect? O.K.? That's the first question.

"Secondly, even if they work, are they sometimes, at least, unfair to others? Could you argue that in some cases there is reverse discrimination; and if so, how?

"Thirdly, are there now others in need who are not covered by affirmative action programs? Keep in mind that's really what's fueling this whole thing. You've got 20 years in this country where most hourly wage earners have not kept up with inflation. Most Americans are working harder for lower wages than they were making 20 years ago."

Los Angeles Times

DATE: 3-24-95
PAGE: B-1

March Backs Affirmative Action

Demonstration: Downtown protest by women's organizations targets proposed ballot measure that would eliminate the programs.

By FRANK B. WILLIAMS
TIMES STAFF WRITER

Vowing to fight a rising national and local tide, nearly 75 representatives of various women's organizations marched from City Hall to the Ronald Reagan State Office Building in Downtown Los Angeles Thursday to protest a proposed ballot initiative that would eliminate most affirmative action programs.

"For every white male in California who thinks this initiative is right, he better sit down with his wife or his daughter because it will be these people who will be unemployed," said Tammy Bruce, president of the Los Angeles chapter of National Organization for Women.

The multiracial coalition, ranging from construction managers to lawyers, said it plans to present a detailed outline of its concerns to Los Angeles Mayor Richard Riordan and Gov. Pete Wilson, who has already voiced his support for the proposed anti-affirmative action measure.

Organizers hoped that the march would force Riordan, who has yet to take a position on the issue, to support affirmative action.

Riordan spokeswoman Noelia Rodriguez noted that women and minority business owners have been among the leaders in Los Angeles' economic recovery effort, and said the mayor will continue to study the issue before announcing his position.

Thursday's march was part of a statewide effort by dozens of organizations, including NOW, the NAACP Legal Defense and Education Fund and Asian Pacific Women's Network, to fight the proposed initiative.

"When Gov. Wilson announces his presidency [bid] today," Fund for the Feminist Majority President Eleanor Smeal said Thursday, "he should remember what we told President Clinton last week. And that is that affirmative action cannot be deserted."

Smeal, who flew from Washington to Los Angeles for the march, said, "The glass ceiling study released last week clearly shows that women are fighting for their very existence."

Author Susan Faludi told the rally that she was admitted to Harvard University in the 1960s because of affirmative action and that she is "proud to be an affirmative action baby."

Beverly King, of the Black Women's Caucus, which represents more than 1,000 women in California, told the demonstrators and passersby that recent studies confirm that affirmative action programs ushered in nationwide more than 30 years ago are still necessary.

"Those who suggest, in the face of overwhelming evidence to the contrary, that affirmative action has outlived its usefulness," King said, "must validate the racist, sexist and political motivation behind their attack."

THE NATION'S NEWSPAPER
USA TODAY

DATE: 3-24-95
PAGE: 1-A

COVER STORY

Affirmative action: Four groups' views

Poll 'confirms the confusion' most people feel – until it becomes personal

By Kevin Johnson and Andrea Stone
USA TODAY

In the gathering battle over affirmative action, there is no clear front line between white and black, male and female, Republican and Democrat.

A USA TODAY/CNN/Gallup Poll on the issue — the "most comprehensive" in two decades of polling, says John Barry of the Roper Center — instead finds a large middle that wants fairness, but opposes unfair advantages.

The poll is "a sober view of the complexity of this issue," says Gallup's David Moore.

From this debate is likely to come the future of affirmative action — under fire from Republicans in Congress, under review by the Clinton administration and certain to be an issue in the 1996 election.

The poll does show some general trends:

▶ Blacks are more sympathetic to the need for affirmative action than whites.

▶ Republicans oppose it far more than Democrats.

▶ Women are more supportive than men.

And while there is no strong call to eliminate affirmative action, there's even less support for expanding it.

"This is one of those issues that's tough to get a handle on," says Bob Roach, 30, a state worker from Jackson, Tenn. "Government should keep their hands off, let the cream rise to the top in business. But I know that when you do that, a lot of times you end up in court looking at some bad problems."

Howard University political scientist Ronald Walters agrees: The poll "confirms the confusion. ... The public is willing to accept something called affirmative action on the grounds of fairness, but not willing to accept hard quotas and set-asides, which have the same effect."

Beyond the traditional political, racial and gender fault lines, the poll shows the public split into four opinion groups, as identified by Gallup analyst Moore.

True Believers

They are the backbone of support for affirmative action. Mostly Democratic, this group is nearly half women, many of whom have benefited from the policies.

True Believers say that without government-mandated affirmative action programs, businesses and schools would not provide equal opportunities for women and minorities. And it is this group alone that supports quotas and favors an increase in preference programs.

TRUE BELIEVERS 28%

They strongly favor affirmative action:

How the group breaks down

Minority women	18%
Minority men	15%
White women	45%
White men	24%
Republicans	29%
Democrats	63%

Source: Analysis of March 17-19 USA TODAY/CNN/Gallup Poll
(Party affiliations include those who say they "lean" toward the party)

Though not totally comfortable with quotas, Joseph Jones, 55, says if government opts out of affirmative action, so would businesses and schools.

"It always seems to start when the economy gets really bad, bad enough that whites start losing their jobs," says the black Chicago computer programmer. "Then people start talking about how bad affirmative action is.

"You can't have all the toys," Jones says. "If minorities and women get shut out, the game is over and then there is trouble. I wish affirmative action never had to be, but I don't think we'll ever get to the point where we can do without it."

There is little room for compromise on this point with Jones and others like him. Most True Believers say job discrimination remains a problem for blacks and Hispanics. In this group, Democrats outnumber Republicans more than 2 to 1 — and almost a third are minorities.

This traditionally liberal group counts as its most articulate voices the National Organization for Women and the NAACP. And that may prove the biggest problem for President Clinton, who needs to retain his party's loyal voter base while not alienating the moderates he'll need to win re-election in 1996.

"The anti-affirmative action forces have controlled the dialogue and debate for many years," says Democratic pollster Mark Mellman. But his party has "done almost nothing to explain to the American public what it is and what it's good for. ... Democrats have to defang the issue."

The Antagonists

They are at the center of the current debate. Almost all white, mostly Republican and heavily male, affirmative action to this group means preferences, quotas and reverse discrimination. The Antagonists want no part of it.

They are also the force behind the proposed California Civil Rights Initiative, which would eliminate all preferences based on race or sex. They also report the highest incidence of reverse discrimination, making up the bulk of the 21% of white men who say they were denied a job or promotion, or failed to get admitted to a school, because of affirmative action.

For them, old-fashioned discrimination against women and minorities no longer is a problem.

THE ANTAGONISTS 24%

They are strongly opposed to affirmative action:

How the group breaks down

Minority women	0%
Minority men	2%
White women	43%
White men	55%
Republicans	71%
Democrats	20%

Source: Analysis of March 17-19 USA TODAY/CNN/Gallup Poll

"Affirmative action breeds distrust between the races," says Republican pollster Frank Luntz. "It takes real or perceived inequalities and rubs salt in the wounds."

A long time ago, Rodney Myer, 63, of Baton Rouge, La., worked as an affirmative action officer, but the white man wants no part of it now.

"It says you can't do

Cont'd

the job on the merits so you have to do it another way," he says.

Antagonists aren't only angry white men, though.

Norma Stever, 62, a Spokane, Wash., medical transcriber, says she's "seen incompetent people get jobs who don't deserve them. ... That kind of unfairness is very frustrating."

Says Loretta Lutman, an Ashboro, N.C., volunteer zoo worker: "When you talk about affirmative action, the standards start to drop for women and minorities and here sits the little 'ol white man — left out.

"That really bugs me and I'm a woman," Lutman says.

It also bugs a tiny proportion of black men who say affirmative action casts a stigma on their qualifications and abilities.

"When you announce there are group preferences freely at work, people are going to perceive that to be the case, even when it isn't," says black conservative scholar Shelby Steele.

The Floaters

Enter the great big muddy middle.

'FLOATERS' 21%

They back principles but oppose some programs.

How the group breaks down

Minority women	9%
Minority men	4%
White women	47%
White men	40%
Republicans	44%
Democrats	45%

Source: Analysis of March 17-19 USA TODAY/CNN/Gallup Poll

Talk-show rhetoric does not fuel extreme emotions here. There is healthy support for affirmative action, but the level of commitment is lukewarm. Floaters favor government contract set-asides for minority run businesses, gender and racial quotas in schools, and outreach programs. But they are divided on business quotas and race-based scholarships.

Only a quarter says existing programs should be pared. And many support specific measures to ensure broader participation by minorities and women in schools and business.

They go as far as to set aside some government contracts for minority businesses and favor minority hiring if they are as qualified as whites. There also is support for engaging in general outreach programs to benefit women and minorities.

But the group also exhibits a major contradiction: Despite the support for quotas and special programs, only 1 in 10 believe that discrimination is a major problem for minorities and women. An overwhelming majority says blacks have the same chance as whites of getting a job. And even without mandated affirmative action policy, Floaters say businesses and schools would still be fair to women and minorities.

Connie Sue Knuckols, 46, of Fredricksburg, Va., is a Floater. Her solution to the whole problem: simply change the way we deal with our children.

"Kids would be raised, not to look at the differences, but to look at what makes us the same," Knuckols says. "Affirmative action would be obsolete."

Though laced with contradiction, this middle ground perhaps best defines the perplexing nature of the issue, analysts say. For politicians seeking consensus, it is chockful of land mines and, analysts say, where Clinton has most at stake.

"The polarized debate is not where people are positioned," says Democratic strategist Brian Lunde. "If we allow Jesse Jackson and (Fund for the Feminist Majority president) Eleanor Smeal to define our affirmative action position, we'll lose."

The Dubious

THE 'DUBIOUS' 27%

They are divided on goals and oppose many programs.

How the group breaks down

Minority women	4%
Minority men	3%
White women	45%
White men	48%
Republicans	49%
Democrats	41%

Source: Analysis of March 17-19 USA TODAY/CNN/Gallup Poll

Major divisions coexist here.

A majority says job discrimination against blacks and Hispanics persists, but the same number says blacks already have as good a chance as whites in the workplace.

While they overwhelmingly support job training, outreach and special education classes for minorities, they strongly oppose quotas, set-asides and special scholarships.

Patrick Green is among the Dubious. He wants a fair shot at a better job and believes affirmative action can help blacks like himself. But he is torn by a suspicion that the policy at its most extreme is misguided.

"No way could I support quotas or anything like that," says Green, 24, a Plainfield, N.J., data entry clerk. "That kind of thing can never help business be competitive."

Worse than that, Green says, "it does nothing to motivate minorities to be the best they can be. You tell me whether you would give your best effort if going into a job you knew that you got hired to fill a quota. It's demoralizing."

While there is strong resentment for anything smacking of mandated favoritism, the Dubious overwhelmingly support aggressive recruitment of minorities and women, employment training programs for the disadvantaged, and special education classes to help minorities and women enter schools.

A majority also believes that blacks already have as good a chance as whites in landing a job in their communities.

"Employers should have the right to pick and choose who they want and not have to hire based only on race or gender," says Pat James, a black Fulton County, Ga., government employee. "Sometimes, I think whites believe that the only reason you got the job is because you are black."

Exit the people, enter the politicians.

For them, the supreme test is finding consensus in this collision of principle and personal experience, because traditional political groupings only scratch the surface of the issue.

In that sense, the game could turn on simple semantics, says political analyst Stuart Rothenberg.

"It's a good political issue, ending affirmative action, if it's defined as quotas," Rothenberg says. "But Republicans have to make it clear if they want to use it in '96. They have to define it as preferences, advantages. If they do ... they can tap that sensitivity."

Democrats, on the other hand, must redefine the debate if they are to prevail. Many are already trying to shift the focus away from race and toward gender, arguing that the biggest beneficiaries are not minorities, but women.

Still, despite all the philosophical hand-wringing over affirmative action, voters aren't likely to be riveted unless they feel their personal interests are at stake.

"If you only know it as an abstract you may not like it but it's not going to motivate you much," says political analyst Kevin Phillips. "But, if it becomes a job issue it simply becomes one of the most important issues."

THE NATION'S NEWSPAPER
USA TODAY

DATE: 3-24-95
PAGE: 4-A

Issue lurks as a politicking time bomb

By Judy Keen
USA TODAY

The affirmative action debate has always been about fairness, money, gender and race. And politics as well.

The issue now looms again as a political fault line, straight through the 1996 presidential election, fraught with hazards for President Clinton and Republicans in Congress.

Congress, trying to capitalize on what many see as a grassroots firestorm over social planning from the 1960s, is moving to dismantle mandatory affirmative action programs. The latest congressional salvo may come today when the Senate votes on elimination of a tax break for companies that sell broadcast licenses to minority buyers. The House voted 381-44 this month to end the 20-year-old policy.

"I never thought affirmative action was intended to give, in perpetuity, special preferences and quotas," says Senate Majority Whip Trent Lott, R-Miss. "It was intended to be an encouragement . . . to make sure everyone has an equal opportunity. It is a far stretch from this."

But Republicans know that if they move too hard on what remains a deeply emotional and divisive issue, they risk charges of racism that could drive voters from the GOP, and energize Democratic interest groups at election time.

Affirmative Action

President Clinton, sensing the same brewing resentment over hiring preferences that galvanized Republicans, has ordered a review of federal affirmative action programs. If he recommends that some of them be eliminated or altered, he risks splitting the Democratic Party's already fragile coalitions — and endangering his re-election chances.

But if he leaves affirmative action intact, Clinton could alienate the so-called angry white male voters who abandoned Democrats Nov. 8 — and imperil his re-election hopes.

Clinton told college journalists Thursday that he has asked his staff to identify affirmative action programs that work, those that might be unfair, and whether there are people in need who are not helped by them.

"I'm against discrimination. I'm against giving people opportunities who are unqualified," Clinton said.

Rep. Maxine Waters, D-Calif., last week issued a warning: "No party is so important that we will belong to it if it undermines us on this issue. No president is so important that (black voters) will belong to him if he undermines us on this issue."

Affirmative action — a range of programs that improve chances of women and minorities in hiring, promotion, contracts and school admissions in an effort to redress discrimination — has inspired similar political problems in the past.

When Attorney General Edwin Meese proposed junking some affirmative action programs in 1985, President Reagan's administration erupted in furious debate. Ultimately, Reagan decided the political pitfalls weren't worth the gains. But change seems more certain this time:

▶ California will have a 1996 ballot measure that would end race- and gender-based preferences; a bill is pending in Pennsylvania and there's a campaign to review Oregon programs.

Massachusetts Gov. William Weld, a Republican, has ordered aides to explore a revamping of the state's program. Georgia is considering an end to preferential treatment for women and minorities in getting county contracts.

▶ Senate Majority Leader Bob Dole, R-Kan., has pledged to introduce legislation ending federally sponsored preferences.

▶ The Supreme Court is considering a case that challenges affirmative action, and several more cases may be on the way.

▶ Clinton, who often seeks the middle ground on controversial issues, is likely to conclude that some affirmative action programs need refurbishing. He may recommend elimination of set-aside programs, in which government reserves a portion of its business for minority- or female-owned companies.

Clinton's review, which won't be complete until next month, is focused on a score of major federal programs, including military education and federal civilian employment.

"The idea of the review is to get the facts, find out which programs are working, which programs can be strengthened, which programs aren't working," says George Stephanopoulos, the senior Clinton adviser heading the review. Clinton, he says, "will not retreat" from his basic support for affirmative action.

Meanwhile, Republicans who backed affirmative action in the past are gambling that voters won't punish them if they shift positions now.

For example, before Dole became a presidential front-runner, he voted to set aside some federal contracts for women and minorities. The White House argues that Dole's sponsorship of legislation creating the Glass Ceiling Commission — whose study last week suggested barriers still exist for women and minorities — is at odds with his current stance.

"My past record on civil rights does not and should not disqualify me from raising legitimate questions about the continuing effectiveness of affirmative action — particularly when the affirmative action label is used to describe quotas, set-asides and other preferences," Dole says.

Dole is being forced to move to the right to head off presidential hopefuls Sen. Phil Gramm, R-Texas, who has said he'd repeal all affirmative action orders, and Calif. Gov. Pete Wilson, who supports a ballot initiative banning race- and gender-based preferences.

Supporters of affirmative action hope to turn the debate to one about sex. By most measures, women have been the largest beneficiaries and compose a huge voting bloc.

Cont'd

"When women find out that dismantling affirmative action puts their own jobs on the line, the public will have to turn against it," Katherine Spillar of the Feminist Majority Foundation said in Los Angeles Thursday. "There is no room for compromise, absolutely no room."

Stephanopoulos acknowledges that affirmative action is "a serious issue of real concern to a lot of Americans. At the same time, I think there's no question that there are many who are using it as a wedge to divide the country for political reasons."

That kind of rhetoric makes it hard for politicians to see how the issue can be debated in a non-political way.

Sen. Joseph Lieberman, D-Conn., chairman of the centrist Democratic Leadership Council, says it's "time to step back ... and review where we are on affirmative action."

But he worries the emotional debate will overwhelm the 1996 campaign. "We've just got to say 'wait a second,' it's too important," Lieberman says. "Let's be thoughtful about this."

THE NATION'S NEWSPAPER
USA TODAY

DATE: 3-24-95
PAGE: 3-A

More than equal opportunity, less than quotas

Definition, court's position have shifted in past 30 years

By Tony Mauro
USA TODAY

In an angry, handwritten memo, the nation's first black Supreme Court justice told his white colleagues why America needed affirmative action.

"We are not yet all equals," Thurgood Marshall wrote in a 1978 note that recently came to light. "As to this country being a melting pot — either the Negro did not get in the pot or he did not get melted down."

The court went on that year, in the landmark *Bakke* case, to strike down a racial quota that kept a white male out of a California medical school.

But it said using the race of applicants as a "plus factor" in a less formal way — without strict quotas — was acceptable.

Ever since then, affirmative action has been attacked, praised and misunderstood — but also largely accepted in the American workplace. It has been endorsed by political leaders from Richard Nixon and Robert Dole to Jesse Jackson, and embraced by many corporations and government agencies, large and small.

But what is it? And why has it risen to the top of the political and legal agenda?

Lack of definition

The term affirmative action encompasses a range of measures aimed at compensating for past discrimination by increasing the chances that minorities or women will be chosen for jobs, promotions, admissions or contracts.

It's more than equal opportunity — encouraging minorities and women to apply for jobs, promotions or contracts. But it is less than quotas, whereby jobs don't get filled until a minority is found.

Within that spectrum, a definition of what is legal and what is not legal has shifted, sometimes depending on what kind of employer is involved.

In fact, some forms of affirmative action seem to be banned outright in the main federal law on the subject.

The 1964 Civil Rights Act prohibits workplace discrimination on the basis of "race, color, religion, sex or national origin." That law also says it should not be interpreted to require any employer "to grant preferential treatment to any individual or to any group."

It wasn't long before it became clear to many that passing a law simply banning bias was not enough.

In 1965, Lyndon Johnson signed an executive order telling companies that receive federal funds to establish minority hiring goals — but not quotas.

"Some people were simply not going to change unless you ordered them, 'The next person you hire is black,'" says University of Washington law professor Eric Schnapper, a longtime civil rights lawyer.

The so-called Philadelphia plan, instituted under Nixon in 1969, required federal contractors to set goals for minority hiring. The number of minorities in construction jobs jumped from 1% to 12%.

Unions and employers protested at first, but learned to live with affirmative action plans — some of which might not pass legal muster today.

"It was the lesser of two evils," recalls Washington lawyer David Copus, a former government official who helped force AT&T to hire more minorities in the early 1970s.

"Better to do this than be accused of violating the law."

The backlash

But as the years have passed, more and more uneasiness has built up among white males and others toward programs that clearly give preference on the basis of race.

"Twenty years ago, most white people had pretty direct knowledge of what was going on with black people," says Schnapper. "Now, the only race-conscious thing that young people see may be affirmative action. Bull Connor isn't on TV anymore."

The court's role

The Supreme Court, once the key champion of affirmative action, has also shifted. Marshall, who fought for affirmative action, was replaced in 1991 by Clarence Thomas, who says it stigmatizes blacks and holds them back.

Some basic principles gleaned from court rulings on affirmative action:

▶ **It's remedial.** The court has said there ought to be some evidence of past bias as a backdrop for whatever boost, bonus or remedy that is being given to minorities or women today.

In 1989, justices struck down a Richmond, Va., plan that required 30% of city subcontracts to go to minority-owned companies. Not enough evidence of past bias, the court said.

Related issues — such as how recent the past bias has to be — are much less clear.

▶ **It can't dislodge whites.** The courts have generally looked kindly toward plans that boost minorities' chances of getting hired — even though some pool of white applicants did not get the job. Those whites, in theory, have other doors to knock on.

But plans that called for laying off or firing specific whites to make room for blacks have generally been struck down.

"There is a fundamental difference between not being hired and being fired," says Darien McWhirter, author of *Your Rights at Work*. "Affirmative action that causes you to fire white people is illegal."

A New Jersey case on its way to the Supreme Court may test that rule. The Clinton administration has sided with the Piscataway school system, which used race as a "tie-breaker" when it chose to lay off a white teacher and retain a black teacher with roughly equal seniority.

▶ **It can't exclude all whites.** "If the sign goes up, 'Whites need not apply,' it won't fly," says Copus, who advises employers on affirmative action.

That principle is what led the court to agree with Allan Bakke in 1978 and strike down the University of California-Davis program setting aside 16 out of 100 medical school openings for minorities.

Cont'D

By Tory Wesnofske, AP

Last month, the Justice Department sued Illinois State University, challenging a training program that considered only those applications from minorities or females.

"When individuals are absolutely precluded from getting a job because of their gender or race, we have an obligation to enforce the law," says Assistant Attorney General Deval Patrick.

▶ **An affirmative action plan should have an end.** In 1979 and 1986, the court approved two plans — one for steelworkers, one for firefighters — that set goals for minority hiring that had an end.

Justice Harry Blackmun wrote in the *Bakke* case that "in order to get beyond racism, we must first take account of race." He hoped for the time "when an 'affirmative action' program is ... a relic of the past," and guessed that would take about 10 years.

Seventeen years later, the courts, Congress and society are looking at whether the time has come to turn affirmative action into a relic.

Fitting the label: Several hiring plans

Several hiring plans have been labeled affirmative action over the years, but not always correctly, says Darien McWhirter, author of *Your Rights at Work*:

▶ Employers actively seek out and encourage minorities and women to apply for jobs. This, says McWhirter, is not really affirmative action, but has gained wide acceptance in the workplace.

▶ Two candidates are essentially equal in qualifications, and the job goes to the minority or female candidate if they are underrepresented in the company or agency. The Supreme Court has approved this kind of classic plan, particularly in jobs traditionally dominated by white males, such as county road crews.

▶ Women or minorities get the job if they meet the minimum qualifications, even if there are clearly more qualified white male candidates. This form of affirmative action has been allowed in some court cases — particularly in federal and private sector programs — and struck down in others at the state and local level.

▶ The search continues until acceptable women or minorities can be found, regardless of whether a qualified white male is available. This type of rigid quota has not been upheld in the courts, and is not legally viewed as affirmative action.

Cont'd

Affirmative action: The public reaction

How much support for affirmative action?

Do you generally favor or oppose affirmative action programs for women and minorities?

	All	Blacks	Whites
Favor	55%	72%	53%
Oppose	34%	21%	36%

Do you think we need to increase, keep the same or decrease affirmative action programs in this country?

	All	Blacks	Whites
Increase	31%	65%	26%
Keep same	26%	26%	26%
Decrease	37%	6%	41%

Do you favor or oppose the following?

Making a certain number of scholarships at public colleges and universities available only to minorities and women:

	All	Blacks	Whites
Favor	31%	51%	27%
Oppose	67%	45%	71%

Requiring a certain percentage of government contracts to be awarded to businesses owned by minorities and women?

	All	Blacks	Whites
Favor	48%	73%	44%
Oppose	48%	24%	52%

Companies making special efforts to find qualified minorities and women and then encouraging them to apply for jobs with that company:

	All	Blacks	Whites
Favor	73%	87%	71%
Oppose	24%	12%	26%

Providing job training programs for minorities and women to make them qualified for better jobs:

	All	Blacks	Whites
Favor	82%	94%	80%
Oppose	17%	6%	18%

Providing special educational classes for minorities and women to make them better qualified for college:

	All	Blacks	Whites
Favor	75%	90%	73%
Oppose	22%	9%	24%

Favoring a well-qualified minority applicant over an equally qualified white applicant when filling a job in a business that has few minority workers:

	All	Blacks	Whites
Favor	48%	51%	47%
Oppose	44%	42%	45%

Favoring a minority who is less qualified than a white applicant, when filling a job in a business that has few minority workers:

	All	Blacks	Whites
Favor	13%	22%	11%
Oppose	84%	68%	86%

Establishing quotas that require businesses to hire a certain number of minorities and women:

	All	Blacks	Whites
Favor	35%	66%	30%
Oppose	63%	30%	68%

Establishing quotas that require schools to admit a certain number of minorities and women as students:

	All	Blacks	Whites
Favor	39%	70%	35%
Oppose	57%	27%	61%

Require private businesses to set up specific goals and timetables for hiring women and minorities if there were not government programs that included hiring quotas:

	All	Blacks	Whites
Favor	50%	75%	46%
Oppose	46%	21%	50%

Source: USA TODAY/CNN/Gallup nationwide telephone poll of 1,220 adults conducted March 17-19. Margin of error for the total sample: ± 3 percentage points. Margin of error for whites is ± 4 percentage points; blacks is ± 6 percentage points; men is ± 4 percentage points; women is ± 4 percentage points (some had no opinion).

Affirmative Action

By Joe Tabacca, AP

"There are a lot of people who need training for a lot of jobs right now and affirmative action is the only way they can get it."

— William Bellamy, 38, of Queens, N.Y.

By Steve Barrett

"Divide (affirmative action) up between all minorities and women, not just focus on women in general or blacks in general."

— Connie Sue Knuckols, 46, of Fredericksburg, Va.

32

Cont'd

Is affirmative action needed?

Do you think schools and businesses would or would not provide blacks and other racial minorities with equal opportunities if the government dropped all affirmative action programs:

	All	Blacks	Whites
Would	46%	27%	48%
Would not	45%	67%	43%

How much of a problem do you think job discrimination is for the following groups?

	Major problem	Minor problem	Not a problem
White men	16%	29%	52%
White women	19%	38%	40%
Black men	41%	30%	25%
Black women	41%	31%	24%
Hispanics	38%	30%	23%
Asians	22%	34%	34%

How have lives been affected?

Have any of the following things ever happened to you as a result of affirmative action programs favoring minorities:

	All whites	White men	White women
Not offered a job that went to a racial minority	12%	15%	10%
Passed over for a promotion that went to a racial minority	8%	9%	8%
Not admitted to a school	2%	4%	1%

Have any of the following things ever happened to you as a result of affirmative action programs that favor women?

	All men	White men	Black men
Not offered a job that went to a woman	8%	7%	10%
Passed over for a promotion that went to a woman	7%	6%	11%
Not admitted to a school	2%	2%	6%

Do you believe that any of the following things have ever happened to you because of racial discrimination?

	All blacks	Black men	Black women
Not offered a job that went to a white	33%	42%	31%
Passed over for a promotion that went to a white	31%	42%	28%
Not admitted to a school	6%	7%	5%

Do you believe that any of the following things have ever happened to you because of discrimination against women?

	All women	White women	Black women
Not offered a job that went to a man	19%	20%	18%
Passed over for a promotion that went to a man	13%	13%	13%
Not admitted to a school	2%	1%	5%

Have you personally ever thought that a woman where you worked got a job or promotion she did not deserve as a result of affirmative action programs?

	All	Men	Women
Yes	19%	20%	19%
No	79%	80%	78%

Have you personally ever thought that a racial minority where you worked got an undeserved job or promotion as a result of affirmative action programs?

	All	Blacks	Whites
Yes	30%	15%	32%
No	69%	85%	66%

Have you personally ever thought that a well-qualified person at your workplace was hired or promoted as a direct result of affirmative action, and probably would not have been hired without affirmative action?

	All	Blacks	Whites
Yes	24%	32%	23%
No	75%	67%	76%

Have you ever thought that because of discrimination, someone at your workplace received a job or promotion rather than a woman or minority who was better qualified?

	All	Blacks	Whites
Yes	21%	36%	20%
No	78%	64%	79%

Have you ever thought your colleagues at work or school privately questioned your abilities or qualifications because of affirmative action?

	White women	Black women	Black men
Yes	8%	19%	28%
No	90%	79%	71%

By Julie Stacey, USA TODAY

THE NATION'S NEWSPAPER
USA TODAY

DATE: 3-24-95
PAGE: 4-A

'There are no easy answers' on Capitol Hill

By Desda Moss
USA TODAY

The debate over affirmative action heats up today when Congress opens hearings on the volatile issue that could shape the presidential campaign.

Assistant Attorney General Deval Patrick goes before the House Economic and Educational Opportunities Committee, which seeks information on affirmative action policies in the workplace.

"I never thought much of using discrimination to remedy discrimination," said Rep. Henry Hyde, R-Ill., chairman of the House Judiciary Committee, which is expected to hold hearings on affirmative action this year. "How many hundreds of years must expire before we all are at the starting line?"

House Republicans have not yet written any legislation dealing with affirmative action and quotas, and Hyde said the complex and emotional issue deserves a thoughtful hearing.

"These are very nuanced questions," he said. "There are no easy answers and no flip answers."

There's disagreement about how far Congress will go to alter federal affirmative action.

"I don't think it's going to be an all-out assault," says Sen. Rick Santorum, R-Pa. "But there are some affirmative action programs not targeting the people who need to be targeted."

As the Senate prepares to vote on ending tax breaks for companies that sell broadcast licenses to minority businesses, Sen. Carol Moseley-Braun, D-Ill., vowed to fight for affirmative action.

"If there is any objective that should command complete American consensus, it is ensuring that every American has the chance to succeed — and that, in the final analysis, is what affirmative action is all about," she said.

Meanwhile, leaders of several national women's, civil rights, religious and labor groups took their campaign to preserve affirmative action in California to the steps of Los Angeles City Hall.

The coalition's action Thursday was aimed at blocking a prospective 1996 ballot initiative designed to end race- and gender-based preferences. Gov. Pete Wilson supports the measure.

Similar efforts under way in Washington, Pennsylvania and, most recently, Michigan have affirmative action proponents gearing up for battle.

Contributing: Mimi Hall and Judy Keen

The New York Times

DATE: 3-24-95
PAGE: B-6

Court Upholds Law Banning Unsolicited Fax Ads

By KIT R. ROANE

A Federal appeals court has backed the rights of fax machine owners over those of some small advertisers by upholding a law banning unsolicited advertising by fax. The ruling could lead to curbs on other forms of advertising, lawyers said.

The unanimous decision by a three-judge panel of the United States Court of Appeals for the Ninth Circuit, in San Francisco, upheld the right of Congress to stem the flow of costly and unrequested commercial faxes to businesses and homes. In doing so, the court rejected arguments that the 1991 Telephone Consumer Protection Act violates commercial free speech.

Charles F. Hinkle, who represented the five concerns that challenged the law, said he would not appeal because of a lack of money and the fact that the law had not been aggressively enforced. The appeals court, on Feb. 1, upheld a decision by Federal District Court in Oregon.

On Feb. 6, the court upheld a provision of the law that bars recorded sales messages by telephone.

The act was intended to protect people's pocketbooks and privacy by restricting businesses' use of telephone lines to advertise. In upholding the ban on advertisements by fax, the court said that tying up consumers' phone lines and forcing them to pay paper and ink costs to receive advertisements that they did not request was a violation of the law.

"Because Congress's goal was to prevent the shifting of advertising costs, limiting its regulation to faxes containing advertising was justified," the decision said. "The ban is evenhanded, in that it applies to commercial solicitation by any organization, be it a multinational corporation or the Girl Scouts."

A ruling that some lawyers fear could chill advertising.

But lawyers who specialize in information issues said that the court's decision in the case, Destination Ventures Ltd. v. Federal Communications Commission, could have a broader effect on commercial communication, including direct mail and junk electronic mail, if its rational was applied elsewhere.

"It is a very dangerous precedent for other emerging technologies," said Daniel L. Brenner, a former senior legal adviser at the F.C.C. "Just because a message is unsolicited doesn't mean that someone does not benefit from it. Calling it junk denigrates the message before even inquiring about its content."

Lawyers for Destination Ventures Inc. and four other plaintiffs in the case argued that the Telephone Consumer Protection Act unduly burdened businesses while saving consumers only a few pennies on the cost of fax paper and ink. They also said the law discriminated against businesses because it did nothing to stop others from sending unsolicited faxes.

"We are disappointed that the court did not recognize our position," Mr. Hinkle said. "The result is that unprotected speech like hate mail, vulgar cartoons and hoaxes can still be sent to recipients that have not requested them, but that the downtown deli can't send out a menu for the day to downtown businesses. It just seems to me to be wrong public policy."

The plaintiffs, all of which either used faxes to advertise their businesses or sold fax numbers to others, filed suit against the Federal Communications Commission in August 1993 seeking relief from the law. Under its provisions, those who receive such faxes are entitled to recover $500 in damages from the sender.

Mark B. Stern, an Assistant United States Attorney who represented the F.C.C., declined to comment on the repercussions of the case, saying only that the decision "correctly upholds the word of Congress to regulate an area of public concern."

The Washington Post

DATE: 3-24-95
PAGE: A-21

IN THE LOOP

Another Invitation to Guest Workers?

By Al Kamen
Washington Post Staff Writer

There are rumblings on the Hill that California growers, including some strong backers of likely presidential contender Gov. **Pete Wilson** (R), are lining up behind an attempt to bring back a nationwide "guest worker" program for seasonal farmworkers.

The idea would be to regulate these workers—for example, withhold a portion of their wages until they return to Mexico—as a way to control the number of people coming across the border. Proponents say this would replace the illegal stream with a legal one. For Wilson, backing the program would assuage growers upset by his anti-immigrant, border-closing positions.

Opponents compare the initiative to the infamous *bracero* program, which was widely denounced and eventually abandoned in 1964 because of abuse of Mexican workers. Critics say the new program, an expansion of one for a relatively small number of workers on the East Coast, won't work for lots of reasons—it's limited only to agricultural workers—and would end up adding to the illegal immigrant stream.

But growers love these programs because the "guests" work for peanuts, cannot unionize or cause trouble, and essentially are grateful for anything.

It gets even better for farming interests. A provision tucked in the GOP welfare reform bill, which cuts off food stamps and other benefits for legal permanent residents (green card holders), specifically allows guest workers to continue receiving those benefits.

Seems only fair. Why hire citizens and legal residents if you don't have to? And why not let taxpayers help our nation's guests?

But, wouldn't ya know it, California Rep. **Howard L. Berman** (D) is opposed.

"The very social services U.S. farm workers pay taxes to support will be made available to foreign guestworkers competing for their jobs," Berman said in a "Dear Colleague" letter this week. Rather than have longtime legal residents in subsidized farm worker housing, why not kick them out to make room for the guests?

Berman, who has opposed the East Coast guest worker program as a subsidy for growers, says, "I strongly suspect" the exemption from welfare cuts was "sought by agribusiness lobbyists."

We're shocked.

Fresh Ammo for Immigration Panel's Critics

■ Speaking of immigration, pro-immigration activists have long complained that the nine-member U.S. Commission on Immigration Reform has no Asian American members and only two Latinos. Word now is that the House is moving quickly to add two more members, former representatives **Romano L. Mazzoli** (D-Ky.) and **Hamilton Fish Jr.** (R-N.Y.), neither of them known to be Asian Americans.

Meanwhile, although former representative **Barbara Jordan** counts for a lot as chair of the commission, observers note she's the only woman on it.

What a Difference a Year Doesn't Make

■ Seems there were some unhappy folks in a certain senator's office this week. The administration Monday announced its massive, and expensive, campaign to save the salmon in the Pacific Northwest. But when reporters called the chairman of the Senate Appropriations Committee, Sen. **Mark O. Hatfield** (R), who just happens to live in Oregon, for his assessment, they were told the chairman had not been briefed about the plan and couldn't comment.

This has happened on other occasions, one source said, citing one plan to release additional water into the Columbia River, which Hatfield opposed. But that was last year, when he wasn't called "Mr. Chairman."

Who's Been Tailing Henry Foster?

■ In case you've been wondering who's been shadowing surgeon general nominee **Henry W. Foster Jr.**, wonder no more. Turns out they are his security detail from the U.S. Marshals Service. Word is the Nashville obstetrician/gynecologist, who has acknowledged performing abortions, has at least two guards with him everywhere he goes. The White House is not saying why they've laid on this detail. The security is highly unusual, possibly unprecedented, for a mere nominee.

Calling for Calls of the Wild

■ And this from the Greenwire. Seems the Minneapolis Star-Tribune is offering the chance to hear what gray wolves sound like. You simply call 612-673-9067 and punch the extension of the kind of wolf sound you'd most like to hear. For the howls they make when something threatens their den, dial 4490. For the howl after a winter kill, dial 4491. For the howl during breeding season, dial 4492. There's a little chat explaining the howlings, which were provided by wolf biologist **Fred Harrington** and the International Wolf Center in Ely, Minn.

We're told one of them sounds a lot like White House Chief of Staff **Leon E. Panetta** after the balanced budget amendment went down.

Recent Moves . . .

■ **Sanford McAllister**, formerly in the Reagan White House, the Bush Federal Energy Regulatory Commission, the Heritage Foundation and more recently an assistant to Republican National Committee chairman **Haley Barbour**, has been named RNC executive director.

Peter M. Yu, formerly with the National Association of Public Hospitals and more recently at the White House National Economic Council, is going to the American International Group as managing director of a new company dealing with investments in the former Soviet Union and other places.

Jonathan Yarowsky, former general counsel of the House Judiciary Committee, is moving to the White House, to be special counsel to the president for law and policy, a job that straddles the legal counsel and legislative affairs operations.

130

The Washington Times

DATE: 4-5-95
PAGE: C7

Ex-cop guilty in murder

Aided drug gang in retaliation killing

By Kristan Metzler
THE WASHINGTON TIMES

A former D.C. police officer pleaded guilty yesterday to conspiracy to commit murder in a 1990 slaying that prosecutors said was in retaliation for the earlier killing of a lieutenant in a Southeast drug gang.

Fonda Moore, 34, also pleaded guilty to tampering with physical evidence on behalf of drug gang members and faces eight years in prison when sentenced May 24.

In exchange for the guilty plea on the conspiracy charge, the U.S. Attorney's Office agreed to drop a cocaine distribution charge against Moore, who resigned from the police force last month.

"I can't think of anyone who violated that oath as a sworn police officer more than this one," Assistant U.S. Attorney G. Paul Howes told D.C. Superior Court Senior Judge Fred Ugast.

Moore threw her head onto the defense table yesterday and sobbed loudly after Judge Ugast ruled she be held without bond pending sentencing.

"I can't avoid that it involves admission of a violation of trust as a sworn police officer in this city," the judge said.

The conspiracy charge stems from the October 1990 killing of Billy Ray Tolbert by members of a Southeast drug gang who thought he was partly to blame for the death of Jimmy Murray, one of their gang's members, prosecutors said.

Moore drove several members of the gang to Barry Farms, a Southeast public-housing complex, to look for Mr. Murray's killer and then drove them back to a Southeast deli when they did not find the man they were looking for.

Moore also retrieved keys from the 7th District police station that had been confiscated from a gang member who had been arrested and charged with carrying a pistol without a license.

She admitted last year in a videotaped interview that she took the keys and that she knew members of the drug gang killed Mr. Tolbert but never reported it. She also checked police investigative files for members of the drug gang, Mr. Howes said.

After a seven-month trial, Moore was acquitted last year on murder and kidnapping charges, but the jury deadlocked on the charge of conspiracy to commit murder. She spent two years behind bars before being freed last April after that trial ended.

Three men were convicted in that trial of killing Mr. Tolbert, who was bound with duct tape in an apartment in the 4000 block of South Capitol Street and shot eight times as he tried to escape by leaping from a window.

Her plea ends the case against the drug gang. The U.S. Attorney's Office next Tuesday will drop a distribution of cocaine charge against Mr. Murray's mother, Eunice Demyers, 49. She was acquitted last year of murder, kidnapping and conspiracy to murder.

Tessie Thomas, 27, pleaded guilty Feb. 28 to conspiracy to commit murder and attempted distribution of cocaine and will be sentenced in mid-April. She stood trial with the others until the judge declared a mistrial when her lawyer became ill.

The Washington Post

DATE: 4-5-95
PAGE: A-1

On Affirmative Action, New Perspectives Strain Old Alliances

By John F. Harris and Kevin Merida
Washington Post Staff Writers

There was a time when the friends of affirmative action were powerful Republicans as well as powerful Democrats. And during the Nixon administration, people who thought the federal government should redress the unfair treatment of minorities and women in the workplace had few better friends than two Republicans at the U.S. Labor Department: Secretary George P. Shultz and a top deputy, Arthur A. Fletcher.

Beginning in 1969, Shultz and Fletcher were architects of some of the very federal hiring and contracting regulations that are now being reviewed by President Clinton and assaulted by congressional Republicans. But a quarter-century after their collaboration under President Richard M. Nixon—years during which the concept of affirmative action has been woven into far corners of the U.S. government and economy—the two men find that affirmative action no longer holds them together.

"It's certainly outlived its usefulness," said Shultz, now at the Hoover Institution at Stanford University. "At the time we needed a 2 by 4 [to end discrimination] but the time for the 2 by 4 is gone."

Fletcher, by contrast, complains "that my party is making me sick" with its attacks on affirmative action. Fletcher, a member of the U.S. Commission on Civil Rights, says affirmative action is "about ensuring that evils are not committed in the future, not paying for past sins."

These opposing views reflect how the broad support that once watered the growth of affirmative action has evaporated. In its place has risen a vast political dust cloud, one that often has obscured the details of government programs designed to improve the social and economic position of women and minorities.

What would actually change if, as some Republicans advocate, the federal government were simply to abandon affirmative action?

The answer is a lot, at least by numerical measure. According to the Congressional Research Service, about 160 federal programs, statutes, regulations and executive orders grant some measure of "preference" to women or minorities in the areas of hiring, federal contracts, educational opportunities and grants.

But the list can be deceiving. Some of what goes by the name affirmative action is little more than boosterism; some is vaguely admonitory. The Agriculture Department, to cite one of dozens of similar examples, requires that winners of rural housing grants be "encouraged to use minority banks."

Other policies are bluntly prescriptive: "not less than 10 percent" of the $151 billion approved for spending over a period of years in a 1991 transportation act is to be spent on small firms owned by women and minorities.

Senate Majority Leader Robert J. Dole (R-Kan.), whose criticisms first stoked the debate in Washington nearly two months ago, said he is for affirmative action if it means "remedying proven past discrimination against individuals" and recruiting "qualified minorities and women to give them an opportunity to compete without guaranteeing the results of the competition."

But he added: "If affirmative action means quotas, set-asides and other preferences that favor individuals simply because they happen to belong to certain groups, then that's where I draw the line."

But drawing the line will be difficult. The Congressional Research Service report that Dole ordered lists no more than 25 programs or rules—about 15 percent—that contain specific numerical requirements based on race, ethnicity or gender. And even some of these programs were carefully built with linguistic escape hatches, such as "to the maximum extent practicable" and "absent a waiver" by the Cabinet secretary.

Engine Propelling the Program

Behind its blandly bureaucratic name, the Office of Federal Contract Compliance Programs (OFCCP) is one of the government's most important engines of affirmative action.

It enforces Executive Order 11246, signed by President Lyndon B. Johnson and vastly expanded under Nixon, requiring every company with 50 employees and doing more than $50,000 in business directly with the federal government or as a subcontractor to prepare "goals and timetables" for a more diverse work force. Its ultimate weapon is to disqualify companies from doing work for the federal government, although that penalty usually is implemented in only a handful of cases each year.

Some 90,000 or so firms fall under the Labor Department agency's domain, accounting for an estimated 25 million U.S. workers.

One is Aaron Woodson, an African American. Woodson never complained about discrimination after he applied for but did not get a job at Solectron Corp., a Silicon Valley computer chip manufacturer. Instead, his case was found two years later with the help of a computer.

It typifies how the OFCCP works. Using reports that Solectron filed with the Equal Employment Opportunity Commission, a computer analysis showed that Solectron had a low percentage of minority workers compared with similar firms in that geographic area. The OFCCP's regional office in San Francisco began an audit, one of about 4,100 done annually on firms that do business with the federal government.

After reviewing Solectron's records, the auditors found nine qualified minority applicants—five Hispanics and four African Americans—who had been rejected for jobs. The firm reached a settlement with the contract compliance agency that included up to $237,000 in payments, job offers to the nine employees, and an agreement to refine its affirmative action goals. A Solectron official said the OFCCP audit actually helped the firm improve its hiring procedures for minorities and others.

"We think that this audit did us a large service," said Jeffrey F. Cox, a Solectron spokesman, "because it pointed out a hole in our procedures that if not filled would have put us at a great disadvantage competitively."

"I think it would be a major setback in this country if we didn't have affirmative action," said Woodson, who turned down Solectron's later job offer but received a check for $10,500. "Lots of places, minorities wouldn't get in the door."

Affirmative action proponents say there is a tendency among white managers to simply hire people who are like them; the motivation may not be prejudice so much as habit. Goals and timetables force companies like Solectron to "cast a wider net," said Shirley J. Wilcher, the OFCCP's director in Washington, but they do not amount to quotas.

cont'd

"A quota is a rigid and inflexible target," Wilcher said. "What we require are benchmarks . . . and good-faith effort."

Policies Are 'Good Business'

Yet, inevitably, the definition of a quota remains firmly in the eye of the beholder. Among U.S. businesses, there is nothing remotely like consensus on what the federal government's affirmative action policies should be. Typically, the largest firms have been supportive of a government role, saying it simply complements efforts they were making on their own.

"We would have these policies because they're good business," said Laurie Broedling, vice president for human resources at McDonnell Douglas, a large federal defense contractor.

Because the firm's customers are diverse, Broedling said, McDonnell Douglas wants to make sure its workers are too, even if that requires extra effort. "There are great talent pools in our country that have not been tapped," she said. "We want the best talent, and talent grows everywhere."

Fred Alvarez, a former Labor Department official now practicing law in San Francisco, said big firms realize that "a company with an effective affirmative action plan is much less likely to be a target" of discrimination complaints and lawsuits.

Yet these same policies often look quite different from the vantage point of a smaller firm. Bob Lindberg, president of Young Co. in Seattle, thought his small metal firm had a recent diversity record—with a work force that included about 35 percent women and minorities—until the OFCCP came knocking in 1993. He said the agency accused the firm, which is a subcontractor for a company that supplies anchors to the Navy, of a number of charges, including failing to hire qualified Asian applicants.

Young opened its books to the auditors, spent thousands of dollars on a consultant, and finally settled in part by paying $47,500 in back wages to some minority workers.

"They were looking for blood and weren't going to be happy until they found some," Lindberg said.

His son, Mark Lindberg, a Young vice president, said the company now has an extensive affirmative action plan that it is following in anticipation of another audit. "They like to call them goals, not quotas," he said. "For us, there's no difference."

Some Minority Firms Rejected

After enforcing hiring goals, probably the most important element of the government's affirmative action policies is helping companies owned by minorities and women gain a larger share of federal largess. The government's main tool for this is the "set-aside," reserving a portion of federal contracts solely for bids by these businesses.

Programs with this aim are scattered across the government, but the model for most are the set-aside programs run by the Small Business Administration. Among the most important of them is the so-called 8(a) program, named after the section of the Small Business Act that created it.

Firms that are granted 8(a) status are able to win contracts from agencies across the federal government without competitive bidding if the contracts are less than $5 million for manufacturing and $3 million for other services.

Participating companies must be 51 percent owned, controlled and operated by individuals who are "socially and economically disadvantaged." Social disadvantage applies automatically to most racial and ethnic minorities, but can extend to white men and women if they demonstrate they have suffered because of some prejudice or cultural bias. To establish economic disadvantage individuals must show their net worth does not exceed $250,000, exclusive of home equity or business investment.

The dual criteria mean that some minorities get rejected, such as Rep. Eva Clayton (D-N.C.) when she sought to win federal contracts for her fledgling consulting business in the early 1980s. She was turned down, she said, because her husband made too much money. "Of course I disagreed with that," Clayton said. "It was me that was applying, not my husband."

Still, 46 percent of the program's 5,330 participants are black like Clayton, 23 percent are Spanish-speaking and 21 percent are Asian. Only seven firms headed by white women have qualified, which has led to criticism of the criteria.

Rep. Jan Meyers (R-Kan.), chairman of the House Small Business Committee, says that a black Harvard graduate with a net worth of a quarter of a million dollars stands a better chance of getting into the program than a poor white woman from Appalachia. "There is something wrong with that," she said.

In addition, Meyers adds, program rules allow a participant to remain eligible while his net worth steadily climbs during his nine-year tenure in 8(a). "If a person has $750,000 in assets, plus a house, plus a business," she said, "then government shouldn't be involved."

Before the 8(a) program awarded its first contract in 1969, minority companies did $11 million in business with the federal government. Since then, the program alone has been responsible for $48 billion in contracts to minority-owned companies and others who qualify. And 8(a) now accounts for about half of the contract dollars that minority businesses get from the federal government.

"The 8(a) program has been absolutely critical to our success in penetrating the railroad construction industry," said Melvin E. Clark Jr., president of an area construction firm, in recent testimony on Capitol Hill. "We started as an inexperienced, undercapitalized company with great ambitions. We needed help."

The program, Clark said, provided him with technical and management assistance, made banks and bond companies more receptive and opened access to the federal marketplace "that we never would have had."

A measure of the program's success is that current or former participants include 32 of the top 100 African American-owned businesses and 17 of the top 100 Hispanic-owned companies.

Over the years, however, reports by the General Accounting Office, the SBA's inspector general and other parties have highlighted continuing problems with 8(a). One common criticism is that a few firms are getting a disproportionately large share of the contracts and getting rich while claiming a disadvantage.

In fiscal 1994, for example, 50 firms—or about 1 percent of the participants—received a quarter of the $4.4 billion in contract dollars awarded. Furthermore, 56 percent of the enrolled firms did not receive any contracts during the last fiscal year.

SBA officials said those statistics reflect, in part, how aggressively some firms market themselves compared with others and the tendency of many federal agencies to deal with companies they know. Though there are still some problems to work out, SBA officials said, overall the program is working.

"Given the opportunity," said Herbert L. Mitchell, who supervises the program, "minority firms perform."

Discrimination or Development?

Are set-asides a mild way of evening out the natural advantages established firms have against new and minority firms? Or an intrusive form of favoritism that amount to de facto quotas? The Defense Department's program for aiding disadvantaged businesses shows that the question can be difficult to answer.

With a contracting budget that totaled $112 billion last year, the Pentagon's decision to set aside 5 percent of that for firms owned by women and minorities would seem to leave plenty of business to go around. Moreover, the goal is not a mandate: though the current contracting program was established in 1987, the Defense Department met the 5 percent goal for the first time in 1993.

The Pentagon attains the goal in part by setting aside contracts whenever it has a reasonable expectation that two or more small, disadvantaged businesses will compete for them. Also, in certain instances, disadvantaged businesses can bid high by as much as 10 percent and still win a contract.

Daniel R. Gill, the Pentagon official in charge of aiding disadvantaged businesses, does not consider it affirmative action. "In my judgment it's an economic development program," Gill said.

But Bryan McGinnis, who helps runs a small, white-owned construction company in Texas, considers the same program a blatant exercise in reverse discrimination. In some recent years, he said, all the contracts his firm is qualified to compete for in the San Antonio area—not merely 5 percent—have been set aside for disadvantaged firms.

Cont'

The reason is that many defense dollars go for big-ticket items such as bombers and tanks that are not likely to ever go to disadvantaged firms. In order to meet its departmentwide goal, therefore, the military services must compensate by awarding more than 5 percent of other types of business to disadvantaged firms.

"I never discriminated against any of those people in the past," McGinnis said. "If you had oppression of one group and you're opposed to that, why would you turn around and oppress another group? Minority firms should have to compete for business just like any other firm."

The Politics of Anxiety

Why is the consensus that sustained affirmative action suddenly so imperiled?

Adherents believe it is due more to a general free-floating frustration adrift in the modern economy than it is to specific grievances against individual programs.

Polling seems to have only muddled the picture. When Americans are asked whether they favor granting "preferences" to minorities or women—such as making a certain number of educational scholarships available only for them—respondents generally oppose such measures. But when asked, for instance, if they favor companies making "special efforts" to attract "qualified" minorities and women to those companies, Americans generally are supportive.

For all the rhetoric about "reverse discrimination," there is little hard data to suggest bias against white males is widespread. Of the 91,183 discrimination complaints filed with the Equal Employment Opportunity Commission in fiscal 1994, only 1.5 percent alleged that white men had been discriminated against because of their race. Over the past eight years, the percentage of such complaints has been fairly constant.

Further, a draft study of discrimination cases handled by U.S. district and appellate courts conducted for the Labor Department indicates that a "high proportion" of reverse discrimination claims are "without merit."

"You can't make the case that this [backlash] is quotas," said California Assembly Speaker Willie Brown (D). "The explanation for why people view it that way is the scapegoat phenomenon."

Others, such as conservative activist Clint Bolick, believe the breakdown has occurred because some of the key affirmative action measures were implemented by executive orders, not legislative action, and thus never had strong roots in the political culture.

Today's debate is caught up in the politics of anxiety, fueled by emotional arguments about merit versus preference, opportunity versus discrimination. In this arena, anecdotes seem to carry the day.

FROM ENCOURAGEMENT TO GUIDELINES

Sen. Robert J. Dole (R-Kan.) last year asked the Congressional Research Service for a "comprehensive list of every federal statute, regulation, program and executive order that grants a preference to individuals on the basis of race, sex, national origin, or ethnic background."

What came back was a listing of more than 160 programs affecting every major area of the government, but varying from those that simply encourage extra effort to those that set explicit numerical guidelines. Among the programs:

DEFENSE

- The Pentagon has a goal that 5 percent of all its procurement budget ($112 billion last year) be awarded to firms owned by "socially and economically disadvantaged individuals," meaning women and minorities, as well as historically black colleges and universities.
- As the Navy cleans up environmental damage at its facility on Kahoolawe, part of the Hawaiian island chain, it is to give "especial preferences to businesses owned by Native Hawaiians."

ENVIRONMENTAL PROTECTION AGENCY

State and local governments that win EPA grants "shall make positive efforts to use small businesses and minority-owned business sources of supplies and services."

EDUCATION

In awarding grants for teacher training, the Education Department is to give "special consideration" to "historically black colleges and universities," and to schools with at least 50 percent minorities.

HEALTH AND HUMAN SERVICES

The minority medical biomedical research support program, run by the National Institute of General Medical Sciences, gives grants to educational institutions with a "significant proportion" of minority students. Grants are awarded to faculty members, regardless or race, and include money to support research assistants at schools ranging from predominantly black Morehouse School of Medicine in Atlanta to California State University in Los Angeles, which has a large Hispanic population. Last year the institute devoted $34.8 million, about 4 percent of its budget, to the program.

STATE

"Not less than 10 percent" of money appropriated for diplomatic construction shall be allocated "to the extent practicable" to minority contractors.

TRANSPORTATION

"Except to the extent that secretary determines otherwise, not less than 10 percent" of the money authorized in the $151 billion transportation act passed in 1991 will be spent on "small business concerns owned and controlled by socially and economically disadvantaged individuals."

—Compiled by Kevin Merida and John R. Harris

"I'm a white male," said Bob McCallie, whose Nebraska firm sells computer services to the government. "I don't feel that I have been given anything, cut a break, because I'm a white male. I don't know why a female or a minority wouldn't have had the same opportunity to enter the system that I had."

Yet despite McCallie's perceptions, something is clearly barring women and minorities from reaching the highest levels of achievement in the workplace, regardless of qualifications. The Glass Ceiling Commission report released last month found that 97 percent of senior managers in Fortune 1000 industrial and Fortune 500 companies are white; 95 to 97 percent are male.

Fletcher Mulls 1996 Campaign

By the time the dust clears, the old Bills who were on the frontlines of affirmative action may become more involved in the fight than they would have imagined 25 years ago.

Shultz expects to support California's proposed referendum that would ban most affirmative action policies at the state level. "The problem is," Shultz said, "that affirmative action that you genuinely want to see . . . turns very easily into a quota."

Arthur Fletcher, meanwhile, is so upset with his fellow Republicans that he is planning to announce today a presidential exploratory effort to determine if he should enter the 1996 GOP race as "the affirmative action constituency's candidate."

"They're getting ready to divide this country," said Fletcher, "so we can't solve the race problem for the next 100 years."

The Washington Post

DATE: 4-3-95
PAGE: A-1

Small Business Gets Biggest Push

$12.9 Billion Set-Aside Outpaces That for Minorities

By Steven Pearlstein
Washington Post Staff Writer

Each year, billions of dollars in federal business are reserved for a group of businesses that complain that the contracting field is tilted against them.

These businesses suffer a host of disadvantages: They have trouble getting bank loans, they lack connections to federal contracting officers, they are unfamiliar with the government's arcane rules. And in most cases, these firms lack the buying clout and scale efficiencies enjoyed by big corporations.

Black-owned paving companies? Eskimo cooperatives? Actually not. This set-aside program is for millions of garden-variety small businesses, firms with as many as 1,500 employees, sales as high as $21 million and owners who are mostly white, male and economically comfortable.

Last year, according to the Office of Management and Budget, federal contracting officers set aside $12.9 billion in contracts for small businesses, making them the beneficiaries of the government's biggest "quota" program.

That $12.9 billion is double the value of contracts set aside last year for minority-owned businesses under the various affirmative action programs now under attack from congressional Republicans and under review by the Clinton administration. And it comes on top of an estimated $40 billion in other federal contracts and subcontracts that small businesses won in open competition against large firms.

In the context of the debate over affirmative action, the contract set-aside for small business "poses a very interesting problem," said Cassandra M. Pulley, the deputy administrator of the Small Business Administration. "I'm not sure why it's valid to preserve a 20 percent goal for small business contracting while eliminating the 5 percent goal for minorities."

Samuel Carradine, executive director of the National Association of Minority Contractors, put it more bluntly: "I think it is disingenuous to identify race- and gender-based programs for an assault on preference programs while leaving others untouched."

As Carradine and Pulley see it, the traditional justifications for the popular small business preferences apply even more urgently to businesses owned by women and minorities, and therefore justify a separate program to enable them to compete successfully for federal contracts.

While small businesses continue to report troubles getting bank loans, there is anecdotal evidence to suggest that bankers are even less receptive to applications from minority-owned firms. Hard data on this issue are difficult to come by because banks are not required to keep business loan data by race. But a study by Timothy Bates, an economist at Wayne State University, based on census data from 2,100 firms in a variety of industries, found that after controlling for management experience, education, age and other factors, white-owned businesses received $1.84 in bank loans for every $1 invested by the owners, compared with $1.16 for black-owned firms.

Similarly, if small businesses lack the economies of scale of larger firms, then minority-owned firms lack them even more. According to the Commerce Department's latest census, sales of the average firm owned by a white male are 2½ times those of the average minority or woman-owned firm.

As for those all-important informal connections that come to play in federal contracting, minorities also start out at a disadvantage.

"Theoretically, any contract is open to any bidder," said the SBA's Pulley, "but if you ask any contractor, they will tell you that by the time an opportunity is listed in the Commerce Business Daily, it is pretty well decided. Being in the know is still very much part of the process, and absolutely, blacks and women aren't there yet."

Up to now, small business and civil rights groups have generally made common cause in protecting and expanding government's contract preferences for both small and minority businesses.

Now, however, this alliance is being tested. In the next few months, the Supreme

Cont'D

Court is expected to decide whether minority set-aside programs violate the Constitution's guarantee of equal protection under the law.

The case was brought by a white businessman from Colorado who failed to win a subcontract to provide guardrails in the San Juan National Forest despite submitting the lowest bid. Under an affirmative action program initiated by the Department of Transportation, the general contractor for the San Juan project got a $10,000 bonus for choosing a Hispanic business to do the guardrail work.

Meanwhile in Congress, key Republicans indicate they will push for rolling back some or all of the minority preferences.

Sen. Christopher S. Bond (R-Mo.), the new chairman of the Senate Small Business Committee, said that while he remains strongly committed to small business set-asides, he finds programs that involve "set-asides, numerical goals, and quotas based on race and gender are of a different stripe, and raise difficult questions."

Reservations also were expressed by Rep. Jan Meyers (R-Kan.), who chairs the House Small Business Committee. "I don't like set-asides and bid preferences for special groups, because they interfere with the principle that the low bidder should prevail," Meyers said.

Meyers said she did not consider small business as a "special group" because "it pertains to an entire industry classification, millions of businesses. The idea there is to encourage the participation of these businesses and to get the benefit of greater competition, which is a good thing for the government."

Not always, it turns out. Last year the inspector general of the Department of Veterans Affairs found that a VA hospital in Houston overpaid by 35 percent for about half of its laboratory supplies because they were purchased through small business set-asides. Similar concerns were expressed in interviews last week with other government contracting officers, who asked that their names and agencies not be used.

Some critics of minority set-asides are willing to extend their opposition to contracting preferences of any sort, including those for small business.

"I do not support set-asides or quotas—period," said Sen. Phil Gramm (Tex.), a candidate for the GOP nomination for president. "We ought to engage in outreach to make sure everyone gets a chance to bid, but in the end we ought to award contracts in open competition, strictly on the basis of quality and cost."

Even past supporters of these programs concede that change is coming.

"Our position in the past has been 100 percent behind set-asides, but we live in new times," said Jose Nino, president of the U.S. Hispanic Chamber of Commerce. "We are now reviewing these programs ourselves with the idea that we have to accommodate the political and economic reality."

The Washington Times

DATE: 4-5-95
PAGE: A1

Bearing the white man's burden?

D.C. builder seeks piece of set-asides

By Karen Riley
THE WASHINGTON TIMES

In a scruffy industrial area 30 blocks from the U.S. Capitol, D.C. contractor Arnold O'Donnell is on the front lines of opposition to government affirmative-action programs.

For years, Mr. O'Donnell has fought to be included in federal and local set-aside programs, arguing that white-owned companies are the true minorities in a city dominated by blacks.

"A small business in the District owned by a white male is going to be routinely discriminated against," he contends.

"There's no room for a small white firm," he argues.

Mr. O'Donnell went up to Capitol Hill yesterday — as he often does on behalf of his industry lobby, the Associated General Contractors of America — to complain about the Small Business Administration's program to aid "socially and economically disadvantaged" businesses.

Though the SBA's 8(a) program had some defenders in the hearing before the Senate Small Business Committee, critics charged that it is mismanaged, and Mr. O'Donnell said the government is wrong in making a person's race the dominant factor in certifying disadvantaged business owners.

Last year, he unsuccessfully tried to convince the SBA he was qualified for the program because his company is a victim of racial discrimination.

A Washington native, Mr. O'Donnell, 46, is co-owner of 10-year-old O'Donnell Construction Co. with his brother, John.

The company specializes in building and repairing streets, sidewalks and underground utilities. Most of the work comes from local and federal governments.

It often happens that nearly all of the work that a small company can do is earmarked for the sheltered market, Mr. O'Donnell said in a recent interview. That means a small, struggling firm owned by a white man probably can't qualify.

Mr. O'Donnell says that over the past five years O'Donnell Construction has been barred from bidding on "several hundred projects" in the Washington area simply because he and his brother are white.

Competing minority contractors have a different point of view.

"He's never been serious about bidding on any work. What he's doing is fighting these [affirmative-action] programs," says Carroll Harvey, chairman of Faith Construction Co. of the District and a member of the Coalition to Protect Minority Business.

Mr. Harvey maintains that without a government set-aside program, there would have been no market for black contractors like him. Today, his 17-year-old company employs 81 persons and takes in about $8 million to $13 million a year in gross revenues.

Dismissing Mr. O'Donnell's claims, Ed Nelson, a member of the D.C. Contractors Association, says: "He's just a troublemaker, a redneck."

Mr. O'Donnell says that's nonsense, citing projects his company has worked on over the years including reconstructing Indiana Plaza on Pennsylvania Avenue NW, preparing the site at the National Arboretum for the old columns from the U.S. Capitol, and relocating First Street NW for Washington Hospital Center. Under its latest contract, his company is replacing sewer lines at Fort McNair in Southwest.

He gives the example of a November solicitation for a road-building project at Washington National Airport. The Metropolitan Washington Airports Authority's goal was to award all of this work to disadvantaged business enterprises, official documents said.

In a formal complaint to the Federal Aviation Administration in January, Mr. O'Donnell said that goal excluded him from bidding, as the airports authority had rejected his request for certification as a disadvantaged business.

At its peak in 1989, O'Donnell Construction had $2.6 million in revenues and about 25 workers — about 80 percent of whom were minorities, Mr. O'Donnell says.

By 1992, O'Donnell Construction took in just $500,000, due in part to the recession, and had to lay off 20 workers. The company lost its surety bond because of its falling revenues and bleak outlook. Last year, its fortunes improved enough to get its bonding back, and sales climbed to $1.1 million.

Ten years ago, several white-owned firms dominated local road building and repair, Mr. O'Donnell says, but minority preferences forced them out of the District. Today, his is the only bonded company in the District that is white-owned, and Mr. O'Donnell says he is close to moving away.

"By definition, I suppose he is a minority," says Robert Corry, a lawyer with the Pacific Legal Foundation in San Francisco.

The U.S. Transportation Department's 1982 construction procurement program defines a disadvantaged business as a small firm owned and operated by blacks, Asians, Hispanics or American Indians, or persons with origins in Burma, Singapore, Laos, the Marshall Islands, Micronesia, Fiji, Kiribati, Sri Lanka or Bhutan.

White men can apply but must provide "clear and convincing evidence" that they are disadvantaged.

Gerald Draper, associate director of the city's Minority Business Opportunity Commission, says the commission has decided to reject Mr. O'Donnell's application and will issue its opinion this month.

The program gives disadvantaged businesses a 5 percent allowance off the bidding price, which can be an advantage when net profits on a job typically range from 5 percent to 10 percent.

In deciding whether a company has been disadvantaged, Mr. Draper says, the commission looks at a variety of criteria, including whether its owners have faced discrimination in housing and education, been rejected for credit or confronted chronic business problems. Some blacks have been turned down because they can't prove they're disadvantaged, Mr. Draper says.

He notes that Mr. O'Donnell has a degree in aeronautics from Massachusetts Institute of Technology and a master's degree in engineering administration from George Washington University and has demonstrated some financial success.

"If he grew up in Appalachia," Mr. Draper says, "he might have qualified."

The Washington Times

DATE: 4-5-95
PAGE: A20

SBA set-aside programs hit on how contracts are awarded

Senators told many participants aren't disadvantaged

By Betsy Pisik
THE WASHINGTON TIMES

Critics of an affirmative-action program run by the Small Business Administration yesterday hurled charges of mismanagement at the program, which was set up to help minority-owned and economically disadvantaged companies win government contracts.

The SBA does not adequately screen its 8(a) participants, many of whom, critics say, are "fronts" for business owners who do not qualify for special federal consideration. They also charge that participation in the 9-year-old program doesn't necessarily prepare firms to compete in the real world.

At a Senate committee hearing yesterday, SBA Administrator Philip Lader defended his agency, calling the 8(a) program "a response to a historic pattern of exclusion."

He also said that the number of requests for certification has doubled.

The SBA revised the program a year ago to concentrate resources on certifying, training and assisting companies rather than acting as a subcontractor for government needs.

"I have maintained that each and every SBA program must be scrutinized closely to weed out what has not worked and to identify what is worth keeping and improving," said Sen. Christopher S. Bond, Missouri Republican and chairman of the Small Business Committee.

The long-troubled affirmative-action program was created in 1968 to help steer a portion of the government's $160 billion worth of contracts to small businesses that are "socially and economically disadvantaged."

The SBA presumes businesses are socially disadvantaged if their prinicipal owners are black, American Indian, Asian-American, Aleut, Spanish-speaking or female. Economically disadvantaged companies are owned by those whose net worth does not exceed $250,000 — excluding equity in their home and business. The average net worth of the 8(a) participant, according to the SBA, is $54,000.

Last year the 8(a) program distributed $4.4 billion in contracts to just under half of the program's 5,100 participating firms.

Some 50 firms — 1 percent of the 8(a) companies — — land 25 percent of the contract dollars, concentrating the economic benefits. More than half of the participating firms received no contracts last year, according to a GAO report. Roughly 80 percent of those contracts are not competitively awarded.

"The concentration of contract dollars continued in 1994," said Judy England-Joseph, director of the General Accounting Office's economic development division.

She added that many participants who spent years in the program did not meet the requirements for amount of nongovernment contracts, "seriously raising doubts about the firms' probability of success in the commercial workplace."

Several witnesses said the SBA does not sufficiently monitor the rolls in its 8(a) program.

"It is not an issue we can address on the basis of ancecdotal information or speculation," SBA Deputy Administrator Cassandra M. Pulley said yesterday. "If anyone thinks there is a front company, they must report it to us. We will investigate to the maximum extent possible."

Local business owners testified to a diverse universe of experiences.

"We were successful before getting into the 8(a) program," said Santos F. Garza, founder and chief executive officer of Bethesda-based Counter Technology Inc. "But I wouldn't be employing 375 people today if the program had not enabled us to do that."

CTI, which specializes in designing security systems, seems the model of an 8(a) firm: It has grown from four employees to several hundred, lands its share of of non-federal contracts, and has grown slowly and responsibly.

Ms. Garza praised the opportunity to learn the bidding process, marketing and other business skills in the relatively sheltered 8(a) program.

But many of the contracts she was asked to bid on as an 8(a) company were more labor-oriented than technical, she testified.

That hasn't stopped Arnold J. O'Donnell of O'Donnell Construction Co. from wanting in.

Yesterday, he angrily told the committee that he, as a white male, is socially disadvantaged in the District of Columbia and was prevented by local affirmative-action programs from bidding on 50 percent of the area's street and underground utility repair contracts.

Barksdale Air Force Base, Mr. O'Donnell testified, had set aside all of its contracts for minority bidders. "My evidence was strong enough to satisfy the U.S. Court of Appeals, but it is not enough, today, for the SBA," he said.

THE WALL STREET JOURNAL.

DATE: 4 5 92
PAGE: A1

Mr. Fletcher's Plan: Lights, Camera, Affirmative Action!

* * *

A Republican. He Is Mulling Uphill Run for President To Save Racial Preferences

By DOROTHY J. GAITER
Staff Reporter of THE WALL STREET JOURNAL

CHANDLER, Ariz. – The Father of Affirmative Action is mad as hell.

He also happens to be a Republican.

And today, he plans to form a committee to explore a run for the GOP presidential nomination – to save his baby.

This is Arthur A. Fletcher, who, on one recent day before a group of minority contractors here, collected $800 for a campaign that few think has little chance of success. But at 70, the outspoken Mr. Fletcher has come out of semiretirement to lead a quixotic charge against what he sees as an ill-advised, and uninformed, effort by conservatives and many moderates – Republicans especially – to ditch affirmative-action programs.

Arthur A. Fletcher

He thinks his ties to the old-line GOP will help remind new Republicans of affirmative action's Republican roots – all the way back to the Nixon administration. He thinks his position as a black "pragmatist-optimist" will help convince white people of good will that affirmative action has been good for them, and the nation. "If they tear down the elevator we're using to get to the top," he asks, "what other device is there?"

But Mr. Fletcher, currently a member of the U.S. Commission on Civil Rights and a man occasionally given to self promotion, is also personally sore: "I'm the father of affirmative action," he says. "And they're messing with my footnote in history."

Tough Sledding

Republican pragmatist or not, Mr. Fletcher has a hard sell; a lot of people think he has his history right, but his politics wrong. Republican committees in Congress have already begun hearings on a number of fronts that could eventually result in the elimination of billions of dollars in federal set-asides to minority-owned businesses. And in California, anti-affirmative action groups hope to place an initiative on that state's 1996 ballot that would bar the state or its contractors from awarding promotions, jobs or contracts based on racial or sex preferences. Moreover, opinion polls generally show a majority of Americans oppose affirmative action.

Nonetheless, some think there is method in Mr. Fletcher's madness. "Art reminds me of Jesse Jackson in 1988," says Nigel Parkinson, president of the National Association of Minority Contractors, an advocacy group. "Jesse kept talking about South Africa and nobody wanted to talk about South Africa but you see what has resulted from that."

Mr. Fletcher's claim to affirmative-action glory dates back to 1969, when he served as an assistant secretary for employment standards. The post had been created by George Shultz, President Nixon's first secretary of labor. At the behest of Mr. Shultz, who was outspoken about the need to bring blacks into the American economic mainstream, Mr. Fletcher oversaw the revival and toughening of a Johnson-era affirmative-action plan that was mostly voluntary and, in the view of critics, unenforceable.

Known as the Philadelphia Plan, the Nixon plan was considered the first truly enforceable affirmative-action program. It required companies competing for $4 billion in federal projects in the Philadelphia area to make a good-faith effort to hire minorities by setting goals – ordaining that a flexible range of the hours logged on federal contracts go to minority workers. Companies that fell short of those goals, and weren't able to show good faith in their hiring efforts, faced sanctions.

Early Controversy

Then as now, affirmative action was a wedge issue. Though the late president seemed to genuinely want to create a larger black middle class – hoping that some of their number would become Republicans – he also had other motives. Mr. Nixon saw the prospects of creating friction between two bed-rock Democratic constituencies: the mostly white construction trade unions resentful of having to share contracts with blacks, and the civil-rights community delighted with his affirmative-action policies. With a stroke of a pen – in this case it was Mr. Fletcher's pen that signed the Philadelphia Plan authorization – he did just that.

Different Drummer

And if Mr. Fletcher is still a true believer, his old boss Mr. Shultz isn't. It's time to pull the plug on affirmative action, says Mr. Shultz, a fellow at Stanford University's Hoover Institution. Though he fought hard to push the Nixon plan through Congress – where Democrats tried to kill it – he adds that "unfortunately, the terms we used, goals and timetables, got translated into quotas, which have been bad."

But Mr. Fletcher's view is that, despite some well-chronicled abuses, affirmative action actually has been a success in moving minorities and women into the middle class. One example: He says home ownership among blacks, since the advent of affirmative action, has increased dramatically, which he feels can be traced largely to job preferences that moved blacks in large numbers into the middle-class work force.

In this belief, Mr. Fletcher has become positively missionary, undertaking a strenuous schedule of appearances, despite two triple-bypass operations, aimed at both rallying affirmative action's core supporters, and helping to put out antiaffirmative action brush fires.

In February, Rep. Dawn Mason, the lone black in the state of Washington's House of Representatives, needed help in beating back an antiaffirmative-action bill sponsored by Republican Rep. Scott Smith. She called Mr. Fletcher while he was a guest on a radio talk show in California and asked him to help. "He was here the next morning," says Ms. Mason, and together, by talking to churches and other groups, they packed a committee meeting with 500 people. After Mr. Fletcher addressed the House Law and Justice Committee, the bill died in the committee. "We couldn't have done it without him," Ms. Mason says. (Mr. Smith's office says there may be an effort to get an antiaffirmative action measure on the state's next ballot.)

The Washington state battle, says Mr. Fletcher, helped broaden the case for affirmative action among some people who had become complacent. "There were people fighting to get on the bus" to go to the meeting, Mr. Fletcher recalls, including "brothers who thought they had made it and sisters in mink coats who suddenly realized that coat, the house, the kid in college and the Lexus were in danger."

In the end, he says, some Republicans refused to vote for the Smith bill. "It does pay to be a Republican now and then," he says with a chuckle.

Personal Commitment

On one level, Mr. Fletcher's commitment to affirmative action is deeply personal. He once operated a food-catering business that had contracts with the U.S. military. But Mr. Fletcher most vividly recalls his hardships when, as a resident of Kansas, he raised money for the landmark Brown vs. School Board of Topeka desegregation lawsuit in the 1950s. As a result, he says, he was excluded from jobs in Kansas and, later, California.

He had a wife and five children to support, and his five years of joblessness, he believes, contributed to his first wife's suicide in 1960. "I decided then that if I could help it, no woman would ever again take her life because her husband couldn't find work," says Mr. Fletcher.

CONT.

In 1968, while living in Washington state, Mr. Fletcher, after a stint in local politics, narrowly lost an election to become lieutenant governor. After that bruising experience, the Republican Party offered him four jobs with the Nixon administration. The one that Mr. Shultz had appealed to him.

Mr. Fletcher says unapologetically that his color helped him get the post and that it affirmed his belief that a boost – for those qualified but traditionally left out – isn't such a bad thing. "They put me there not because I was qualified but because I was a Negro. There were plenty of white boys who were just as qualified," Mr. Fletcher says unflinchingly. "I was qualified and black."

The New York Times

DATE: 4-5-9
PAGE: A1

Time and Money Producing Racial Harmony in Military

By STEVEN A. HOLMES

FORT HOOD, Tex., April 1 — As a young Army officer in Korea in 1970, Frank L. Miller found himself in a racial climate so volatile among American troops that his post averaged more than 100 racial assaults a week.

These days, the experiences of Mr. Miller, now a major general and the deputy commander of the Army III Corps, are far different. Outside his office on this sprawling base, black, Hispanic and white soldiers maintain their M1A1 tanks and Bradley fighting Vehicles, train in Apache helicopters, attend classes, eat, work and laugh together — all with a lack of rancor that makes those tempestuous days in Korea seem a distant memory.

In the last two decades the military has achieved notable improvements in racial harmony by devoting time, energy and money to the vexing problem of race relations. While the rest of America is engaged in strident combat over the issue of affirmative action, its armed forces — primarily the Army — have quietly transformed themselves into perhaps the most integrated institutions in the country.

To be sure, the progress of blacks in the military — especially at the upper ranks — has not been achieved across the board. The Army boasts of 22 black generals and the only African-American ever to become Chairman of the Joint Chiefs of Staff, Colin L. Powell. The other three services, which have traditionally been less hospitable to blacks, have a combined total of 11 black generals and admirals.

Nevertheless, some Democrats, including President Clinton — who have been placed on the defensive by an increasingly strident conservative onslaught against affirmative action — are holding up the military as a model of how to give minorities and women a leg up without generating resentment among white males.

"I take it there is virtually no opposition to the affirmative action programs that are the most successful in our country, which are the ones adopted by the United States military," Mr. Clinton said at a news conference last month. "Those have not resulted in people of inferior quality or ability getting preferential treatment but has resulted in an intense effort to develop the capacities of everybody who joins the military so they can fully participate and contribute as much as possible."

According to the Pentagon, minorities, mainly blacks, made up 29.2 percent of active-duty personnel in the four armed service as of last September.

The Army led the way with 39.5 percent. The Navy had 29.3 percent, the Marines 28.6 percent and the Air Force 22.5.

Minorities also made up 5.8 percent of all the male generals and admirals on active duty, compared with a 1.1 percent minority representation among the male senior-level managers at the country's largest corporations.

Pentagon officials note that even as the armed forces have reduced the number of active duty personnel to about 1.6 million from more than 2.2 million in 1987, the percentage of minorities has increased in the enlisted ranks and the officer corps alike.

"Our society is becoming more diverse and that diversity has been reflected in the force, not only in aggregate numbers but in the various grades as well," said Fred Pang, Assistant Secretary of Defense for force management policy.

For blacks, equal opportunity in the military has had its rewards, but it has also exacted its costs: of the 266 soldiers killed in the Persian Gulf War, 15 percent were black.

In part the military's success stems from factors that only are unique to the armed services. Military life requires maintaining strict order and discipline so that orders, including ones to diversify the work force, are obeyed without question. The armed forces grow all of the managers; there is no such thing as hiring from outside the organization. Consequently, it can better influence the racial mix and the quality of promotions.

And there never has been a shortage of blacks seeking to enter the military.

Nonetheless, the armed forces also provide instructive lessons for society at large. It has adhered to tough standards for advancement while at the same time providing additional training and education so that larger numbers of candidates can meet them. And it is constantly taking the pulse of its work force to see if its policies, including those regarding advancement, are perceived as fair.

"If you don't have standards that you apply across the board, then your white employees are going to be very disturbed by it," said Maj. Gen. Wallace Arnold, the Army Deputy Chief of Staff for personnel. "Your minorities are going to be disturbed by it as well because it puts them in a situation where they are then looked down on and scorned."

As late as September, the Navy had only four black admirals and the Air Force, six black generals. The Marine Corps had none, although it recently promoted one black to brigadier general and another has been recommended for such a promotion.

For Hispanic people, progress has been slower still. Though they make up 5.4 percent of active duty personnel, there are only 11 Hispanic generals and admirals in all of the four services.

There is no question, experts say, that the Army's success stems in part from its ability to attract blacks. A 1994 Pentagon report noted that 30 percent of enlistees the previous year had been black, higher than any other service and nearly triple the percentage of blacks, 18 to 44 years old, in the civilian population. Blacks not only enlist in higher proportions than do whites, they are also more likely to re-enlist.

"Show me another organization in America besides the N.F.L. and the N.B.A. where you have so many blacks," said John Butler, head of the sociology department at the University of Texas, speaking of the professional football and basketball leagues.

The high retention rate has resulted in blacks making up more than 30 percent of the Army's sergeants. That means, some experts say, that

Cont'd

there is a good chance for many enlisted soldiers to have an immediate supervisor who is black, providing a role model for all races and sweeping away stereotypes about blacks in positions of authority.

"The military is the only place in America where blacks routinely boss whites around," said Charles Moskos, a sociology professor at Northwestern University.

But black success in the Army is not merely an accident of numbers. The service establishes affirmative action goals and permits boards to take into account race and diversity when granting promotions. Army officials demand explanations if goals are not met. But no timetables are set for achieving them, and no sanctions are exacted for falling short. As a result, Army officials say, the pressure to cut corners to make the numbers look good is lessened.

The ideal affirmative action program is reported to be in the military.

Perhaps most important, the Army has placed a great emphasis on education, providing basic skills in reading and mathematics, paying 75 percent of tuition to soldiers who want to earn college degrees and running management training schools for soldiers considered worthy of promotion to sergeant.

When the anti-war protests in the 1960's at predominantly white colleges forced the Army to withdraw its Reserve Officers Training Corps from many campuses, it expanded R.O.T.C. at historically black colleges and universities. In the 1980's, when it found that a high percentage of blacks receiving their commissions from these programs were failing their officers' training courses because of academic deficiencies, the Army established a tutorial program at black colleges with emphasis on math and communications skills.

As a result, in 1992 about half of the 563 blacks who were commissioned as officers by way of R.O.T.C. came from historically black colleges, according to a study by Mr. Butler and Mr. Moskos.

The Army also trains a cadre of sergeants and commissioned officers to conduct seminars on race and sex, to monitor commendations and disciplinary proceedings, to investigate bias complaints and to advise commanders on the state of race relations in their units, including conducting annual "climate surveys."

These surveys, which include many questions on a unit's attitudes on race, allow soldiers to express their views anonymously on a variety of issues from the quality of food to their trust in their commanders.

Still, the experts say there are limits to which the Army can teach the country how to deal with racial interactions.

Few companies or other institutions have the financial resources to devote to training and education on the scale that the Army does. And it would virtually be impossible for a corporation to bring some of its its top management to Washington every year, as the Army does, to spend up to six weeks examining the records of people eligible for promotion.

And virtually no segment of the society maintains the discipline found in the armed forces

"The reason I think the Army works best in this area is discipline," said Sgt. Jody Church, a tank gunner. "The civilians, they don't have discipline. You can show them all this stuff and they go right out the door and blow it off."

The New York Times

DATE: 4-5-
PAGE: A25

In America

BOB HERBERT

The Wrong Target

One of the many important issues to emerge battered and distorted from the insidious cavern of political demagoguery is affirmative action. If you listen to the latest crop of compulsively deceitful politicians, or tune into the howling degradation of talk radio, you might become convinced that the biggest problem of discrimination in the United States today is bias against white men.

The complaint is that legions of African-Americans, women and assorted others are taking jobs, promotions, classroom slots, theater tickets and the best seats on the bus from the folks who really deserve them — white guys.

The arguments against affirmative action are almost always crafted in racial terms because the demagogues know that race is the way to get the emotional flames roaring. In fact, the primary beneficiaries of affirmative action are women. If all parties would lower their voices and try to communicate in good faith, it could be pointed out that while there are problems with affirmative action — including some serious problems of fairness — the negative impact on white men has not been great, and the problems are correctable.

What you do not want to do, in a country where there are still prodigious amounts of race and sex discrimination, is abandon a long and honorable fight for justice in the face of political hysteria.

The Federal Glass Ceiling Commission recently reported that 95 percent of top corporate management positions in the United States are held by white men. Throughout corporate America, women, blacks and Latinos are paid less than white men for doing the same work. And if you believe there is a bias against white males in hiring, just pair up a white guy with a black guy and send them off in search of the same job.

Racism against blacks and sexism against women abound. And yet the outrage we hear today is about discrimination against white men.

A report on discrimination in employment commissioned by the Labor Department found very little evidence of employment discrimination against white men. The report was prepared by Alfred W. Blumrosen, a law professor at Rutgers University. It found that a "high proportion" of the so-called "reverse discrimination" claims brought by white men were without merit.

The politicians will tell you that the attack on affirmative action is a cry for racial justice. That is not so. It is an expression of the anger and frustration felt by large numbers of overwrought and underemployed white men. Their anxiety is understandable, but affirmative action is not their enemy. Downsized to the point of despair, their wages stagnant or falling, their prospects dim, these men are caught up in the treacherous world of technological innovation, economic globalization and unrestrained corporate greed. Buffeted by forces that seem beyond their control (forces that are affecting everybody, not just white men), they listen to the demagogues. *It's the blacks doing it to you. It's the women. They're getting your piece of the pie. Otherwise you'd be O.K.*

Affirmative action isn't anti-white.

The Clinton Administration, under pressure, is reviewing Federal affirmative action programs. Fine. Let whatever abuses exist come to light. Scrap whatever programs are unnecessary or unfair. Where affirmative action is being used to help the disadvantaged, remove the racial or ethnic requirements. There are white kids all over the country who are economically and educationally deprived. Give them a hand.

But neither Bill Clinton nor anybody else should back off from the commitment to fight what is still an enormous and debilitating problem — discrimination against blacks, other ethnic minorities and women. Where affirmative action is needed to counter the effects of discrimination, let it be.

The United States is going through a period in which the politics of meanness is in the ascent. In many circles, it is unfashionable to be compassionate. Putting down others is the dominant mode of political expression, preferably with a vicious remark accompanied by cruel laughter.

All of this will pass. Eventually we'll find our higher selves and chase the dogs of bigotry and fear and ignorance from the yard. I am convinced this will happen. We are Americans, after all. We are better than we have been behaving lately. □

THE WALL STREET JOURNAL.

DATE: 4-3-90
PAGE: A12

Race, Not Class

By NATHAN GLAZER

Only a few months ago, affirmative action seemed sacrosanct, having survived under two Republican presidents who opposed it but were incapable of modifying it in any way. Now suddenly the policy is threatened by complete abolition. But even confirmed opponents might quail before the cold-turkey withdrawal now made possible by the massive upthrust of political opinion. Is there any alternative to extinction, and should we try to find it?

One of the most popular alternatives to complete abolition is the replacement of race-based affirmative action with class-based affirmative action. It is preference on the basis of race that arouses anger and a sense of injustice among whites, just as it arouses such feelings among blacks. When whites believe that race alone excludes them from consideration for jobs or limits their opportunities to enter selective colleges, universities and professional schools, many will feel the same anger blacks do.

Proponents of class-based affirmative action assert it would do much of what race-based affirmative action attempts to do, and would not arouse the same hostility. Nor is there any bar to such preference, apparently, in the Constitution or in civil rights law. Of course, it could not achieve the same results for blacks as race-based affirmative action. But since blacks are to be found disproportionately among the poor (they form 12% of the population, but 30% or more of the population in poverty), many could move up because of their poverty. Class-based affirmative action would reduce the irritation and anger of those excluded, because of the moral legitimacy of this ground of preference. It would also reduce the cases of inequity, few as they may be, in which blacks of professional and high-income backgrounds get preference on the basis of race over poorer whites.

A Bad Idea

But class-based affirmative action is a bad idea, whose weaknesses become apparent when we review the areas in which affirmative action operates. Consider the preference to government contractors on grounds of race. This was designed to increase the number of black businessmen, and it has been ineffective in doing so, because we do not know the levers that will turn people averse to entrepreneurship into eager small-business men willing to undertake the risks, long hours and stresses. (Koreans have the highest rate of self-employment of any racial or ethnic group, but not because of any government preference in bidding for contracts, even though they are apparently eligible for preference because they are "Asian.")

How would one qualify for eligibility for preference in bidding for government contracts when the racial criterion is replaced by the economic? Would it be current income, to demonstrate that the bidder is truly poor? Could a poor contractor fulfill the contract? Would it be the income of the bidder's family of origin? What sense would that make? After all, how many children of prosperous parents undertake the hard and risky life of the small-business man? And who would the new businessmen of impoverished backgrounds be replacing, but other small-business men of almost equally impoverished backgrounds?

This area of affirmative action is peculiarly afflicted by dissembling and fraud. Is the contractor truly a "minority" or a "woman"—rather than a white contractor seeking a minority cover or a woman covering for her husband? Matters in this regard would not be improved if we replaced race by class. In the case of race-based preference in government contracts, abolition is clearly preferable to class-based preference.

Class-based preference makes as little sense in another area of affirmative action, admission to colleges, universities, and professional schools. We already have a huge and expensive system of federal loans and grants, supplemented by state programs and individual institutional scholarships, to make it possible for those without parental or their own income to get higher education. These do not cover all costs, but it is the assumption in American higher education that students will work to help pay for their education, and almost all, rich or poor, do. One can imagine covering all costs for higher education for everyone, as European countries attempt to do, but the costs would be enormous, and the beneficiaries for the most part would be white and Asian.

Class-based affirmative action is a bad idea, whose weaknesses become apparent when we review the areas in which affirmative action operates.

The problem African-Americans face in entering institutions of higher education is performance, and performance is affected by poverty. But then the direct answer is programs to raise performance, or to reduce poverty. We know that substantial efforts have been expended on both objectives, and how frustratingly difficult it has been to make progress on either. The only effect of preference on grounds of class could be to increase the number of poor whites and Asians in institutions of higher education, and to reduce the number of blacks.

When it comes to employment, it is also hard to see what class-based affirmative action would achieve. Those aspiring to well-paid skilled work, as electricians, plumbers and the like; to work as policemen, firemen, sanitation workers; to teaching jobs—in all of which strong affirmative action programs exist—are not typically from well-to-do backgrounds.

In each area of employment, defined means of entry and promotion have been developed: apprenticeship and union membership for skilled work, civil-service examinations for city jobs. Endless effort has been devoted to opening apprenticeship programs, union membership and city work forces to blacks, and there has been some modest success, particularly in police forces, but these successes could not have been achieved by class-based affirmative action. Those struggling to enter such programs do not see themselves as particularly advantaged, and would resent the notion that a preference should be given to those poorer than they are when they themselves struggle against poverty.

Affirmative action is afflicted with irrational and illogical preference categories and with fraud. Much of this can and should be stripped away. But at its heart is a reality that cannot be wished away. This is the distinctive condition of American blacks, scarred by a history of oppression no other group, save American Indians, can match. African-Americans are a group still uniquely isolated and segregated.

Whatever the weight of the logic that led to the inclusion of Hispanic-Americans and Asian-Americans in affirmative action at its beginnings, it no longer applies. Both groups now consist in their majority of immigrants and their children. American society and institutions have no special obligation beyond nondiscrimination for these groups. Asian-Americans in general already have more education and as much income as most Americans. Hispanic-Americans are more poorly off, but their circumstances are explained far more by lower average education, language difficulties, and recent immigration than by discrimination. Neither group should be included in legal requirements for affirmative action. American Indians raise other issues, but their condition is already addressed by a great deal of special legislation.

CONT.

A Terrible Rejection

Affirmative action was occasioned by the civil rights revolution, and was designed for blacks. The problems it was intended to address are still with us, and in some respects are more serious than they were 30 years ago. Affirmative action has done precious little to ameliorate these problems, but I am concerned that African-Americans will see the abandonment of affirmative action for them as a terrible rejection by an indifferent and hostile society. It would have consequences—for example, a sharp reduction in the number of blacks in selective colleges and professional schools—that we should not accept, whatever the value of the principle that justifies them.

Just what form affirmative action for blacks should take, where it should be applied, and who should benefit require further discussion. At the very least, voluntary affirmative action, which would certainly be maintained in colleges and universities, by major corporations, and by many cities, even in the absence of federal regulations, should be encouraged. There are legal and constitutional problems here, but they should not be allowed to stand in the way of voluntary efforts to deal with our greatest domestic problem.

Mr. Glazer is the author of "Affirmative Discrimination," "Ethnic Dilemmas," and "The Limits of Social Policy."

THE WALL STREET JOURNAL.

DATE: 4.5.95
PAGE: A13

Extortion, Not Enforcement, by the Civil Rights Divisio

Rule of Law

By Clint Bolick

It's gallows humor, but the joke making the rounds about Deval Patrick goes like this: "Knock, knock." "Who's there?" "Sina." "Sina who?" "Sina 'voluntary' settlement or spend the next five years litigating against an army of 225 lawyers."

In the year since he assumed the reins as Bill Clinton's assistant attorney general for civil rights, Mr. Patrick has mastered the art of persuading private companies and local governments to accede to Justice Department demands, wielding the threat of litigation to induce pre-emptive capitulation. Unfortunately, Mr. Patrick's aims often stray beyond law enforcement into the race-based agenda that is the hallmark of President Clinton's civil rights policies.

The latest episode involves Fullerton, Calif., on whose doors Mr. Patrick knocked recently, bearing a charge of employment discrimination in one hand and an invitation to surrender in the other. If Fullerton acquiesces, it will have to submit to quota hiring for its police and fire departments and a host of other race-conscious mandates, even as it is laying off employees. If it refuses, it will have to bear massive costs to defend itself: Nearby Torrance already has spent more than $1 million in 21 months of litigation against a similar Justice Department lawsuit. Either way, the city loses.

The mayor, Julie Sa, insists the city is guilty of no wrongdoing, and is aware of no individual claims of discrimination. Rep. Edward Royce (R., Calif.) asked Attorney General Janet Reno on March 10 to explain the charges against Fullerton, but to date has received no reply.

The Justice Department wants the city to produce a 44.3% minority applicant pool, including 9.1% blacks, in a city that is only 37% minority and 1.9% black. The department's statistical analysis seems to draw from the Los Angeles metropolitan area, which is more heavily minority, than from Orange County, which has fewer minorities. Fullerton is in Orange County, about 22 miles from the city of Los Angeles.

Mr. Patrick demands that the city sign a consent decree obligating it to actively recruit in minority-targeted media and other outlets designed to increase minority hiring. Failure to achieve racial parity will trigger Justice Department scrutiny. The city must also hire on a priority basis minorities who applied (or felt discouraged from applying) for entry-level police and fire positions since 1985, and to offer back pay and benefits.

The decree is similar to others secured by Mr. Patrick with Hialeah, Fla., and Macon County, Ga. It also is reminiscent of the "voluntary" settlement with Chevy Chase Savings & Loan, which Mr. Patrick and Ms. Reno accused of "shunning a community" by failing to open branch offices in certain minority census tracts. Among other things, the agreement requires Chevy Chase to open new branch offices, to advertise in minority-targeted media, and to "invest $11 million in the African American community," including funds for mortgage subsidies and below-market interest rates. In these and other cases, Mr. Patrick seems determined to pursue high-profile cases that less resemble objective law enforcement than naked extortion.

Nor is Mr. Patrick's arsenal trained only on large targets; he wields it as well against the utterly trivial. When the club at the East Brunswick Condominium Association in New Jersey set aside some swimming pool hours exclusively for adults, Mr. Patrick's troops swept in, alleging a violation of the Fair Housing Act for discrimination against children. For this transgression, the association was obligated to pay $3,000 in compensatory damages, enroll its employees in nondiscrimination training, and report its policies to the Justice Department for the next four years.

Deval Patrick

Mr. Patrick's real passion seems to be the Voting Rights Act and the redistribution of political power along racial lines. Early in his tenure, Mr. Patrick organized within the Civil Rights Division a seven-lawyer SWAT team to defend "every single challenge" to racially gerrymandered voting districts. In a brief in the Louisiana voting rights case now before the Supreme Court, the Justice Department claims that a decision striking down such practices will create "a serious disincentive to settlements and voluntary compliance with the law." In fact, such settlements often are neither voluntary nor required by law.

Mr. Patrick's policies are of a piece with the administration's overall civil rights direction. Mr. Clinton has tapped alumni of advocacy groups for every major civil rights position. To help gear up the defense of race-based policies, Mr. Patrick recently named as counselor and chief of staff Susan Liss, who previously toiled as legislative director and point person on judicial nominations for People for the American Way.

Meanwhile, by choosing Christopher Edley, an associate budget director and former Harvard law professor, to head the administration's review of affirmative action, Mr. Clinton has pre-ordained its findings. Mr. Edley has opined that "race remains a useful proxy for a whole collection of experiences, aspirations and sensitivities." If that is the premise underlying the review, any suggestions for change in the race-based preferences that permeate the federal government surely will prove superficial at best. If so, Mr. Patrick will have plenty of answering to do when he appears next month before the House Judiciary subcommittee on the Constitution, chaired by Rep. Charles Canady (R., Fla.), who is developing legislation to curb racial preferences in the federal government.

If Mr. Clinton has any desire to run for re-election as a "new Democrat," he needs to rein in Deval Patrick and other administration officials who are using their law enforcement positions to implement racially divisive agendas. More significantly, he needs to hew in a serious way to the biracial and bipartisan consensus on civil rights that favors strong enforcement of antidiscrimination laws but abhors racial preferences.

For a president who gained positive attention for denouncing "bean counters" and "quota games," that seems not too much to ask, yet in light of his record, far too much to expect.

Mr. Bolick is vice president and litigation director at the Institute for Justice in Washington.

White Man Proves Discrimination

Federal Times

By Ed Winsten
Federal Times Staff Writer

An executive downgraded in the 1992 reorganization has won a reverse discrimination complaint against the U.S. Postal Service.

An Equal Employment Opportunity Commission administrative judge said Anthony Brescia proved his case and awarded him a Postal Career Executive Service position in customer service support for the Southwest Area. Brescia now is postmaster at Winter Haven, Fla.

The judge, Dwight Lewis, said Brescia was "discriminated against on the basis of his race" when he did not get the customer service support job. He ordered back pay and benefits dating to Jan. 15, 1993. Brescia is white.

> *'The entire selection process . . . is suspect.'*
>
> **EEOC Judge**

Lewis castigated the postal service for "blatant disregard for deadlines," and he complained about the service's paucity of information.

"The agency's malfeasance, at best, or deliberate attempt to withhold material information, at worst, shall result in the severest of sanctions in this case."

Brescia's job as field director for marketing and communications in the New Orleans Division was abolished in the 1992 reorganization, and he was downgraded to the Winter Haven postmaster job Jan. 15, 1993.

That same day, Brescia noted the postal service moved a black man, Noble Alix, from a Level 22 position in Houston to the PCES position of customer services support. Brescia should have been placed in that position, Lewis noted.

"It is undisputed that the position held by Mr. Alix in Houston was not a PCES position and Mr. Alix did not have PCES status. There is some controversy as to whether Mr. Alix was even a PCES candidate."

Brescia contended "this selection process contravened the established procedure for filling PCES positions," according to the decision.

Lewis noted Brescia had four years in a PCES position. "But the selectee, who did not have PCES status, was selected . . . with only a three-month detail in a customer service position."

"In all, with even the skeleton information provided by the agency, the entire selection process for the position at issue is suspect," and "a case of discrimination based upon [Brescia's] race is clearly established."

The judge said normal procedures were disrupted when the postal service refused to respond by deadlines, then did not give adequate information. No hearing was held in the case.

"The quality of the responses provided . . . were such that [Brescia] could not adequately prepare for the hearing," said Lewis.

At one point, a postal official suggested a piece of evidence might not even exist, the judge said. At another point, a postal official said he could not supply information because of the Privacy Act — "clearly an inappropriate response," said Lewis.

"The agency demonstrated an extraordinary lack of cooperation in providing any meaningful information. The result left the complainant unable to adequately prepare for hearing and the administrative judge with little option but to impose severe sanctions."

Anthony Brescia vs. Postmaster General Marvin Runyon, U.S. Postal Service, EEOC No. 150-94-8114X, Jan. 9, 1995, Dallas.

IN THE LAW

Accused Sex Harasser Gets Job Back at Alcohol Bureau

Fed. Times

By Christy Harris
Federal Times Staff Writer

An appeals court, citing a "striking lack of evidence," has reversed the firing of an Alcohol, Tobacco and Firearms investigator accused of repeatedly sexually harassing another agent over 2½ years.

The agency fired John Gamboa from his GM-14 supervisory criminal investigator position in March 1993, charging him with misconduct in 21 incidents of sexual harassment toward Sandra Hernandez.

Gamboa denied the charges and appealed to the Merit Systems Protection Board. An MSPB administrative law judge sustained the firing.

But an appeals court found several things wrong with the administrative judge's decision, implying the judge may have made up her mind before the hearing was finished.

One problem "goes to the heart of whether Gamboa received a fair hearing before an unbiased adjudicator," the court said.

A witness said in a sworn statement before the hearing that Hernandez had not told her about Gamboa's harassment.

But at the hearing, the same witness said Hernandez told her Gamboa had been hugging, grabbing and kissing her.

Hernandez had called the witness after she gave her sworn statement and again the night before the hearing to remind her of their conversations, the witness said.

Hernandez's calls were a "flagrant impropriety," the court said, but the administrative judge did not treat them as such.

The administrative judge's "cavalier attitude toward Hernandez's communications powerfully suggests an adjudicator whose conclusions were foregone," according to the court decision.

The "record presented to this court simply leaves us with too many questions regarding the agency's case," the court said.

The court found other problems with Hernandez's testimony, and the administrative judge's treatment of it.

Hernandez failed to complain for more than two years, the court said, and she did not tell her closest friends or doctors.

"Only later were her psychological problems ascribed to Gamboa," the court said.

The administrative judge also relied too much on hearsay testimony from Diane Klipfel, who supervised both Hernandez and Gamboa, the court said.

Hearsay is admissible in administrative proceedings, but should be "given weight appropriate to its source," the court said.

Klipfel failed to act on information from Hernandez that Gamboa was harassing her, according to the court decision.

Klipfel told the administrative judge Hernandez did not want anything done about Gamboa's behavior because she was still a probationary employee.

> *The court found several things wrong with the MSPB judge's decision, implying the judge's 'conclusions were foregone.'*

Klipfel's "responsibility was to prevent harassment — preserve discipline in her office — whatever Hernandez might have wanted," the court said.

"Employers and hence supervisors are responsible for hostile or abusive work environments."

On the other hand, the administrative judge decided some of Gamboa's witnesses were biased without good enough reason, the court said.

The administrative judge decided certain behaviors were both harassing and welcomed, the court said.

Gamboa allegedly arranged for Hernandez to meet with his friend about a modeling career. Hernandez told the administrative judge she met with the man because she was interested in modeling. So the administrative judge decided sexual harassment had not occurred in that instance.

But the administrative judge decided harassment had occurred in another instance involving invitations to pursue modeling.

"Either Hernandez wanted to model, or she did not," the court said. "Either possibility is plausible, but the possibilities are mutually exclusive."

The MSPB judge also ruled sexual harassment had occurred though the allegation did not meet legal standards, the court said.

Gamboa allegedly pressured Hernandez to date a different friend of his. The three had lunch together. Afterward, the friend called Hernandez to ask for a date, which she refused.

Going to lunch to spark a romance between Hernandez and the friend was not "severe or pervasive enough to create an objectively hostile or abusive work environment," the court said.

John M. Gamboa vs. Treasury Department, 94-3129, Federal Circuit Court Appeals, Jan. 13, 1995.

The Washington Post

DATE: 3-17-95
PAGE: A-4

Dole Takes 180-Degree Turn on Affirmative Action

By Kevin Merida
Washington Post Staff Writer

In 1965, President Lyndon B. Johnson signed Executive Order 11246 making it U.S. policy to "provide equal opportunity in federal employment for all qualified persons" and to prohibit job discrimination.

Senate Majority Leader Robert J. Dole (R-Kan.) says that order, the cornerstone of federal affirmative action policies over the past 30 years, has gone off track—"the work of federal bureaucrats"—and should be rewritten or repealed.

Those "federal bureaucrats," Dole does not say, worked for the Nixon administration, which expanded Johnson's executive order in 1970 to require federal contractors to establish "goals and timetables" for hiring women and minorities. And a decade ago, when conservatives in the Reagan administration said the "goals and timetables" provision was a euphemism for quotas and tried to get rid of it, Dole fought them.

But now the Senate Republican leader is attacking the Republican remedies to discrimination he once supported, a striking metamorphosis given his long record of supporting civil rights and often battling opponents in his party.

As he prepares to officially launch his 1996 presidential campaign, Dole has jumped strongly into the escalating debate over affirmative action. First he ordered a congressional report on all government programs, then asked two committee chairmen to hold hearings, and on Wednesday he gave a sharply worded floor speech in which he promised to introduce legislation later this year banning the federal government from "granting preferential treatment to any person simply because of his or her membership in a certain favored group."

Like his presidential rival, Sen. Phil Gramm (R-Tex.), and other conservatives in his party, Dole has begun equating affirmative action with quotas, set asides and racial preferences. It is the same position Reagan administration conservatives took in 1985 when they unsuccessfully went after Executive Order 11246 for imposing what they contended was "reverse discrimination" on white males.

That effort, led by Attorney General Edwin Meese III, caused a bitter internal struggle pitting Meese and other conservative hard-liners against Transportation Secretary William E. Brock and his moderate allies. Dole sided with the Brock faction, which argued the executive order did not mandate quotas and had been effective in combating discrimination, according to civil rights groups who monitored the dispute.

A Jan. 24, 1986, memorandum on the subject prepared by the Leadership Conference on Civil Rights lists Dole as one of 23 Republican senators who "have asked President Reagan not to change the executive order."

Ralph Neas, executive director of the conference, said he hoped Dole would not "undo one of the great Republican achievements in civil rights. Along with the Voting Rights Act, the executive order on affirmative action is the most important and effective civil rights program over the past three decades."

Asked to explain Dole's change in position, spokesman Clarkson Hine said, "Senator Dole's view is it is time we reexamined all these programs and his record gives him the credibility to do it."

Dole said on the floor Wednesday he remains committed to ridding the workplace of discrimination, but he added that if Executive Order 11246 continues to be "misused as a hammer to force contractors to adopt race-based hiring practices, then it too should be repealed."

The political implications of Dole's tough talk on affirmative action are apparent. On his right flank is Gramm, who took a veiled shot yesterday at Dole. "My position on quotas has been totally consistent," he said in an interview. "In this race, as in other races, you reach a point where people look beyond rhetoric and look at record. . . . I was opposed to quotas from Day 1, and if I have anything to say about it, their days are numbered in America."

But other Senate Republicans have sounded caution warnings. Sen. William S. Cohen (R-Maine), in his floor speech Wednesday, argued that "any short-term political success" for Republicans would "prove to be a long-term policy disaster."

"I think we have to look back and look deep into our hearts and history and remind ourselves that we have a great deal to account for and to correct based on discriminatory policies of the past, policies that continue to this very day." Dole has asked Sen. Nancy Landon Kassebaum (R-Ka[illegible] chair of the Labor and Human [illegible] sources Committee, to hold hearing[illegible] on the executive order on affirmative action, but an aide describes her as "hesitant."

Kassebaum was among a group of Republican senators who signed a letter to Reagan on Oct. 21, 1985, urging him not to "weaken" the order.

"I think we have to be careful not to throw the baby out with the bath water," Kassebaum said in an interview. That is why before embarking on the affirmative action hearings, Kassebaum said, she first wants to hold hearings on the Equal Employment Opportunity Commission and its backlog of 100,000 discrimination complaints. "I want to do it the right way," she said.

The Washington Times

DATE: 3-17-95
PAGE: A-10

Executive orders, regulations backbone of affirmative action

Lack of legal mandates makes practice easy to overturn

By Ruth Larson
THE WASHINGTON TIMES

Affirmative action, fast becoming the pivotal issue of the day, has largely been carried out by executive orders and federal regulations, enforced by federal agencies with little congressional — or public — scrutiny.

But critics say the current system of minority preferences is far different from the one intended by the authors of the Civil Rights Act of 1964, which guaranteed women and minorities equal access to education, federal contracts, housing and employment.

"Agencies may think they're implementing the law," said Michael Rossman, associate general counsel at the Center for Individual Rights. "But judges and courts have taken a law that says 'don't discriminate' and interpreted it as 'do discriminate.' "

Clint Bolick, legislative director at the Institute for Justice, agrees.

"I can say categorically that there is not a single civil rights law that requires the government to engage in preferences."

Nevertheless, since passage of the civil rights law, judges and federal bureaucrats have created a system that mandates preferences for minorities and women.

For example, agencies are officially "encouraged" to use minority-owned firms and banks for federal contracts and federally backed loans. They also are required to set annual goals for the use of such minority firms.

Minorities and women are given preference in several federal grant programs, including housing and education. Federal agencies also must periodically develop affirmative-action plans for their employees, along with a "minority recruitment program" to eliminate "underrepresentation" in specific federal job categories.

Proponents of affirmative action, such as Civil Rights Commissioner Arthur A. Fletcher, say preferences and goals — not quotas — are necessary to address the effects of past discrimination.

"The country has only now arrived at the most difficult area of the struggle for full equality, which is economic equity," Mr. Fletcher told a recent gathering of the group Blacks in Government. "We must concede that the present effect of past discrimination against women and minorities is alive and well and as debilitating as ever."

Mr. Fletcher, who was President Nixon's assistant secretary of labor for employment standards, was instrumental in crafting the influential Philadelphia Plan, which established mandatory minority hiring goals for construction unions working on federally

AFFIRMATIVE ACTIONS

At least 159 federal regulations require that preference or consideration be given to "race, gender or ethnicity as factors in federal employment or the allocation of federal contracts or grants to individuals or institutions."

Federal hiring: Agencies must prepare affirmative-action plans and submit them to the Equal Employment Opportunity Commission for approval.

- Agencies must implement "minority recruitment" programs to eliminate minority "underrepresentation" in specific federal job categories, and must document measurable progress toward that goal.
- Members of the Senior Executive Service are graded on their support of affirmative-action goals.

Federal contracts: All employers who receive federal contracts worth more than $50,000 must file written affirmative-action plans.

- Contractors are given incentives for meeting or exceeding goals set for hiring minorities or using minority- or female-owned businesses as subcontractors.
- Since 1987, the Department of Defense has had a goal of awarding minorities 5 percent of all contracts for procurement, research and development, military construction, and operations and maintenance. Last year, the 5 percent goal was extended to NASA and Coast Guard contracts.
- The Energy Department has a goal of awarding minorities 5 percent of all contracts in its national security program, along with at least 10 percent of its subcontracts.

Banking: A variety of loan programs "encourage" agencies to use minority- or female-owned businesses.

- Agriculture: Eligibility for technical assistance grants considers the number of low-income minority families the applicant will assist in obtaining affordable housing.
- Resolution Trust Corp.: Provides "incentives" and "bonus considerations" to RTC prime contractors who agree to give at least 25 percent of the work to minority- or female-owned subcontractors.
- Local Public Works Capital Development and Investment Program: At least 10 percent of every project grant must go for contracts with minority business enterprises.
- Housing and Urban Development: For direct loans to housing projects, "more favorable consideration will be given to projects with the higher percentage of minority or women representation in the ownership of the project."

Education: The secretary of Education is required to give priority to awarding grants for postgraduate study to "individuals from minority groups and women."

- In awarding facility improvement grants, the education secretary "shall give priority to institutions of higher education that serve large numbers or percentages of minority or disadvantaged students."
- When a particular minority group is over- or underrepresented on the staff of a vocational education program, the department's Office of Civil Rights "will presume that the disproportion results from unlawful discrimination."

Source: Congressional Research Service report

The Washington Times

Cont'd

The report finds:

▶ White men make up 43% of the workforce but hold 95% of senior management positions.

▶ Women and minorities who do make it to the top earn less than their white counterparts. Black men with professional degrees earn 79% of what white men make with the same degree and in the same job category.

"This should be eye-opening for anyone who believes we have succeeded in eradicating discrimination," says Reich. "Women and minorities still have a long way to go."

He says the panel also has detected a "glass elevator" that confines minorities and women to traditional career paths. "They tend to be on certain tracks like public relations or human resources, not production, marketing or finance."

The commission offers no remedies. It has until November to make recommendations.

The New York Times

DATE: 3-17-95
PAGE: A14

White Males and the Manager Class

Report Finds Prejudices Block Progress of Women and Minorities

By PETER T. KILBORN

WASHINGTON, March 16 — In exploring the demography of American upper management, a Government commission Wednesday put its official stamp on what many people have suspected all along: important barriers to the progress of women and minorities are the entrenched stereotypes and prejudices of white men.

News Analysis

Women, the report of the Federal Glass Ceiling Commission said, are perceived by white males as "not being tough enough" and "unable or unwilling to relocate." Black men? "Undisciplined, always late." Hispanic men are deemed "heavy drinkers and drug users who don't want to work" — except for Cubans, who are "brave exiles from Communism." Asians? "More equipped for technical than people-oriented work." And, the report said, white males believe that none of these folks play golf.

Never mind that women's attendance records are better than men's, discounting maternity leaves; that Hispanic Americans work longer than the non-Hispanic white men putting them down, or that American management is impressed enough by Asian management that it often apes it.

These are the attitudes that block the doors to the executive suites of corporate America, the commission said in trying to explain why, three decades after after the civil rights movement, about 95 percent of industry's senior executives are starkly and stubbornly white and male.

Some white men are frightened and angry that people unlike them are vying for their jobs. But for many other men, higher level executives, simple inertia sustains the stereotypes and keeps top management white and male.

Heidi I. Hartmann, director of the Institute for Women's Policy Studies here who provided some research help for the commission but was not a member of it, said the study shows how white men have insulated themselves within a culture that is impervious to everyone else.

"The report," she said, "makes a great case for affirmative action," a term that only appears deep into the report. But in so many words, she added, "it shows the importance of goals and timetables in terms of what happens in the workplace."

The commission depicted a division between the chief executives of industry, the men who have surpassed all their competitors to reach the mountaintop, and the younger men still scrambling up the slopes.

Freed from watching their backs, chief executives can look out for the fortunes of their companies. They face a horizon of polyglot and multiracial world and domestic markets and told the commission they need lieutenants who have a feel for reaching the markets. They want variety in the ranks so that they can compete better for business.

Why most senior executives are still white and male.

"Given the national demography and the fact that much of our domestic business is with city and state governments, walking in with an all-white male team is a tie-breaker negative," said one chief executive who was quoted anonymously in the report. "If I go to Washington, I need black representatives to interact with the people who can give me contracts."

But the report shows that the men who populate the ranks can thwart the boss. These men write the performance reviews of junior managers, become their mentors and organize the training and the assignments that can make them shine.

Whether unconsciously or by design, out of fear or indifference, they lean toward the people who share their golf, fishing and baseball metaphors, their schools and clubs. They steer female and minority workers to the sidelines, making them managers of public and community relations, human resources and, evidently without an eye to the irony, equal employment opportunity.

Of course, say the managers in the ranks, the woman or black who can think like the managers do can do just as well as they have. "What's important is comfort, chemistry, relationships and collaborations" a white manager, who is unnamed like all who testified in the commission's hearings or was interviewed. "That's what makes a shop work. When we find minorities and women who think like we do, we snatch them up."

The culture can be so pervasive that women and minorities are reminded of it all the time. At a company where she once worked, one woman said: "I'd win a lot of awards when I'd win contests, and they'd give me money clips and tie tacks. And I'd say, 'What am I supposed to do with these things?' "

Competition within the ranks among men vying for bigger jobs can stir resentment and anger among the losers, and it always has.

"Men tend to blame anyone but themselves," Ms. Hartmann said. In the past, she added, they would say, ' "His wife plays golf with the boss's wife.' Or, 'He's got a better personality.' "

The competition may be no stiffer than it ever was. But its complexion has changed, so white men can now aim at the easier target of affirmative action and blame the Government. "They're more likely to use minorities and women when the competition is not like themselves," Ms. Hartmann said.

But on occasion, they can also be right. In the companies' zeal to promote women and minorities, she said, "a less competent black guy can be promoted over a white. That does happen."

Some chief executives also told the commission that they could not find enough "qualified" minorities, especially blacks, to recruit. Yet, the commission said that the number of black college students soared from 141,000 in 1960 to a peak of 785,000 in 1988, and that business management was their most popular major. "It is evident," the commission said, "that there is a pool of African-American college graduates, and it has increased in the last decade."

The New York Times

DATE: 3-17-95
PAGE: A20

Shattering the Ceiling

Three years ago Elizabeth H. Dole, then Secretary of Labor, initiated an investigation into the so-called "glass ceiling." The glass ceiling, women and members of minority groups charged, was what they crashed their heads against on their climb up the corporate ladder. You can go this far, the men on the top rungs seemed to say, and no farther.

The bipartisan Glass Ceiling Commission has now reported that, yes indeed, there is such an invisible barrier. Despite 30 years of affirmative action, 95 percent of senior management positions are still held by white men, who constitute only 43 percent of the work force.

Affirmative action has borne more fruit at lower levels. White women hold close to 40 percent of the jobs in middle management, but black women hold only 5 percent and black men even less. Something is blocking their further advance up the ladder, and it is not just a lack of qualified candidates moving through the pipeline. Thirty years has seen a big jump in the number of women and minority members who have the education and skills to move up. But it appears not to have been long enough to erase the fears and stereotyped preconceptions employers bring to female and minority candidates. No employer would assume that a white male is too lazy, ill trained or family-bound to be successful. Yet those assumptions are constantly brought to bear on Hispanic, black and female applicants, the report suggests. Furthermore, women and minority members do not receive the mentoring and other support that white men automatically receive from other white men.

The report should be required reading for Senator Robert Dole, who sponsored the legislation establishing the commission but is now trying to end the very programs that may one day demolish that glass ceiling. He might also reread the autobiography he wrote with his wife several years ago. On her first day at Harvard Law School, Elizabeth Dole recalled, a male classmate asked her what right she had to take the place of a man who could be counted on to make good use of a high-powered legal education. Although Mrs. Dole later crashed through the glass ceiling, right then and there she had a very clear view of its reality.

The Washington Times

DATE: 3-17-95
PAGE: A20

WALTER WILLIAMS

Ruinous effect of the quota mind-set

If enough ballot initiative signatures are obtained, Californians will vote on a proposition that reads: "Neither the State of California nor any of its political subdivisions or agents shall use race, sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the state's system of public employment, public education or public contracting."

The fact Californians find this law necessary, and the way they're choosing sides in the political struggle for passage, shows how wrong we've gone in matters of race. You don't have to be a racist to condemn racial quotas and see them as a betrayal of the noble goals of the early civil rights movement. But if you're against quotas, who might be your allies? Some will be America's racists. Quotas give racists strong cover to infiltrate, exploit and win the sympathies of non-racist whites.

Much of the quota debate focuses on fairness to white students. But just as important is what quotas have done to black students.

People who support quotas argue they are needed to fight discrimination. But discrimination is not the main problem. Take college admissions. Any black high school graduate with a SAT score of 900 points would be admitted to most of the nation's 3,000 colleges. However, as of 1992, black SAT scores averaged 737, nearly 200 points below the white average of 933. At elite colleges, where a typical SAT score may be 1,300 points or higher, black students may trail by more than 300 points. It is also not uncommon for black students to be admitted to law schools with scores well below the average of 42 points out of 48, such as at Georgetown Law School where whites scored 42 on the LSAT and blacks 32.

The quota mind-set produces a prescription for disaster. It guarantees that academically superior white students will run circles around black students. The academic difficulties of black students can't be hidden from white students and professors. It creates negative impressions of black academic ability and fosters condescending attitudes toward them. Worse of all, it creates unnecessary anxiety and self-doubt among black students. In addition, quotas that cause black students to be academically mismatched create dropouts and failures out of people who might otherwise be successful.

It's not hard to see how racist attitudes can develop among white students who, possibly meeting blacks for the first time, come to see blacks as incompetents given special privileges at their expense. This wouldn't happen if black students were admitted to college solely on academic merit; they would share the same academic characteristics as the general student body. However, given today's SAT differential, there'd be far fewer black students attending the nation's elite colleges like Harvard, the Massachusetts Institute of Technology and Stanford. But a greater percentage of those actually admitted would graduate.

Much of the quota debate focuses on fairness to white students. That's important. But just as important, perhaps more so, is what quotas have done to black students. The quota vision sees racial discrimination by colleges as the problem. That's a false vision. The real tragedy and academic handicap is the day-to-day destruction of the career chances of black students by the public school system. The quota vision, emphasizing what colleges may or may not be doing allows that tragedy to go unchallenged.

Without a doubt, blacks would be the major beneficiaries of changing the focus from admissions quotas to the realities of public schools. Black parents should ask, "If my kid graduated from high school, why is it he can't get into college on his merits?"

Walter Williams, an economics professor at George Mason University, is a nationally syndicated columnist.

Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010
Washington, D.C. 20006
202/466-3311

Contact: Ralph G. Neas (202-466-3311)

2/24/95

Affirmative Action For Women and Minorities - It Works Well, It Is Necessary, and It Benefits America (or facts that you may not have read, heard, or seen in recent news accounts)

1. Definition of Affirmative Action

- A term which broadly encompasses any measure, beyond simple termination of a discriminatory practice, adopted to correct or compensate for past or present discrimination or to prevent discrimination from recurring in the future (Report of the Citizens' Commission on Civil Rights, June 1984).

- Affirmative Action doesn't mean "quotas": rigid requirement that employers hire fixed percentages of members of specific groups, regardless of qualifications.

- "Goals and timetables" shouldn't be confused with "quotas". Goals and timetables are targets set by employers for the employment of minorities and women, along with time frames for achieving the targets. Employers are encouraged to make good faith efforts, but there are no legal penalties if they make good faith efforts that are unable to meet the goals. See Executive Order on Affirmative Action (11246). It provides for goals and timetables but prohibits quotas.

2. Affirmative Action Is A Civil Rights Remedy With Strong Bipartisan Support

- Current standards for affirmative action were recommended in the late 1960's to the Nixon Administration by a group of several hundred large corporations (partly in response to the civil disturbances of the time). These recommendations, accepted by President Nixon and implemented by Secretary of Labor George Schultz, included the "management-by-objectives" concepts of employment goals and timetables.

- Eight successive presidents have supported affirmative action.

- The Business Roundtable and the National Association of Manufacturers have repeatedly endorsed affirmative action, stating that affirmative action, among other things, is good business.

- During the Reagan Administration, the majority of the Cabinet, led by Secretary Bill Brock, successfully fought efforts by Ed Meese and Clarence Thomas to undermine the Executive Order on Affirmative Action. They were joined by strong bipartisan majorities in Congress.

- By two to one votes, bipartisan majorities in the Senate have defeated Senator Helms' last two attempts to ban affirmative action (language similar to the California Initiative). See Congressional Record, June 1991 and September 1991.

- Polls consistently show that Americans, by a 3-2 margin, support federal affirmative action programs as long as they do not involve quotas. See Gallup Poll (3/92), NBC/Wall Street Journal (3/91), Harris (1985), and the 3/94 poll commissioned by the National Conference of Christians and Jews. In addition, a recent L.A. Times poll (1/95) showed that when people were asked whether "affirmative action programs designed to help minorities get better jobs and education go too far these days, or don't go far enough, or are just about adequate," 55 percent said the programs are adequate or do not go far enough, while only 39 percent said the programs go too far.

3. **Affirmative Action Has Worked Well**

- Dozens of private and public studies have concluded that affirmative action has been successful. Literally millions of men and women have been given equal opportunity in employment, education, housing, and voting because of affirmative action (If you would like a copy of a bibliography, please call us at 202-466-3311).

- Affirmative action is good for families, especially given the economic conditions of recent times, when several members of the family must work to make ends meet. Wives, daughters, and mothers have been given an opportunity to compete in the workplace.

- Studies have shown that affirmative action has been good for business. The evidence gathered by surveys and consultations indicates that most employers believe that their productivity has not suffered because of affirmative action and that in some cases it has improved and that affirmative action often widens the labor pool and may introduce more competition for jobs. In addition, many business leaders believe affirmative action is necessary to allow them to compete domestically and internationally. It provides a work force that reflects the diversity of the markets they serve. See, among other studies, Fortune magazine, March 1992.

4. **Discrimination Is Still A Serious Problem**

All Americans want a color or gender blind society. That is our goal. But serious discrimination persists today. Study after study concludes that in employment, education, housing, and voting, minorities and women do not have equal opportunity. Too often, individual or institutional discrimination, intentional or not, precludes minorities and women from participating in many levels of our society.

As long as there is discrimination based on race and gender, we must fashion remedies that take race and gender into account. Race and gender conscious remedies have proved essential and remain essential.

5. **Recent Assaults On Affirmative Action Are Not New**

- For nearly two decades, especially during the Reagan-Bush era, right wing conservatives like Ed Meese, Jesse Helms, Brad Reynolds, and Clarence Thomas, have attempted to eliminate affirmative action. Time and again, the civil rights community, working with key elements of the business community and a bipartisan congressional coalition, have defeated these efforts. Also, the United States Supreme Court has repeatedly upheld the constitutionality of race and gender-based remedies. The Court has held that if discrimination is based on race or gender, race or gender may sometimes be taken into account when fashioning a remedy.

6. **Factors That Help Explain the Current Climate**

- For years, many opponents of affirmative action have been misrepresenting the law and the facts regarding affirmative action. Too many politicians have been playing racial politics with the quota issue. Such tactics have led many Americans to believe that affirmative action and quotas are the same thing.

- In times of economic insecurity, when people are losing, or fear losing, jobs and promotions, they feel a need to blame, to scapegoat, others. In such an environment, quota politics find a receptive audience.

- A number of opponents of affirmative action now occupy key positions of leadership in Congress.

7. **The Courts and Affirmative Action - Addressing the Issues of Fairness and Merit**

- The courts have struggled conscientiously to balance competing interests in order to meet a test of practical fairness to all parties. The Supreme Court has ruled that minority workers may be denied positions they would have held "but for" the discriminatory practices of an employer if awarding the positions would require the displacement of an incumbent white worker. The test, as articulated in Weber, is whether race conscious remedies "unnecessarily trammel the interests of the white employees", and in employing it courts have drawn lines between actions that disappoint the expectations of whites and those that uproot them from a status that already has vested. Various means have been utilized to provide redress to workers, black or white, whose legitimate expectations have been defeated through no fault of their own. Political bodies have a wider array of options than the courts to assure that no one bears a disproportionate burden in adjusting civil rights and seniority claims during economic hard times. If predictions of impending labor shortages in the 1990s and beyond are accurate, the dilemma should arise with less frequency.

- As to concerns about the subversion of merit standards by affirmative action policies, it has been clear from the outset that federal affirmative action policy recognizes and incorporates the principle of merit. The courts have said

repeatedly that the purpose is to create "an environment where merit can prevail" and that "if a party is not qualified for a position in the first instance, affirmative action considerations do not come into play."

- Critics argue that the merit requirement is widely flouted. But they have produced no evidence of widespread abuse, relying instead on anecdotal examples. Most often, they argue not for the correction of the abuse but for jettisoning the policy.

8. **Civil Rights Leaders and Other Leaders Must Do A Better Job of Educating the American Public - Making The Distinction Between Permissible and Impermissible Affirmative Action**

- Affirmative Action, to be permissible, must involve only **qualified** workers.

- Affirmative Action is a remedy for past **and present** discrimination.

- Civil rights laws cover **all** Americans. While there is no doubt that civil rights laws were enacted primarily to protect those who have historically been the victims of discrimination, civil rights laws apply to all Americans. If a white male has been a victim of unlawful discrimination, he may seek the protection of civil rights laws.

- Reverse discrimination is rare. See the 1992 Urban Institute Study.

- Sometimes employers use unlawful quotas, usually out of ignorance or an unwillingness to take the time to prepare an appropriate and permissible affirmative action plan. If employers hire women or minorities strictly by the numbers, regardless of qualifications, they are violating the law. The solution for such situations is for the law to be enforced, not repealed.

- Remedies to address socially or economically disadvantaged persons are no substitute for remedies addressing race and gender discrimination in the workplace.

Civil rights advocates also support other efforts to expand educational and employment opportunities, from full funding of Head Start to help every child start school ready and eager to learn, to college assistance and job apprenticeships to help prepare every young person for productive careers. Public services such as health care, child care, and housing assistance also help people attain their full potential.

While some well-meaning people suggest that civil rights enforcement and affirmative action are less important than education, employment, housing, and health care programs, these statements suggest a false choice that America should not make. More than ever before, our society needs to tear down discriminatory barriers to achievement and provide all our people with the education, health care, and job training they need to make their fullest contributions to our society.

The Washington Times

DATE: 9.15.94
PAGE: A4

Hill caucus leader gives Clinton a C on black issues

By Ronald A. Taylor
THE WASHINGTON TIMES

Congressional Black Caucus Chairman Kweisi Mfume yesterday gave the Clinton administration a grade of "high C" on issues important to black Americans.

"There is a great deal of goodwill and effort," the Maryland Democrat said while noting administration failures in health care reform and ending loan discrimination by banks.

Mr. Mfume's remarks, which featured a spirited defense of the caucus, came at the end of a speech on the opening day of the caucus' annual five-day legislative conference at the Washington Convention Center.

Through redistricting, the caucus has grown from 24 to 40 members in the past four years, accounting for 9 percent of the 435-member House. The mostly Democratic group includes a female senator and a House Republican.

The caucus has taken advantage of its new size by voting as bloc on various topics such as health care reform, NAFTA and the newly enacted anti-crime bill.

It also has formed legislative coalitions with other caucuses, such as those for women, Hispanics or members from the Sunbelt.

Nonetheless, the gathering is focusing on how caucus members can preserve those gains in the face of an expected surge in the number of Republicans in the House in November.

Defending the need for a caucus of black lawmakers, Mr. Mfume dismissed criticism that his group is the driving force behind an impending U.S. invasion of Haiti.

Rep. Donald M. Payne, New Jersey Democrat, said the caucus supports a restoration of democracy in Haiti and favors military intervention if it is the only feasible option.

"We would hope that the military leaders would take their last opportunity to leave," Mr. Payne said.

The main worry among caucus members, however, is that an invasion may contribute to the slaughter of Haitian civilians and create a situation that the United States could not leave easily.

At least a dozen caucus members are opposed to intervention, and a small number are undecided. The caucus is not expected to take a formal vote on Haiti but anticipates backing Mr. Clinton's decision.

"The caucus is not of one mind. There are some strong feelings," said Rep. John Lewis, Georgia Democrat. "You don't want to get involved in a guerrilla effort in Port-au-Prince."

The split over Haiti comes after a similar splintering over Mr. Clinton's crime bill.

Mr. Mfume yesterday criticized the crime-fighting package as a small, insufficient step toward easing violence in urban areas and said the caucus would continue to fight for preventive measures for their districts.

The caucus had fought for a crime-bill provision to allow racial statistics to be used in death-row defenses. The measure was dropped from the bill, but Mr. Clinton promised key caucus member he would order federal prosecutors to consider race in death-penalty cases.

He blamed some of the urban violence on the images presented in movies and television shows to young blacks. "An aggressive popular culture has spawned an aggressive subculture," the former college professor said.

Rep. Kweisi Mfume is chairman of the Congressional Black Caucus.

The Black Caucus leader said stricter attention must be paid to the moral tenets that once ruled in the black community. "When Moses came down from Mount Sinai, he was carrying Ten Commandments, not 10 suggestions," he said.

Mr. Mfume said there are some people who believe the caucus is "this wide-eyed, crazy, pinko, communist, liberal, twisted group that can't think for itself, that's out of step with everybody and everything, and has nothing better to do except to stand up and put forth and advance positions."

Despite that, he said, he expects it to continue operating as a bloc.

"We all would like to believe that we could live to see the day there would not be a need for a Congressional Black Caucus, because we would have in our society . . . a new appreciation for the value of diversity," he said. "That day has not yet arrived."

• *This article is based in part on wire service reports.*

The New York Times

DATE: 9-15-9
PAGE: A-16

A Congressman's Personal Story Opens Session on Black Families

By KATHARINE Q. SEELYE
Special to The New York Times

WASHINGTON, Sept. 14 — Representative Kweisi Mfume, chairman of the Congressional Black Caucus, described his personal salvation today and urged a group of black leaders to help young blacks facing similar difficulties to take control of their lives and prepare for their futures.

"Unlike many in this room, I came out of a disjointed family structure," Mr. Mfume, a 45-year-old Baltimore Democrat, said in opening a conference here that will focus on problems faced by black families. "I grew up in the worst possible conditions. I became homeless after my mother's death, hit the streets and dropped out of school, flirted with every temptation that was around, became a teen parent before my time, felt left out and victimized."

Mr. Mfume said he turned his life around after a sort of religious epiphany. However, he said, most youths today would not find such solace "unless we find ways to intervene with great dispatch."

The four-day conference on the theme of "Embracing Our Youth for a New Tomorrow" will include workshops to help blacks understand and influence politics. Three sessions on Thursday and Friday will focus on health and health care.

Mr. Mfume said the group had an obligation to make sure that young blacks understood the importance of the family. "It means taking responsibility and recognizing that the government can't and won't solve every one of our problems," he said.

The conference will also honor such prominent blacks as Leon A. Higginbotham Jr., former Chief Judge of the United States Court of Appeals; Maya Angelou, the poet, and Johnnetta Cole, president of Spelman College in Atlanta.

Mr. Mfume, whose two-year chairmanship of the 40-member caucus expires this year, said his tenure had been productive, if misunderstood. He defended the caucus's alliance with Republicans on such matters as redistricting and the crime bill by saying that the caucus has no permanent friends or permanent enemies, just "permanent interests."

Mr. Mfume called the crime bill, which six caucus members voted against because it expanded the death penalty, "only a very small step" toward dealing with crime. "No amount of warehousing of prisoners will solve the problem," said Mr. Mfume, who voted for the bill.

He gave the Clinton Administration a mediocre grade for its accomplishments on issues of importance to the caucus. He said that it had been better than the two previous Administrations but that "the jury is still out."

The Washington Times ★ TUESDAY, MAY 23, 1995

UMd. loses appeal to keep blacks-only scholarships

By Frank J. Murray
and Maria Koklanaris
THE WASHINGTON TIMES

The Supreme Court yesterday rejected the University of Maryland's appeal to keep a scholarship program available only to black students.

The court denied a hearing, upholding the 4th Circuit Court of Appeals decision without explanation or comment, in the latest setback for advocates of affirmative action in schools and the workplace.

At a news conference on the College Park campus, university President William E. Kirwan said he was "deeply saddened" that the court refused to review the ruling.

About 138 current Benjamin Banneker scholars may graduate, but new recruiting will involve a companion program that takes "diversity" into account instead of race.

Because the court did not issue an opinion, the appeals court ruling is binding in Maryland, West Virginia, Virginia, North Carolina and South Carolina, the states in the the 4th judicial circuit.

The fate of race-specific scholarships elsewhere remains in a legal limbo.

More than a dozen civil rights groups and interest groups representing about 10,000 institutions of higher learning had urged the high court to resolve confusion over race-based scholarships by hearing this case.

The victory pleased the Washington Legal Foundation, which represented University of Maryland honor student Daniel J. Podberesky of Riva, Md., in appeals after his father, a lawyer, brought the case in federal district court.

"The fact that there were dozens of civil rights groups asking the Supreme Court to hear this case indicates the importance of today's decision. We think this will put an end to segregated scholarships in our nation's universities," said Paul Kamenar, the foundation's executive legal director.

Supreme Court rejection was a blow against campus "diversity for diversity's sake," said Michael L. Williams, who as assistant secretary of education in the Bush administration took a public battering for declaring that race-based scholarships were not legally permissible.

In a telephone interview from Fort Worth, Texas, where he is in private practice, Mr. Williams said he feels a "great deal of vindication."

Mr. Podberesky, now a first-year medical student at the university's Baltimore campus, expects a $35,000 check, the value of the scholarship he was not allowed to apply for, Mr. Kamenar said.

"From the beginning, this case has been clear-cut — publicly funded academic scholarships awarded on a race-exclusive basis are unconstitutional," Mr. Podberesky said.

The Banneker scholarships funded 30 to 40 black students with high grades each year, while about 30 Francis Scott Key scholarships were funded from the same money pool without the restriction.

The university has awarded 482 Banneker scholarships totaling $4.1 million. For the 1994-95 school year, it received 278 applications and gave out 36 scholarships.

Before Mr. Kirwan announced the "diversity" standard would replace the racial restriction, Mr. Kamenar predicted the state would claim that scholarships for blacks contribute to diversity in the student body, an argument raised unsuccessfully in the appeal rejected yesterday.

According to the Washington Legal Foundation, the university's black enrollment now is the second largest among major state universities nationwide.

Mr. Kirwan said the Banneker scholarships helped attract and retain black students, but blacks are still "underrepresented" in a state where they make up 25 percent of the population.

Last year, a record 9.4 percent of College Park's 5,097 undergraduate degree recipients were black.

Advocates of race-based scholarships, led by the American Council on Education, an umbrella organization for higher education, argued that the goal of diversity was a legitimate reason for race-based scholarships.

Banneker scholar Monifa Brooks of Baltimore, a junior premed student who has a 3.25 grade point average and is active in student government, said the program was a strong factor in her decision to attend College Park instead of the University of Virginia or Virginia Tech.

Miss Brooks said the university will lose not only good students, but also "wonderful recruiters" for the Bannekers. "When [black applicants] are visiting campus, Bannekers are usually the students they see," she said.

But Miss Brooks remained loyal to the university. "I think that it's a wonderful place, and I am telling everyone that."

Among other groups backing Mr. Kirwan were the Lawyers Committee for Civil Rights Under Law, the American Civil Liberties Union, the NAACP, the Mexican American Legal Defense Fund, the Puerto Rican Legal Defense Fund, the United Negro College Fund and the National Women's Law Center.

• *Carol Innerst contributed to this report.*

THE SUPREME COURT YESTERDAY:

- Ruled 5-4 that only a constitutional amendment can set term limits on members of Congress. In a case from Arkansas, the court said states may not limit the terms anyone serves in Congress.
- Refused to let the University of Maryland reinstate a scholarship program limited to black students, ruled unconstitutional by a lower court.
- Decided unanimously that police with court warrants are constitutionally required, in many cases, to knock and announce their presence before entering a home to conduct a search.

The Washington Times

re Washington Times
May 23, 1995

Race-based scholarships face review in Maryland

By Shawn Donnan
ASSOCIATED PRESS

BALTIMORE — The Maryland Attorney General's Office will review all race-based scholarships in the state pursuant to the Supreme Court's refusal yesterday to let the University of Maryland reinstate a blacks-only scholarship.

"At a minimum it requires us to look at any scholarship that's out there," said Evelyn Cannon, chief of litigation in the Attorney General's Office. "Potentially it knocks all of them out of the ballpark."

The Supreme Court, without comment, refused yesterday to hear an appeal of an appellate court's decision that effectively ended the Benjamin Banneker scholarship program at the University of Maryland. The scholarship was created in the late 1970s to help boost black enrollment at the university's College Park campus.

Daniel J. Podberesky, a Hispanic student, sued the university in 1990 after he was denied a Banneker scholarship.

Ms. Cannon said yesterday's ruling would prompt a review of all other race-based scholarships in the state but will not affect athletic or academic scholarships that are not race-specific.

About 2,500 students in the University of Maryland system receive an estimated $6.3 million through publicly funded race-specific scholarships each year, said John Lippincott, spokesman for the system.

Officials will review each of the more than 30 publicly funded race-specific scholarships targeting a variety of ethnic groups, said Mr. Lippincott.

THE WASHINGTON POST
TUESDAY, MAY 23, 1995

Black Scholarship Ban Is Left Intact

High Court Lets Stand U-Md. Ruling

By Charles Babington
Washington Post Staff Writer

The Supreme Court yesterday let stand a ruling that dismantled a University of Maryland scholarship program exclusively for black students, jeopardizing an incentive that many colleges have used to increase their minority enrollment.

More than half of the nation's colleges have similar affirmative action programs, which now may be in legal peril, according to officials familiar with the ruling. This is true especially in Virginia, Maryland, the two Carolinas and West Virginia, which are covered by the 4th Circuit Court of Appeals ruling the Supreme Court declined to review.

The University of Maryland program provided 40 annual blacks-only scholarships and was designed to redress years of discrimination, officials said, and to encourage a greater minority presence on a campus that is 12 percent black, despite a statewide population that is 24 percent black.

Calling yesterday's decision "tragic," university officials said they now will treat ethnic diversity as one criterion for financial aid but no longer will limit some scholarships to blacks only.

"We're deeply disappointed that the court decided not to review" the lower-court decision, "because we believe that decision is tragically wrong as a matter of law and a matter of policy," said Theodore M. Shaw, associate director of the NAACP Legal Defense and Education Fund. In the five states covered by the ruling, Shaw said, "these scholarships have been thrown into serious doubt."

Some education advocates said other universities may be able to retain their race-specific scholarships because they are not identical to the program at the University of Maryland at College Park, known as the Benjamin Banneker scholarships.

For example, they said, universities may be able to satisfy court of appeals objections with race-specific scholarships that apply only to in-state students and focus on the goal of racial diversity, rather than redressing past discrimination. On the other hand, the Supreme Court's decision to let stand the court of appeals ruling may be taken as a signal by other lower courts to apply tougher scrutiny to affirmative action programs.

Conservative groups said yesterday's decision strikes at the heart of efforts to defend scholarships that are set aside for members of one race.

"I don't think any colleges within the five states could continue to operate their programs in good faith," said Richard A. Samp, chief counsel of the conservative Washington Legal Foundation, which represented a Latino student who challenged the Maryland program in court.

Without comment, the Supreme Court declined to review an October decision by the Richmond-based Court of Appeals. That decision declared the Banneker scholarship program unconstitutional because it was limited to African Americans.

The court ruled that the university's history of discrimination and its resulting poor reputation among blacks could not legally justify a blacks-only scholarship program. The Banneker scholarships, the court ruled, were "not narrowly tailored."

Cont'd 1 of 2

Cont'd 2 of 2
The Washington Post

Scholarship Ruling Raises Questions for Other States

The ruling is not binding outside the five states that make up the 4th Circuit. But Samp said federal courts in other parts of the nation might mimic the court's ruling if race-specific scholarships are challenged.

At the University of Virginia, officials yesterday said they were unsure of the future of two scholarship programs for blacks only. One provides aid yearly to about 10 blacks who are not Virginia residents and the other to about 50 black students from Virginia.

"The university is working to try to understand how our programs here may or may not fall under the terms of the 4th Circuit decision," said spokeswoman Louise Dudley. "We are definitely committed to programs that are effective in creating a more diverse student body."

Lawyers for the Clinton administration had urged the Supreme Court to overturn the appeals court decision. The ruling, they argued, creates a "virtually insurmountable burden of proof" for colleges that want to reserve some scholarships for black students.

Yesterday's action was the latest round in a long-running dispute over affirmative action in higher education. The seminal Supreme Court decision, in *Regents of the University of California v. Bakke* in 1978, found that race could be taken into account in college admissions.

At the University of Maryland, black students were banned by law until 1954 and were actively discouraged from attending for many years thereafter, according to university officials. Under federal orders to attract more blacks, the university in 1979 created the Banneker scholarships, given to about 40 students a year without regard to financial need.

The scholarships originally were open to all minority students but were limited to African Americans beginning in 1988. University officials defended the program on two grounds: It helped make amends for past discrimination against blacks, and it helped attract more black students to the College Park campus.

University of Maryland President William E. Kirwan said yesterday he was "deeply disappointed" by the Supreme Court's refusal to review that decision.

"The history of our segregated past continues to live in the minds of a significant segment of our population," Kirwan said. "These memories have made it very difficult to recruit African American students to an institution like ours without the use of incentive programs."

Critics, however, note that many Banneker recipients said they would have attended Georgetown, Princeton, Cornell or other prestigious universities had they not elected to enroll at College Park on a full scholarship. Such colleges compete heavily for well-prepared minority students.

Race-specific scholarships were designed "to benefit institutions, not the students," said Michael L. Williams, now a lawyer in Fort Worth. Five years ago, as assistant secretary for civil rights in the Bush administration, Williams caused a national furor by declaring race-specific scholarships to be discriminatory. He was forced to rescind the statement.

"I feel quite vindicated," Williams said in an interview yesterday.

Robert H. Atwell, president of the American Council on Education, said the 4th Circuit's ruling "does not address the full range of circumstances in which minority scholarships have been established, nor does it address the use of such scholarships to achieve diversity, a goal that was held to be legitimate on educational grounds by the Supreme Court in the Bakke case."

BY JOHN McDONNELL—THE WASHINGTON POST

Benjamin Banneker scholarship winner Monifa Brooks and University of Maryland President William E. Kirwan discuss the Supreme Court action.

ne Washington Post May 23, 1995

Clinton Signs Law To Cut Paperwork

Reuter

A pile of documents at his side, President Clinton signed the Paperwork Reduction Act yesterday, saying it would further reduce government-required reports and help Americans conquer a "mountain of paperwork" wasting their time.

"So far, we have eliminated the forms represented in this large stack of papers here on the table," he said during the signing ceremony at the Old Executive Office Building.

Passed unanimously by Congress in April, the law establishes guidelines for agencies to develop simpler forms and calls on them to reduce small business reporting requirements.

Clinton said he had instructed agencies to provide for electronic submission of every new form or demonstrate why that is not possible.

REUTER

The president points to forms already eliminated by administration efforts.

The Washington Times May 23, 1995

In Chung firing, CBS denies discrimination

Negotiations over the terms of Connie Chung's possible departure from CBS continued yesterday as news division brass denied her accusation that her weekend firing from the "CBS Evening News" was a case of sex discrimination.

"Sexism was not a factor," CBS News President Eric Ober told Reuters. "We are not blaming her for anything. The co-anchor format didn't work, and if anyone was to blame for that, it was management.

ON MEDIA

"There just wasn't enough room in a 22-minute nightly news format for two anchors. It was our fault," Mr. Ober said.

Miss Chung was fired as co-anchor of the "CBS Evening News" over the weekend. She has little more than a year left on her contract, but is refusing other assignments from the network, saying they would be a demotion.

She was paired with Dan Rather in 1993 in an effort to boost the broadcast's sagging ratings. The ratings continued to decline, and Miss Chung drew public criticism for a series of moves many felt cheapened CBS News' reputation.

Mr. Rather rejected suggestions of sexism in the Chung ouster. "This has about as much to do with gender as mustard does with ice cream," he told the New York Post. "This was a decent experiment. We tried to make it work, and it didn't work. So where is it written that when it doesn't work, you just have to keep going down, down, down?"

Mr. Rather ended last night's broadcast by reporting that CBS News management decided to return to a single-anchor format, and that Miss Chung's future with the network was under consideration.

"If you would allow me a personal moment," he concluded, "I'd like to take this moment to wish my longtime friend and colleague Connie Chung good luck and Godspeed."

Miss Chung, 49, was only the second woman ever to be named anchor of a nightly network newscast.

None of the media analysts and critics interviewed yesterday bought Miss Chung's sexism accusations as the reason for her firing.

Ellen Hume, media analyst at the Annenberg Washington Program, said she has been critical of Miss Chung's role on the "CBS Evening News" for some time.

"The contributions she's been maki[illegible] CBS have not been the kind that are a cr[illegible] to the broadcast," she said. "She's led a tabloid trend to CBS News that has been very self-destructive for the quality of the program."

Ms. Hume cited Miss Chung's anchoring of the newscast from Portland, Ore., as she chased down skater Tonya Harding for an interview, and her much-criticized interview with the mother of House Speaker Newt Gingrich.

Everette Dennis, executive director of the Freedom Forum Media Studies Center at Columbia University, said he suspects this was a financial decision, not a personal one. "People have been treated pretty shabbily by the networks . . . way before Connie was around," he said.

New York Post columnist Andrea Peyser argued that the telegenic Miss Chung was added to the newscast because Mr. Rather is "an aging prima donna who was graying ungracefully and losing his audience." Now, she wrote, "Connie must take a dive. . . ."

Conservative media critic L. Brent Bozell III said there is an element of truth in the charge that canning Miss Chung won't solve CBS' problems. "Dan Rather wasn't working out, so they add her, and she doesn't work out, so they go back to what wasn't working out," he said.

"You're not going to see people racing to watch CBS now that she's not on," [illegible] Bozell said. "Their problems are bi[illegible] than Connie Chung. You just get the feelin[illegible] that this network is in utter disarray and doesn't know what to do next."

In America

BOB HERBERT

Throwing a Curve

In Montclair, N.J., where I grew up in the 1950's and 60's, there was an elderly woman named Mildred Maxwell who would greet the periodic outbursts of segregationists and other racial provocateurs with the angry and scornful comment, "There isn't a hell hot enough for that man and his ideas."

Mrs. Maxwell comes to mind whenever I think (angrily and scornfully) about Charles Murray and his book "The Bell Curve," a scabrous piece of racial pornography masquerading as serious scholarship.

Mr. Murray fancies himself a social scientist, an odd choice of profession for someone who would have us believe he was so sociologically ignorant as a teen-ager that he didn't recognize any racial implications when he and his friends burned a cross on a hill in his hometown of Newton, Iowa.

In a New York Times Magazine article by Jason DeParle, Mr. Murray described the cross-burning as "dumb." But he insisted, "It never crossed our minds that this had any [illegible] significance."

[illegible]no. Of course not.

[illegible]w, in middle age, Mr. Murray gets his kicks by thinking up ways to drape the cloak of respectability over the obscene and long-discredited views of the world's most rabid racists. And so "The Bell Curve," written with Richard Herrnstein, who died last month, promotes the view that blacks are inherently inferior to whites.

It's an ugly stunt. Mr. Murray can protest all he wants, his book is just a genteel way of calling somebody a nigger.

The book shows that, on average, blacks score about 15 points lower than whites on intelligence tests, a point that was widely known and has not been in dispute. Mr. Murray and I (and many, many others) differ on the reasons for the disparity. I would argue that a group that was enslaved until little more than a century ago; that has long been subjected to the most brutal, often murderous, oppression; that has been deprived of competent, sympathetic political representation; that has most often had to live in the hideous physical conditions that are the hallmark of abject poverty; that has tried its b[illegible] survive with little or no pre[illegible]are, and with inadequate [illegible] care and nutrition; that has been segregated and ghettoized in communities that were then redlined by banks and insurance companies and otherwise shunned by business and industry; that has been systematically frozen out of the job market; that has in large measure been deliberately deprived of a reasonably decent education; that has been forced to cope with the humiliation of being treated *always* as inferior, even by imbeciles — I would argue that these are factors that just might contribute to a certain amount of social pathology and to a slippage in intelligence test scores.

Mr. Murray says no. His book strongly suggests that the disparity is inherent, genetic, and there is little to be done about it.

Most serious scholars know that the conclusions drawn by Murray and Herrnstein from the data in "The Bell Curve" are bogus. The issue has been studied ad nauseam and the overwhelming consensus of experts in the field is that environmental conditions account for most of the disparity when the test results of large groups are compared.

> Murray's book is nothing but a racial epithet.

The last time I checked, both the Protestants and the Catholics in Northern Ireland were white. And yet the Catholics, with their legacy of discrimination, grade out about 15 points lower on I.Q. tests. There are many similar examples. Scholars are already marshaling the evidence needed to demolish "The Bell Curve" on scientific grounds. But be assured that when their labors are completed and their papers submitted, they will not get nearly the attention that "The Bell Curve" has received.

A great deal of damage has been done. The conclusions so disingenuously trumpeted by Mr. Murray were just what millions of people wanted to hear. It was just the message needed to enable whites to distance themselves still further from any responsibility for the profound negative effect that white racism continues to have on all blacks.

Mildred Maxwell is no longer with us. I wish she were. Just once I would like to hear her comment on Charles Murray and his book. □

Washington Post
10/26/94

Robert J. Samuelson

'Bell Curve' Ballistics

"The Bell Curve"—the controversial book about the role of intelligence in society—is already a commercial success. Its publisher reports that it has now gone to four printings, totaling 200,000 copies. This is heady stuff for an 845-page book crammed full of tables and charts. But whether the book can improve public debate (its avowed purpose) is less clear, because it broaches two subjects that drive Americans to passionate incoherence: class and race. The debate will remain constructive only if we grasp what "The Bell Curve" does and doesn't say.

Although public attention has focused on race, the book is mainly about class. Intelligence, it argues, has become critical in determining class status. More specialized jobs demand more brain power, and schooling has become more democratic. In 1940 only 25 percent of adults had graduated from high school and only 5 percent from college; by 1990, those rates were 78 and 21 percent. The combination of new jobs and more schooling means that bright people move up the social ladder.

This wasn't so a century ago, argue authors Charles Murray and the late Richard Herrnstein. Then people clustered (or were segregated) into neighborhoods and jobs by ethnic group or race, and women were confined to the home by custom. The American ideal has been partially realized. People succeed on their abilities. This thesis is less novel than it seems. Other writers (Mickey Kaus, Labor Secretary Robert Reich) have also concluded that society is splitting along lines of skill and, like Murray and Herrnstein, they have mixed feelings about the change.

"[T]he rich will get relatively richer," Kaus argued, and "will increasingly do it by exploiting skills and talents that are mainly mental." This is not very different from Murray and Herrnstein: "[B]right youngsters who formerly would have become carpenters or truck drivers . . . go to college instead, thence to occupations higher on the socio-economic ladder. Those left on the lower rungs are likely to be lower and more homogeneous intellectually. Likewise their neighborhoods . . . get drained of the bright and the no longer poor."

Where Murray and Herrnstein differ is in arguing that raw intelligence—as measured by IQ tests—plays a role. Other writers emphasize the impact of class. Middle-class families pass along social and schooling advantages to their children. The proof that IQ matters, says "The Bell Curve," is that bright children of poor parents can advance and dull children of affluent families may slip. And statistics buttress the point. In practice, intelligence and class mix, the book argues, because much intelligence is inherited. For individuals, Murray and Herrnstein put the inherited part at 60 percent.

Much of this seems common sense, however the benefits of class and genes sort out. But to say it openly offends the American spirit, which exalts individual free will and effort, by making life seem heavily preordained. The American meritocracy seems to have its own rigidities. "The Bell Curve" compounds the insult by extending its analysis to society's basement. Murray and Herrnstein argue that low IQs, more common among blacks than whites, contribute to many of today's worst social problems: out-of-wedlocks births, welfare dependence and violent crime.

Of course, there has been a furor. Although the black-white gap in IQ scores (about 15 points) has long been known, it's been a great unmentionable. Murray and Herrnstein break another taboo by suggesting that the difference may be hereditary. They admit the evidence is less than conclusive; they also emphasize that any individual black may be smarter than any individual white. No matter. The mere suggestion of racial inferiority has, unfortunately but inevitably, dominated debate about the book.

It is not that we know who's right. We don't. Critics pose powerful objections. Is the IQ gap really hereditary or the cumulative consequence of a poisonous racial history? Do poor blacks score lower because they are shortchanged in, say, nutrition in children's early years? Do IQ tests miss many important skills and talents? But the acrimony over these questions (which is really a veiled debate over whether Murray is a bigot) obscures a larger point: the explosions in violent crime, out-of-wedlock births and welfare dependency—among whites and blacks—were clearly not caused by low intelligence.

These changes have occurred since 1960. Back then, for example, 22 percent of all black births and only 2 percent of all white births were to unmarried mothers; by 1991, those figures were 68 percent and 22 percent. Likewise, the murder rate of 10.5 per 100,000 in 1991 was more than double the 1960 rate of 4.7 per 100,000. No one contends that average intelligence has dropped over this period. Just the opposite. Raw scores on IQ tests have actually risen modestly.

Put simply, this means that other changes in the social or economic climate must have done the main damage. What might these be? There are the standard suspects: a shift in moral values; upheavals in the job market; the perverse effects of government welfare programs. But whatever they are, they probably feed each other, and the role of intelligence is secondary. All Murray and Herrnstein say is that those with lower-than-average intelligence are especially vulnerable to these changes.

This distinction is critical. Unfortunately, it gets lost in the book's thick statistics and has been ignored in the popular reaction. If all our major social problems were mechanically caused by low intelligence, then they could be solved only by raising intelligence levels. Despite recent improvements, this is hard, as Murray and Herrnstein say. But intelligence isn't the only critical factor. What changed for the worse might change for the better. There is no guarantee that we will find ways—either through altered government policies or private behavior—to improve social conditions. But not trying ensures failure.

Although Charles Murray is no bigot, "The Bell Curve" does invite misuse. The book can rationalize racism and fatalism by both whites and blacks. It is a pretext for both blacks and whites to think the worst of each other. And it is a ready-made excuse for both to lapse into personal and political passivity on the grounds that nothing can be done. In this sense, "The Bell Curve" and the violent reaction to it are, as much as anything else, a commentary on America's present pessimism.

USA TODAY

DATE: 6-16-95

PAGE: 4A

Justice Department to examine ruling

The White House, anticipating lawsuits challenging federal programs in the wake of Monday's Supreme Court affirmative action decision, has asked the Justice Department to analyze the ruling.

The decision, which set a new standard for race-based preferences, "is broad but we're not sure yet how deep it is," says George Stephanopoulos, the senior adviser directing President Clinton's review. "We need to figure out what we need to do to know which programs comply and which . . . don't."

"Agencies have to be prepared to defend the fairness of their program not only in the court of public opinion but in a court of law," says Christopher Edley Jr., who is conducting the White House review.

Edley has assembled 20 binders describing, analyzing and grading federal programs. A preliminary draft went to Clinton a few weeks ago, but it's being rewritten to take into account the high court's ruling.

Despite growing public concerns and Republican attacks, Clinton will defend continuation of some affirmative action programs.

Clinton's "commitment is clear," says Stephanopoulos. "The purpose of the review is to figure out what's working and what isn't working, what's fair and what's not fair."

House Speaker Newt Gingrich said Thursday affirmative action should help the poor, but "there's a growing consensus against" aiding people solely for race or gender reasons.

— *Judy Keen*

Los Angeles Times

DATE: 6-16-95
PAGE: A5

Despite Prejudice, Gingrich Says, Affirmative Action Not Needed

By SAM FULWOOD III
TIMES STAFF WRITER

WASHINGTON—House Speaker Newt Gingrich said Thursday racial prejudice continues to limit opportunities for black Americans, but added he thinks it is possible for everyone to succeed without affirmative action programs that require federal government or legal assistance.

"I believe there is real prejudice in America," Gingrich said during an interview with black reporters working for major news organizations. "I don't believe we live in a color-blind society.

"But I don't think you can find individual justice by litigation," he said. "I think when you try to create that backward-looking grievance system, you teach people exactly the wrong habits. They end up spending their life waiting for the laws to come instead of spending their life seeking opportunity."

In an hourlong discourse that repeatedly returned to his views on affirmative action, Gingrich said federal programs intended to assist minority businesses should be scrapped and a new system erected that will provide opportunities for blacks, women and other groups.

"I'm looking for positive models, not ones based on genetic codes that exploit a lawyer-defined system," he said.

The breakfast meeting, organized by National Minority Politics, a conservative, black-owned magazine, invited Gingrich and black journalists to discuss current events. A smiling and jovial Gingrich freely offered his opinions on school busing, federal assistance to cities and civil rights history.

His comments attacking government affirmative action—the nation's 160 federal programs that take stock of race and gender in hiring, promotions and awarding of federal contracts and benefits—followed a key ruling on the issue earlier this week by the Supreme Court. In a 5-4 ruling on a Colorado case, the high-court majority declared that preferential treatment based on race is almost always unconstitutional even if it is intended to correct past discrimination against minority groups.

The White House said Thursday that a planned announcement of its findings from a broad review of federal affirmative action programs has been delayed as officials scramble to understand the impact of the court's decision.

Gingrich, however, said the GOP-led House would press on with efforts to repeal federal affirmative action programs. But he said he did not know when such legislation would be introduced because more pressing issues are facing Congress.

"We're very interested in maximizing affirmative action for individuals and for people who are financially and culturally deprived," he said. "But I think that there is a growing consensus against genetically based patterns and grievance-based patterns."

Gingrich said civil rights leaders—spurred on by lawyers—created an affirmative action system that rewards people for belonging to groups and not for individual initiative or merit.

"We ended up with a civil rights movement that was too lawyer-dominated . . . and too dominated by people who thought that there was some way to get fairness of outcome instead of equality of opportunity," Gingrich said. "So we've gone down a 30-year trail that at the end is a total dead end."

'We're very interested in maximizing affirmative action for individuals and for people who are financially and culturally deprived. But I think that there is a growing consensus against genetically based patterns and grievance-based patterns.'

The problem with such a system is that government "teaches people to focus on grievance and to focus on finding a lawyer and filing a complaint, which is a negative way of thinking about life," he said.

Gingrich said he believes racism, while overestimated as a barrier to black advancement, still exists in American life. "It is harder to be black and American," he said. "It is more difficult to acquire wealth as a black in America."

Asked if he believed that to be true, what should government and civil rights leaders tell black youths about opportunity in this country, Gingrich said:

"I'm prepared to say to the poor, you have to learn new habits," Gingrich said. "The habits of being poor don't work.

"In this country in 1996, if you work twice as hard, you're going to succeed," he added. "There are enormous avenues for opportunity in this society."

40

The New York Times

DATE: 1-11-95
PAGE: B-7

Kansas City's Widely Debated Desegregation Experiment Reaches the Supreme Court

By WILLIAM CELIS 3d
Special to The New York Times

KANSAS CITY, Mo., Jan. 6 — Long before the sun rises, Alex Ruthmann boards a 5:15 A.M. school van for a nearly two-hour, 70-mile trip, past furrowed and dormant fields in rural Butler to the Paseo Academy of Visual and Performing Arts in a working-class neighborhood here.

The academy is a sparkling $23 million high school that is unrivaled in Missouri.

"I couldn't take all the courses I wanted at my school back home," said Alex, a 17-year-old who takes band, choir, music theory, calculus, chemistry, college-level English and history. "Here, I can do it all."

For a decade, the Kansas City school district has labored with uneven success to attract more whites like Alex, to improve its buildings and to lift overall student achievement under a series of Federal District Court desegregation orders dating back to 1984. The case has produced the costliest plan in the nation and has been among the most bitterly contested.

Now, the case, Missouri v. Jenkins, has reached a crucial crossroad. On Wednesday, Missouri officials will argue before the United States Supreme Court that in the last 10 years the state has contributed the bulk of the plan's $1.3 billion cost — the state contribution averages $200 million a year — and has more than adequately helped Kansas City desegregate its 84 public schools. Spending that much money in Kansas City is unfair to the rest of Missouri, the state will argue, and the expenditure is producing only slow progress.

The officials will also contend that the Federal court, in declaring that overall student performance must improve as part of the plan, overstepped its bounds, setting standards that are much broader than most desegregation cases elsewhere.

For its part, the school system, which wants the desegregation order to remain in effect, will argue that the full desegregation plan has been in place only three years — too little time to show marked academic improvement. Only about a fourth of the city's schools meet the Federal court's recommendation that enrollment be 65 percent members of minorities and 35 percent white.

The Kansas City district can draw students from anywhere in the state, although most come from the immediate suburbs. The participation of the outside students is voluntary.

The case has drawn national attention because of what the Supreme Court's ruling might mean for desegregation here and in the 200 or so other school systems under Federal court supervision. And it poses basic questions about how the success of a court-ordered integration plan is ultimately to be judged.

Among the changes made under the order were the construction of expensive buildings like the $32 million Central High School, with its indoor track and Olympic-size swimming pool. The order also brought salary increases of 30 percent for teachers, smaller classes, and specific academic and job-training themes at virtually all of the district's schools.

Across this district of 37,000 students, 75.9 percent of whom are members of minorities, there is a deep fear that the Supreme Court will rule as it did in two previous desegregation cases, in 1990 in Oklahoma City and in 1992 in DeKalb County in suburban Atlanta. In both of those decisions, the Court eased desegregation orders, resulting in what Gary Orfield, a Harvard University desegregation expert, called a resegregation of some public schools.

"There's no doubt that the Court has put very serious limitations on desegregation remedies and opened ways for courts to dismiss cases even when tremendous educational and social inequalities remain in communities," said Mr. Orfield, who is director of the Harvard Project on School Desegregation. "What will happen in Kansas City if the Court cuts off the system is, the district would be left with a lot of facilities that it cannot support."

Black parents express similar concerns, as well as anger.

"The state should not be excused right now," said the Rev. Robert Stephens, the minister at Peace Baptist Church, whose son attends first grade at Attucks Elementary in the city. Because of the city's already eroded tax base, Mr. Stephens said, losing the state money would mean certain deterioration not just of buildings but also of programs.

"Racism, I think, is still the problem," he said.

Dorothy Shepherd, the principal at Paseo Academy, recalled when Kansas City schools were segregated and underfinanced and when, as a young music teacher here in the 1960's, she had an annual budget of $60 for supplies.

"It was grim," she said as she walked around the high school one afternoon, checking in on students practicing a fashion show in the school's 1,181-seat theater. The school also has a smaller recital hall and a theater where experimental productions are performed.

"Do you think after enjoying all this that I could go back to $60 a year?" Mrs. Shepherd asked.

Like other administrators and parents here, Mrs. Shepherd does not expect the state to help finance the district forever. But she said that without continuing state support, at least for a few more years, the district's gains and efforts to recruit more white students from suburban communities would be undermined.

Missouri officials say education aid has its limits.

Paseo was built three years ago, using huge infusions of state desegregation money for capital improvements. It has been one of the more successful schools in attracting white students who, like Alex Ruthmann, are lured to the performing arts school because their own schools lack similar extras.

And so Alex wakes up at 4:30 A.M. every school day to catch his school van, which also picks up three other students from surrounding towns.

"We spent all of last summer investigating whether this would be a good thing for him," said Sally Hatten, Alex's mother and a public school teacher in Ridge Hill, Mo. "I worried about safety. We talked about interracial dating. We discussed being in the minority. He wasn't concerned about any of this."

Cont'd

Indeed, in the hallways, libraries and cafeterias of the Kansas City schools, black, white, Hispanic and Asian students mix freely, all enticed by the district's rich collection of magnet schools.

"The teachers are nice, and there are not a lot of fights," said Jessica Eicholz, 13, a white seventh grader at Martin Luther King Latin Grammar Middle School. The teen-ager, who lives in nearby Independence, takes a cab to school with other students in a 30-minute ride paid for by the district. "I like the environment here," she said.

So does Lori Barber, 13, another white seventh grader, who gets up at 5 A.M. to catch a school van from her home in Oakview, a northern suburb of Kansas City. "I came here because my parents and I thought I would get a better education," she said. "I didn't like the schools in my district."

And added their friend, Tiffany McElroy, 13, a black seventh grader from Kansas City, "Teachers here give you respect, and they expect a lot out of all of us."

Jeremy Johnson, a white 17-year-old junior, left a private school in Independence to attend the East Environmental Studies and Agribusiness Magnet High School, which has a working farm where students raise pigs and sheep and then market and sell the produce.

"There aren't any schools like this in Independence," said Mr. Johnson, sitting in an environmental studies class. "My parents were kind of scared at first, since it was the Kansas City school district, because of everything they had heard. When they came to visit, they were really surprised because the school is clean and safe and there is no graffiti.

"They would much rather have me in Kansas City schools than Independence schools because schools here are better."

At all grade levels, the district offers the academic, extracurricular and social services that education analysts say urban schools have lacked for years. In the Attucks Communications and Writing Elementary School, for example, fourth and fifth graders produce a daily newscast of school news that they broadcast over closed-circuit television.

The rich array of programs here, state officials said, has spawned only resentments in other schools across the state that cannot afford all that Kansas City offers. Kansas City officials, meanwhile, say the bitter criticism from state officials has only reinforced the notion among suburban parents that the district is troubled.

Indeed, the state has been an outspoken critic of school officials and the Federal District Court, maintaining that the remedies have been too exorbitant and have come at the expense of the state's other school districts. Although Kansas City has only 4.3 percent of Missouri's total public school enrollment, it receives about 8.5 percent of state education aid.

"The state has been writing the checks and we have no control over where the money is spent," Attorney General Jeremiah W. Nixon said in an interview. "We want to return control of the district to parents and teachers."

But all in due time, said Dr. Walter L. Marks, the Superintendent of Schools in Kansas City. "We need to give the effort here a few more years. This desegregation plan wasn't fully implemented until two to three years ago, and that isn't enough time."

THE NATION'S NEWSPAPER
USA TODAY

DATE: 1-11-95
PAGE: 2-A

Court could 'draw curtain' on 'Brown'

By Tony Mauro
USA TODAY

After spending $1.3 billion to desegregate Kansas City's schools, Missouri will tell the U.S. Supreme Court today that enough is enough.

But civil rights groups and the Clinton administration, backed by a federal judge who has supervised the effort for more than 10 years, say more needs to be done to ensure that minority students are reaching the same achievement levels as whites.

How the court decides the issue could determine the fate of more than 200 school systems nationwide that are under court-supervised school desegregation orders, an outgrowth of the landmark 1954 decision *Brown vs. Board of Education*.

"The court could draw the curtain on *Brown*," says Washington, D.C., civil rights lawyer William Taylor, "if it agrees with the state that all they have to do is invest some money for a few years and then move on, regardless of the results."

By Kelley McCall, AP
NIXON: Says state has met desegregation goal

But Missouri Attorney General Jay Nixon says the state has met the original goal of dismantling a racially segregated school system and should be released from federal court supervision.

That is not enough, federal Judge Russell Clark said in a 1992 order that is being challenged in the case today. "The success of quality of education programs must be measured by their effect on the students" as indicated by standard test results, Clark said.

"As Missouri reaches the finish line, the lower courts have introduced a new hurdle," says Nixon. "The law requires equal access to educational opportunities. It does not require specific academic results."

Many of the factors that affect student test results are "beyond the control of schools," he says.

When black families first sued in 1977, a judge found the Kansas City school system had "rotted away" to the disadvantage of minorities.

After lengthy litigation, massive improvements began in 1985. State funds went to help, causing resentment in other Missouri localities. Clark even ordered the school district to enact a sharp tax increase to pay for some improvements.

"I know there's been a lot of money spent, but I'd hate to think where we'd be without it," says Ruth Pirch, a local early childhood education expert. "If the funding is not kept up, there will be a lot of backward steps."

Minority achievement levels are beginning to improve markedly in Kansas City, but not enough to warrant a halt to desegregation efforts, say civil rights groups.

When will it be enough?

"We're not there yet and I'm not sure it will be in my lifetime," says Pirch.

Also at the Supreme Court:

▶ Justices will consider today the constitutionality of a Florida rule that forces lawyers to wait 30 days after an accident or disaster before they solicit business from survivors and family members.

▶ A 5-4 decision Monday will narrow the types of hearsay evidence that can be admitted in federal trials, possibly affecting the prosecution of child abuse cases.

The New York Times

DATE: 1-11-95
PAGE: B-7

Once Principal, but Now Barred From All Schools

By RONALD SMOTHERS
Special to The New York Times

ATLANTA, Jan. 10 — Nearly a year after a white principal's opposition to interracial dating thrust the eastern Alabama town of Wedowee into racial turmoil, national headlines and the Federal courts, black parents and the local school board have reached a tentative agreement that, among other things, bars the former principal from school grounds during class hours.

The agreement was reached late Monday, a day before lawyers with the United States Justice Department's civil rights division and lawyers for black parents were scheduled to go into Federal court and argue that the district should be compelled to dismiss the principal, Hulond Humphries. While some parents angrily insisted that the case should have been heard in court and Mr. Humphries dismissed, others said they welcomed the proposed settlement and hoped it would end the tensions in the tiny city of 800 and surrounding Randolph County.

The settlement forbids Mr. Humphries from visiting any school in the district during school hours until July 1997. In addition, it calls for the district to increase its percentage of black teachers from 10 percent now to 23 percent in four years, to develop a disciplinary code and monitoring system designed to prevent disproportionate punishment for black students and to create multiracial citizen groups to monitor issues like curriculum counseling and extra-curricular activities.

The Rev. Henry Sterling, a resident and an organizer for the Southern Christian Leadership Conference who was a plaintiff, said that the agreement would "dismantle the plantation attitude and atmosphere" that Mr. Humphries had established over the years at the high school and removed him from a position in which he could "intimidate children and keep his legacy alive."

Mr. Humphries, principal of Randolph County High School for 26 years, set off months of turmoil last February when he told a student assembly that he would cancel the prom if interracial couples planned to attend. He said he was concerned that violence might break out. During the meeting, several students said, he also termed a mixed race student at the school a "mistake" by her parents.

His remarks generated a boycott by black parents and weekend motorcades by white parents in support of Mr. Humphries. It disrupted decades of seeming racial calm, bringing to the surface black anger about the principal and his iron-fist rule as well as feelings of powerless in the community.

The tensions reached a peak last August an arson fire destroyed the high school. After the fire the 56-year-old educator was reassigned as a consultant in the district headquarters.

Even though Mr. Humphries rescheduled the prom and it went off without a hitch, the district was forced to worked out its racial animosities in the glare of television lights and national news headlines. Wedowee became a national symbol of the region's still tortured race relations.

Because of the dispute, the Justice Department reopened a 1970 desegregation lawsuit, and the agreement this week was negotiated by attorneys for the school board, the Justice Department and the lawyer for the black parents, Solomon Seay.

A hearing on the fairness of the proposed out of court settlement is scheduled for Feb. 10 in Federal District Court in Montgomery before Judge Myron Thompson.

Deval L. Patrick, the assistant attorney general in charge of the agency's Civil Rights Division, said in a statement released in Washington late Monday that the agreement removed "existing barriers to equality of educational opportunity."

Varesia Houston, a mother of two black students at the high school and a plaintiff, said she and others felt that "it was far less than Humphries deserved" but she added that his removal from Randolph High had improved the things at the school for black students.

"Settling now seems to be the best outcome for our children," she said.

The Rev. Gerald Romine, who is white and is president of the school board, also hailed the agreement. "I don't see the same tension here as before and I think Wedowee and Randolph County can heal now," he said. The board voted with one abstention to accept the agreement.

But other black plaintiffs said they were angry because Mr. Seay had not shown them the agreement before signing.

In a letter to Mr. Patrick opposing the settlement, Charlotte Clark-Frieson, the only black member of the board, told of scores of current and former students at the school who were eager to tell in court of harsh and racially biased discipline, corporal punishment, mistreatment and racism suffered at Mr. Humphries' hands over 26 years.

"Have you not considered that they may need this unique opportunity to finally liberate themselves by the telling in court of what happened to them?" she wrote. "It is what they finally need to heal themselves, affirm themselves. There is a psychological need to tell this to somebody who was not going to shoo them off like some pesky fly."

Those feelings show that the proposed settlement does not quite end the story of Randolph

Cont'd

High. Ms. Clark-Frieson said that she planned to go the Feb. 10 court hearing and accompany those who "did not want to suppress their feelings under stacks of Justice Department files" and still want to testify.

In addition, it appears likely that arrests will soon be made in the arson that destroyed the school, which could revive ill will. "We're going to charge people before too long," said Nicholas Walsh, special agent in charge of the Mobile office of the Federal Bureau of Investigation.

THE NATION'S NEWSPAPER
USA TODAY

DATE: 1-11-96
PAGE: 1-A

COVER STORY

Affirmative action next target in Calif.

Critic calls 'preferential treatment' for minorities, women 'vile and corrosive'

By Kevin Johnson
USA TODAY

California, scene of a political rumble over passage of the illegal immigrant law Proposition 187, is bracing for an even bigger aftershock.

In a state that long has been a springboard for national movements, a drive to dismantle affirmative action is rolling toward the 1996 ballot.

At issue: the California Civil Rights Initiative, which aims to overturn programs that give minorities and women preference for college admission, jobs, promotions and government contracts.

"I sense a revolution coming," says Santa Ana lawyer Milton Grimes, who represents Rodney King, a man who has become a symbol of racial tension in Los Angeles. "I think California is just an indicator of the social conflict going on throughout the country."

In fact, the U.S. Supreme Court also will be weighing in on affirmative action: Next week, it considers a case that some think could lead to a major reversal of the doctrine.

And California's proposed initiative — the subject of an angry protest in Los Angeles Tuesday — clearly is volatile enough to rock the USA's most populous state to its cultural and political foundations.

The state's latest revolution, like some of its previous ones, is being plotted from a makeshift headquarters in Berkeley, this time by a local scholar and a California State University professor who believe affirmative action guidelines granting preference to minorities and women promote reverse discrimination.

To its co-authors Thomas Wood and Glynn Custred, the initiative is nothing more than a return to the basic doctrine of the Civil Rights Act of 1964, which, Wood says, contradicts any notion that one group should get preference over another.

To the protesters who gathered Tuesday to fight it, and to people like the Rev. Zedar E. Broadous, it is a "call to battle."

Not only are the rights of minorities threatened, says Broadous, president of the San Fernando Valley NAACP, but the specter of the initiative further erodes California's reputation as a tolerant place for African-Americans, Hispanics, women and other groups to live and work.

Gov. Pete Wilson, whose successful re-election bid rode heavily on his support of Prop. 187 — which denies most state services to illegal immigrants — made a dramatic entrance into the fray when he recently announced his support for eliminating preference programs.

Although Wilson didn't specifically endorse the initiative, he was labeled by the Rev. Jesse Jackson as a "sophisticated version of Lester Maddox" — the segregationist ex-Georgia governor — for his stand.

Says Broadous: "It looks like white folks are doing the best they can to keep control of the state when it is clear that we live in a time when minorities are rising to power."

Although the campaign has touched sensitive political and cultural nerves inside and outside California, backers of the measure have escaped being labeled as extremists — so far — and are largely seen as activists who sense the public's call for affirmative action reform.

"Gov. Wilson is known for grabbing on to a train when it is rolling down the right track," says state Assemblyman Bernie Richter, a northern California Republican who is backing legislation to abolish state affirmative action programs.

"Affirmative action has become a vile and corrosive system that threatens to blow us asunder," the legislator says. "There are a lot of good people out there being denied promotions on the job, not because they are not qualified, but because they are the wrong ethnicity or gender.... People know it's going on and we want it stopped."

That, in the nutshell, is the argument behind the voter drive.

Wood, who needs 615,000 signatures to get his initiative on the ballot — not that difficult by California standards — says his move has been misunderstood in some quarters as an attempt to wipe out civil rights legislation altogether.

"The passage of (the initiative) will not overturn any of the positive aspects of civil rights laws," he says. "What we're against is giving preferential treatment."

Nor, Thomas says, is the initiative seeking to restrict access to employment or education, a critical reform in early civil rights legislation.

"This is not an attack against people," he says.

What does the initiative say?

The gist of it says that California cannot use "race, sex, color, ethnicity or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group" for state jobs, education or contracts.

But Jackson, whose Rainbow Coalition is hosting strategy sessions against the proposal this week, doesn't see either the measure or its authors so benignly.

"There were plenty of Ph.D.s supporting apartheid in South Africa," he says.

Charles Geshekter, African history professor at California State University, Chico, and supporter of Richter's proposed state legislation, says the entire movement represents a key change in the public discussion.

"It used to be political suicide to say these things," Geshekter says, "but times have changed. ... The country seems to be shaking with this. I sense the whole concept of racial or gender preference is so unpopular that it's become a ticking time bomb."

Broadous and Jackson, however, see no compromise in the nearly identical proposals offered up by Richter's legislation and Wood and Custred's initiative.

"It will take time for minorities and women to find themselves on equal footing in the workplace and in the classroom," Broadous says, "and that time has not come."

Adds Jackson: "This is yet another effort to roll back the process of inclusion."

Political analysts already are suggesting it could be the defining issue of a presidential election year in a state crucial for both parties.

"This could drive a wedge right through the Democratic Party whose traditional constituency has been women, labor and minorities," says Sherry Bebitch-Jeffe of the Claremont Graduate School's Center for Politics and Economics. "It could force (Democrats) to choose among constituencies."

Like it or not, Bebitch-Jeffe says, the anti-affirmative action movement, coming after Prop. 187, will add to perception of California.

"The myth of California as the 'Golden State' is dead," she says. "There is a mean-spiritedness lingering out there. ... We are still socially tolerant, but we have become more economically conservative, very skeptical of government and not willing to spend money on anybody else but ourselves."

The Washington Times

DATE: 1-10-95
PAGE: A-6

Hispanic agents get court hearing on FBI bias claims

By Jacque Crouse
SAN ANTONIO EXPRESS-NEWS

SAN ANTONIO — A federal judge who ruled in 1988 that the FBI discriminated against Hispanic agents has ordered a hearing next week during which three of the agents say they will present evidence of continued retaliation against them for bringing the charges.

The FBI could be held in contempt if U.S. District Judge Lucius D. Bunton III decides it has violated his order.

Judge Bunton scheduled the Tuesday hearing in El Paso after a conference this week with lawyers representing both sides in the landmark case.

Former FBI Director William Sessions is expected to testify at the hearing in behalf of three Hispanic agents assigned to San Antonio's FBI field office, said Antonio Silva, the El Paso lawyer representing agents Gil Mireles, Art Vela and Bobby Montoya.

Mr. Sessions was chief U.S. district judge in San Antonio before President Reagan named him FBI director.

The San Antonio agents say the FBI has continued to retaliate against them since Judge Bunton's judgment ordering the bureau to end discrimination and improve treatment of Hispanic agents.

Mr. Sessions and government attorneys could not be reached for comment.

Judge Bunton, reached at his home, said five agents originally claimed they were victims of retaliation. He determined earlier that one of the agents did not have a legitimate claim.

Another, who will be allowed to present legal arguments during the hearing next week, was fired for what the FBI termed security reasons, Judge Bunton said.

In his 1988 decision, the judge agreed with 311 Hispanic agents who said they were discriminated against in hiring and promotion practices.

Mr. Silva said the three San Antonio agents have filed several equal-employment-opportunity complaints within the FBI since the lawsuit was settled.

Because of their complaints, Mr. Silva said, the three agents have been targeted by Office of Professional Responsibility investigations.

Before the lawsuit, Mr. Silva said, the three — now labeled by some as "troublemakers" — had spotless service records with the FBI.

Mr. Sessions, Mr. Silva said, was badgered and drummed out of the FBI by the same faction that has discriminated against Hispanics and other agents who do not fit the "prototype" set in the FBI while J. Edgar Hoover ran the bureau.

"This is the Hoover clique that forced the director out," Mr. Silva said. "It is not only anti-Hispanic; it is anti-anything that does not fit the prototype of a white, Anglo-Saxon, male professional as an FBI agent."

He said that group within the FBI views minority agents as "less than agents" and has sought to remove them.

While some Hispanics have been promoted within the bureau, Mr. Silva said they are among those who have sided against the agents who filed the original class-action lawsuit charging discrimination.

Mr. Silva said an agent cannot be promoted while investigations by the Office of Professional Responsibility are under way.

The investigations, he added, have prevented the three agents from being considered for promotions for which they are qualified.

The Washington Post

DATE: 1-11-95
PAGE: A-11

Campbell Vetoes Voter Bill

■ COLUMBIA, S.C.—As his last executive act, South Carolina's outgoing Gov. Carroll A. Campbell Jr. (R) vetoed a bill that would have made it easier to register to vote, defying a federal government order.

Campbell, who leaves office today, rejected South Carolina's implementation of a provision of the National Voter Registration Act of 1993—dubbed the Motor-Voter Act—that orders states to register voters at motor vehicle offices and other government facilities. But he directed a state agency to make voter registration easier by promulgating "a simple election registration form, with a post-paid return envelope, which can be completed and returned by mail to the State Election Commission."

Campbell derided the federal law as an unfunded federal mandate. "I exercise my veto prerogative . . . because I believe the manner in which the federal government has imposed this mandate on the states is unconstitutional," he said.

A Justice Department spokesman said South Carolina was one of four states being monitored for failing to comply with the law.

California, Pennsylvania and Illinois are also being watched.

From news services

THE WALL STREET JOURNAL.

DATE: 1/11/95
PAGE: A1

Budding Backlash?

Race, Sex Preferences Could Become Target In Voter Shift to Right

Some in GOP Plan Assault, And California May See A Grass-Roots Initiative

A Case Before Supreme Court

By PAUL M. BARRETT
And G. PASCAL ZACHARY
Staff Reporters of THE WALL STREET JOURNAL

Racial and gender set-aside programs, one of the civil-rights movement's most concrete – and controversial – achievements, may prove to be a casualty of the nation's lurch to the political right. And should that assault succeed, some predict it would be only a matter of time before the larger issue of workplace affirmative action is engulfed in a similar backlash.

Introduced more than 20 years ago with the support of Republican President Nixon, preferences now permeate federal spending on everything from highways and military supplies to computer and janitorial services. Federal agencies acting under racial mandates disburse more than $13 billion a year to thousands of mostly small minority-owned businesses employing hundreds of thousands.

But disdain for such preferences also permeates the political subconscious of a conservative Congress elected to a large extent on the votes of angry white men. Perhaps unsurprisingly, some GOP activists in Washington are pushing for legislation that would eliminate policies favoring minority companies seeking federal contracts, while Republican legislators are mulling a plan to attach riders to individual bills to ban racial preferences.

A Broad Front

At the same time, many of the forces that propelled California's Proposition 187 to a November victory are at play in an effort by two obscure California academics to put on the 1996 state ballot an initiative to bar the state and its contractors from parceling out jobs, promotions or contracts based on race or sex. Beyond that, the U.S. Supreme Court will hear arguments next week in a reverse-discrimination case that some legal experts believe will result in a ruling sharply limiting federal set-asides for minority businesses.

Suddenly, policies that liberals and many members of minority groups view as symbols of a national commitment to remedying past racism are under assault. "Doing away with federal affirmative action would be devastating," says Anthony Robinson, president of the Minority Business Enterprise Legal Defense and Education Fund in Washington. Predicting fierce liberal opposition to such a push, he warns, "You're talking about eliminating a lot of the progress we have made for some abstract notion of color neutrality."

With his veto power, President Clinton could still frustrate any attempt in Congress to roll back affirmative action – a veto that many conservatives would most certainly relish turning into a campaign issue in 1996. But the movement is more complicated than a liberal/conservative ideological split. Some blacks have long opposed affirmative action, arguing that such policies typically do little for the poor while calling into question legitimate minority achievement. And a growing number of intellectuals are beginning to wonder if criteria based on pure economic need might better serve minorities and women than preferences based on race and sex.

Whatever the case, there is nothing Mr. Clinton or liberal Democrats can do about what appears to be the grass-roots groundswell of white opposition to affirmative action, especially among white males.

"It really burns your butt," says Randy Pech, the man who brought the case currently before the Supreme Court. He sued the government after his firm lost a federal contract to install highway guardrails in Colorado to a Hispanic-run company with a higher bid. "We're a small family-owned company," he says. "We don't discriminate. Why should we be punished?"

Race and Economics

The November election sent a phalanx of conservatives to Congress and statehouses who feel the way Mr. Pech does. And the overwhelming passage of California's Proposition 187 also showed deep-seated frustration among white voters over an issue—illegal Mexican immigration—that, like affirmative action, has both racial and economic overtones. Now, a similar tide may be gathering for the California Civil Rights Initiative, which would bar state agencies, colleges or contractors doing business with the state from giving preferences to any individual or group based on race or sex.

"There is heavy sentiment for it," says Mervin Field, founder of the California Field Poll. He thinks it has a 50-50 chance of passing even if white women vote against it in droves, which he considers unlikely. The last time the Field Poll asked about affirmative action, in 1988, two-thirds of female respondents said they opposed preferences for women, not to mention minorities. Many women who considered themselves independents or Republicans voted for Proposition 187, which bars public education or nonemergency public health care for illegal immigrants. Though its implementation has been blocked by legal appeals, it is considered by some to be a litmus test of white feelings about racial matters.

Depending on how the question is asked, national polls also show a modest majority opposing affirmative action. And minorities and women generally don't have any constitutional guarantees protecting government preferences based on race or sex. A successful assault on affirmative action in California could start a civil-rights counterrevolution, some suggest. "As California goes, so goes the nation; they're always in the lead," says Terry Eastland, a conservative legal analyst.

Such efforts may already be spreading. Says Grover Norquist, president of Americans for Tax Reform, a conservative group in Washington: "I think you'll see [anti-preference initiatives] on six state ballots in 1996."

Liberals and minority leaders are deeply alarmed over this backlash. They argue that while affirmative action has achieved large gains for minorities in blue-collar and government jobs, and for women in white-collar occupations and professional schools, women and minorities are still under-represented in many areas, particularly in small businesses and managerial positions.

'Horror Stories'

"Can we say at a given moment of time that enough has been done to rectify the disadvantages we've admitted to, and we're now going to be colorblind?" asks Herbert Sandler, chief executive officer of Golden West Financial Corp., a backer of Democratic politicians whose big thrift holding company is headquartered in predominantly black Oakland, Calif. "To this day, I hear horror stories of gender bias and racism, from people I trust."

Supporters of affirmative action and preferences predict a fierce fight in California and across the nation. "We think this is *the* fight for us over the next two years. We anticipate we will be reliving Prop. 187 with this," says Elizabeth Toledo, president of California's branch of the National Organization for Women. She says some programs are carried out "incorrectly or unfairly" and therefore "we may have a tough fight" defeating the initiative in California. But Ms. Toledo argues that white women have benefited from affirmative action more than minority women, and that support is broad.

Moreover, public-employee unions may represent a hard-to-dislodge bulwark of the affirmative-action edifice. Covering everything from teachers to postal workers to police, these unions either wholeheartedly back preferences for women and minorities or accept them as part of the permanent landscape. Any rollback effort would be met with stubborn opposition.

Quota Question

But support for affirmative action largely evaporates among whites when it is portrayed as a quota system that penalizes well-qualified whites. And fostering that quota perception is the aim of affirma-

Cont'd

tive-action critics. Says John H. Bunzel, a research fellow at Stanford's Hoover Institution: "The whole argument about affirmative action today is perceived as one in which a quota mentality is at work."

Affirmative action wasn't initially intended to establish quotas. Starting in the 1960s, courts and administrative orders by Presidents Johnson and Nixon pressured federal agencies, private companies and municipalities to give preference to minorities, and later women, in hiring and promotions to remedy past bias. But later Supreme Court decisions allowed companies and universities, as well as public agencies, to favor "protected groups" without proof of prior discrimination.

Preference programs were adopted mainly by large institutions, such as Fortune 500 companies, colleges and government entities. Critics say that when managers were told that their own pay depended on meeting affirmative-action goals, they often took the easiest route by using de facto quota systems.

Many white males became convinced that quotas were in place, and their outrage has grown. Consider Ray Batz, a white 57-year-old firefighter in San Francisco, where the fire department has been under court order for more than a decade to hire more women and minorities.

Mr. Batz says he doesn't mind minorities and women receiving an extra boost to land a job – it is subsequent preferential treatment that angers him. "Some firefighters have been [promoted] four times," he asserts. "I don't think anyone needs four legs up. That's madness."

Support for preferences has also been undermined by some bureaucratic rules for determining who is eligible for protection. White males of Spanish descent qualify as protected Hispanics, but whites whose ancestors were from neighboring Portugal aren't. The daughter of a wealthy black dentist is eligible for preferences, but the daughter of an impoverished white sharecropper may not be.

Such inconsistencies have prompted some blacks to turn on affirmative action, arguing that equal opportunities, not equal results, are needed. Instead, "we've tried to cover up [discrimination] with preferences," says Shelby Steele, who has written a book criticizing affirmative action, which he says "has bred cynicism in people rather than racial good will. It has fostered backlash, divisiveness, even plain old racism."

In 1989, the Supreme Court ruled that state and local governments may not set aside contracts for minority-owned firms unless doing so directly remedies past discrimination that can be proved with concrete evidence. The ruling effectively nullified some 200 affirmative-action programs, although some have been revised and reactivated.

Case From Colorado

In a 1990 decision, the high court ruled 5-4 that Congress should have greater latitude than states or localities to use "benign" racial classifications. Now, Mr. Pech, the Colorado contractor, is asking the court to apply the tough constitutional standard to federal racial preferences – essentially, greatly narrowing the effect of the 1990 ruling.

His case is typical of how visceral the issue has become. His contracting concern submitted the low bid on a guardrail project – $102,000 – but the prime road contractor gave the business to a Hispanic-owned firm because the U.S. Transportation Department offered a financial incentive for hiring "disadvantaged" subcontractors (minorities are presumed to be disadvantaged under federal law).

"We can't afford to lose this kind of business," says Mr. Pech, whose Colorado Springs firm employs 10 to 25 people, depending on the season, and whose revenue last year was about $2.3 million.

Mr. Pech's timing may be fortuitous to his views. Four of the five members of the 1990 majority have since left the court; all four dissenters are still there, and Justice Clarence Thomas is an almost certain vote against affirmative action.

Meanwhile, some Republicans in and out of Congress are bent on capitalizing on the controversy. With encouragement from GOP lawmakers, former Reagan-administration lawyers are drafting legislation to eliminate policies favoring minority-owned companies seeking federal contracts. If such a bill succeeds, it would present a dilemma for President Clinton.

"A Clinton veto would set up racial quotas and set-asides as a major issue for 1996," says Clint Bolick, the lawyer leading the drafting of the bill. Sen. Phil Gramm of Texas, a likely GOP presidential contender, is expected to make opposition to racial preferences a major part of his campaign. "If Gramm makes it a campaign issue, it's going to be a tidal wave," Mr. Bolick says.

Mr. Bolick's group is also preparing a menu of more modest proposals, such as attaching "riders" to spending bills that bar agencies from using taxpayer money to favor one race over another. One likely target: Federal Communications Commission programs that help minorities and women acquire licenses for broadcasting and telecommunications services.

Prominent GOP theoretician William Kristol says that another approach being reviewed is holding a series of publicized hearings on Small Business Administration programs that funnel federal contracts to minorities. Such programs "are great candidates for show trials," Mr. Kristol says, "followed by executions."

But as with property-tax revolts and term-limit campaigns, California voters might start the tidal wave themselves. The ballot initiative was conceived by Glynn Custred, a 55-year-old anthropology professor at the California State University at Hayward, and by 48-year-old Tom Wood, executive director of the California Association of Scholars, a conservative group of professors. But both fret that if the measure is hijacked by the right, it could do more damage than good.

"Unless you keep this on the highest moral plane, you can slip into something that would polarize [society] even more than the divisiveness and hate that programs are creating," Mr. Custred says.

While the initiative doesn't endorse it, Mr. Wood says he favors some alternative to affirmation action based solely on need and ignoring sex and race – at least for entry-level jobs and college admissions. Preferences based on race and sex, he says, are just counterproductive.

Even some minorities agree. "Affirmative action's day has come and gone," says Mr. Steele, the author. "Everything seems to point to that."

The Washington Post

DATE: 1-12-95
PAGE: A-12

Court Ponders School Segregation Issue

Justices Appear Split on Tying Court Supervision to Test Scores

By Joan Biskupic
Washington Post Staff Writer

The Supreme Court struggled yesterday with one of the most fractious issues of the last half century: school segregation and how to remedy its vestiges in the education of blacks and whites.

The new twist on the old question—in a 17-year-old case from Kansas City, Mo.—is whether court supervision in school desegregation can end if black students' achievement scores have not improved. During oral arguments, the justices appeared sharply split on that answer, as well as on how much they should scrutinize lower court orders aimed at segregation's lingering effects.

Justice Anthony M. Kennedy expressed frustration with long-standing court intervention in local schools, saying, "I just see no end to this," while Justice David H. Souter emphasized the enduring "attitudes" of segregation that need to be addressed. "It takes time to change," Souter said.

In the most expensive effort made in the name of school desegregation, the Kansas City schools have spent $1.3 billion on rebuilding over the last decade. But lower federal courts say the court supervision must continue, in part because test results in the mostly black school district have not sufficiently risen.

Assistant Missouri Attorney General John R. Munich argued that the constitutional protection for equal education does not mean that results must be equal. Look at the money and other resources spent to improve schools, he said, not at student performance.

But Souter, who staked out a vigorous liberal position, said that evidence of an end to segregation's effects may be in the results. "Why is it irrelevant to look at whether resources are having any effect?" he said.

Similarly, Justice Stephen G. Breyer sketched an example of children who faced early discrimination and lacked basic skills, and asked Munich, "You're honestly saying you can't look at whether they can read now?"

Munich said schools have no control over many factors that contribute to performance, including that individuals learn at different paces.

Theodore M. Shaw, representing black students who first sued the state in 1977 alleging school segregation, told the justices a district court must "have flexibility in fashioning a remedy." He said test scores are a legitimate measure of the progress of integration but added that no particular achievement level should be the sole determining factor.

Shaw, of the NAACP Legal Defense and Educational Fund, said the state of Missouri has not met its legal burden of proving it has done everything possible to end the vestiges of segregation. Supreme Court rulings have said districts must eliminate the remains of segregation to the "extent practicable" and have given district courts great discretion in the matter.

Justice Antonin Scalia, who voiced skepticism for the use of test scores, asked, "Don't you think the amount of money spent is one element? . . . What about the length of time" that a judge has controlled the district?

Other justices suggested the lower court also may have overstepped its authority when it ordered salary increases for school district employees.

Justice Sandra Day O'Connor said pay raises for non-teaching personnel have nothing to do with student achievement. "I'm just quite amazed," she said about the breadth of the judge's order.

Shaw stressed that the school district had been "woefully" under-funded and that the judge, U.S. District Judge Russell Clark, was trying to lure back students who had transferred to private city schools or moved to the suburbs.

Clark's orders were affirmed in late 1993 by the U.S. Court of Appeals for the 8th Circuit, which cited white flight and reduced student achievement as segregation's vestiges. The success of education improvements, that court said, "must be measured by their effect on the students, particularly those who have been the victims of segregation."

The Justice Department has joined the case on the side of the black students in *Missouri v. Jenkins*.

The New York Times

DATE: 1-12-95
PAGE:

School Case Displays High Court Divisions on Desegregation

By LINDA GREENHOUSE
Special to The New York Times

WASHINGTON, Jan. 11 — The Supreme Court's fault lines on the subject of desegregation remedies were starkly obvious today as the Justices heard arguments on whether the state of Missouri had met its obligation to dismantle the legacy of segregation in the Kansas City school system.

The central question before the Court was how to measure success in a court-ordered program that has rebuilt much of the battered district. The answer could affect the future of hundreds of school districts that are still under Federal court supervision.

In Kansas City, where the state was found in 1986 to be jointly liable with the school district for unconstitutional segregation, physical and educational repairs have cost the state more than $800 million of the $1.3 billion spent so far. The school district, which wants the desegregation plan to continue and has joined black parents in opposing the state in court, has spent the rest.

Student achievement has not improved substantially despite the large expenditures. But that fact should be considered irrelevant to an assessment of whether Missouri has discharged its constitutional duty, an assistant state attorney general, John R. Munich, told the Court.

Mr. Munich said that unlike attendance zones or other aspects of school management that can be changed with the stroke of a pen, it was "beyond the capacity of the schools" to guarantee educational success. So all that should count, he said, is whether the state has complied with court orders and done all it can to assure that student assignments are made and resources allocated on a nondiscriminatory basis.

The state lawyer's argument was met with incredulity from some Justices and sympathy from others.

"If it is appropriate to look at some point at the educational offerings," Justice David H. Souter said in a reference to the magnet schools and other enrichment programs that are part of the desegregation plan, "why is it irrelevant to see whether those offerings are having any effect?"

Justice Stephen G. Breyer asked Mr. Munich to imagine a district in which segregation had produced a student body that could not read. "Are you honestly saying that you can't look to see if they can read now?" Justice Breyer asked.

Mr. Munich replied: "We don't think that should be part of the Court's analysis. It is almost wholly nonprobative."

Two lower Federal courts had refused to relieve the state of its continuing obligation to pay for the remedial and enrichment programs, in part because substantial increases in student achievement had not been made. Judge Russell G. Clark of Federal District Court in Kansas City said in 1993 that "the court is not satisfied that the district has reached anywhere close to its maximum potential because the district is still at or below national norms at many grade levels."

"National norms!" Justice Antonin G. Scalia said in an exasperated tone to Deputy Solicitor General Paul Bender, who was arguing for the Clinton Administration that the state had not shown that it had taken adequate steps to erase the legacy of segregation. "Half the country is below national norms!"

Justice Scalia asked Theodore M. Shaw, a lawyer for the NAACP Legal Defense and Educational Fund Inc., who was arguing for the school district and the black plaintiffs, why comparing Kansas City with other districts was "relevant at all" when the issue was only whether there was still discrimination within the district.

Justice Anthony M. Kennedy told Mr. Bender that while student achievement might make for a "fascinating sociological inquiry," it was not a "practical measure of when a court should return control of a school system to the popularly elected democratic authorities."

"The principal objective must be to return control to the civil authorities, not the judicial authorities," Justice Kennedy told Mr. Shaw. Mr. Shaw said that while he agreed in principle, the constitutional violations had to be remedied first.

The debate over the relevance of student achievement illuminated the range of attitudes among the Justices, all of whom spoke, with the exception of Justice Clarence Thomas. Justices Souter and Scalia, for example, debated each other pointedly but indirectly by means of the questions they asked the lawyers.

Justice Souter asked the Missouri Assistant Attorney General whether years of segregation might not have "an effect on attitudes and expectations that get passed on from one school generation — indeed, one biological generation — to another, and take time to change."

"Do you deny that's a fact or a relevant consideration?" Justice Souter asked the state's lawyer.

Mr. Munich replied, "We don't think it's an appropriate consideration."

Justice Souter said, "Then I take it you accept it as a fact."

Mr. Munich said with evident reluctance, "It may happen."

Justice Souter persisted. "If it's a fact," he said, "why should it be irrelevant?"

Mr. Munich replied, "It's beyond the capacity of the schools to deal with."

Justice Scalia followed Justice Souter's line of questioning by asking Mr. Shaw, the school district's lawyer, how the state should be expected to prove its lack of responsibility for "something as remote and unproximate as attitudes going several generations back."

Mr. Shaw replied that the judicial findings concerning the state's actions in creating a substandard school system were "much more specific" and that the case did not pose the broad question Justice Scalia asked.

The debate over achievement was itself part of a broader debate about what issues this case, Missouri v. Jenkins, No. 93-1823, actually placed before the Court.

While the state's lawyer urged the Court to rule broadly that the lower courts had gone too far — and several Justices appeared inclined to do just that — there was considerable question about whether this case actually raised broad issues at all. While Judge Clark, the district

28 Cont'd

judge, had referred in passing to test scores, neither his opinion nor that of the United States Court of Appeals for the Eighth Circuit, in St. Louis, which upheld his ruling that Missouri could not be released from its remedial obligations, required any particular level of achievement or made test scores the essential feature of the legal analysis.

Several Justices appeared uncomfortable with the scope of Missouri's argument. Both Justices Sandra Day O'Connor and Ruth Bader Ginsburg questioned whether Missouri's broad attack on the scope of the desegregation remedy was even properly before the Court, because five years ago the Court denied review of an earlier Missouri appeal that raised similar questions.

Los Angeles Times

DATE: 1/12/95
PAGE: A9

Supreme Court Hears Debate on the Price of Equality in Schools

By DAVID G. SAVAGE
TIMES STAFF WRITER

WASHINGTON—If spending a bundle of money would make for an exemplary school system, the Kansas City district should be among the nation's best.

Since 1986, the state of Missouri has spent $1.3 billion to upgrade the Kansas City schools. Thanks to this extraordinary infusion of state aid, the city's schools spend three times more per student than the state average.

Nonetheless, a federal judge who ordered the extra spending ruled that the city's 17-year-old desegregation program is not yet complete because test scores of city students remain below "national norms."

On Wednesday, the U.S. Supreme Court heard arguments in the Kansas City case, seeking to settle one of the last remaining questions in desegregation law.

In two recent rulings, the high court has said that a court-ordered school desegregation program should end once spending has been raised to the levels of other districts, facilities have been desegregated and the "vestiges of past discrimination eliminated to the extent possible."

But are below-average test scores in a big-city school district a "vestige of past discrimination" that must be eliminated?

No, said state lawyers, arguing that they should not be held responsible for how students perform.

John R. Munich, Missouri's chief counsel, said that the state should be required to "allocate the resources" to pay for the required programs but that it cannot guarantee students will learn.

"Is student achievement irrelevant?" asked an incredulous Justice David H. Souter. Joined by Justice Stephen G. Breyer, he suggested that changes in test scores are a key indicator of whether the program has succeeded.

Lawyers representing the black students and the Clinton Administration agreed that the desegregation program should continue until test scores increase.

Black students who have "suffered the terrible deprivation of segregation" should not be cut off from extra state support, Deputy Solicitor General Paul Bender told the court.

But a skeptical Justice Antonin Scalia wondered how the state can be held responsible for test scores. "Half the country is below the national norms," he said.

Justice Anthony M. Kennedy appeared to agree. "I see no end to this," he said.

The Kansas City case has been closely watched for years because it offers the most striking example of a judge seeking to remake a school system in an effort to remedy past segregation.

Beginning in 1977, Judge Russell G. Clark ordered the busing of 16,000 students to integrate the schools. When that spurred "white flight" to the suburbs, Clark turned to upgrading the city schools, partly in hopes of attracting white students.

Because the state of Missouri was held jointly liable for failing to desegregate the school system, it was required to pay for many of the educational improvements.

The judge ordered the building of a $32-million high school, created a series of magnet schools and reduced the size of classes. But his far-reaching rulings appear to have irritated several justices, perhaps a majority.

Justice Sandra Day O'Connor said that she was "quite amazed" that the judge had ordered salary increases for janitors and other non-instructional employees, suggesting that the action was "an abuse of [judicial] discretion."

Earlier, the judge had ordered a property tax increase in Kansas City to help pay for school improvements.

In 1990, a sharply split Supreme Court upheld that decision on a 5-4 vote. Since then, three of the court's staunch liberal justices have retired, leading to speculation that a new majority is likely to rein in Clark.

JAMES BOVARD

Open season on gun owners?

Dubious decision at Justice

The Clinton administration has indicated there will be no prosecutions of federal agents involved in the killing of 14-year-old Sammy Weaver and his mother, Vicki Weaver during a 1992 government siege in Idaho. Deval Patrick, assistant attorney general for civil rights, effectively overruled a Justice Department investigation that urged prosecution of the agents involved for, among other things, violating the U.S. Constitution. Instead, the Clinton administration is signaling that government agents can practically never violate the rights of gun owners — even when they kill a man's son and wife.

The FBI effectively decided in this case that a family that had defended itself against a de facto ambush by U.S. marshals practically automatically deserved a death sentence, to be administered by FBI snipers.

Randy Weaver lived with his wife and four children in an isolated cabin on 20 acres on Ruby Ridge in the Idaho mountains 40 miles south of the Canadian border. Mr. Weaver was a white separatist — he did not favor violence against blacks or any other race, but merely believed that the races should live separately. Because of his odd beliefs, Mr. Weaver was targeted for a government undercover sting. In 1989, an undercover agent for the Bureau of Alcohol, Tobacco and Firearms approached Mr. Weaver and sought to get him to sell sawed off shotguns. Mr. Weaver refused, but the agent was persistent and even showed Mr. Weaver exactly where to saw off a shotgun barrel. Mr. Weaver eventually relented to the undercover agents' demands and sold him two shotguns — thereby violating federal firearms law. A court official sent Mr. Weaver the wrong date to appear in court; after Mr. Weaver did not show up on the actual date, a Justice Department attorney (who knew Mr. Weaver had been sent the wrong date to appear) then secured a warrant for his arrest.

Federal agents launched an elaborate 18-month surveillance of Mr. Weaver's cabin and land. David Niven, a lawyer involved in the subsequent court case, noted later: "The marshals called in military aerial reconnaissance and had photos studied by the Defense Mapping Agency. . . . They had psychological profiles performed and installed $130,000 worth of solar-powered long-range spy cameras. They intercepted the Weavers' mail. They even knew the menstrual cycle of Weaver's teen-age daughter, and planned an arrest scenario around it."

On Aug. 21, 1992, six U.S. marshals trespassed onto Mr. Weaver's property, outfitted in full camouflage and ski masks and carrying sub-machine guns. Three agents circled close to the cabin and threw rocks at the cabin in order to get the attention of Mr. Weaver's dogs. As Mr. Weaver's 14-year-old son, Sammy, and Kevin Harris, a 25-year-old family friend who was living in the cabin, ran to see what the dogs were barking at, U.S. Marshals shot and killed one of the dogs. Sammy Weaver fired his gun in the direction from which shots had come. Randy Weaver came out from his cabin and hollered for his son to come back to the cabin. Sammy yelled, "I'm coming, Dad," and was running back to the cabin when a federal marshal shot him in the back and killed him. Kevin Harris responded to Sammy's shooting by fatally shooting a U.S. marshal. Federal agents testified in court that the U.S. marshal had been killed by the first shot of the exchange — but evidence later showed that the marshal had fired seven shots from his gun before he was shot during the exchange.

The death of the U.S. marshal sent the U.S. government into a frenzy. The commander of the FBI's Hostage Rescue Team was called in from Washington, D.C., and ordered federal agents to "shoot-to-kill" any armed adult male outside the Weaver cabin, regardless of whether that person was doing anything to threaten or menace federal agents. (Thanks to the surveillance, federal officials knew the Weavers always carried guns when outside their cabin — as do many people in the Idaho mountains). With the massive firepower that the federal agents had in the area surrounding the cabin — the automatic weapons, the deadly-accurate sniper rifles, the night vision scopes — this was practically an order to assassinate the alleged wrongdoers. Four hundred government agents quickly swarmed in the mountains around the cabin.

The next day, Aug. 22, Randy Weaver walked from his cabin to the little shack where his son's body lay to say one last goodbye to his boy. As Mr. Weaver was lifting the latch on the shack's door, he was shot from behind by FBI sniper Ron Horiuchi. As he struggled back to the cabin, his wife, Vicki, stood in the doorway, holding a 10-month-old baby in her arms and calling for her husband to hurry. The FBI sniper shot Vicki Weaver in the temple, killing her instantly. (The FBI is very proud of its talented sharpshooters; Mr. Horiuchi testified in court that he could hit within a quarter inch of a target at a distance of 200 yards.)

Though federal officials now claim that the killing of Mr. Weaver's wife was an accident, the FBI capitalized on her death to try to psychologically torture the survivors during the siege. As The Washington Times' Jerry Seper (whose excellent reporting has helped keep this issue alive) reported, "Court records show that while the woman's body lay in the cabin for eight days, the FBI used microphones to taunt the family. 'Good morning Mrs. Weaver. We had pancakes for breakfast. What did you have?' asked the agents in at least one exchange." Neither Mr. Weaver nor Mr. Harris fired any shots at government agents after the siege began.

Mr. Weaver surrendered after 11 days. An Idaho jury found Mr. Weaver innocent of almost all charges and ruled that Kevin Harris' shooting of the U.S. marshal was legitimate self-defense. Federal Judge Edward Lodge told Mr. Weaver: "You've suffered probably far beyond what the court could do. I think you're a good person." Judge Lodge condemned the FBI: "The actions of the government, acting through the FBI, evidence a callous disregard for the rights of the defendants and the interests of justice and demonstrate a complete lack of respect for the order and directions of this court." Judge Lodge issued a lengthy list detailing the Justice Department's misconduct, fabrication of evidence, and refusals to obey court orders.

Deval Patrick

Justice Department officials launched their own investigation of the Weaver case. A 300-page report was completed earlier this year, condemning the FBI's handling of the Weaver case and recommending possible criminal prosecution of federal officials. Yet the Justice Department has disregarded the report's findings and is refusing to release the report to the public, or even to Idaho Sen. Larry Craig, who has fought doggedly to try to get the truth out on this case. Instead, portions of the report appear to have been leaked to journalists trusted to write pro-government stories on the killings, such as The Washington Post front-page story on Dec. 4.

Mr. Patrick reportedly concluded there was no evidence to show that Mr. Horiuchi intended to shoot Mrs. Weaver. Yet, Bo Gritz, the former Vietnam War hero who represented the government when negotiating Randy Weaver's surrender, declared that the government's profile of the Weaver family recommended killing Mr. Weaver's wife: "I believe Vicki was shot purposely by the sniper as a priority target. . . . The profile said, if you get a chance, take Vicki Weaver out."

Mr. Patrick's whitewash of the Idaho killings echoes what Attorney General Janet Reno did after the Waco debacle. The Justice Department's report late last year blamed the Branch Davidians for their own deaths and ludicrously portrayed the gassing and the defacto bulldozing of a compound with live people inside as a nonaggressive FBI tactic. The Justice Department evaluation of the final assault repeatedly praised FBI agents for showing "remarkable restraint" — even when FBI tanks pumped a potentially toxic gas (banned from use in international chemical warfare) into closed areas occupied by women and children.

Mr. Patrick concluded that the FBI's action against the Weaver family did not involve "excessive force." Yet, the FBI effectively decided in this case that a family that had defended itself against a de facto ambush by U.S. marshals practically automatically deserved a death sentence, to be administered by FBI snipers.

If this is not excessive force, then do U.S. government agents have the right to kill anybody suspected of a crime who happens to possess a gun? Can we expect federal sharpshooters to be gunning down women holding babies any time that some supervisor feels his agents may face some distant threat, however remote?

The Weaver case presents a great challenge to the competency and courage of the new Republican congressional leadership. Either or both the House or Senate Judiciary Committees must investigate this travesty of justice. If the Republicans let the Justice Department and the FBI get away with what may have been murder, then they will be accomplices to the deceit and repression of the American people.

James Bovard is the author of "Lost Rights: The Destruction of American Liberty" (St. Martin's Press, 1994).

Associated Press

AP v5273 rw 3exec Dentist-AIDS,400 06-13 5:30p

Dentist Who Rejected HIV Patients To Pay $120,000 in Damages
By MICHAEL J. SNIFFEN
Associated Press Writer

WASHINGTON (AP) - A dentist who refused to treat two HIV-positive patients will pay $120,000 in damages under a settlement worked out Tuesday by the Justice Department.

Dr. Drew Morvant of New Orleans will pay $60,000 to Russell Hodgkinson and $60,000 to the family of Ismael Pena, who died from AIDS in 1993, the department announced.

On March 23, the U.S. District Court in New Orleans found Morvant had violated the Americans with Disabilities Act by discriminating against people with the HIV virus or with AIDS, which the virus causes, by refusing to treat them or referring them to other dentists because of their HIV-positive status.

The Justice Department had sued Morvant in October 1993 alleging that he and his dental corporation illegally denied routine dental service to Hodgkinson and Pena after informing them the office did not treat HIV-positive patients.

Following the March ruling, the federal court had scheduled a hearing to determine appropriate damages, but the settlement makes the hearing unnecessary.

"Both the law and medical experts agree there is no justification for dentists or other health care providers to refuse to treat people with HIV or AIDS," said Assistant Attorney General Deval L. Patrick, head of the civil rights division. "This settlement, together with the court's ruling, demonstrates that such discriminatory conduct will not be tolerated."

Morvant also agreed to provide routine dental care to people with HIV or AIDS and refer them to other dentists only for treatment outside his expertise. He further agreed to undergo training, along with his staff, on dental treatment of people with HIV or AIDS, on infection control in dental offices and on the ethical duties of medical professionals.

The act prohibits discrimination against people with disabilities, as HIV and AIDS are considered, in public accommodations, including medical offices.

The federal Occupational Health and Safety Administration requires dental offices to use "universal precautions" against transmission of blood-borne diseases, including AIDS, for all patients, regardless of their HIV status.

The "universal precautions" are recommended by the federal Centers for Disease Control and Prevention and by the American Dental Association, both of which have found no medical justification for denying dental care on the basis of HIV-positive or AIDS status.

Los Angeles Times

DATE: 6-14-95

PAGE: A-10

Will Americans Really Turn 'Colorblind'?

Affirmative action decision poses a daunting challenge

From the outset, the drumbeat against affirmative action seemed disproportionate to the modest efforts and even more modest results of government agencies to redress historical discrimination. Now, with a decision that deals a severe blow to most of those efforts, the U.S. Supreme Court has challenged every employer, every university admissions officer and every politician—Democrat or Republican—to act in a truly colorblind manner. But the initial reaction in some segments of society to the court's sweeping decision makes us fear that many Americans will fail to embrace that challenge and end two centuries of racially biased behavior.

One of those who did not welcome the ruling was President Clinton, who promised to lead an effort to preserve federal affirmative action programs.

Monday's 5-4 ruling reversed past decisions that upheld federal affirmative action as "benign race-conscious decision-making." The court held for the first time that "all racial classifications" by government agencies are "inherently suspect and presumptively invalid." The case arose after a Colorado road builder—a white male—lost a federal construction contract to a Latino businessman. Although the bid of Adarand Constructors Inc. was lowest, Gonzales Construction Co. won the contract, benefiting from a 1987 law requiring the U.S. Transportation Department to steer at least 10% of its funds to firms owned by racial minorities or women. Adarand's owner sued.

HISTORY IGNORED: "The Constitution protects persons, not groups," Justice Sandra Day O'Connor wrote for the majority. "Whenever the government treats any person unequally because of his or her race, that person suffers an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection." Affirmative action is justified only to correct specific, provable cases of discrimination, not suspected discrimination by society over time, the court held.

But Justice Ruth Bader Ginsburg, in her dissenting opinion, reviewed a sorry reality—of the present, not just the past. "The persistence of racial inequality . . . and discrimination's lingering effects . . . are evident in our workplaces, markets, and neighborhoods. Job applicants with identical resumes, qualifications, and interview styles still experience different receptions, depending on their race. White and African American consumers still encounter different deals. People of color looking for housing still face discriminatory treatment by landlords, real estate agents and mortgage lenders," she wrote.

Nor has it been easy for individuals to pursue claims of discrimination. Federal and state equal employment agencies are overworked, underbudgeted and understaffed.

CALIFORNIA CONNECTION: Because it is binding on California's few formal affirmative action programs, the Adarand decision should short-circuit efforts to put before the voters a state constitutional amendment ending those state programs. However, the leaders of that campaign declared on Monday that they will proceed anyway. Critics of affirmative action in Congress, including presidential hopefuls Sen. Bob Dole (R-Kan.) and Phil Gramm (R-Tex.), hailed the decision and vowed to end every federal group "preference"—except, we presume, those benefiting Kansas farmers and Texas ranchers.

And isn't that the point? There's no getting away from group preferences, but it's apparently only racial minority group preferences that the high court can no longer abide. At least let's not pretend that a restriction on affirmative action can be justified by suggesting that the playing field is now equal for all. As Justice John Paul Stevens pointed out in his dissent, when approaching the door of opportunity it does make a difference whether one encounters a "No Trespassing" sign or a welcome mat.

The New York Times

DATE: 6-4-93
PAGE: 14-E

Affirmative Action, Affirmed

A confidential report to the President prepared by Administration officials should be enough to dissuade Mr. Clinton from joining the Republicans' gathering crusade against affirmative action. Better yet, it might even persuade him to tackle the Republicans head-on with a principled, public defense of a strategy that has demonstrably enlarged the opportunities for blacks, other minorities and women to move into the American mainstream.

The report, which has not been released, argues that with some exceptions the Federal Government's affirmative action programs are morally and constitutionally justified to overcome "manifest imbalances" in the workplace and in the country's educational institutions. The Rev. Jesse Jackson put the case for affirmative action more briskly when he called it a "conservative remedy to generations of unfair practices that favored white men."

The reality that affirmative action is a minimal, short-term remedy for massive, protracted injustice is the message that President Clinton must carry forward. He is likely to wait until the report is published before speaking out. Yet speak he must, because he cannot win by remaining silent. This is an issue so distorted by fear and falsehood that to ignore it would be to default the political terrain to artful demagogues.

In a year when every Republican Presidential candidate needs a trademark angle, Gov. Pete Wilson is trying to sell the public on the idea that affirmative action is an anti-white conspiracy. Mr. Clinton needs to recall the rather modest — and bipartisan — origins of the effort to get minorities and women into a fair race for education and jobs. In the late 1960's, Lyndon Johnson's Justice Department and Richard Nixon's Labor Department designed two consciously race-based strategies to break down ancient patterns of discrimination.

History is instructive, too, when it comes to debunking the phony sense of injustice being urged on white male voters. In 1966, a New Orleans craft union with a self-perpetuating, all-white membership was required to seek out minorities and invite them to use its hiring hall — the only way that blacks could crack the job market. In 1970, Philadelphia contractors seeking city business were told that their employees' racial makeup would have to approximate that of the local work force.

In both cases, Federal courts concluded that there was nothing wrong, morally and constitutionally, with these therapeutic efforts to redress years of negative exclusion with a new practice of affirmative inclusion. Since then, Congress and the courts have for the most part upheld the principles of affirmative action and its expanded application.

Mr. Clinton can also talk about practical results. During the last two decades, a significant number of black families have been able to move up the job and income scale. Affirmative action is not the only reason for this, but it is surely an important one. More broadly, Mr. Clinton might ask, why in the world should white America fear the expansion of the black middle class? That is something to be welcomed by everyone.

According to an account in Wednesday's Times, the unfinished White House report gives Mr. Clinton room to address the concerns of white males. It says that race or sex cannot be the only criterion and that affirmative action programs must respect the rights of "bystanders," like white men. It also expresses concern about Federal programs that establish hard "set asides" or rigid quotas that in effect become an entitlement.

On balance, though, the report reaffirms the value of affirmative action. In what was surely an unfortunate but perhaps revealing choice of words, one official connected with the report said that it was "an attempt by the President to discover and define what he believes." It would be nice to think that Mr. Clinton had believed all along in affirmative action. But even if that was not the case, he now has a reason to embrace its cause and draw a clear clear moral line between himself and politicians who, in their avarice for votes, would end this measured, 30-year effort to undo two centuries of discrimination.

The Washington Times

DATE: 6-5-95
PAGE: A-19

The false promise of affirmative action

By Pete Wilson

Our state and nation are engaged in a debate that goes to the very foundation of the American dream. The question before us: Is preferential treatment based on race or gender consistent with the American dream of equality under the law?

This is a charged issue that has been confused by emotionalism on all sides. But we cannot avoid taking a stand. We cannot sidestep this issue or pretend that it doesn't exist. For it goes to the heart and soul of the nation.

The success of the civil rights movement — against enormous odds — was very much based on its appeal to our heritage that this nation was founded on the principle, as Thomas Jefferson said, of "equal rights for all, special privileges for none." That principle, however, is slipping away from us when we allow affirmative-action programs that grant preferential treatment based on race or gender.

As originally conceived by President Kennedy, affirmative action merely prohibited discrimination by federal contractors. But by 1970, the federal government established regulations which required affirmative action through "goals and timetables." While unintended in conception, in practice, these too often encouraged preferential treatment for members of the group being recruited and hired. And ultimately, affirmative action became expressly based on preferential treatment in the form of quotas and other efforts that made race and gender determining factors in employment, admissions and contracting decisions.

Those who proposed such steps felt then (and some persist in feeling so today) that any member of a group that suffered historic discrimination is entitled to special opportunity as compensation — even though a member of that group has not as an individual suffered discrimination.

The argument is that it is perfectly permissible and right to impose wrongful discrimination upon members of one group to compensate members of another. However natural this compensatory urge may have been in the immediate post-discrimination period of the 1960s and 1970, the validity of the need for such compensation has steadily faded ever since.

President Johnson compared the effort to a foot race in which those who had once been shackled must be given some advantage —the inside track or even a bicycle — to keep up with other runners. Johnson sought to justify preferences by this metaphor, which appealed to our fundamental sense of fairness. Government gladly played the rode of enforcer. A full-court press was made to persuade Americans that mandating and practicing inequality could bring equality. But, of course, it can't.

The contest simply isn't fair if we grant preferential treatment to some of the contestants based not on past discrimination, but simply on being born into a protected group. Even the architects of this system of special preferences never intended that it would last forever. No one, in fact, envisioned that redressing two centuries of unfairness would launch a whole new era of unfairness. But it has.

Rather than uniting people around our common core, this system of preferential treatment constantly reminds us of our superficial differences. Instead of treating every American as an individual, it pits group against group, race against race.

But worst of all, this system is eroding the American ideal that anyone who works hard and plays by the rules has an equal chance to achieve the American dream, an ideal that has attracted generation after generation to our shores.

Most Americans, of all races and creeds, recognize the need to end preferential treatment for protected groups. For whatever good it may have done in the past, they see the harm it is doing to our nation today.

They see that the current system of special privilege based on race and gender is breeding resentment from those left standing on the sidelines.

Parents watch as their children are denied the opportunity to attend the school of their choice or find the job for which they've been trained — not because they don't have what it takes or haven't worked hard all their lives, but because they don't belong to a particular group that enjoys a special advantage.

We cannot ignore the unfairness and pretend it doesn't exist. We must change what's wrong and set it right. We must replace the discredited policies of preferential treatment with a new vision based upon justice, upon individual merit, and upon the fundamental civil rights principle of equality under the law.

We must make hard work, self-reliance, individual initiative and merit — not group membership — the basis for success in America. This new vision rests on three basic pillars:

- Everyone must be prepared to compete. Life is a competition. We shouldn't cancel it through affirmative action. We should ensure that every child is given every chance to grow up to be an individual prepared to compete in life, through preventive programs that prepare children for school, education reform to improve the quality of our schools, and financial aid to help students get the higher education they need to succeed in life.

- Zero tolerance for discrimination of any Kind. We can't pretend that discrimination against women and minorities doesn't still exist. We must conscientiously and vigorously enforce the laws that prohibit and punish unlawful discrimination. Wherever bigotry rears its insidious head, we must condemn it, and we must punish it.

But we must also recognize that preferential treatment based on group membership is also discrimination and that it too must end.

Pete Wilson, a Republican, is governor of California.

80

Cont

Los Angeles Times 5/23/95

Race-Based Scholarship Ban Allowed to Stand

■ Education: U.S. high court rejects university's appeal. Ruling is seen as a setback to college affirmative action.

By DAVID G. SAVAGE
TIMES STAFF WRITER

WASHINGTON—In a setback for college affirmative action, the Supreme Court on Monday let stand a ruling that bars the University of Maryland from restricting some of its scholarships to black students.

The outcome in this closely-watched case threatens the "race-targeted scholarships" that are found at two-thirds of the nation's colleges and universities.

While most scholarships are based on merit and need, about 5% of undergraduate aid and 10% in professional schools is limited to certain students based on their race or ethnic heritage, according to a General Accounting Office survey.

The University of Maryland said its Banneker program, which offered 30 to 40 black freshmen all-expenses scholarships, symbolized its commitment to overcoming its history of excluding blacks. In 1930, Baltimore-native Thurgood Marshall, who later was to sit on the Supreme Court, was barred from applying to Maryland's law school because of his race.

But last year, in the first decision on the issue, a federal appeals court ruled that a scholarship program limited to blacks denies white students equal protection of the laws.

"Racial classifications cannot be rationalized by the casual invocation of benign remedial aims," wrote a three-judge panel of the U.S. 4th Circuit Court of Appeals. The ruling dealt only with racial issues, not with scholarships based on gender or other criteria.

The Clinton Administration, the NAACP Legal Defense Fund and a coalition of major colleges and universities joined the University of Maryland in urging the high court to grant the appeal and to reverse the ruling. They said the ruling, if allowed to stand, would undercut minority scholarships across the nation.

But without comment or dissent, the justices rejected the university's appeal in the case (Kirwan vs. Podberesky, 94-1620).

The action by the high court is not binding. Because the justices can freely choose their cases, a refusal to hear an appeal does not formally uphold the lower court decision.

However, the court's refusal to even hear Maryland's appeal, especially after the Justice Department said that it raised an issue with national implications, strongly suggests that a majority of the justices do not dispute the lower court's conclusion.

The appeals court decision relied on a 1989 Supreme Court ruling in a Richmond, Va., case that said that the use of racial classifications by state and local governments is rarely acceptable. Even though the city of Richmond, once the capital of the Confederacy, clearly had discriminated against blacks in the past, that history does not justify discrimination in favor of blacks today, the court said in the case of Richmond vs. Croson.

The same is true in the Maryland case, the appeals court said. While blacks were excluded from the university until 1954, they make up 11% of the student body today, the court noted.

Recently, the federal courts have relied on the 1989 ruling to strike down various forms of official affirmative action, including city laws that reserve some contracts for blacks and Latinos.

Still pending before the high court is a major challenge to affirmative action programs authorized by the federal government. A white contractor is contesting a federal highway program that steers some contracts to minority-owned firms. A ruling in the case of Adarand Constructors vs. Pena is expected by the end of June.

While the Maryland case may call a halt to scholarship programs that exclude some students based on their race, the ruling does not concern financial aid programs that give an edge to minority students.

But the ruling is likely to end a legal controversy that has festered for five years.

In 1990, lawyers in the George Bush Administration told higher education officials that scholarships directed to only minorities were illegal. However, that announcement set off a political uproar and the White House backed down. It ordered Education Department officials to study the matter.

Soon after President Clinton took office, Richard W. Riley, his secretary of education, announced that "race-targeted scholarships" were legal, either as a means to "remedy past discrimination" or to "achieve a diverse student body."

But Washington Legal Foundation, a conservative law center, decided to challenge that conclusion in court.

In 1990, Daniel J. Podberesky, a Maryland freshman, was told he could not apply for a Banneker scholarship even though he had a 4.0 grade point average and a 1340 score on the Scholastic Aptitude Test. The student said he was "Hispanic" because his mother is from Costa Rica. But his application was denied because he is not black.

Podberesky is now a first-year medical student and his lawyers said he is owed the $35,000 in scholarship aid that he was denied over the course of four years.

"I believe this case will have positive national implications," said Richard Samp, chief counsel for the Washington Legal Foundation, who represented Podberesky. "From the beginning, this case has been clear-cut: publicly funded academic scholarships awarded on a race-exclusive basis are unconstitutional."

Administration lawyers argued that race-based scholarships are justified at Southern universities with a legacy of past discrimination.

Citing earlier rulings in desegregation cases, the Justice Department argued that formerly segregated universities "have an affirmative duty" to take whatever steps are needed to dismantle those systems.

But despite the department's view, the justices refused to even hear the appeal.

Court kills blacks-only scholarship

By Andrea Stone
USA TODAY

In a move certain to heat up the debate on affirmative action, the Supreme Court Monday refused to allow the University of Maryland to reinstate a scholarship program limited to black students.

The high court turned away, without comment, arguments the Benjamin Banneker scholarship was needed to combat lingering effects of racial bias.

A lower court last fall called the program unconstitutional and "reverse discrimination."

The court's refusal to hear the case could have far-reaching effects.

About two-thirds of colleges offer race-based scholarships, although most are left untouched by this specific action.

But it "means any race-based scholarship any place in the country can now be challenged," said Melvin Urofsky, Virginia Commonwealth University historian.

The NAACP Legal Defense and Education Fund's Theodore Shaw, which represented black students in the case, predicted little effect.

"There are scholarships for Dutch students, Greek, Armenian, Italian, gender-specific, or people who can trace their ancestry back to Confederate soldiers," Shaw said. "If you can have all these, they ought to be able to have a few scholarships for (black) students."

Maryland's program, named for a black scientist, was created to boost black enrollment.

Hispanic student Daniel Podberesky sued in 1990 after he was denied one.

The action is "a discouraging message to those working to remedy the present effects of past discrimination," Maryland President William Kirwan said.

Are programs needed? 6D

TUESDAY, MAY 23, 1995 • USA TODAY

Re-evaluating race-based aid

Only days after graduating from the University of Maryland as a top scholar, Maisha Herron found her ride on cloud nine cut short by a thunderbolt.

The Supreme Court refused Monday to let the university reinstate its Benjamin Banneker Program, which has given 482 high-achieving black high school graduates $4 million in four-year scholarships in 16 years. The program, created to boost black enrollment at the College Park campus, was ruled unconstitutional by a federal appeals court last October.

Banneker scholar Herron says she is haunted by the thought thousands of similar bright students no longer will get aid.

"I believe it will create a wave of anti-affirmative action to emerge from the public," says a passionate Herron, who graduated *cum laude* in general business and management.

Michael Williams, former assistant education secretary for civil rights under President Bush, says he feels "vindicated." Williams set off a national furor in 1990 when he pushed for a ban on financial aid targeted to minorities.

Williams, now a Fort Worth, Texas, attorney, says educators and politicians should now focus on "the real problems ... the failure of public education in K-12.

"I've always thought that the reasons our college campuses don't 'look like America' has nothing to do with financial aid and minority scholarships," Williams says. "It is because we are wholly failing to produce a large enough pool of minority youngsters who can meet the rigors of a collegiate education."

But Robert Atwell, president of the American Council on Education, representing all segments of higher education, says the decision's reach is limited. He believes it will affect only states under the 4th U.S. Circuit Court of Appeals — Maryland, North Carolina, South Carolina, Virginia and West Virginia — which declared the program unconstitutional.

He also says minority-targeted scholarships — in which race is one factor among many in a selection — won't be affected, only those in which scholarships are set aside exclusively for one race.

Even then, Atwell says, his organization is advising colleges not to dump programs automatically, but to assess how their scholarships differ from the Banneker program.

"We don't think it's a final ruling on the issue of minority scholarships and certainly doesn't invalidate other programs out there," Atwell says.

Many colleges contend the scholarships are a fraction of all financial aid, yet an important boost to racial equality.

Two-thirds of all four-year colleges award minority-targeted scholarships. But in a January 1994 report, the U.S. General Accounting Office said such scholarships represent no more than 5% of all scholarship dollars. Financial aid based solely on race is less than 1% of the total, GAO said.

Not everyone buys that study, including Stephen H. Balch, president of the National Association of Scholars, a group of academic professionals with a traditional bent, based at Princeton University. Balch says granting admission and awarding financial aid with a notion to creating a campus with a proper racial mix is a "widespread" practice.

"The advice to any university is 'get rid of (race-based awards), change them, re-evaluate your programs, redesign your programs in a race neutral way,'" Williams says.

But University of Maryland's Humphrey Atiemo thinks that would be a mistake. Banneker scholars, he says, are leaders.

"If you look at the top students in each of the schools at the university, at least one or two are Banneker scholars."

Atiemo, who earned a degree in biological sciences and a full scholarship to Maryland's medical school in Baltimore, speculates "in the year 2000, when you look at the résumés of top doctors and lawyers, heads of corporations and leaders in other fields, they will be Banneker scholars."

Banneker program director Patricia Thomas-Walton says about 125 scholars remain in the pipeline and will receive aid until they graduate.

"I think the current political climate has a kind of mean-spiritedness," she says. "It's a blow to equity in education. I'm hoping that there is a way we can constructively overcome the damage."

THE NATION'S NEWSPAPER
USA TODAY

DATE: 3.17.95
PAGE: 4A

AFFIRMATIVE ACTION

'Glass ceiling' report adds fuel to debate

By Andrea Stone and Jessica Lee
USA TODAY

A bipartisan federal panel's report showing women and minorities rarely pass through a "glass ceiling," into the top levels of business, provides new ammunition to affirmative action's supporters in their uphill struggle to defend the policy.

President Clinton has ordered a wide-ranging review of affirmative action, and signaled his willingness to move away from programs designed to counter practices that put women and minorities at a disadvantage.

AP

REICH: 'Glass elevator' limits job paths

Clinton's moves have created widespread unease among African-Americans, Hispanics and Asian-Americans in his party. But they're part of a national reassessment, accelerated by the coming presidential campaign and a controversial move in California to put an affirmative-action measure on the ballot.

It was Senate Majority Leader Bob Dole, R-Kan., who introduced legislation in 1991 to establish the "glass ceiling" panel. At the time, he praised a similar report that showed "the existence of invisible, artificial barriers blocking women and minorities from advancing up the corporate ladder." Now, Dole has introduced legislation to bar government hiring or contracting based on race or sex.

Asked about the apparent change of heart, Dole acknowledged Thursday that efforts to bring women and minorities into the workplace is "not moving much."

"That means we have to go after discrimination," said Dole. "Don't let them (employers) discriminate in the first place. Those who discriminate ought to be punished."

Labor Secretary Robert Reich praises Dole's 1991 initiative. "His vision and foresight on the problems faced by women and minorities in the workplace were exemplary."

But William Kristol, the Republican strategist behind the congressional push to abandon affirmative action, says Dole was "wrong in '91 and right today."

Even long-time advocates say policies should be reassessed.

"If affirmative-action programs are to go down, we will not let them go down without a fight," says Rep. Kweisi Mfume, D-Md.

"There is nothing in this report that convinces me that the government needs to get even more involved in second-guessing hiring or promotion policies in corporations," Kristol says.

But Ron Walters, political science professor at Howard University, says the fight over affirmative action is an attempt to divide the public and boost GOP electoral chances. "It is definitely a wedge issue for Democrats."

Dole's reassessment comes weeks after Sen. Phil Gramm, the Texan who is his chief rival for the GOP presidential nomination, announced he would mount an unceasing attack against quotas if elected president.

Dole's remarks, along with those of other Republicans, suggest the GOP is looking to roll back quotas, set-asides and preferences — timetables and guidelines some believe are designed to help one group at the expense of another.

Democrats seem to be approaching the problem from a different direction. Yet they are embracing the idea that affirmative action must be reviewed and revised.

House Minority Leader Richard Gephardt, D-Mo., defends the programs as necessary in a society that falls short of any color-blind ideal: "We're not there yet."

Congressional Democrats say the White House appears to be moving toward an approach that would erase references to race and gender from affirmative-action programs and base them, instead, on economic disadvantage.

Industry leadership's race, ethnicity, sex

Race, ethnicity and sex of executives, managers and administrators in private-industry fields.

U.S. POPULATION MIX	
Whites	75.3%
Hispanics	9.0%
Blacks	12.0%
Asians/Pacific Islanders	2.9%
Native Americans	0.8%

BUSINESS SERVICES	Men	Women	Total
Whites	51.6%	32.8%	84.4%
Hispanics	5.2%	3.2%	8.4%
Blacks	3.5%	0.5%	4.0%
Asians	1.7%	1.2%	2.9%

FINANCE	Men	Women	Total
Whites	44.8%	37.6%	82.4%
Hispanics	3.4%	5.0%	8.4%
Blacks	2.6%	2.6%	5.2%
Asians	1.8%	2.6%	4.4%

INSURANCE	Men	Women	Total
Whites	44.0%	40.7%	82.4%
Hispanics	2.0%	4.2%	8.4%
Blacks	3.2%	3.0%	6.2%
Asians	0.5%	1.7%	4.4%

COMMUNICATIONS	Men	Women	Total
Whites	58.4%	25.6%	84.0%
Hispanics	6.1%	3.4%	9.5%
Blacks	2.4%	1.0%	3.4%
Asians	1.7%	0.3%	2.0%

RETAIL TRADE	Men	Women	Total
Whites	41.7%	39.1%	80.8%
Hispanics	2.8%	2.0%	4.8%
Blacks	2.3%	2.6%	4.9%
Asians	3.5%	1.7%	5.2%

TRANSPORTATION	Men	Women	Total
Whites	58.4%	25.6%	85.0%
Hispanics	6.1%	3.4%	9.5%
Blacks	2.4%	1.0%	3.4%
Asians	1.7%	0.3%	2.0%

UTILITIES	Men	Women	Total
Whites	71.9%	17.2%	89.1%
Hispanics	3.1%	0.7%	3.9%
Blacks	3.1%	0.8%	3.9%
Asians	0.0%	0.8%	0.8%

WHOLESALE TRADE	Men	Women	Total
Whites	53.4%	36.2%	89.6%
Hispanics	2.7%	2.1%	4.8%
Blacks	1.2%	0.3%	1.5%
Asians	2.4%	1.8%	4.2%

Note: Percentages may not total 100 because of rounding or because not all racial/ethnic groups are shown. Hispanics can be of any race. Whites counted in this report are non-Hispanic.

Source: U.S. Labor Department's Glass Ceiling Commission

26

CONT.

funded projects.

Mr. Fletcher says mandatory goals are sometimes necessary when voluntary goals fail. In the case of the Philadelphia Plan, for example, four years of voluntary minority hiring goals had yielded no increases in minority hires at construction sites.

Federal courts upheld the legality of the mandatory hiring goals. The plan has since been duplicated in every federal department and agency.

"That's what you do when you're not out on the street with a sign that says, 'We shall overcome.' You're inside, overcoming," Mr. Fletcher said.

Mr. Bolick noted that many preferences are cloaked in language designed to help "socially and economically disadvantaged businesses." In practice, however, they equate to race or sex preferences, he said.

"There has never been a straight up-or-down vote on preferences, because proponents of affirmative action are well aware that they couldn't win," Mr. Bolick said. Instead, they have implemented their policies through executive orders and regulations — what he calls "very surreptitious" tactics.

But that approach now makes it easier to roll back the system of federal preferences. "It wouldn't require civil rights laws to be modified. A single comprehensive statute would override all the preferences," Mr. Bolick said.

Mr. Rossman agrees that the system needs to be modified. "We've gone from what was probably a good idea, designed to help out socially and economically disadvantaged, to a system of quotas that look solely at a person's race or ethnic background."

THE NATION'S NEWSPAPER
USA TODAY

DATE: 3-24-95
PAGE: 1-A

Fairness key to support

By Andrea Stone
and Jim Norman
USA TODAY

Most Americans want to help minorities and women succeed, but reject any programs that seem to give them an unfair advantage in school and the workplace.

A new USA TODAY/CNN/Gallup poll, one of the most extensive in the 30-year history of affirmative action, finds 55% support the broad concept of expanding opportunities for minorities and women.

Only a third, 37%, want such programs cut back; 31% want efforts increased; 26% want them kept at the same level.

But support drops sharply when people are asked about specific efforts to combat past discrimination and improve chances of women and minorities in hiring, promotion, contracting and school:

▶ 67% oppose setting aside scholarships at public universities for women and minorities.

▶ 63% oppose hiring quotas.

▶ 84% oppose hiring a less qualified minority over a white applicant at a business that has few minority workers. Resistance to such favoritism includes 68% of blacks.

The poll also shows 64% believe blacks have as good a chance as whites to get a job, a key element in opposition to special hiring practices.

"Americans don't perceive that discrimination is a major problem" anymore, says political analyst William Schneider.

But racial differences remain. Among whites, for example, 68% oppose hiring quotas; 66% of blacks favor them.

White men are the strongest opponents of affirmative action, though most say they have not personally been affected.

▶ Only 15% of white men say they've lost a job because of affirmative action; 42% of black men say they lost a job because of discrimination.

The poll of 1,220 adults was done March 17-19. Margin of error: 3% overall, 4% for whites, 6% for blacks.

THE WALL STREET JOURNAL.

DATE: 3-24-95
PAGE: A16

Some Agencies Stage Affirmative-Action Retreat While White House Still Debates Its Battle Plan

By MICHAEL K. FRISBY
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON – As President Clinton considers changes to affirmative-action policies, his administration already is retreating.

Without clear guidance from the top—it's still not known if Mr. Clinton will abandon some established practices – agencies have begun some backtracking on their own. In the Justice Department, for instance, a conservative and cautious standard is now being used for establishing race-based remedies within other government agencies, even before the president makes his decision.

The Commerce Department learned this recently, when it sought approval for a new fellowship program aimed at minority business students. But it got a surprise answer: Don't create a race-based program, because there isn't convincing evidence of past discrimination.

The Commerce Department wanted to model a program for its U.S. and Foreign Commercial Service after one in the State Department; five minority student-interns were to gain experience, which could lead to jobs as foreign commercial service officers, just as the State Department's program has trained students for diplomatic duty. Currently, only 23 of the service's 217 commercial officers are minorities.

The Justice Department said no. In a March 6 memo, Commerce Assistant Counsel Barbara S. Fredericks recommended that "race-neutral criteria", such as economic disadvantages, be used to determine eligibility. "This office has discussed the proposed fellowship program with the Office of Legal Counsel, Department of Justice, and it is their opinion that there is insufficient legal basis for US&FCS to base eligibility for a fellowship program on minority status," Ms. Fredericks wrote.

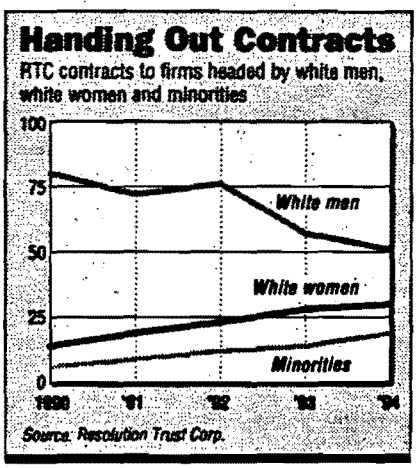
Foundation Program

Moreover, she said the Justice Department believes a state program at the Woodrow Wilson National Fellowship Foundation, in place since 1992, "may not withstand judicial scrutiny."

This interpretation has both angered and puzzled civil-rights lawyers. Barbara Arnwine, head of the Lawyers Committee For Civil Rights Under Law, said their view is that the 1989 Richmond vs. Croson Supreme Court decision, plus other cases, does not require the federal government to show a pattern of past discrimination before adopting race-based remedies (though state governments may have to). She voiced "surprise" at the Justice Department's view, saying it recently argued in a pending Supreme Court case that the federal government has "much broader powers" than the states.

The Commerce Department, meanwhile, isn't sure what to do next. "We are in the process of reassessing the best way to proceed, because it is a very solid program," says Carol Hamilton, the press secretary. She says the department wants more minority commercial officers, the people who work overseas to promote trade, because much U.S. export growth will be in Third World countries.

At other agencies, programs fashioned to help minorities and women also are under attack. For example, a technicality has been used at the Agriculture Department to question the legality of a task force designed to help African-American land grant colleges. The Federal Deposit Insurance Corp. may not absorb a Resolution Trust Corp. program that helps generate contracts for female and minority headed-firms when the two agencies merge. And the Office of Management and Budget suggests a procurement change that would make it more difficult to know if large government contractors meet federal goals for awarding subcontracts to minority companies.



"Of course this is backtracking," says Frank Watkins of the Rainbow Coalition, an activist group. "If you are not seen as moving forward aggressively on enforcing racial justice and gender-equality remedies, then your government will move backwards."

Planned Speech

In fact, a presidential review of preference programs, prompted by GOP attacks, has caused exactly what the administration doesn't want: Minorities are irritated by perceived attempts to take away hard-earned victories, yet blue-collar whites aren't impressed. When Mr. Clinton makes a planned speech on affirmative action, originally scheduled for this week but put off until next month, he doesn't want to upset either constituency.

This issue, however, appears to be uniting two of his potential opponents, Jesse Jackson and Texas billionaire Ross Perot. Mr. Jackson has invited Mr. Perot to join him at a news conference in support of affirmative action.

Meanwhile, the administration sends mixed signals. At a recent meeting, Chief of Staff Leon Panetta vowed to Mr. Jackson and other civil-rights leaders that "we will not go backwards" on affirmative action. Deval Patrick, the head of the Justice Department's Civil Rights Division, will be grilled today at a House hearing on affirmative action. But in the agencies, bureaucrats move in different ways.

Minority-college presidents are upset because the Agriculture Department's general counsel recently ruled the USDA/1890 Task Force, intended to improve its relations with 17 predominately black agriculture schools, is operating illegally. They say the task force, which has both department officials and college presidents, violates the Federal Advisory Committee Act, which limits what officials and citizens can do together in closed meetings.

They "expected us to cease and desist," complains James Tatum, special assistant to the task force. Although there is concern in the civil-rights community that the move is linked to the review of affirmative-action programs, it may reflect unrelated legal requirements. Mr. Tatum says he doesn't question the department's commitment to the task force.

'Purely Technical' Concerns

In fact, Tom Amontree, the department's press secretary, says the department "fully supports" the task force and has the "purely technical" concerns under review. The task force dates from the Reagan administration and is supposed to help black colleges gain a larger share of federal resources. For example, they received $69.2 million of USDA funds in 1991, while white schools got $267.8 million.

To get this done, the task force recommended stationing a bureaucrat at each of the 17 college campuses as a liaison officer, and helped start a program that awards scholarships and, eventually, jobs at the Agriculture Department to 34 minority students each year. It also helps the colleges acquire surplus government property to upgrade their facilities.

36

CONT.

"To dismantle this based on some technicality would be unfortunate," says William DeLauder, president of Delaware State College and a co-chairman of the task force.

Minority businesses are concerned about a proposed regulation change at the Office of Federal Procurement Policy. It would let major government contractors report whether they're meeting small and disadvantaged business subcontracting goals on a company-wide basis, rather than on each contract over $500,000.

Such a change, says Belinda Guadarrama, president of a minority computer-software company in California, would make it difficult to know if contractors give disadvantaged companies at least 5% of their subcontracting work, the government goal. She says the move comes after she won a court ruling which forces the Pentagon to release twice-yearly reports from contractors about meeting these goals.

Easing Paperwork Burden

But William Coleman, the OFPP deputy administrator, says the administration wants to ease the paperwork burden on companies by making this change, and has asked Congress to eliminate the need for subcontracting goals on commercial purchases.

At the FDIC, Chairman Ricki Tigert Helfer is postponing a decision about how much of an RTC minority and women's program to include when the two agencies merge at year end. Alan Whitney, the press spokesman, says the FDIC has hired an outside consultant to study the program and Ms. Helfer "is awaiting the results of this review."

The Washington Times

DATE: 3.24.95
PAGE: A1

Dodd's affirmative reaction

Opponents of preferential policy misinformed, says DNC chairman

By Donald Lambro
THE WASHINGTON TIMES

Sen. Christopher J. Dodd, the Democratic National Committee's general chairman, said yesterday that accepting demands within his party to end affirmative action would be a "huge mistake" that lawmakers would regret.

The Connecticut senator, whom President Clinton named in January to be the party's chief spokesman, said polls showing strong opposition to affirmative action are fueled by "anecdotes" and a lack of information.

Mr. Clinton has been pushed by Republicans into reviewing affirmative-action policies, but Mr. Dodd's remarks place his party squarely behind their retention.

"I think it is a dangerous approach to take the notion of dismantling affirmative action," Mr. Dodd told The Washington Times.

"I'm not at all suggesting that we do nothing," he said. "Clearly, a review should be in order. . . . Are the regulations working? Are they doing what people intended them to do to — create a level playing field for equal opportunity?

"But if the goals are to dismantle, I think we're making a huge mistake. It's an explosive issue that could come back to bite you."

But when a Gallup Poll asked last month whether "affirmative action programs are needed to help women/racial minorities overcome discrimination," 57 percent of women and 56 percent of minorities said no.

In a Wall Street Journal-NBC News poll March 7, 51 percent of respondents favored a law limiting affirmative action, and 38 percent said they opposed such a law.

Mr. Dodd's position puts the party sharply at odds with the Democratic Leadership Council's chairman, Sen. Joseph I. Lieberman of Connecticut, who recently said it is time to repeal laws and regulations that grant preferences based on race.

Mr. Lieberman this month embraced the initiative in California to end racial preferences, saying, "You can't defend policies that are based on group preferences as opposed to individual opportunities."

He said such policies are "patently unfair," and he added, "Those who are the victims of them and lose out when choices are made, based on group preferences as opposed to individual ability, naturally become disaffected from the process."

Mr. Dodd, who is in charge of crafting a message that can help the Democrats recover from last year's heavy election losses, denied that affirmative action has contributed to alienation among working-class whites, who have left the Democratic Party in droves, especially in the South.

"They're anecdotes. I don't think most people know what they're talking about on this subject matter. And I'm not talking about the general public at large. I don't think most members of Congress know what they're talking about on this subject," he said.

"To suggest there is an array of regulations, statutes and so forth that deal with affirmative action is truly not the case. I defy anyone to find a single regulation that talks about quotas," Mr. Dodd added.

"It saddens me in a way to see how people out there are raising the issue from the perspective of good government when quite clearly this is good politics."

Senate Majority Leader Bob Dole of Kansas and Sen. Phil Gramm of Texas, rivals for the 1996 GOP presidential nomination, have called for ending the racial preferences and contract set-asides that have been at the core of social policy for several decades.

Mr. Dodd said he hopes that Mr. Clinton's review is turned over to a nonpartisan panel, as House Minority Leader Richard A. Gephardt of Missouri recently suggested.

"I would hope that we might get a panel of distinguished Americans . . . to get this thing out of the presidential political debate, which worries me," he said.

"People are apt to look at these things as to what are the political implications rather than what are the public policy implications," he said.

"The poll numbers may not be great," Mr. Dodd said of affirmative action, "but I happen to believe it's right."

THE NATION'S NEWSPAPER
USA TODAY

DATE: 3-24-95
PAGE: 12-A

Affirmative action: Not an all-or-nothing issue

After 30 years of acceptance, the wisdom of affirmative action is up for recall. From California to Congress, the clamor is growing to revamp or to eliminate activist policies designed to deter gender and race discrimination.

Affirmative Action

Why now? Has the ultimate goal — a society where color or sex shouldn't matter when it comes to opportunity — radically changed? Has it been realized?

No on both counts, according to a comprehensive look at attitudes on affirmative action in a USA TODAY/CNN/Gallup Poll. Strong general approval remains, 55% nationally, for the principle of affirmative action. Indeed, a majority — 52% of whites and 91% of blacks — believe the commitment should be maintained or increased.

Another significant consensus also emerges: resounding affirmation for the value of merit. Blacks and whites agreed — 68% and 86% respectively — that less qualified minority candidates shouldn't be hired over more qualified non-minorities just to fill affirmative action goals.

So, wherein lies the rub? As always, in the details.

Mirroring the angst of the current national debate, poll respondents disagreed — white and black, male and female, Republican and Democrat — on how aggressively racial and gender diversity should be sought in the public and private sectors.

Some splits were predictable. Blacks overwhelmingly support — and whites reject — the most aggressive courses: quotas in the workplace and on campuses; the "set-aside" of a certain percentage of government contracts for businesses owned by women and minorities.

While often the most expedient remedies, these programs also are the most controversial. Horror stories of such programs gone awry — the qualified white male losing a promotion to an unqualified woman, the white-owned business that gets a contract or tax break by using a black person as a front — provide grist for those who want to cripple affirmative action.

Sen. Phil Gramm has vowed to end set-asides if elected president. Sen. Bob Dole, another presidential contender, wants to eliminate "preferential treatment." President Clinton has begun a review of all 160 federal laws on the subject.

Setting aside political hyperbole — and that would be a welcome if unrealistic rule for this debate — affirmative action is due for a review. Like other 30-year-old programs, it has acquired barnacles over time, misunderstandings, misinterpretations, and mistakes of intent and execution.

Despite all that, in combination with civil rights legislation, it's helped bring the nation a long way. Blacks no longer are restricted to menial, backroom jobs; women's career choices no longer limited to steno pools and kitchens. That's progress, and the poll reflected it.

At the same time, a majority of blacks and whites believe in the continued need for job training, special education and recruiting for minorities and women.

This country and its ideals will not be served by an all-or-nothing shouting match on affirmative action.

Let's debate its methods, update its mechanics. Let's not lose sight of its ultimate goal — a colorblind land of opportunity.

The Washington Times

DATE: 3-24-95
PAGE: A20

The disappearing case for quotas

When the late Hubert Humphrey promised to consume the whole of the 1964 Civil Rights Act if it ever led to racial quotas, Republicans took him at his word and voted for the bill in higher percentages than did Mr. Humphrey's own party. When the late President Nixon amended an executive order to require federal contractors to set goals and timetables — not quotas — for increasing minority hiring and promotion, Republicans went along with that too.

But now that it's clear three decades later that the distinction between "affirmative action" and quotas is in name only, Republicans are withdrawing their support. Today, a House subcommittee is scheduled to open hearings on racial preferences and what might replace them. Senate Majority Leader Bob Dole has already called for their abolition, and even President Clinton says he wants to review them.

Why the change of heart? Some believe it is mere politics. "Bob Dole," writes columnist William Raspberry, "seems forever torn between the urge to statesmanship and the temptation to the crassest of politics."

Perhaps there is something "political" about Mr. Dole's position. Perhaps he and his fellow Republicans are simply no longer capable of the intellectual gymnastics required to defend the status quo.

Consider the argument offered by Tom Wicker, former New York Times columnist and author. Stooping under his presumed personal burden of Southern, white maledom, Mr. Wicker told C-SPAN viewers last week that dreams of a colorblind society had to be postponed until white males could be punished sufficiently for past discrimination against minorities:

"In effect you said because we had a great wrong for three, four, five hundred years, we can't have another wrong to right. I think that's absolutely wrong.

"Suppose a teller is embezzling from a bank. And he's embezzled a lot of money. And you catch him. He's been caught. And you stop him and say, 'Don't do that again.' The bank's grievance has not been redressed. The bank's grievance has not been redressed. And so if in the 1960s we said, 'No more discrimination,' the grievance of the black race and of women has not been redressed. . . . And I say that if that grievance is not redressed, then the mere fact that you have ended the crime doesn't make much difference.

"And affirmative action is an effort to redress the grievance, and I think 30 years is not very long to attempt to redress a grievance lasting over five centuries. . . . Going to jail for that teller is a lot like white males now having to pay some kind of a price for 500 years of preference."

So quotas are the equivalent of jail for white males. But what crimes did the white males now being locked up commit? Many weren't even alive in the days of Jim Crow laws, much less slavery. They didn't pass discriminatory laws, stand in the schoolhouse doorway, tell Rosa Parks to go to the back of the bus or vote for anyone who did. No one may have convicted them of anything, but still they find themselves behind political bars.

To stick with Mr. Wicker's analogy, the original bank robber is gone. Now the bank is trying to redress its grievance by robbing someone else. That means firing the likes of Sharon Taxman, a white New Jersey school teacher, solely because she is white and not because she herself had done anything wrong. And it means the Justice Department of the United States is now defending the school board that fired her on those grounds.

That's not Mr. Wicker's problem, of course. He's out of the job market. He can afford to suffer the kind of guilt that costs other people their jobs. Mr. Dole and the Republicans cannot.

The Washington Post

DATE: 3-17-95
PAGE: A-27

Charles Krauthammer

Running on Empty

What has happened to the presidency of "change"? The word appeared 11 times in Clinton's inaugural address. Its central theme was the need to "make change our friend," perhaps the most insipid call to arms ever offered by a president, but undoubtedly sincerely meant. Why? Because to be a champion of change—undefined, generic change—was Clinton's way of proclaiming himself a moderate reformer unbound by ideology.

Hence the great irony and injustice that this improviser, this hole-patcher for the welfare state so devoid of ideological beliefs, should be portrayed as a great liberal ideologue.

- Gays in the military? It gave off ideological vibes, but beyond being a political payoff, it was for Clinton more of a fix-it for a gap in the existing structure of civil rights.
- Reinventing government? It sounds radical, but it is nothing more than a fancy way of saying "bureaucratic reform."
- Health care? Clinton's fatal health care plan did indeed indelibly mark him as a big-spending Great Society liberal. But that perfectly illustrates his dilemma: the reformer mistaken for the revolutionary.

If Clinton had really wanted a revolution in health care, he would have proposed a single-payer Canadian-type plan. He probably should have. It would have been perfectly in keeping with social democratic tradition. It would have been much simpler to explain and defend. And it could hardly have met a more disastrous fate in Congress than did Clinton's actual plan. Instead, he proposed a parody of Clinton reformism: a plan of so many patches and joins and fixes, of bureaus and commissions and boards, a machine of such grotesque complexity as to be laughed out of town.

And now that the conservative revolutionaries have taken over Congress, what's the reformist liberal, the apostle of change to do? With change coming every day from the House of Representatives, Clinton has discovered that change is no longer his friend. And lacking any ideological beliefs to anchor him, he is lost.

He has, however, chosen a strategy. Gone is the reformist liberalism of change. In its place is what Kevin Phillips once called reactionary liberalism: holding fast to the structures and constituencies of the welfare state come what may. Clinton's new role is to stand in the schoolhouse door against the barbarians who would take food out of the mouths of babes and bureaucrats.

The perfect symbol of this strategy is Clinton's photo-op grandstanding on school lunches. As part of their "war on kids," said the president, "the Republicans want to cut the school lunch program that's helped our children thrive for 50 years."

Now, it turns out that Republicans are not cutting the school lunch program. They are increasing it by about 4 percent a year for the next five years. This is about 2 percent less than Clinton would like. But that does not make it a cut.

Nor does it starve the poor. Why? Because the school lunch program is not, as many assume, reserved for just poor kids. Fully 45 percent of the kids in the program are not poor. These non-poor kids get more than $300 million a year, about 6.5 percent of the federal subsidy. Thus, even if you call the Republican increase a cut, that still leaves in place a substantial margin of protection for the poor.

From Clinton's perspective, however, these are details. What counts is that he has an issue and a role. The role, unfortunately, is almost entirely reactive. Except for the me-too middle-class tax cut that he proposed in the desperate days after the November election, he has offered but one notable domestic initiative: a hike in the minimum wage.

That, too, illustrates starkly the dilemmas of modern liberalism. Classic, vibrant liberalism constructed the social safety net and handed out societal goodies by taxing the country's bounty. By now, however, the bounty is less bountiful and taxation is too taxing. The welfare state is broke. Yet the politician's impulse to continue giving what he does not have remains undiminished. What to do?

Use the federal power to force others to pay for the benefits. With unfunded mandates on state government now largely outlawed, an unfunded mandate on private employers will have to do. No pain to the federal purse; all praise to the politicians.

The minimum wage hike is about all that is left of the presidency of change. Clinton's new role, defender of the status quo, is practically enshrined in his budget—a document of choices avoided, deficits extended and responsibility abdicated to the opposition.

The 1996 campaign shapes up to be perhaps the most significant of the postwar era. A coherent, energetic conservative critique of the welfare state will go up against—what? Clinton's early ameliorative liberalism has disappeared. In its place is a highly reactive, defensive liberalism. It is a sorry stance, devoid of initiative, redeemable only by the Republicans themselves, should they grossly overreach. Having lost his wan claim on change, Clinton is running on hope.

The Washington Times

DATE: 3-17-95
PAGE: A15

Clinton aides back affirmative action

Signal most programs likely to stay

By J. Jennings Moss
THE WASHINGTON TIMES

Senior administration officials yesterday signaled that, when President Clinton completes his review of federal affirmative-action programs, much of the structure is likely to stay in place.

In separate comments, White House Chief of Staff Leon Panetta, Attorney General Janet Reno and Clinton spokesman Michael McCurry gave strong defenses for affirmative action.

Congressional Democratic leaders made similar comments Wednesday night.

The remarks come as the White House continues its methodical review of affirmative-action programs, which aides said likely will lead to a presidential speech on the issue and possible policy proposals.

Republicans also have increased their attacks on the programs, with Senate Majority Leader Bob Dole saying Wednesday he would propose legislation to repeal them. Mr. Dole said they have led to a pattern of unfair preferences for unqualified applicants.

"The president has made it very clear that this is not a time when we ought to be talking about moving backward," Mr. Panetta said.

So far, Mr. Clinton has been pressed by factions in his party. Liberal Democrats have warned they would become angry and might bolt from supporting him if he backs away from affirmative action. Conservative Democrats have said the party could continue losing white male voters if some moderation does not take place.

"This is not an easy issue," Mr. Panetta acknowledged to reporters at the White House.

He said the president believes most Americans want "to go about this in the right spirit, not to drive people apart but to bring them together."

In her weekly press conference, Miss Reno made a strong defense for the programs that hail from the Johnson and Nixon administrations, saying, "Affirmative action has been an extraordinarily important tool in correcting discrimination in this country."

Miss Reno said the White House review is looking primarily for examples in which affirmative action may have had the effect of rewarding unqualified people.

"I've seen so many instances of where a positive effort to reach out to ensure equal opportunity in hiring has made a significant difference," she said.

Mr. McCurry said in his daily press briefing that Mr. Clinton "does not think that we have reached the point at which you can just declare 'job done' and roll back all these programs as some on Capitol Hill clearly do."

He acknowledged that the decision for the review was made in part because of the GOP position against federally mandated affirmative action.

"It is a reaction to a very extreme effort by those who would just abolish all these efforts altogether and go back to saying, 'Look, the America we lived in the 1950s is fine,'" he said.

"What the president wants to make sure is that we can make the best case in defense of programs he believes in based on his past record," Mr. McCurry said.

One senior adviser working on the review, who asked not to be identified, said there is a "real effort to explode myths" about affirmative action and discrimination.

"That is very much on [Mr. Clinton's] mind, how to do that, how best to have a national conversation," the official said.

As he left the White House after a meeting with Mr. Clinton and about two dozen House Democrats, House Minority Leader Richard A. Gephardt said the review would have a good effect on the public dialogue on the issue.

22

President's Judicial Appointments: Diverse, but Well in the Mainstream

By STEPHEN LABATON
Special to The New York Times

WASHINGTON, Oct. 16 — While running for office two years ago, Bill Clinton promised to reshape the character of the Federal courts, reversing the trend to the right under the Reagan and Bush Administrations.

But given the opportunity to choose more judges in his first two years than any President in history, Mr. Clinton has made selections that are not expected to change the ideological hue of the bench, although they have won high praise for their diversity and quality.

Indeed, many experts said that the legacy of the Clinton Administration's first two years on the courts would be the passage of the anti-crime bill, which promises to deluge the Federal courts with thousands of new cases that were once the sole province of the states.

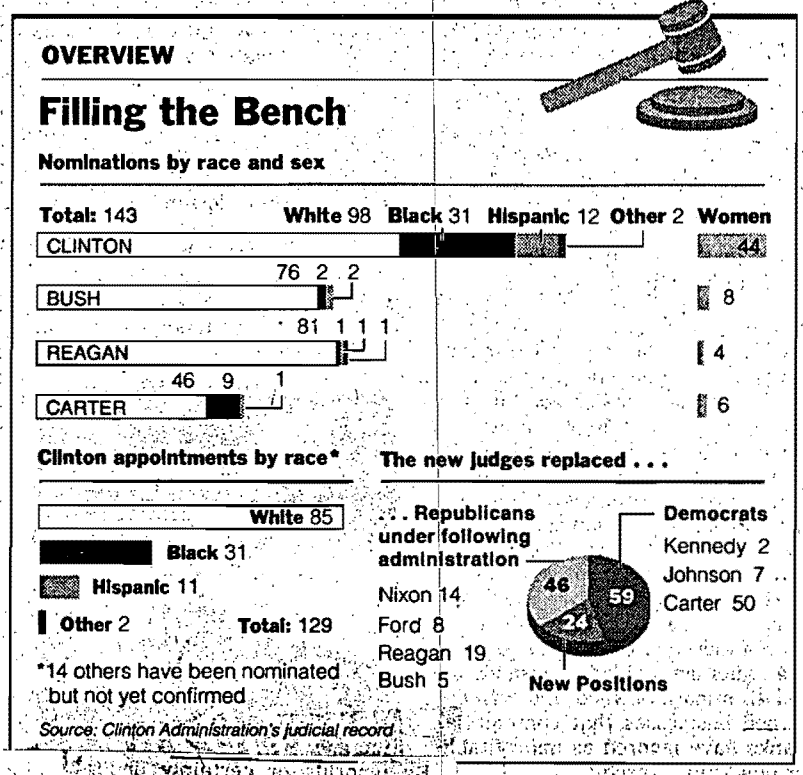
Overall, Mr. Clinton has been true to his campaign pledge to appoint judges of more diverse backgrounds to fill the slew of vacancies he found waiting for him as the first Democratic President in 12 years. The large number of judges who won confirmation in the final days of the Senate term brought Mr. Clinton's appointment to a total of 129 judges, of whom almost 60 percent are either women or minorities, compared with 8 percent for President Ronald Reagan and 27 percent for President Jimmy Carter.

Political scientists, legal scholars and nonpartisan groups like the American Bar Association who have studied the new judges' records also said Mr. Clinton's choices were better qualified than those of Mr. Reagan or President George Bush.

But, perhaps paradoxically, those observers expected the newcomers would do little to alter the courts. The new judges were deliberately chosen to fit squarely in the judicial mainstream and were, by and large, replacing liberal Democrats. The vast majority of seats in the influential appellate courts, moreover, remain in Republican hands.

While Mr. Clinton's appointments are not expected to undo the effects of Republican years, according to legal experts, the crime legislation the Administration pushed through Congress last month is expected to give a tremendous new impetus to a decade-long trend of transforming relatively minor infractions — historically the province of state courts — into Federal offenses.

Justice Department officials said that as a result of the new law, they expected a significant increase in the prosecution in the Federal courts



The Federal appeals courts are still largely Republican.

of cases involving teen-agers with handguns and gang violence. The legislation expands the kinds of fraud cases that can be brought by Federal prosecutors, and creates a raft of new Federal statutes that deal with drive-by shootings, the use of semi-automatic weapons, crimes against the elderly, arson, smuggling and some domestic violence.

One concern among many lawyers and judges was that since the Constitution and the Speedy Trial Act require that criminal cases be tried quickly, people with civil cases who have already been placed at the bottom of the overloaded dockets in many jurisdictions would face further delays in their access to the courts. In addition, the legislation may add a potentially large category of new civil lawsuits because it permits women who are victims of gender-based violent crimes to file their own Federal lawsuits.

"Are the appointments of more blacks and women going to fundamentally alter the courts?" asked Judge Edward R. Becker, a Federal appeals court judge in Philadelphia who has been on the bench for 24 years. He believed they would not. "But what will alter the character of the courts will be the new laws that expand our jurisdiction. The predictions are that there will be astronomical increases in the case loads, and all of us are apprehensive."

Later this month, the Administrative Office of the United States Courts will complete a study on how the new legislation is most likely to affect the judiciary. But analysts at the Administrative Office said last week that based on their preliminary analysis, the Justice Department and private litigants would now have the opportunity to file significantly more lawsuits that were once solely the province of state courts.

"The crime bill will greatly exacerbate a major problem that existed before," said Judge Stephen Reinhardt, a Federal appeals judge in Los Angeles who was appointed by President Carter. "We have so many cases that we cannot do our work properly and the quality of our work suffers."

Cont'd
,92

292

Administration officials acknowledged that the new legislation would increase the burden on the courts, but said that it was too soon to tell how significant the impact would be.

"Every time you add more policemen and more crimes, you will add more cases to the Federal docket," said Abner J. Mikva, who became White House counsel this month after stepping down as the chief judge of the United States Court of Appeals for the District of Columbia.

While the Bush and Reagan Administrations fundamentally changed the courts by nominating conservative and, at times, ideological judges, the Clinton Administration has avoided making appointments solely on the basis of ideology.

Burned from his first days in office by the failed nomination of Zoë Baird to be Attorney General, and again by his choice of Lani Guinier, an academic theorist, as assistant attorney general for civil rights, Mr. Clinton has been shy about making judicial appointments that might be politically controversial. He has generally drawn on older nominees, particularly for the appeals positions, who have been lawyers and judges on other courts.

"All that a young academic brings is ideology untested by experience," said White House deputy counsel Joel Klein.

Administration officials have made avoiding controversy a key criteria for selection and have given significant thought about how their choices would be received by Senate Republicans.

By contrast, the Bush and Reagan Administrations looked more heavily to younger lawyers and academics and never seemed concerned about confronting Congress with choices that would provoke contentious debate.

But some critics said that in largely forsaking law professors and candidates of high achievement from outside the judiciary, the Administration was losing the chance to put creative and original thinkers on the courts. Reflecting a view shared by many of his liberal and Democratic peers, Judge Reinhardt said that although the Clinton Administration had made many qualified appointments, the judges would do little to counter the Bush and Reagan appointees because they had no discernable ideology.

"Reagan and Bush really changed the philosophy of the courts, and not for the better," Judge Reinhardt said. "Clinton had the opportunity to do the same, and he blew it. There seems to be this sense that they don't want to do anything to offend Hatch or Simpson. You can't conceive of Bush or Reagan thinking, 'let's not do anything that could offend Kennedy.'"

The judge was referring to two of the Senate Judiciary Committee's conservative Republicans, Orrin G. Hatch of Utah and Alan K. Simpson of Wyoming, as well as to one of its liberal Democrats, Edward M. Kennedy of Massachusetts.

"Those of us who have waited for three decades for a Democrat to be appointing liberal judges, particularly to the Supreme Court, have been deeply disappointed," Judge Reinhardt added. "There's little chance of them doing anything bold or innovative in the last two years of the Administration, since they didn't do it in the first two years."

Legal scholars who have examined the backgrounds and records of the recent appointments said that while they tended as a group to be moderate to liberal, they were far closer to the center of the political spectrum than their Republican predecessors.

Clinton's legal legacy will be the crime bill, legal scholars say.

"The Clinton Administration has been trying to lower the ideological temperature in the selection process, and there is no indication that the candidates selected by President Clinton have undergone the kind of ideological scrutiny that went on under the Bush and Reagan Administrations," said Sheldon Goldman, a political science professor at the University of Massachusetts who has studied and written about the judicial appointments.

"It would be naïve to say that the Clinton Administration is uninterested in the views of the candidates, and we cannot say the people he has appointed are totally not ideological. But they are clearly not as far to one side of the spectrum as the Bush and Reagan Administration appointments."

There have been a handful of Clinton appointments that have provoked limited debate. Only two nominations were contested on the Senate floor and went to a vote, although both were ultimately confirmed. The two, Rosemary Barkett of Florida and H. Lee Sarokin of New Jersey, were criticized for being soft on crime because they handed down opinions that challenged death penalty convictions.

In June, the Senate also confirmed the nomination to a Federal district court of William Downes, a Wyoming lawyer who had spoken out against abortion rights. A friend and former law partner of Wyoming's Gov. Michael J. Sullivan, Mr. Downes's selection drew criticism from some abortions rights groups, but his nomination sailed through the Senate with virtually no discussion.

"It's not possible to imagine that the Reagan or Bush Administration would have selected someone who was as outspoken on the other side of the abortion issue," Professor Goldman said.

USA Today 10/17/94

Judgeships filling at record pace

By Carl Weiser
Gannett News Service

More federal judges have been confirmed in President Clinton's first two years than in any president's first two, the Justice Department says.

But despite naming 129 new federal judges — 101 this year, the most in one year since 1979 — conservative Reagan/Bush appointees still outnumber Clinton appointees by more than 4 to 1 among the 837-member federal judiciary.

That's because almost half the judges Clinton replaced were Democratic appointees.

Court-watchers say few of Clinton's appointees are liberal activists, theorizing academicians or crusading ideologues.

"I think they're good, mainstream lawyers," says Georgetown University Law professor Mark Tushnet.

cont'd 192

The Washington Times

DATE: 12-24-94
PAGE: A-4

CIA hits charges as it pays claimant

Female officer retires in deal

By Bill Gertz
THE WASHINGTON TIMES

The CIA has reached a $410,000 settlement in a sex-discrimination lawsuit filed by a female case officer who will retire from the agency as part of the agreement.

"I am gratified by this settlement and hope that the CIA leadership and culture changes so that the truly dedicated people may get on with the important mission of protecting our national security without fear of reprisal and retribution for doing their duty and obeying U.S. law," Janine Brookner, a 25-year veteran case officer, said in a statement issued by her attorney.

The agreement, concluded late Thursday, ended a civil lawsuit Ms. Brookner brought against the agency after a 2½-year dispute over her tenure as CIA station chief in Jamaica.

Ms. Brookner, who was identified in court papers by the pseudonym "Jane Doe Thompson," came under fire after reporting to CIA headquarters that a male deputy had beaten his wife during a posting in Jamaica, and that other CIA officers had engaged in improper activities. Other sources identified her by name.

Ms. Brookner "was not only denied promotions and given inferior performance ratings after she disiciplined these subordinates, but also became the subject of an inspector general's investigation based on false accusations by those she had disciplined," the law firm of Manatt, Phelps & Phillips said in a statement.

"The CIA never investigated or took any action against the male deputy for the wife-beating," the statement said.

CIA spokesman Mark Mansfield said there is a "stark contrast between what was requested by the plaintiff and the terms of the settlement."

"The settlement does not concede any of the assertions Ms. [Brookner] made against the agency or any of its individual officers," Mr. Mansfield said.

What's more, the "attorneys' charges about agency inaction in regard to spousal abuse are totally groundless," the CIA spokesman said.

"The agency, as a matter of policy, reports all instances of spousal abuse that come to its attention to the appropriate law enforcement authorities," he said. "The notion that the agency fails to do so is baseless."

Ms. Brookner charged in her lawsuit that the CIA and several individuals named in the suit "fabricated false allegations" against her, including that she was a heavy drinker and engaged in sexual misconduct.

The settlement calls for the agency to pay Ms. Brookner $410,000 and reimburse her legal expenses. She also retired from the agency, effective Thursday.

A government official familiar with the case said the settlement is a "small fraction" of the amount Ms. Brookner had sought, adding that CIA Director R. James Woolsey agreed to the settlement to "bring closure" to the case.

Victoria Toensing, Ms. Brookner's attorney, said her client was "a woman of courage and tenacity who stood up for her beliefs."

The Washington Post

DATE: 12-27-94
PAGE: A-3

Effort to Outlaw Affirmative Action Promoted in California

Civil Rights Groups See Initiative as Political-Cultural Grenade

By John Boudreau
Special to The Washington Post

BERKELEY, Calif.—The headquarters for the California Civil Rights Initiative, a measure that would outlaw affirmative action, is located on Martin Luther King Jr. Way.

"A lot of people see an irony," says Glynn Custred, one of two scholars leading the fight to overthrow the decades-old government attempt to redress discrimination. They want to end government programs that give minority and female preference for jobs, promotions, contracts and college admissions with a proposed state constitutional amendment.

And traditional civil rights groups are taking them very seriously. California voters gave the nation a jolt from the right last month when they passed Proposition 187, which would deny non-emergency medical care and education to illegal immigrants. Now the state could be on the verge of doing it again. Conservatives hope to place the anti-affirmative action measure on the 1996 presidential primary ballot.

"The tide has turned," says Thomas Wood, executive director of the conservative California Association of Scholars and the initiative's co-architect. "There is an anti-affirmative action issue coming down the pike in California that is going to make 187 look like kindergarten."

Noting that voters here are angry and worried about their economic future, Constance Rice of the NAACP Legal Defense and Educational Fund in Los Angeles said, "This state is already dangerously polarized."

The measure, which has been endorsed by the California Republican Party, needs 615,000 valid signatures to qualify for the ballot as a statewide proposition. If approved by voters, it would bar the use of ethnicity or gender "as a criterion for either discriminating against, or granting preferential treatment to, any individual or group." It also would require agencies to reimburse legal costs of successful plaintiffs.

"Affirmative action is like the Vietnam War," said Custred, a California State University anthropology professor. "We got into it with the best of intentions. It turned into a quagmire. Now it's time to get out.

"It's reversed Jim Crow," he added. "We will never have a color-blind society. But we need a color-blind legal code."

The authors of the anti-affirmative action measure argue that affirmative action contradicts the 1964 Civil Rights Act, which prohibited discrimination for reasons of color, race, religion or national origin. In addition, they said it penalizes qualified minorities by tainting them as so-called quota hires and rarely helps the economically disadvantaged.

"People are really livid about affirmative action," Wood said. "It compromises or distorts the American principle that people shouldn't be discriminated against on the basis of their race, sex, creed or national origin."

He said he believes California's political landscape, in an era of limited dreams and resources, is fertile ground for their populist ideas. Wood and Custred are confident that California voters, who approved Proposition 187 by a 2-to-1 ratio in November, are ready to send another powerful message to the state Capitol—and beyond.

> ***"There is an anti-affirmative action issue coming down the pike ... that is going to make 187 look like kindergarten."***
>
> —co-drafter Thomas Wood

"If we get this on the ballot and raise the money and support we need, the race is ours to lose," Wood said. "I would not want to be the campaign manager for the opposition. Who wants to be opposed to equal rights?"

Civil rights advocates view the initiative as a cultural-political hand grenade.

"You can call it Willie Horton goes to college," said Eva Paterson, executive director of the Lawyers Committee for Civil Rights in San Francisco, referring to the television ad during the 1988 presidential campaign in which Massachusetts Gov. Michael S. Dukakis was attacked for allowing a convicted felon, who was black, out of prison. "It's the politics of polarization. It will re-segregate society.

"I believe affirmative action is flawed," she said. "But no one has come up with an answer for admitted racism."

Rice, the western regional counsel for the NAACP Legal Defense and Educational Fund, said that studies show that black males continue to lag behind white counterparts with equal education in terms of salaries. Affirmative action is the only way to bridge that gap and allow minorities to break into professional ranks, long the bastion of white males, she said.

"This is a door-closing measure," Rice said. "As long as the statistics are 100 percent white and male, no one ever raises the question, 'Is there anything wrong with this picture?' But as soon as you begin to level the playing field and make resources available [to minorities], all of a sudden we have a constitutional crisis. It's so hypocritical."

Custred and Wood call themselves neoconservatives. Their cramped, bare-light bulb office resembles a warren for university teaching assistants. The genial scholars emphatically rummage through piles of papers, refer to articles and books as required reading and speak with rea-

Cont'd

50 STATE REPORT

*15 CALIFORNIA: A FIGHT UGLIER THAN PROP. 187 LOOMS IN '96

CA Dems, "still smarting from a stinging defeat" over Prop. 187, are vowing that "from now on, they will not allow conservatives to dominate the state's initiative process." Starting with the '96 elections, Dems plan to devise their own statewide propositions, "some of which will be offered to counter initiatives" like 187. Others "will seek to advance the party's policy goals, perhaps in the areas of welfare and campaign-finance reform." Dem Chair Bill Press admits that his party made a "serious error" in their strategy: "I think we made a mistake not having something on the ballot against 187. ... The initiative process has been perverted in California. ... It's no longer citizens trying to express their point of view. It's being used by right wingers with a pure, extreme agenda to try to influence elections." Press noted that party leaders are now meeting to decide how to proceed in '96: "There are lots of conversations going on about what the ballot will look like in 1996. One thing for sure is that we're not going to accept a totally defensive posture." Nevertheless, "if Prop. 187 set the angry tone for California's 1994 election, 1996 could be the year of an anti-affirmative action initiative, which has been officially named the California Civil Rights Initiative. It could be even more explosive than Prop. 187." Organizers of the CA Civil Rights Initiative say they "still are deciding" whether to get the measure in the 3/96 primary ballot or on the general election ballot. "Given time constraints, they probably will try for November, when the nation elects a president." Organizers have only "a small budget so far," but if the initiative appears on the general election ballot, "that could mean bad news for the Democrats, and for President Clinton's expected re-election bid." Informally dubbed as the "angry white men's initiative," in a state where white voters accounted for about 79% of the turnout, it could provide another chance for angry voters "to voice their discontent and could spell electoral disaster for a liberal party associated with affirmative action." Claremont-McKenna College's Frederick Lynch said the fight that looms over a potential Civil Rights Initiative "could be bitter": "It could be the dirtiest campaign in California history. The other side won't be caught flat-footed, as they were on 187" (Epstein, S.F. CHRONICLE, 12/19).

IT'S HIS FAULT: Assemblyman Paul Horcher, who bolted the GOP after backing Willie Brown (D) for Speaker and became an Ind., said he "made his decision in part on the advice" of ex-Assemblyman Gil Ferguson (R). Horcher said Ferguson's "advice was that I couldn't trust" Assembly GOP Leader Jim Brulte, who had "confidently predicted that he would be the next speaker" until Horcher's switch. Ferguson denied "saying any such thing" about Brulte, adding that he only "recommended Horcher meet with Governor Wilson and Brulte and 'make a deal'" (Lucas, S.F. CHRONICLE, 12/20).

*16 ILLINOIS: RUSH SAYS HE'S NO "DEADBEAT DAD"

ST. LOUIS POST-DISPATCH's Novak reports, "Depending on whom you believe," Rep. Bobby Rush (D-01) "is one of the most prominent deadbeat dads in Illinois, or the victim of a tangled bureaucracy fraught with errors." IL Dept. of Public Aid (DPA) computer records show Rush owes his ex-wife, Sandra Rush, $13,507.69 in "delinquent" child support and welfare payments "that his ex-wife received to support their three children." Rush "quarrels with that debt, just as he has disputed debts" with the IRS and IL Dept. of Revenue. Rush spokesperson Bess Bezirgan: "He has met his obligation. The state hasn't met its

619 3437

The Washington Post

DATE: 3-15-95
PAGE: A19

Charles Moskos

Affirmative Action: The Army's Success ...

Is affirmative action destined, like Prohibition, to become a "noble experiment" that failed? Republicans knowing a popular issue are ready to scrap it. Even the White House, formerly a bastion of support, now acknowledges that affirmative action needs rethinking.

Yet there is an institution where affirmative action works and works well—the U.S. Army. Not that the Army is a racial Utopia by any means. But nowhere else in American society has racial integration gone as far or has black achievement been so pronounced. Indeed, the Army is the only institution in America where whites are routinely bossed around by blacks.

Affirmative action has been crucial in bringing about this positive state of affairs. It has also been key in our military's unquestioned effectiveness. What then can we learn from the Army's affirmative action program?

The first lesson is that affirmative action in the Army eschews quotas but does have goals. Guidelines for Army promotion boards are to select minority members equivalent to the percentage in the promotion pool. This means that the Army promotion process is based not on the number of minority members in the Army, but on the number of minority members in the pool of potential promotees to the next higher rank. Very important, there are no "timetables" to meet goals.

The process goes like this. The board takes into consideration past assignments, evaluation ratings, education and promotability to the next level after the one under consideration. The strongest candidates are eliminated quickly; so are the weakest ones. In reality, goals become operative only in the gray middle. As one well-informed white officer said: "Only fully qualified people are promoted, but not necessarily the best-qualified. But don't forget, we are talking micromillimeter differences in these cases."

There is no denying that pressure to meet the goals is strong. If the goal is not met, the board must defend its decisions. If this looks like a quota by another name, think again. The number of blacks who are promoted from captain to major, a virtual prerequisite for an officer seeking an Army career, is usually below the goal. Why this is so is a matter of debate and Army heartburn. The most plausible explanation for the shortfall is that a disproportionate number of black officers do not possess the writing and communication skills for promotion to staff jobs. In all other ranks, including colonel through general officers, promotions show little racial difference.

One other remark on the "goals vs. quota" distinction. The military has no hint of two promotion lists, whites being compared only with whites, blacks with blacks. All candidates are held to the same standards.

Maintenance of standards may cause short-term turmoil, as it did in the Army of the 1970s, but it also means that those who attain senior positions are fully qualified. Also important, those blacks promoted have a self-confidence that makes them the strongest defenders of standards for their own black subordinates. The Army, by taking the heat early on, reduced its troubles later. An organization that promotes less highly qualified people to buy temporary peace only invites long-term disaffection.

Although affirmative action in the Army is not without its tensions, it is not a prescription for loss of self-esteem by blacks or resentment by whites. No identifiable group of underqualified minority members occupies positions of authority in the Army. The military does not elaborately disguise its goals or its methods of attaining them because it does not have to deal with the situation that drives quota systems in civilian institutions: a dearth of qualified blacks.

This bring us to another lesson: A level playing field is not always enough. The Army shows how youths from diverse backgrounds can be made to meet uniform and demanding standards. The Army has successfully introduced programs to bring young people up to enlistment standards, to raise enlisted soldiers up to noncommissioned officer standards, to bring black undergraduates up to officer commissioning standards and to raise high school graduates up to West Point admission standards. These programs are not exclusively targeted on minority soldiers, but they are disproportionately Afro-American. These programs cost money and require a significant commitment of resources.

The objective should always be to prepare members of a historically disadvantaged population to compete on an equal footing with the more privileged. Good affirmative action acknowledges that compensatory action may be needed to help members of disadvantaged groups to meet the standards of competition. Bad affirmative action suspends those standards.

So what finally can be transferred from the Army? Maybe a broad lesson: Affirmative action can do what it is supposed to do when there is an unambiguous guarantee of equal opportunity, clear standards of performance and a commitment to raise people to meet those standards.

The writer is a visiting fellow at the Annenberg Washington Program, Northwestern University.

The Washington Times

DATE: 3-15-95
PAGE: A4

Religious-freedom ruling faces appeal

U.S. will challenge federal judge's overturning of law

By Jerry Seper
THE WASHINGTON TIMES

The White House said yesterday it has asked the Justice Department to appeal a federal court ruling in Texas that found the Religious Freedom Restoration Act unconstitutional.

"The act affirms the historic role that people of faith have played in the history of this country and the constitutional protections those who profess and express their faith have always demanded and cherished," said White House spokesman Michael McCurry.

"This administration is committed to the act's full implementation in order to protect the religious liberties of all Americans, and we will continue to defend its constitutionality in the courts," he said.

On Monday, U.S. District Judge Lucius Bunton in Midland, Texas, ruled — in a case involving the Roman Catholic Archdiocese of San Antonio — that the act unconstitutionally usurps powers traditionally granted to the courts.

The archdiocese had filed a lawsuit against Boerne, Texas, in a zoning dispute over the denial of a permit to demolish part of a building within the city's Historic District to expand the archdiocese's sanctuary.

Church officials argued that the city's denial violated the religious-freedom statute and said it would appeal the ruling to the 5th Circuit Court of Appeals.

Mr. McCurry said the Justice Department will intervene in the case to support the act's constitutionality and that Solicitor General Drew S. Days III has determined "the department will now join in the appeal from the district court decision."

"Prior to the Texas decision, no court had found RFRA unconstitutional," Mr. McCurry said. "A federal district court in Hawaii last month upheld the constitutionality of the act, and the Justice Department is participating in support of the act in four other federal court cases which have not yet been decided."

He said the act provides that the government "may not substantially burden a person's exercise of religion unless there is a compelling governmental interest and the government has adopted the least restrictive means of furthering that interest."

Mr. Clinton signed the religious-freedom act into law on Nov. 16, 1993. It was applauded at the time by religious and civil-liberties groups — including conservatives, liberals, Christians, Jews, Muslims and representatives of other religions — that had formed a coalition to back it.

The president noted during a signing ceremony that "some new friendships were formed and some new trust was established" during the 3½-year effort to pass the law, which reversed the effect of a 1990 Supreme Court ruling. He said at the time that the power to use legislation to rebut a court ruling was "rightly, hesitantly and infrequently exercised" by Congress.

"But this is an issue in which that extraordinary measure was clearly called for," he said.

In 1990, the Supreme Court — in what is known as the "peyote case" — turned down an American Indian's claim to a right to use the drug for a religious ritual without a state penalty. The court said the state did not need to show a "compelling interest" to restrict religious practice.

The new law restores a legal principle that government can restrict religious practice only if the state shows "compelling government interest" and applies "the least restrictive means."

The Washington Post

DATE: 3-15-95
PAGE: A19

William Raspberry

... Blaming the Cure, Forgetting the Disease

Republicans are using it as a constituency-splitting wedge. Democrats are agonizing about it. President Clinton has ordered a review of it, and California has even put it on the ballot.

Affirmative action is, no doubt about it, a provocative issue.

What is being lost in the political and philosophical furor is that it is an issue *about something*. It is an attempt—however ill-devised or badly administered—to remedy the ugly disease of discrimination. Forget that and it becomes all but inevitable that we get distracted over side issues.

It has happened before. In the early days of school desegregation, for instance, recalcitrant southerners raised issues of states' rights, free association, fiscal constraints. And when none of these objections prevailed, many simply withdrew into hastily established "seg academies."

But America wasn't fooled. The rest of the country—the White House, the courts and the overwhelming majority of the population—saw clearly that all those fancy doctrines, from interposition to massive resistance, were designed for the ignoble purpose of thwarting desegregation. The bad guys, there was no doubt, were the segregationists.

Then the desegregation fight moved north, and suddenly matters that had seemed so crystalline became cloudy to the point of opacity. The bad guys were no longer ignorant rednecks clinging to a discredited way of life but pushy civil rights leaders, arrogant and impatient judges, even unsafe school buses.

Here's the point: Busing may have been the wrong answer, at least some of the time. There is a value in neighborhood schools. It's even possible to argue some of the proffered cures—long-distance bus rides to inferior (though predominantly white) schools, for instance—might have been worse than the disease.

But there *was* a disease.

And so is there a disease behind the debate over affirmative action. Yet a stranger hearing the debate might conclude that the problem is the plight of white men, mistreated and scorned by a remorseless black minority determined to take over the levers of political and corporate power. By some strange political alchemy, the villains have become the victims, the remedy the disease.

Are there problems with the affirmative-action remedy? Of course. Sometimes the benefits go to people who merely look like the actual victims. Sometimes the price of the remedy is paid by people who are demonstrably innocent. White men do sometimes lose out to less-qualified women or minorities, and we need to talk straight about that.

But discrimination—racism—remains a problem, too, and we need to talk straight about that as well. There is certainly less discrimination than there used to be, but as every test case involving evenly qualified black and white applicants for jobs or apartments reveals, there is still plenty of discrimination around. Is a results-based approach the best way of combating it?

There probably is no one best way, aside from an employer's desire for what, these days, is called "diversity."

Vincent H. Cohen, the Washington lawyer, has proposed only slightly facetiously that we abandon any practice that even hints of racial preference—that we hire and place and promote strictly on merit. But: "Any employer found by a jury of his peers to be guilty of discrimination would go to prison." The threat of jail, says Cohen, would encourage recruiters and placement officers to get serious about nondiscrimination.

The problem with Cohen's remedy is that if you're going to send people to jail for discriminating against blacks or Hispanics or women, you'll have to jail them for discriminating against white men too. Would Georgetown basketball coach John Thompson have to prove, on threat of incarceration, that he couldn't find a white player as good as the last black guy on his bench?

As a matter of fact, I think Georgetown basketball is a fit candidate for a little affirmative action. There's a value in diversity, even in the sports arena.

But my purpose here is not to devise the perfect remedy but merely to remind us not to forget the disease. The administration types who are undertaking the affirmative action review on Clinton [illegible] ought to behave like medical researche[illegible] might look at the success rates of various treatment protocols, even try to assess whether the good they do is offset by some countervailing harm.

What they must not do is get so involved in the debate over radiation vs. chemotherapy vs. laetrile that they lose sight of the cancer.

Los Angeles Times

DATE: 3-15-95
PAGE: A-11

We Still Need Affirmative Action

A law school dean who has seen both sides says our imperfect system has provided opportunity to a generation.

By KAREN GRIGSBY BATES

When Gregory Williams was appointed dean of the College of Law at Ohio State University, a number of people were delighted for him and the school. As Williams recalls it, a university well-wisher was effusive in her praise. "And then," he says wryly, "she discovered I was black. And the first question she asked—not of me, but of someone else—was: 'Well, did he get the position because he's black?'"

Actually, it seems Williams got the position because he was qualified. But *black* and *qualified*, in too many American minds, seem to be an oxymoron, like "jumbo shrimp." The assumption that these two cannot coexist is part of the sacred mythology surrounding affirmative action. It's a comfort zone for white people who feel disenfranchised by a system that takes race into consideration when all other things are equal. (You will notice that I did not say *makes race the whole criterion for consideration.*)

So yes, the board of governors at Ohio State University probably did take Williams' race into account when they considered him for his deanship. They probably also took into account some other factors, such as his 22-year tenure as an administrator in higher education, his five degrees and his stated mission of having the legal profession "reflect the diversity of the society in which we live."

But the woman who commented on Williams' race knew nothing of his background. She was basing her decision on something else. "When she thought I was white," Williams says, "she assumed I was qualified. When she realized I am black, she assumed I was unqualified. At neither point was there any discussion about my qualifications. Her view was based solely on race."

Williams, who has white skin, has had a unique experience. Born in Virginia just after World War II, he attended segregated schools, swam in whites-only pools and sat in the orchestra at the town movie house, while his darker-skinned playmates were relegated upstairs to the balcony. "Nobody spent a lot of time talking about it," he recalled during a recent visit to Los Angeles, "we just all knew that things had always been done a certain way."

When Williams was 10, his parents separated. His father, whose business had collapsed, took Gregory and his younger brother, Mike, and relocated to his hometown of Muncie, Ind. En route, Dad dropped a little bomb on them: He wasn't Italian, as he'd always told the boys; he was *colored*. "Life is going to be different from now on," he said. "In Virginia, you were white boys. In Indiana, you're going to be colored boys. I want you to remember that you're the same today that you were yesterday. But people in Indiana will treat you differently."

Just how differently these boys were treated because they were no longer white is the subject of Gregory Williams' recent riveting autobiography, "Life on the Color Line; the True Story of a White Boy Who Discovered He Was Black." But from his experience on both sides of America's racial divide, Williams is convinced that we still have more planning to do before the playing field is truly level for all citizens and that affirmative action still has a vital role in achieving that.

"Affirmative action may not have worked the way everybody wanted it to, but it opened a lot of doors of opportunity for [nonwhite] folks and it enabled them to show that they did or didn't have the ability to perform the functions for which they'd been chosen. So I think it's a little early to think about eliminating affirmative action. If we do, we're talking about saying to a generation of people, 'We're not interested in seeing what you're able to do.'"

That's certainly why an earlier generation of black men with college degrees found themselves working for public utilities companies and as Pullman porters instead of finding employment in schools, banks, law firms and other institutions and businesses that traditionally had been white. "I could be an unemployed black pharmacist," said a friend's father, explaining his position, "or a steadily employed black postal worker and send my children to college. What would your choice have been?"

The tragedy is that such a choice should ever have been necessary. Or that, soon, it could be again.

Karen Grigsby Bates writes from Los Angeles about modern culture, race relations and politics for several national publications.

POINTS OF VIEW

OPINION AND COMMENTARY

Republicans can be expected to return to a policy of individual rights and colorblind opportunity.

Racial Justice: Changing the Tune

BY LINDA CHAVEZ

The Republican takeover of both houses of Congress signals a new era in civil-rights policy—but not because Republicans are less committed than Democrats to civil rights, as many liberals fear. The GOP has shifted considerably on race issues from the mid-1960s, when stalwart conservatives like Ronald Reagan and Barry Goldwater opposed the Civil Rights Act of 1964 on the ground that it trammeled individual rights.

Today, it's Republicans who champion individual rights and colorblind opportunity, while Democrats generally favor group rights and racial and ethnic preferences. Indeed, Senate Judiciary Committee Chairman Orrin Hatch (R-Utah) sounds more like the late Hubert Humphrey, the chief sponsor of the Civil Rights Act of 1964, than do some of the civil-rights movement's latter-day adherents.

It was Humphrey, after all, who promised to eat the pages of the civil-rights bill if it ever came to require racial preferences.

"Title VII does not require an employer to achieve any sort of racial balance in his work force by giving preferential treatment to any individual or group," Humphrey argued during Senate debate.

But 30 years later, Assistant Attorney General for Civil Rights Deval Patrick invoked the same law to argue in *Taxman v. Board of Education of Piscataway* in favor of race-based layoffs to maintain just such a balance in a New Jersey school district.

The Republican rout in November's congressional election came about in large part because whites—especially white males—voted overwhelmingly Republican. A majority of white males have been voting Republican in presidential contests for some time, giving the Republican candidate a 20 percent to 30 percent edge in the three presidential elections prior to 1992.

Bill Clinton was able to win the last election, at least in part, because George Bush maintained only a two-point advantage among whites, thanks to Ross Perot's siphoning-off of 20 percent of white votes.

Democratic congressional candidates were able to fare much better at the polls than presidential candidates, splitting or winning the white vote for House races in four out of the last seven elections.

This year, however, Republicans won 58 percent of the white vote—and took control of the House of Representatives

SEE CIVIL RIGHTS, PAGE 29

Linda Chavez is president of the Center for Equal Opportunity, a Washington-based think tank, and was staff director of the U.S. Commission on Civil Rights in the Reagan administration.

LEGAL TIMES

[illegible]

SENT BY: 1- 4-95 ; 4:09PM ; EEOC→ CCITT ECM;# 2

Congress Should End Race-Conscious Policies

CIVIL RIGHTS FROM PAGE 18

for the first time in 42 years. A number of political analysts have suggested that this shift represents the latest chapter in the continuing white backlash against affirmative action and other programs that benefit minorities.

Does this mean we're headed toward a resurgence of racism and discrimination in the days ahead? Not likely. Most opinion polls still show a huge majority of whites favoring equal opportunity for blacks, Hispanics, Asians, and other non-whites.

By 1972, 97 percent of whites agreed that blacks should have an equal opportunity to compete for any job for which they were qualified. This figure represented a 52-percent rise in support for equal employment opportunity over a 25-year period, and support has remained consistently high ever since. On a range of other issues as well, from residential and school integration to intermarriage, white tolerance has improved markedly over the years.

Affirmative-Action Consequences

Nonetheless, opposition to affirmative action is strong—and growing. In a 1990 *Times Mirror* survey, 81 percent of white males opposed preferential treatment for minorities.

Those attitudes can affect how whites perceive blacks on other issues as well, according to *The Scar of Race*, a 1993 book published by two California professors, Stanford University's Paul Sniderman and University of California at Berkeley's Thomas Piazza.

Using a sophisticated survey technique, Sniderman and Piazza demonstrated that whites were far more likely to view blacks negatively if they were first asked a question regarding affirmative action. The mere mention of affirmative action was enough to elicit increased disapproval of blacks on subsequent questions having to do with, for example, personal responsibility.

The authors explain,

> Certainly some whites dislike affirmative action because they dislike blacks. [but] it is unfortunately also true that a number of whites dislike the idea of affirmative action so much and perceive it to be so unfair that they have come to dislike blacks as a consequence. Hence the special irony of the contemporary politics of race. In the very effort to make things better, we have made some things worse.

Liberals have never been able to face up to the unintended consequences of affirmative action—either the resentment it evokes among most whites or the stigma it attaches to its beneficiaries. When whites complain of "reverse discrimination," liberals respond that affirmative-action programs merely make up for decades of past discrimination that favored whites. They counsel patience, arguing that the programs are "temporary," even though they've lasted more than 25 years. When public-opinion polls show overwhelming opposition to quotas, liberals obfuscate, claiming that they, too, oppose "rigid quotas" while supporting "goals and timetables."

'Convenient Subterfuge'

For much of the time that affirmative-action policies have dominated civil-rights enforcement, elected officials—especially those in Congress—have been able to avoid responsibility for their proliferation. With rare exceptions (most recently on the Civil Rights Act of 1991), Congress has not had to vote explicitly on affirmative-action measures. The courts and executive-branch agencies have done the dirty work instead, interpreting facially neutral laws to require preference by race, ethnicity, and gender.

This division of labor has allowed the Democratic-controlled Congress to avoid much of the blame for affirmative action from its critics, while still garnering the favor of its supporters. This convenient subterfuge has been eliminated by the recent election, however. And Republicans, if they have the fortitude, can use their newly acquired power both to launch an assault on race-conscious policies and to expose Democrats' political vulnerability on this issue.

Republicans could begin by using the tactic that was the Democrats' favorite when they controlled Congress and Republicans controlled the executive branch: congressional oversight hearings. Sen. Hatch has already suggested he wants Deval Patrick to answer questions about the administration's recent about-face in the Piscataway case, where the Justice Department decided to switch sides from defending the rights of a white teacher to supporting the school district, which ordered her dismissal in order to maintain racial balance in the school in the face of layoffs.

Other cases also deserve explanation, including an upcoming Supreme Court case from Colorado, *Adarand Constructors v. Peña*, in which the department is defending minority business set-asides.

Nor should oversight end with the Civil Rights Division of the Justice Department. The appropriate oversight committees in the House and Senate should call the following civil-rights appointees to give an account of their current enforcement policies: Roberta Achtenberg, assistant secretary for Fair Housing and Equal Opportunity, Housing and Urban Development Department; Department of Education Assistant Secretary for Civil Rights Norma Cantu; Equal Employment Opportunity Commission Chairman Gilbert Casellas; and Office of Federal Contract Compliance Programs Director Shirley Wilcher.

The committees could begin by asking each official whether they believe the civil-rights laws they enforce guarantee equal opportunity or equal results. The Judiciary committees should also consider holding oversight hearings on the U.S. Commission on Civil Rights, whose authorization expires in two years. When the commission was established in 1957, no other federal agency had responsibility for overseeing civil-rights enforcement; now several do, making the commission's mandate redundant.

The ultimate aim of such hearings should be to send a clear signal that Congress is committed to colorblind justice and to enforcement of the civil-rights laws *as written*.

Amend Title VII

If the courts and the executive branch continue to subvert the clear language of the civil-rights laws, Congress should consider amending the law itself to make its intentions plain.

Title VII of the 1964 Civil Rights Act now says:

> Nothing contained in the title shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer.

The addition of only two words—"or permit" between "require" and "any employer"—could prevent judges and bureaucrats from coercing "voluntary" affirmative-action programs that depend on preferential treatment for racial minorities and women.

At the very least, the public debate that such a proposed change would engender would be a good way to test where members of Congress stand on the issue of colorblind justice. □

SENT BY: 1- 4-95 ; 4:09PM ; EEOC→ CCITT ECM;# 3

The NCLR Civil Rights Forum

is the first of its kind!

Don't miss this unique opportunity to discuss the U.S. Latino civil rights agenda with the nation's chief enforcement officers!

On Monday, July 18, NCLR will host the first ever civil rights forum to focus exclusively on the Latino community. As part of NCLR's Annual Conference, the forum will take place at the Miami Beach Convention Center at 3:00 p.m. NCLR's guests for the forum are six chief civil rights enforcement officers in the federal government. They will present their individual departments' efforts to address the needs of the Hispanic community. Don't miss your chance to witness the Clinton Administration's vision of civil rights in America!

What:

The NCLR Civil Rights Forum

When:

3:00 p.m. to 5:00 p.m.
Monday, July 18, 1994

Where:

The Miami Beach
Convention Center
Miami Beach, Florida

The Panel:

Roberta Achtenberg
Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development

Antonio J. Califa
Director of Civil Rights
U.S. Department of Transportation

Norma V. Cantu
Assistant Secretary, Office for Civil Rights
U.S. Department of Education

Dennis Hayashi
Director, Office for Civil Rights
U.S. Department of Health and Human Services

Deval Patrick
Assistant Attorney General, Civil Rights Division
U.S. Department of Justice

Shirley J. Wilcher
Deputy Assistant Secretary for Federal Contract Compliance Programs
U.S. Department of Labor

The Moderator:

James J. Lyons
Executive Director
National Association for Bilingual Education, Washington, D.C.
former staff member of the U.S. Commission on Civil Rights

These family tragedies, one after another, puzzled friends and relatives as well as the doctors. The deaths were always sudden, the causes inexplicable. The final two babies spent most of their short lives in a Syracuse hospital, their every breath monitored by machines. On occasion, they suffered slightly abnormal pauses in respiration. Then, like matchsticks lit against an unforgiving wind, they each died within a day after being sent home.

As a medical case history, this haunting clockwork of mortality seemed a significant tale to share. One of the hospital's attending physicians, Dr. Alfred Steinschneider, wrote it up for the noted journal Pediatrics. He went on to become a national expert on Sudden Infant Death Syndrome.

That 1972 article was seen as pioneering work. Pediatricians often cited it as evidence that the unexplained phenomenon of SIDS may well run in families. Those abnormal pauses in breathing could be foretellers of a sudden death. If so, SIDS was possibly preventable with the use of monitoring devices at home.

Those conclusions aside, there was also a second, starkly contrary view of Steinschneider's report. Some doctors thought it naive. SIDS cases were too often indistinguishable from smothering. To them, the repeating catastrophes of this woebegone family read like the relentless clues in a murder mystery.

It was an arcane, scholarly conflict, easing into obscurity over the years. But time on occasion has a remarkable way of turning backflips, the present reaching into the past. That is what has happened here. A chance remark to a young prosecutor made him look up the old article and he also began to wonder: Were there awful secrets afloat in a grieving mother's tears?

Two months ago, 23 years after the death of her fifth baby, Waneta Hoyt was interrogated by police for the first time. Questioning went on for almost two hours before something gave way. The mother then began to confess the details of

Please see DEATHS, A8

Key Civil Rights Post Left Empty as Search Falters

By RONALD BROWNSTEIN
TIMES POLITICAL WRITER

WASHINGTON—In an ironic collision of symbolism and substance, the White House has left unfilled a key civil rights job for more than a year while searching for a nominee that sends the right signal of racial diversity.

The delay in naming a chairman for the Equal Employment Opportunity Commission has confounded and divided civil rights activists, and raised questions about whether the White House has violated the spirit, if not the letter, of the fair employment laws by effectively limiting its search to Latino candidates.

Over the past year, the White House has floated the names of three prospective Latino nominees. But each has been shot down by civil rights groups who felt they lacked sufficient experience in fair-employment law.

The civil rights community and the Administration itself are now split around a pointed question: Is the symbolism of naming a Latino to the job more important than the impact of leaving leaderless the agency charged with enforcing laws prohibiting hiring discrimination on the basis of race, sex, age or physical disability?

Critics say the absence of a permanent chairman, a post traditionally held by a minority, has left the agency floundering as it struggles to dig out from a massive backlog of more than 80,000 pending discrimination complaints.

Latino advocacy groups are still pushing for a Latino appointment, though others in the civil rights community say the Administration can no longer afford to place such a premium on the nominee's ethnic

Please see EEOC, A12

Hayden: Zen and the Art of Running for Governor

■ Elections: His campaign is as much a journey of self-realization as it is about political destiny.

By CATHLEEN DECKER
TIMES POLITICAL WRITER

This is serious stuff, this business of running for governor. So why is Tom Hayden—the activist with the angry edge, the man who thwarted the Establishment during the Vietnam War, the non-glamour half of Jane and Tom, the man whose sober warnings of California crises have been uttered regularly for years—why is he having fun?

On the patio of a Santa Monica cafe, where the next table's raucous rendition of "Happy Birthday" has just ruined part of Hayden's interview with a local television station, the candidate launches into a serious discussion of his place in the political landscape. Suddenly, he veers off.

"There was this guy in San Francisco. We were asking him what he knew about Hayden," the state senator says. "He said: 'He was married to that woman who channels—what's her name?—Shirley MacLaine.'"

Jane Fonda's ex-husband let loose a well-timed grin. "Wwweeellll, it's a start."

These are the final weeks of the gubernatorial primary campaign, a time when humor has abandoned most candidates. It is a time when the answers to every question come out rote, memorized from briefing books or memos, when the sheer physical drain of a long campaign starts to wear out even

Please see HAYDEN, A7

LA Times 5/23/94

EEOC: Ongoing Agency Vacancy Divides Civil Rights Activists

Continued from A1

background.

"My feeling is: Get someone in there, whether a he or she, whether Hispanic or African American or Asian American, no matter what their background is," said Sen. Paul Simon (D-Ill.), who chairs a Senate subcommittee that oversees the EEOC.

"The Administration in this case has been unduly absorbed with some kind of a balancing process in affirmative action and that seems to have hampered their acting rapidly," said William Taylor, vice-chairman of the Citizens' Commission on Civil Rights, a liberal advocacy group. "It is a misapprehension of the general goal of diversity to pinpoint particular positions for particular people."

■ FROM SUNDAY EDITIONS

Former President George Bush's appointee as EEOC chairman, Evan J. Kemp Jr., resigned in April, 1993. Since then, the commission has been under an acting chairman: Tony E. Gallegos, a Latino Democrat first appointed to the EEOC by President Ronald Reagan in 1982.

Clinton also hasn't chosen anyone to fill the commission's general counsel position, which has been vacant since last June, and only recently announced his intention to nominate candidates for two other vacant positions on the five-member board.

Sources said the appointment process was delayed while Clinton sought to assemble a diverse slate of candidates. One of the two nominees to the commission is a disabled person, the other is Asian.

Since Gallegos can only serve on the commission for a 60-day grace period after his term expires at the beginning of July, if none of Clinton's nominees receives Senate confirmation by Aug. 29, the commission will lack a quorum to conduct business.

Gallegos said that even with only three commissioners the agency is running at full steam. "Cases are moving through," he said. "Nothing is delayed."

But civil rights groups said the commission has been drifting.

"It is just a leaderless group over there," said Pat Wright, director of government affairs at the Disability Rights Education and Defense Fund.

For conservatives all this stands as a parable on the perils of rigid insistence on racial diversity in hiring decisions.

"It's a question of sacrificing civil rights enforcement on the altar of [appointment] quotas, and it seems to me that's what is happening," said Linda Chavez, executive director of the U.S. Commission on Civil Rights under Reagan.

Publicly, White House officials say they have considered candidates of all races for chairman, and note that they have interviewed some white candidates.

"We have looked at a very broad spectrum of people for this position," said Veronica Biggins, who was named White House personnel director last January. "Our preference is that it would be an Hispanic, but in the same breath it is most important to have the right person in this position."

But privately, several White House sources acknowledge that the Administration has sought a Latino, virtually to the exclusion of candidates of any other background.

One official involved in the process said finding a Latino chairman became imperative after African Americans were named to the two other high-profile civil rights jobs: Deval Patrick as assistant attorney general for civil rights and Mary Frances Berry as chairwoman of the U.S. Commission on Civil Rights.

A second White House official concurred. "There was a general consensus on behalf of everyone who was involved . . . that if the civil rights division and some of the other significant positions [went to blacks], there had to be balance and it made sense to be an Hispanic chair" at EEOC.

If the Administration has, in fact, effectively narrowed the search to Latinos, it would technically violate the equal employment laws the commission enforces, several civil rights experts said. Under Title VII of the 1964 Civil Rights Act, which applies to the federal government, employers cannot designate specific positions for members of specific races.

"The law generally is you can consider race as a factor, but you cannot reserve a position by race," Taylor said.

As a practical matter, a disappointed candidate for the EEOC job probably could not turn to the courts because the Supreme Court has held that the President cannot be sued on matters relating to his official duties.

Each of the potential nominees the Administration has publicly floated have been Latino: Nelson Diaz, a Philadelphia judge who was later appointed general counsel at the Department of Housing and Urban Development; Ida Castro, a New York labor lawyer now at the Labor Department; and Gilbert F. Vasquez, a San Antonio lawyer.

But in each instance problems developed that convinced the White House to back off. The deciding factor each time appeared to be a lack of support from the major civil rights groups, a response that has created tensions between Latino advocacy organizations and civil rights groups with their roots primarily in the black community.

Latino groups largely shared the skepticism concerning Diaz and Vasquez, but they were annoyed at the reaction to Castro, an energetic attorney who spent weeks visiting civil rights groups to muster support only to find her prospects scuttled at the last minute.

"There had been this tacit understanding [between black and Latino groups] that 'let's not step on each other's toes here, let's divvy up the jobs,'" said one civil rights attorney familiar with the discussions. "There was a feeling among the Hispanic community that this [appointment] was their call alone . . . and the other civil rights groups had undermined Castro by damning her with faint praise to the White House—and that was reneging on the deal."

With some civil rights advocates now quietly suggesting the time has come for the White House to broaden the search to other ethnic groups, Latino advocates are reacting angrily.

Beyond the symbolic concerns, Latinos want one of their own named to the job because they feel the agency historically has not focused on their concerns, said Charles Kamasaki, a vice president at the National Council of La Raza, a Latino advocacy group in Washington.

To select a non-Latino for the job now would mean the White House and other civil rights groups have effectively concluded that no Latino is qualified, Kamasaki said.

"What they will have done is accept what employers have said about affirmative action for the past 20 years."

White House officials say that conclusion is simplistic because the job was turned down by several prominent Latinos, including Raul Yzaguirre of La Raza in Washington and Antonia Hernandez of the Mexican American Legal Defense and Education Fund in Los Angeles.

At this point, the White House appears eager to put the controversy to rest. But it will have to hurry to avoid a dubious achievement. Clinton is less than a month shy of the record set by Reagan when he left the agency without a permanent chairman for 14½ months before Clarence Thomas, now a Supreme Court justice, was confirmed for the job in May, 1982.

Wall Street Journal 2/27/95

President and Advisers Are Struggling To Find Position on Affirmative Action

By MICHAEL K. FRISBY
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—President Clinton is planning a major speech on affirmative action next month, but the president and his brain trust are far from deciding what position he'll take.

It's one of the biggest challenges of Mr. Clinton's presidency: Articulating a policy that aims to neutralize the Republican assault on affirmative action without angering working-class whites or minority voters — two groups he needs for re-election.

Already, though, this hot-button issue threatens to drive a wedge through Mr. Clinton's own White House, much as the Republicans may use it to divide the electorate. A White House meeting on Thursday initiated a fiery internal debate over setting the policy, as well as what tactics to use in fighting for it.

While those in the Clinton camp struggle to satisfy the ideological wings of the White House, they are light years behind in responding to the GOP: Conservatives want to end race-based affirmative action, and their only question is how far to go.

By contrast, the White House isn't saying it will fight for the status quo—good news to moderate Democrats who themselves want changes, but worrisome to supporters of affirmative action. "The administration and Democrats must get out front on this issue," warns Georgia Democratic Rep. John Lewis.

But George Stephanopoulos, the presidential aide managing the issue, was vague at Thursday's meeting. He said that "we oppose discrimination" and that "we believe there have to be some affirmative remedies." And on Friday Mr. Clinton said, "What we need to guarantee is genuine equality of opportunity."

Commerce Secretary Ron Brown, as well as other civil-rights advocates, seems to be calling for something stronger, although he and others acknowledge a need to protect the rights of white males. "Affirmative action is very much needed in America," Mr. Brown said. "Certainly, it has had a positive impact on mediating the gross discrimination that has taken place against women and minorities. It continues to be needed not to redress grievances of the past, but current discrimination that continues to exist."

Mr. Brown acknowledges that some unintended or unfair applications have resulted. "But," he said, "that doesn't mean that you dismantle an effort that has clearly worked."

Last week, Mr. Stephanopoulos asked aides to come up with names of corporate, media, political, educational and civil-rights leaders whom the president can brainstorm with in the coming days. The names will be presented at a meeting today, and Mr. Stephanopoulos hopes some will become the administration's public supporters.

In addition, several aides are writing papers to be assembled into a presidential briefing book. It will include the work of two people whose views may clash: Deval Patrick, head of the civil-rights division at the Justice Department, a strong advocate of affirmative action; and William Galston, of the domestic policy council, a supporter of rollbacks. Moderates in the administration are weary of Mr. Patrick, and some want him to be reined in.

At last week's meeting, the group failed to embrace a suggestion by aide Kitty Higgins that the administration take the focus off minorities by highlighting women's benefits from affirmative action.

New Jersey Sen. Bill Bradley, likely to be a key adviser, said the Democrats must alter the debate: "The issue has been so distorted that affirmative action to many people means reverse discrimination and preferences, which is clearly not what affirmative action is; that's what quotas are." He said affirmative action means an effort to find qualified minorities or women to fill positions in the work force or in a classroom.

The White House may ultimately be bailed out by the Democratic Leadership Council, a centrist group. While looking for changes, Al From, the group's president, respects the role that affirmative action has played. "The principle of equal opportunity is the key," Mr. From said. "Affirmative action is a tactic, but we need to be careful about giving up an imperfect tactic until we know that some new strategies can achieve that goal."

Will Marshall, of the DLC's think tank, suggested that Democrats and Republicans may find common ground in using "economically disadvantaged" as a category instead of race, sex or ethnicity. Mr. Marshall said current discrimination laws must be enforced and ways found to economically empower minority communities. "The question," he said, "is can Democrats acknowledge that the current regime of affirmative action is problematic and untenable in its present form and needs to be changed?"

But the problem for Mr. Clinton is that affirmative-action supporters don't want changes. "Women and minorities have both been beneficiaries of affirmative action," said Ralph Neas, head of the Leadership Council on Civil Rights. "And it is good for families."

Washington Times
2/27/95

White painter sues set-asides after brushoff

By Joyce Price
THE WASHINGTON TIMES

The head of a 48-year-old painting firm in Columbia, Ohio, was told he could no longer compete for work at Ohio State University because he is white and the university had decided to award all painting contracts to "minority vendors."

Jerry Henry, president of the Henry Painting Company, sued the university in 1994, saying its "100 percent minority set-asides" for painting jobs and a state affirmative-action law that sparked the special treatment were unconstitutional.

Affirmative-action programs give minorities and women preferential treatment for jobs, promotions, contracts and college admission. The programs, which have been around for more than 30 years, were designed to make up for past discrimination against those groups.

But critics of the programs, such as Mr. Henry and a growing list of disgruntled contractors, police officers, firefighters, political leaders at both the state and national levels, political pundits, and private citizens say such programs promote discrimination against whites, rather than fulfilling their intended purpose of making people colorblind.

Mr. Henry said the university ended 100 percent minority set-asides for painting, in place since 1984, soon after learning of his lawsuit. But he said he's proceeding with the litigation, and a pre-

see SUIT,

Cont'd 192

Minority uplift programs in trouble

2 black leaders agree on review

By Major Garrett
THE WASHINGTON TIMES

Two of the nation's most prominent black political leaders yesterday conceded that some affirmative-action programs should be reviewed and possibly abolished.

Republicans in Congress have been pushing for abolishment or overhaul of all affirmative action laws, which have emerged as an issue in the 1996 elections.

Rep. Kweisi Mfume, the former chairman of the Congressional Black Caucus, and California State Assembly Speaker Willie Brown supported President Clinton's upcoming examination of the successes and failures of affirmative action.

"I think at every stage of any governmental program designed to level the playing field it should be constantly reviewed," Mr. Brown said on CBS-TV's "Face the Nation." "We ought to come to the point in our lives where not only affirmative action, but all the other kinds of things that we do to try to level the playing field will no longer be necessary."

"I think what we need to do . . . is to look at what works and what doesn't work," the Maryland Democrat said on ABC-TV's "This Week." "It is after we reach that point in time that I think we can look at talking about whether or not we ought to dismantle it. But right now we cannot."

Both lawmakers cautioned, that Republicans are channeling voter anxiety over declining wages into

see REVIEW,

Cont'd 192

THE WALL STREET JOURNAL
MONDAY, FEBRUARY 27, 1995

Kmart Advertises Jobs, But Posts Are Closed To Former Employees

By a WALL STREET JOURNAL *Staff Reporter*

TROY, Mich. – Kmart Corp. is again advertising to fill jobs at its headquarters here. But the 1,100 employees the big retailer dismissed as part of a work-force reduction two months ago aren't eligible to apply.

Under the severance agreements the workers signed at the time, the employees agreed they wouldn't seek re-employment. Such a clause is "pretty standard in any severance agreement," said a spokeswoman. She was unable to say precisely what purpose such a measure serves.

Some of the employees complained to the Associated Press that the jobs being advertised resemble jobs that the company had eliminated in the December cutback – and concluded that older and higher-paid workers had been cut in order to replace them with younger and cheaper workers.

Kmart denied any such intent. The job cut differed from department to department, and those let go "ranged from some who were literally teenagers to individuals with 30 years or more" of experience, said the spokeswoman. The cutbacks had "nothing to do with age."

Many of the jobs now being advertised relate to systems and accounting jobs that are being consolidated in the Michigan headquarters, as a result of the pending transfer of the company's apparel division from New Jersey. A yet-unknown number of those New Jersey employees won't accept the transfer, she said.

Kmart froze hiring and stopped accepting applications in December, the spokeswoman said. But "if we are to have a pool of job candidates, we need to have some active resumes," she said.

SUIT

From page A1

trial hearing is scheduled for tomorrow.

"This was blatant reverse discrimination," Mr. Henry said in a recent telephone interview. He added that his suit seeks more than $300,000 in damages — the amount he says he lost as a result of being barred from competing for work under the university's former policy of awarding all painting service jobs to nonwhites.

Republicans in Congress already have started a move toward eliminating affirmative-action plans. Many of the Republican contenders for president in 1996 are making this a campaign promise.

Affirmative action is "like the Vietnam War because we got into it for the best of reasons," Glen Custred, leader of a California referendum drive that would end that state's racial- and sex-preference programs, said recently on CNN's "In[illegible]olitics."

"[illegible]ame a quagmire, and now it's [illegible] to get out," he said.

Many agree, and they are fighting to end affirmative action through litigation, legislation and ballot initiatives.

The Center for Individual Rights (CIR), a Washington-based legal group that's representing Mr. Henry, is also representing a 14-year-old Corpus Christi girl who's challenging affirmative action. Last summer, the girl, whom CIR calls "Stacey," was barred from attending a study camp sponsored by the National Science Foundation and run by Texas A&M University because she is white.

The camp, Planet Earth, was "reserved exclusively for blacks, Hispanics and Native Americans," CIR President Mike McDonald said.

"We're back ... to state-sponsored segregation, except now it's dressed in multicultural group-think," CRI said recently in its newsletter, Docket Report.

No figures are available as to the overall prevalence of affirmative action, but experts say it's mandatory in police departments, education and other government agencies receiving federal funds and is common in the private sector as well.

"Some police departments are under court orders to meet a certain percentage of minority applicants" because of past discrimination, said Richard Samp, chief counsel of the Washington Legal Foundation.

"On the negative side, many law enforcement agencies, particularly those in urban or large metropolitan areas, very quietly will tell you that if you are a white male, don't bother to apply," said Mort Feldman, executive vice president of the Miami-based National Association of Chiefs of Police.

Such policies, he said, "not only cause a lot of resentment" but also "plant seeds of racism" and "create a real backlash."

Anger at race-based hiring and promotional practices has prompted white police officers or firefighters in a number of cities, such as Tampa, Memphis, Birmingham, Indianapolis and St. Louis, to challenge the affirmation action programs that are in effect where they work.

In a ruling last year, a federal appeals court agreed with white firefighters in Alabama that the Birmingham Fire Department illegally used racial quotas to alleviate past discrimination.

"In both the private and public sector, employers feel compelled to take steps ... to make sure the work force mirrors precisely the diversity of the local community," Mr. Samp said.

"Whites and Asian-Americans [generally] score significantly higher on tests than blacks and Hispanics but aren't being hired" by many employers using tests as a hiring prerequisite.

Instead, Mr. Samp said, "Hiring is going on by quotas, so employers don't get sued" for using tests that might be found to have a "disparate effect" on some minorities.

As Jerry Henry found out, affirmative action is the norm in government contracting.

Ohio State University said it was forced to set aside all its painting contracts for minority bidding because it was unable to comply with a state law requiring that it make at least 15 percent of all its purchases from minority firms. To help it come closer to compliance, the university opted to restrict bids to minority contractors for services "where sufficient competition exists among minority vendors."

In 1984, the university also announced 100 percent minority set-asides in the areas of carpeting, electrical supplies, electrical repairs, janitorial supplies and services, office supplies, and stock form paper purchases.

Mr. Samp said Ohio State's response is "commonly" used by agencies and institutions required to meet an overall minority procurement goal.

But a case pending before the Supreme Court could abolish racial preferences in federal contracting, Mr. Samp said. The case, Adarand Constructors Inc. vs. Pena, was brought by a Colorado man who manufactures guardrails that have been used in federal highway projects.

The contractor, who is white, brought suit against the secretary of the Department of Transportation after losing out on a job in which he was the low bidder. The reason? Minority set-asides.

Civil rights groups such as the National Association for the Advancement of Colored People remain strongly behind affirmative action, as are such black leaders as Jesse Jackson and Rep. Charles Rangel, New York Democrat.

They recall eras when some police departments were lily-white and turned their backs on black applicants. They worry this could happen again.

But Rep. Dana Rohrabacher, California Republican, who has long opposed affirmative action, commented: "The Jesse Jacksons of the world are doing a great disservice to the black population by continuing to espouse an ideology of victimization. Blacks who want to improve their status have an enormous opportunity to do so. But the Jesse Jacksons of the world say, 'Don't try.' "

Some black leaders seem to share Mr. Rohrabacher's view. Ward Connerly, a black member of the University of California Board of Regents, is leading a drive to eliminate racial preference in the university system. A vote is expected this summer.

FIGHTING AFFIRMATIVE ACTION

Some legal landmarks in reverse-discrimination cases:

1978 — Bakke vs. Board of Regents, University of California — The Supreme Court ruled that the medical school of UC-Davis discriminated against Allan Bakke, a white student, by establishing a quota of slots for minority students. The high court's decision forbade the use of specific racial quotas for admission to the medical school but allowed race to be a factor in admissions.

1992 — Finding by the U.S. Department of Education's Office of Civil Rights — The OCR said the University of California at Berkeley's law school used a race-specific admissions quota system that violated civil rights laws. The school, Boalt Hall, did not acknowledge guilt but agreed to change its practices.

1994 — Hopwood et al. vs. State of Texas — A U.S. District Court found that the University of Texas Law School intentionally discriminated against four whites who said they were denied admission in 1992 because of their race under a policy that effectively reserved 15 percent of all seats in each class for blacks and Mexican-Americans. They won $1 each in damages and the right to reapply to the law school without paying an application fee. The students have appealed, seeking more substantive financial relief and immediate admission to the law school.

1994 — Podberesky vs. University of Maryland — Daniel J. Podberesky, a Hispanic student, was rejected in 1990 by a university scholarship program that assists only blacks. In 1993, a federal court ruled that the Benjamin Banneker Scholarship Program was justified in awarding full scholarships only to blacks. But in October a federal appeals court ruled that the university cannot have a scholarship program only for blacks, despite evidence of past discrimination.

The Washington Times

FROM PAGE ONE

REVIEW

From page A1

a nationwide assault on affirmative action. They say safeguards against discrimination are still necessary.

"You know, people will make the argument that we need a colorblind society," Mr. Mfume said. "I don't buy that. I'd like to believe it. I hope by the time I go to my grave it will be, but it's not. The median wage in terms of families that are black, white and brown and red are always different. They're not equal."

The House Judiciary subcommittee on the Constitution has scheduled oversight hearings in March on the Justice Department's enforcement of civil rights laws.

House Majority Leader Dick Armey of Texas said yesterday the federal government should abolish all affirmative-action programs. He said employers should govern hiring decisions, and the courts should punish discrimination only after a provable pattern has been uncovered.

"I think we can find and discover that, if given a chance to be free, the American people will, in fact, respect each and every person for the merit of their ability, the content of their character, and not the color of their skin," Mr. Armey said on "Face the Nation."

"I want to look at the whole question with an eye towards what is the fundamental sound goodness of the American people, not what is the bully and guile of the federal government," he said.

Conservative commentator and soon-to-be Republican presidential candidate Pat Buchanan said affirmative-action programs — which number 160 — are as indefensible as slavery or the Jim Crow laws that followed slavery.

"Affirmative action is official discrimination on the basis of race and color," Mr. Buchanan said on the same CBS program. "Discrimination is wrong. It was always wrong. It's wrong when done against black folks as it was done in the South. It is wrong when done against white folks as well."

The Supreme Court outlawed explicit racial preferences in a 1978 case involving Allan Bakke, who had been denied enrollment at the University of California at Davis. The school had a policy of reserving a precise number of slots at its medical school for minority applicants.

The 5-4 decision said numerical quotas were illegal under Title IV of the 1964 Civil Rights Act. The act outlawed discrimination based on "race, color or natural origin" in all federally funded programs and institutions.

In a separate 5-4 ruling, the high court said voluntary racial goals in hiring and college admissions were legal. The court said race could be a contributing factor in an admission or hiring decision, but not the decisive factor.

Ever since the Bakke decision, the federal government has tried to adjust the rules governing hiring and enrollment decisions to enlarge opportunities for minorities without penalizing whites.

The most recent attempt was the Civil Rights Act of 1991, which allowed victims of racial, sex or religious discrimination to sue for punitive damages. Previously, victims of discrimination could sue only for back pay and lost benefits. The bill also made it easier for suits to be brought on the basis of indirect discrimination — where physical tests or academic requirements were used in hiring decisions.

When he signed the bill on Nov. 21, 1991, President Bush declined to endorse a draft presidential directive that would have abolished existing federal affirmative-action policies. The directive tried to end regulations, in place since 1965, that provided for racial preferences and "set-asides" in federal hiring and promotions.

Mr. Buchanan attacked Mr. Bush during the 1992 presidential campaign for codifying quotas into federal law.

William Kristol, a conservative Republican strategist, said yesterday that affirmative action cannot be defended on the basis of income inequities. Workers of all races have wages based largely on factors unrelated to race, specifically skills, eduction and performance, he said.

Governing the workplace by any other standard, Mr. Kristol said on "This Week," is wrong.

"I'm against using race as a proxy for poverty," Mr. Kristol said. "It isn't."

Mr. Mfume defended the goal of affirmative action to redress past discrimination.

"When there is historical discrimination and where there is an absolute absence of the courts to protect the rights and the opportunity of people, you have to set aside sometimes and you have to create goals and timetables to bring people in," Mr. Mfume said.

AP

Rep. Richard Armey wants to get government out of affirmative-action in jobs and education.

CONGRESSIONAL RESEARCH SERVICE'S COMPILATION AND OVERVIEW OF FEDERAL LAWS AND REGULATIONS ESTABLISHING AFFIRMATIVE ACTION GOALS

Congressional Research Service
The Library of Congress
Washington, D.C. 20540-7000

February 17, 1995

TO: Honorable Robert Dole

FROM: American Law Division

SUBJECT: Compilation and Overview of Federal Laws and Regulations Establishing Affirmative Action Goals or Other Preference Based on Race, Gender, or Ethnicity

This is in response to your request, by letter dated December 22, 1994, for "a comprehensive list of every federal statute, regulation, program, and executive order that grants a preference to individuals on the basis of race, sex, national origin, or ethnic background. Preferences include, but are not limited to, timetables, goals, set-asides, and quotas."

To compile the list of federal legal authorities contained in this memorandum, several searches on LEXIS/NEXIS and WESTLAW legal databases were undertaken utilizing a variety of search strategies which incorporated legal terminology most frequently associated with federal affirmative action and minority set-aside programs. This yielded citations to several hundred statutory and regulatory programs which we then examined individually to determine whether they appeared to be of the nature described in your inquiry. The compilation of law's included in this memorandum reflects our efforts to be as "comprehensive" as possible, in accordance with your instructions. Consequently, we have included any statute, regulation, or executive order uncovered by our research which appears, in any manner, to prefer or consider race, gender, or ethnicity as factors in federal employment or the allocation of federal contracts or grants to individuals or institutions.[1] Several laws and regulations directed to "socially and economically disadvantaged" individuals and institutions are included because, as explained *infra*, that term has been defined administratively and by statute to presumptively apply to specific racial and ethnic minorities. As a background for understanding operation of the numerous listed federal laws and regulations, more extensive discussion is devoted at various points to the development of major "affirmative action" programs in federal grant, contract, and employment law.

FEDERAL GRANT AND PROCUREMENT LAW

Federal efforts to increase minority and female participation in contracting, federally assisted programs, and employment have been a major aspect of civil rights enforcement for more than three decades. Congress and the Executive Branch have crafted a wide range of federal laws and regulations authorizing, either directly or by judicial or administrative interpretation, race or gender "conscious" strategies in relation to jobs, housing, education, voting rights, and governmental contracting. The historical model for federal laws and regulations establishing minority participation "goals" may be found in Executive Orders which since the early 1960's have imposed affirmative minority hiring and employment requirements on federally financed construction projects and in connection with other large federal contracts. Presently, Executive Order 11246 as administered by the Office of Federal Contract Compliance Programs (OFCCP) requires that all employers with federal contracts in excess of $50,000.00 must file written affirmative action plans with the government. These are to include minority and female hiring goals and timetables to which the contractor must commit its "good faith" efforts. Similar affirmative action measures relating to federal government employment were enacted as part of the Equal Employment Opportunity Act Amendment of 1972[2] and the 1978 Civil Service Reform Act.[3]

Affirmative action for minority entrepreneurs soon became a focus of efforts by the Small Business Administration (SBA) and other federal agencies to assist "socially and economically disadvantaged" small businesses under a variety of federal programs. Increasingly, an "affirmative action" model, in the form of participation "goals" or "set-asides" for members of racial or ethnic minorities, and businesses owned or controlled by these or other "disadvantaged" persons, found legislative expression in a wide range of federal programs.

The Small Business Act, as amended, provides the statutory prototype for a host of federal programs to increase minority and female participation as contractors or subcontractors on federally funded projects. First, the "Minority Small Business and Capital Ownership Development," or §8(a) program authorizes the Small Business Administration (SBA) to enter into all kinds of construction, supply, and service contracts with other federal departments and agencies. The SBA acts as a prime contractor and then "subcontracts" the performance of these contracts to small business concerns owned and controlled by "socially and economically disadvantaged" individuals, Indian Tribes or Hawaiian Native Organizations.[4]

Applicants for §8(a) certification must demonstrate "socially disadvantaged" status or that they "have been subjected to racial or ethnic prejudice or cultural bias because of their identities as members of groups without regard to their individual qualities."[5] The Small Business Administration "presumes," absent contrary evidence, that small businesses owned and operated by members of certain groups—including Blacks, Hispanics, Native Americans, and Asian Pacific Americans—are socially disadvantaged.[6] Any individual not a member of one of these groups must "establish his/her individual social disadvantage on the basis of clear and convincing evidence" in order to qualify for §8(a) certification. The §8(a) applicant must, in addition, show that "economic disadvantage" has diminished its capital and credit opportunities, thereby limiting its ability to compete with other firms in the open market.[7]

The "Minority Small Business Subcontracting Program" authorized by §8(d) of the Small Business Act codified the presumption of disadvantaged status for minority group members that applied by SBA regulation under the §8(a) program.[8] Prime contractors on major federal contracts are obliged by §8(d) to maximize minority participation and to negotiate a "subcontracting plan" with the procuring agency which includes "percentage goals" for utilization of small socially and economically disadvantaged firms. To implement this policy, a clause required for inclusion in each such prime contract states that "[t]he contractors shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to he disadvantaged by the Administration pursuant to §8(a)..."

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

The affirmative action issue has also been raised by several prominent Republicans, including Senate Majority Leader Robert Dole (R-Kan), who wants a "color blind" society. Dole is interested in re-examining minority preference programs, one Republican aide said.

The GOP is not necessarily interested in abolishing all such programs, but in determining whether "they are antiquated or subject to abuse," he added.

House Debate Over Affirmative Action Issues

The debate in the House during consideration of the health deduction measure highlighted key differences between Republicans and Democrats over affirmative action policies in general and may offer insight into the coming debate in the Senate.

By a largely party line vote of 191-234, the House rejected the alternative plan offered by Ways and Means member Rep. Jim McDermott (D-Wash) that would have kept the FCC program in place. Only two Republicans voted for McDermott's amendment.

McDermott's amendment would have extended the deduction to the self-employed and extended it to employees whose employers do not provide health insurance. As an offset, McDermott would have reformed the FCC program by placing caps on the amount of money companies could defer once they sold their facilities to minority businesses.

Additional revenue for McDermott's amendment would be raised by taxing certain assets owned by individuals who renounce their U.S. citizenship and revising the taxation of income from foreign trusts.

Ways and Means Committee Chairman Bill Archer (R-Texas) and other members of his party explained that they did not support the McDermott amendment because they opposed the underlying principle of granting special tax preferences on the basis of race or color.

That theme was struck by many Republicans, including Rep. Nancy Johnson (R-Conn), who said that "racial classifications are inherently divisive." She added that repeal of the FCC provision "is not a retreat from equal opportunity."

"Greater minority participation is a goal shared by all, but not by giving special preferences to some at the expense to others," Archer said. Those who argue in favor of keeping the FCC provision are actually "driving a wedge in our society on racial and ethnic grounds," he added.

But those views were challenged by many House Democrats, led by Rep. Charles Rangel (D-NY), who said that despite the Republican call for a "color blind" tax code, "the board rooms and editorial rooms are not color blind."

Rangel also charged that the health insurance bill has nothing to do with the debate on the floor, but is actually "a sugar coating for repealing the FCC provision."

Rep. Kweisi Mfume (D-Md) underscored those remarks, saying the debate over affirmative action was really "a flare that goes up before the firefight and lights the horizon. . .let me suggest that the real fight is on the horizon." He added that "affirmative action will not go down quietly."

—By *Vandana Mathur*

Minimum Wage

REPUBLICANS VOICE CONCERN OVER FEDERAL MANDATE IN MINIMUM WAGE HIKE

Republican members of the Joint Economic Committee made it clear during a Feb. 22 hearing that they are skeptical of agreeing to raise the minimum wage by 90 cents to $5.15 an hour by 1996 at a time when many Americans, especially business owners, say they want fewer government mandates.

In a four-hour, often rancorous hearing, JEC members questioned Labor Secretary Robert B. Reich and a dozen other witnesses on the 90-cent increase in the minimum wage proposed by the Clinton administration. Private business owners and economists presented testimony that offered widely differing views of how an increase might affect low-wage jobs, largely in retail firms.

While none of the GOP members at the hearing said they support a repeal of the minimum wage, House Majority Leader Richard Armey (R-Texas) has vowed to fight the proposed increase and has argued for elimination of the wage floor. Armey did not testify at the hearing because of scheduling conflicts, a staff aide said.

Democrats, on the other hand, tried to focus the debate on their main argument that raising the minimum wage would help to encourage welfare recipients to take jobs rather than stay on welfare. The debate is not about government mandates, but about lifting families out of poverty and "making work pay," said Reich.

The labor secretary pushed hard for the proposed increase, reiterating the administration's argument that inflation has eroded the value of the minimum wage to where it is 27 percent lower than it was in 1979. A person working full-time year-round at the $4.25 an hour rate currently in effect cannot sustain a family of four at the annual earnings total of $8,500, he said.

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

Accordingly, SBA has discretion in designating a firm or individual as socially and economically disadvantaged for purposes of both the §8(a) and §8(d) programs in conformity with specified criteria.[9]

These obligations, first codified in 1978 as an amendment to the SBA, were augmented a decade later by the Business Opportunity Development Reform Act of 1988.[10] Congress there directed the President to set annual, government-wide procurement goals of at least 20% for small businesses and 5% for disadvantaged businesses, as defined by the SBA. Simultaneously, federal agencies were required to continue to adopt their own goals, compatible with the government-wide goals, in an effort to create "maximum practicable opportunity" for small disadvantaged businesses to sell their goods and services to the government. The goals may be waived where not practicable due to unavailability of disadvantaged business enterprises (DBEs) in the relevant area and other factors.[11] While the statutory definition of DBE includes a racial component, in terms of presumptive eligibility, it is not restricted to racial minorities but also includes persons subjected to "ethnic prejudice or cultural bias." [12] It also excludes businesses owned or controlled by persons who, regardless of race, are "not truly socially and/or economically disadvantaged." [13] Federal Acquisition Act amendments adopted in 1994 amended the 5% minority procurement goal, and the minority subcontracting requirements in §8(d), to specifically include "small business concerns owned and controlled by women" in addition to "socially and economically disadvantaged individuals." [14]

In addition, Congress has frequently adopted "set-asides" or other forms of statutory preference for "socially and economically disadvantaged" firms and individuals, following the definitions of the Small Business Act, or by designating minority groups and women as part of specific grant or contract authorization programs. Thus, targeted funding, in various forms, and minority or disadvantaged business set-asides or preferences have been included in major authorization or appropriation measures for agriculture, communications, defense, education, public works, transportation, foreign relations, energy and water development, banking, scientific research and space exploration, and other purposes. Other federal laws appear to authorize some consideration of race or gender to enhance the participation of minorities and women in federal programs or employment but without directly mandating preferential goals or set-asides.

The following statutes, regulations, and executive orders governing federal contracts and grant programs are, to the extent possible, grouped according to agency and subject matter.

Federal Acquisitions Regulations—General

48 C.F.R. §19.001(b) (1994): "Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) are to be considered socially and economically disadvantaged" for purposes of "Socioeconomic Programs" under the Federal Acquisitions Regulation (FAR).

48 C.F.R. §19.704 (1994): FAR requirement that "[s]eparate percentage goals for using small business concerns and small disadvantaged business concerns as subcontractors" be included in small disadvantaged business subcontracting plans.

48 C.F.R. §19.706(c)(2) (1994): FAR subcontracting assistance program states that "[v]arious approaches may be used in the development of small and small disadvantaged business concerns subcontracting incentives. They can take many forms, from a fully qualified schedule of payments based on actual subcontract achievement to an award fee approach employing subjective evaluation criteria. . .The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program." See also §19.705-1 (monetary incentives for exceeding goals).

48 C.F.R §§52.219-8, 52.219-9 (1994): Prescribe clauses for inclusion in federal prime and subcontract which require, inter alia, "[g]oal, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors."

Agriculture

7 U.S.C.S. §3154(c): The Secretary of Agriculture is authorized "to set aside a portion of funds" appropriated for certain research on the production and marketing of alcohols and industrial hydrocarbons for grants to colleges and universities to achieve "the objective of full participation of minority groups."

7 C.F.R. §225.6(g)(xi) (1994): Food service management companies participating in the Summer Food Service Program must submit with appropriate state agency a registration which is to include "a statement as to whether the organization is a minority business enterprise" managed and controlled by "Blacks, Hispanics, American Indians, Alaskan Natives, Oriental and Aleuts. . ."

7 C.F.R. §246.13(g) (1994): Financial management system maintained by state agencies participating in Special Supplemental Food Program for Women, Infants and Children are "encouraged" to use minority- and women-owned banks.

7 C.F.R. §272.4(b)(1994): Bilingual program information and certification, and interpreters must be provided in certain low income areas with specified percentages of non-English speaking minority households under Food Stamp and Food Distribution Program.

7 C.F.R. §1940.968(k)(3)(1994): States participating in certain rural economic development programs are "encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds."

7 C.F.R. §1942.17(p)(3)(iii) (1994): Applicants for certain FmHA community facilities loans are "encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds."

7 C.F.R. §1942.472(c) (1994): Grantees of certain rural housing and community development technical assistance and training grants are "encouraged to use minority banks (a bank which is owned by at least 50 percent minority group members) for the deposit and disbursement of funds."

7 C.F.R. §1944.526(a)(2)(i)(D) (1994): Preapplication process for Technical and Supervisory Assistance Grant program considers in determining applicant's eligibility "the estimated number of low income and low income minority families the applicant will assist in obtaining affordable adequate housing."

7 C.F.R. §1944.671(b) (1994): Equal Opportunity and outreach requirements applicable to FmHA Housing Preservation Grants program state that "[a]s a measure of compliance, the percentage of the individuals served by the HPG grantee should be in proportion to the percentages of the population of the service area by race/national origin."

7 C.F.R. §§3015.13, 3016.21(h) (1994): "Consistent with the national goal of expanding opportunities for minority business enterprises, recipients and subrecipients" of federal financial assistance administered by the Department of Agri-

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

culture "are encouraged to use minority and women-owned banks. Upon request, awarding agencies will furnish a listing of minority and women-owned banks to recipients."

7 C.F.R. 3051 APPENDIX A (1994): OMB Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions. "11. Small and Minority Audit Firms. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this circular." See also OMB Circular A-128 (.19) (Uniform Audit Requirements for State and Local Governments), 29 C.F.R. Part 96 APPENDIX A (1994).

7 C.F.R. §§3403.1, 3403.2 (1994): USDA regulations implementing small business innovation grants program which as one of its goals is to "foster and encourage minority and disadvantaged in technological innovation." For purposes of this program minority and disadvantaged individual is defined as a member of any of the following groups: Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, or Subcontinent Asian Americans."

48 C.F.R. §§419.201-72(a), 419.202-71(a) (1994): The Department of Agriculture small disadvantaged business regulations state that "[t]he Department is required. . .to establish fiscal year goals for the procurement preference programs" and mandate "[establishing aggressive minority and women-owned business goals based on the annual review of advance acquisition plans."

48 C.F.R. §422.804-2 (1994): Affirmative action program provision relating to the Department of Agriculture which states that "each contracting office awarding nonexempt construction contracts maintains a current listing of covered geographical areas subject to affirmative action requirements specifying goals for minorities and women in covered construction."

48 C.F.R. §452.215-71 (1994): Department of Agriculture instructions for the preparation of technical and cost or pricing proposals state that the contract offeror "[i]ndicate what positive efforts your company will take to implement the concepts of equal employment under the proposed contract" and state the extent of minority enterprise participation "goals the contractor has set in the past five (5) years and his actual performance against these goals."

Banking

12 U.S.C.S. §1441a(r-w): Provides for various incentives, including "preference points" on proposals and minority capital assistance programs, to preserve and expand bank ownership by minorities and women; authorizes establishment of Resolution Trust Corporation guidelines to achieve parity in distribution of RTC contracts, and "reasonable goals" for subcontracting, to minority and women-owned businesses and firms; and provides a "[m]inority preference in acquisition of institutions in predominantly minority neighborhoods." [15]

12 U.S.C.S. §1823(f)(12): Authorizes Federal Deposit Insurance Corporation (FDIC) approval of minority-controlled bank acquisitions by minority-controlled holding companies without regard to asset size.

12 U.S.C.S. §2219c: Requires that "all institutions of the Farm Credit System with more than 20 employees shall establish and maintain an affirmative action program plan that applies the affirmative action standards otherwise applied to contractors of the Federal Government"

12 U.S.C.S. §2907: Any donation or sale on favorable terms of bank branch in minority neighborhood to minority or women-owned depository institution shall be a factor in determining the seller or donor institution's compliance with the Community Reinvestment Act.

12 C.F.R. §4.63 (1994): Establishes Contracting Outreach Program for the Office of Comptroller of the Currency to "ensure that minority and women- owned businesses have the opportunity to participate, to the maximum extent possible, in contracts awarded by the OCC." "Minority means any African American, Native American. . . , Hispanic American, Asian-Pacific American, or Subcontinent-Asian American.

12 C.F.R Part 361, §§361.2, 361.10 (1994): Federal Deposit Insurance Corporation "Minority and Women Outreach Program" states "policy of the FDIC that minorities and women and entities owned by minorities and women shall have maximum practicable opportunity to participate in [FDIC] contracts" and requires prime contractors "to carry out the FDIC minority and women-owned business contracting policy in the awarding of subcontracts to the fullest extent, consistent with the efficient performance of the awarded contract."
For this purpose "minority' means "any Black American, Native American Indian, Hispanic American, or Asian American."

12 C.F.R. §§517.5, 517.7 (1994): The Minority, Women, and Individuals with Disabilities Outreach Program of the Office of Thrift Supervision (OTS) defines "[o]utreach activities" to include "identification and registration of minority-, women-owned (small and large) businesses" and "[m]onitoring proposed purchases to assure that OTS contracting staff understand and actively promote the outreach program." Contract award guidelines state that "[t]he OTS Outreach Program Advocate shall work to facilitate the maximum participation of minority and women-owned. . .businesses. . .in the OTS procurement of goods and services."

12 C.F.R. Part 1507 (1994): Minority and Women Contracting Outreach Program of the Thrift Depositor Protection Oversight Board requires the Board's staff to formulate guidelines providing opportunities, "to the maximum extent possible, for the inclusion of minorities and women," and entities owned by them, in the performance of Board contracts; to undertake specified outreach activities; and to report periodically on minority and women-owned business participation in the contracting process, and as subcontractors on Board contracts. "Minority" means "Black American, Native American, Hispanic American, or Asian American."

12 C.F.R. Part 1617 (1994): Minority and Women Outreach and Contracting Program of the Resolution Trust Corporation (RTC) describes a variety of outreach activities (§1617.11); provides procedures for certification of minority and women-owned businesses (§1617.13); provides "incentives" and "bonus considerations" to RTC prime contractors "who demonstrate[ ] a commitment to subcontract at least 25 percent or more of the work" to minority or women-owned firms (§1617.30); and "reserves the right to award a contract directly to a MWOB either by technical competition or by concompetitive award." "Technical and cost bonus points" may be award to contractors with an "eligible subcontracting plan" for women and minorities (* 1617.60). A special outreach program is provided to promote participation of minority and women-owned law firms in RTC legal services contracting (§1617.90).

13 C.F.R. §§317.19(b), 317.35 (1994): "No grant shall be made. . .for any project" under the Local Public Works Capital Development and Investment Program "unless at least 10 percent of the amount of such grant will be expended for contracts with and/or supplies from minority business enterprises." All applications for assistance must contain certification to that effect. "Minority group member means a citizen of

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

the United States who is Negro, Spanish-speaking, Oriental, Indian, Eskimo, or Aleut." (13 C.F.R. 317.2).

Commerce

Executive Order 11625 (1971): Directs the Secretary of Commerce "[w]ith the participation of other Federal departments and agencies. . .[t]o develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by the order." See also Executive Order 12138 (Women-owned Business Enterprise Program).

15 C.F.R §24.21(h) (1994): Grantees and subgrantees of certain grants and cooperative agreements to state and local government "are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members)."

15 C.F.R. §917.11(d) (1994): A "factor considered" in the approval of proposals under the Sea Grant Matched Funding Program "will be the potential of the proposed program to stimulate interest in marine related careers among those individuals, for example, minorities, women, and the handicapped whose previous background or training might not have generated such an interest."

15 C.F.R. §2301.3 (1994): The National Telecommunications and Information Administration of the Department of Commerce, in administering the Public Telecommunications Facilities Program, "will give special consideration to applications that foster ownership and control of; operation of; and participation in public telecommunication entities by minorities and women."

48 C.F.R. §1319.7003(a) (1994): Directs contracting officers of the Commerce Department to "provide assistance to prime contractors to identify potential women-owned small businesses. Such assistance is intended to aid prime contractors in placing a fair proportion of subcontracts with women-owned businesses."

Communications

47 U.S.C.S. §309(j)(4)(D): In radio licensing proceedings, the Federal Communications Commission is directed to prescribe regulations to "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures."

47 C.F.R. §73.3555(d)(2)(ii)(1994): Federal Communication Commission (FCC) multiple ownership rules provide exemption for "minority-controlled" broadcast facilities from certain restrictions on the granting or transfer of commercial TV broadcast stations which result in an aggregate national audience exceeding twenty-five percent. "*Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander:" (*italics* in original).

47 C.F.R. §76.977(a),(b),(e) (1994): Minority and educational programming used in lieu of deregulated commercial leased access capacity. "A cable operator required by this section to designate channel capacity for commercial use pursuant to 47 U.S.C. 532 may use any such channel capacity for the provision of programming from a qualified minority programming source. . .whether or not such source is affiliated with cable operator." "Qualified minority programming source" means a source "that devotes substantially all of its programming to coverage of minority viewpoints, or to programming directed at members of minority groups, and which is over 50 percent minority-owned." "Minority" includes "Blacks, Hispanics, American Indians, Alaskan Natives, Asians, and Pacific Islanders."

68 F.C.C. 2d 381, 411-412 (1978). FCC policy awards a quality enhancement credit for minority ownership and participation in station management in the comparative licensing process. When faced with mutually exclusive applications for the same broadcast channel, the FCC initiates a proceeding to compare the merits of the competing applicants based on specific factors including: diversification of control of mass media communications, full time participation in station management by owners, proposed program service, past broadcast record, efficient use of frequency, and character of the applicant. Under the FCC's preference policy, ownership and active participation in station management by members of a minority group are considered a plus to be weighed in with the other comparative factors.

68 F.C.C. 2d 983 (1978): FCC "Distress Sale" Policy. Under this policy, existing licensees in jeopardy of having their licenses revoked or whose licenses have been designated for a renewal hearing are given the option of selling the license to a minority-owned or controlled firm for up to seventy-five percent of fair market value. The minority-assignee must meet the basic qualifications necessary to hold a license under FCC regulations and must be approved by the FCC before the transfer is consummated.

Defense

10 U.S.C.S. §2196(j)(8): Selection criteria for manufacturing engineering grant program established by the Secretary of Defense require proposal by applicant "to achieve a significant level of participation by women, members of minority groups, and individuals with disabilities through active recruitment of students from among such persons."

10 U.S.C.S. §2323: Establishes a goal of awarding five percent of the total value of Department of Defense procurement, research and development, military construction, and operation and maintenance contracts to "socially and economically disadvantaged individuals," historically black colleges and universities, and minority institutions in each of the fiscal years from 1987 to 2000. This requirement was extended to contracting activities of the Coast Guard and the National Aeronautics and Space Administration by §7105 of the Federal Acquisition Act of 1994, P.L. 103-355, 108 Stat. 3243, 3369 (1994) which also added a requirement that "[t]o the extent practicable," the head of each of these agencies is to "maximize the number of minority small business concerns, historically black colleges and universities, and minority institutions participating in the program."

P.L. 103-835, 108 Stat. 2259, 2652, §8127(a)(1994): "In entering into contracts with private entities to carry out environmental restoration and remediation of Kaho'olawe Island, Hawaii, and the waters surrounding that island, the Secretary of Navy shall, to the maximum extent practicable, give a preference to small business concerns and small disadvantaged business concerns located in the State of Hawaii. In giving the preference, the Secretary shall give especial preference to businesses owned by Native Hawaiians."

32 C.F.R. §33.21(h) (1994): Department of Defense (DOD) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" DOD grantees and subgrantees to use minority banks at least 50% owned by minority group members.

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

48 C.F.R. §205.207(d)(iv) (1994): States that "[f]or acquisition being considered for historically black college and university and minority institution set-aside," the proposed contract "is being considered as a 100 percent set-aside for historically black colleges and universities (HBCUs) and minority institutions (MIs), as defined by the clause at §252.226-7000 of the Defense Acquisition Regulation Supplement."

48 C.F.R. Part 219, §219.000 (1994): DOD regulation which implements "goal" in 10 U.S.C. 2323 to "[a]ward five percent of contract and subcontract dollars to small disadvantaged business (SDB) concerns, historically black colleges and universities (HBCUs), and minority institutions (MIs)." Specific requirements include data collection and reporting (§219.202-5); eligibility criteria for program participation (§219.703); subcontracting plan goals for SDB concerns and institutions (§219.704); reviewing the subcontracting plan (§219.705-4); solicitation provisions and contract clauses (§219.708); and evaluation preference for small disadvantaged business concerns ("by adding a factor of ten percent to the price of all offers") (§219.7002). See also 48 C.F.R. §226.7000 (implements the historically black college and university and minority institution provisions of 10 U.S.C. §2323; §252.219-7005) (small business and small disadvantaged business subcontracting plan on DOD contracts); §252.219.7005 (incentive for subcontracting with small businesses, small disadvantaged businesses, historically black colleges and universities, and minority institutions); §252.219-7006 (notice of evaluation preference for small disadvantaged business concerns); and §252.226-7000 (notice of historically black college or university and minority institution set-aside).

48 C.F.R. Chapter 2 APPENDIX I (1994): Pilot Mentor-Protege Program is to "provide incentives to major DOD contractors, performing under at least one active approved subcontracting plan negotiated with DOD or other Federal agencies, to assist small disadvantaged businesses (SDBs) in enhancing their capabilities to satisfy DoD and other contract and subcontract requirements."

Education

20 U.S.C.S. §1047: Authorizes grants and contracts by the Department of Education (ED) with "historically black colleges and universit[ies]" and other institutions of higher education serving a "high percentage of minority students" for the purpose of strengthening their library and information science programs, and establishing fellowships and traineeships for that purpose.[16]

20 U.S.C.S. §1063b: Authorizes ED grants to specified postgraduate institutions "determined by the Secretary [of Education] to be making substantial contributions to the legal, medical, dental, veterinary, or other graduate education opportunities for Black Americans."

20 U.S.C.S. §1069f(c): Reservation of 25% of the excess of certain educational appropriations for allocation "among eligible institutions at which at least 60 percent of the students are African Americans, Hispanic Americans, Native Americans, Asian Americans, Native Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof."

20 U.S.C. §1070a-41: "Priority" in selection for Model Program Community Partnership and Counseling Grants given to program proposals "directed at areas which have a high proportion of minority, limited English proficiency, economically disadvantaged, disabled, nontraditional, or at-risk students. . ."

20 U.S.C.S. §1112d(d): "Special consideration" to be given "historically Black colleges and universities" and to institutions having at least 50% minority enrollment in making grants for teacher training and placement.

20 U.S.C.S. §1132b-2: In awarding facilities improvement grants, the ED Secretary or each State higher education agency "shall give priority to institutions of higher education that serve large numbers or percentages of minority or disadvantaged students."

20 U.S.C.S. §1134e: In making grants for post-graduate study, the ED Secretary shall "consider the need to prepare a larger number of women and individuals from minority groups, especially from among such groups which have been traditionally underrepresented in professional and academic careers," and shall accord a "priority" for awards to "individuals from minority groups and women" pursuing study in specified professional and career fields.

20 U.S.C.S. §1134s: The ED Secretary "shall carry out a program to assist minority, low-income, or educationally disadvantaged college students" to pursue a degree and career in law through an annual grant or contract.

20 U.S.C.S. §§1135c, 1135d: The ED Secretary shall "carry out a program of making grants to institutions of higher education that are designed to provide and improve support programs for minority students enrolled in science and engineering programs as institutions with a significant minority enrollment (at least 10 percent)." Eligibility for such grants is limited to "minority institutions" (minority enrollment in excess of 50%) or other public or private nonprofit institutions with at least 10 percent minority enrollment.

20 U.S.C.S. §1409(j)(2): The ED Secretary "shall develop a plan for providing outreach services" to historically Black colleges and universities, other higher educational institutions with at least 25% minority student enrollment, and "underrepresented populations" in order to "increase the participation of such entities" in competitions for certain grants, contracts, and cooperative agreements.

20 U.S.C.S. §1431(a)(3): "Priority consideration" for fellowships and traineeships in special education and related services shall be given to "individuals from disadvantaged backgrounds, including minority and individuals with disabilities who are underrepresented in the teaching profession or in the specialization in which they are being trained."

20 U.S.C.S. §2986(b): A portion of state allotment of critical skills improvement funds to be distributed for various purposes, including "recruitment or retraining of minority teachers to become mathematics and science teachers."

20 U.S.C.S. §3156(a): Program to assist local educational agencies "which have significant percentages of minority students" to conduct "alternative curriculum" schools which "reflect a minority composition of at least 50 percent" and contribute to school desegregation efforts.

20 U.S.C.S. §3916: Fifteen percent of National Science Foundation funds available for science and engineering education is to be allocated to faculty exchange and other programs involving higher educational institutions with "an enrollment which includes a substantial percentage of students who are members of a minority group."

20 U.S.C.S. §5205(d): No less than 10 percent of Eisenhower Exchange Fellowship Program funds "shall be available only for participation by individuals who are representative of United States minority populations."

20 U.S.C.S. §6031(c)(5): ED "shall establish and maintain initiatives and programs to increase the participation" of "researchers who are women, African-American, Hispanic, American Indian and Alaskan Native, or other ethnic minorities" in the activities of various authorized educational institutes.

42 U.S.C.S. §292g(d)(3): For a three-year period beginning on October 13, 1992, historically black colleges and universi-

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

ties are exempted from provision rendering certain institutions ineligible for student loan program based on high loan default rate.

42 U.S.C.S. §293a: "Special consideration" in scholarship grant program to be given "health profession schools that have enrollments of underrepresented minorities above the national average for health profession schools."

42 U.S.C.S. §293b(3): Institutional eligibility for faculty fellowship program based on "ability to. . .identify, recruit and select individuals from underrepresented minorities in the health profession" with potential for teaching and educational administration.

42 U.S.C.S. §1862d: At least 12 percent of amounts appropriated for the Academic Research Facilities Modernization Program shall be reserved for historically Black colleges and universities and other institutions which enroll a substantial percentage of Black American, Hispanic American, or Native American students.

34 C.F.R. §74.12 (1994): Department of Education (ED) Uniform Administrative Requirements for Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations "encourage" ED grantees and subgrantees to use minority-owned banks. See also 34 C.F.R. §80.21(h) (1994).

34 C.F.R. §318.11(a)(15), (16) (1994): Includes "[t]raining minorities and individuals with disabilities" and "minority institutions" among several optional funding priorities under special education training program.

34 C.F.R. §461.33(a)(2)(ii) (1994): "[P]articular emphasis" placed on training "minority" adult educators under one aspect of adult education demonstration grant program.

34 C.F.R. Part 607, §607.2(b) (1994): An institution of higher education is eligible to receive a grant under the Strengthening Institutions Program even if it does not satisfy certain other generally applicable state authorization or accreditation requirements if its student enrollment consists of specified percentages of designated minority groups.

34 C.F.R. Parts 608, 609 (1994): "The Strengthening Historically Black Colleges and Universities Program [HBCU] provides grants to Historically Black Colleges and Universities to assist these institutions in establishing and strengthening their physical plants, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity."(§608.1).

34 C.F.R. §637.1 (1994): "The Minority Science Improvement Program is designed to effect long-range improvement in science education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, partictlarly minority women, into scientific careers.

34 C.F.R. §641.1 (1994): "The Faculty Development Fellowship Program provides grants to institutions of higher education, consortia of institutions, and consortia of institutions and nonprofit organizations to fund fellowships for individuals from underrepresented minority groups to enter or continue in the higher education professorate."

Energy

42 U.S.C.S. §7141: The Secretary of Energy "may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate."

42 U.S.C.S. §13556: Provides that "[t]o the extent practicable, the head of each agency shall provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts by each agency" under the Energy Policy Act of 1992 "shall be expended with" socially and economically disadvantaged small businesses, historically Black colleges or universities, or college and universities with more than 20 percent Hispanic or Native American enrollment.

P.L. 103-160, 107 Stat. 1547, 1956, §3159 (1993): Provides, as a "goal," that 5 percent of the combined total of funds obligated by the Department of Energy for purposes of carrying out national security programs for fiscal years 1994 through 2000 be allocated to contracts and subcontracts with socially and economically disadvantaged small businesses, historically black colleges and universities, and minority institutions.

10 C.F.R. §600.3 (1994): "Socially and economically disadvantaged" firm or individual, for purposes of Department of Energy (DOE) financial assistance rules, is defined to include "Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and other specified minorities, or any other individual found to be disadvantaged by the Small Business Administration under §8(a) of the Small Business Act."

10 C.F.R. 799.2, 799.7 (1994): A requirement of DOE loan guarantee program for waste projects that "the borrower agree to take positive efforts to maximize the utilization of small and disadvantaged business concerns in connection with the project. . ." For this purpose, "[d]isadvantaged business concern means a concern which is at least 51 percent owned by one or more socially and economically disadvantaged individuals" as defined by the Small Business Act.

10 C.F.R. Part 800, §800.003 (1994): Under DOE regulations setting forth policies and procedures for the award and administration of loans to minority small business enterprises, "[a]n individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut, or is a Spanish speaking individual of Spanish descent, is a member of a 'minority'. . ."

10 C.F.R. §1040.101(b)(1),(2) (1994): Under DOE regulations prohibiting discrimination in federally assisted programs, the agency is to select recipients for compliance reviews based, among other factors, on "(the relative disparity between the percentage of minorities, women, or handicapped persons, in the relevant labor market, and the percentage of minorities, women, or handicapped persons, employed by the recipient" or "in the population receiving program benefits."

Environment

P.L. 101-549, 104 Stat. 2399, 2708, §1001 (1990): "In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments of 1990 which uses funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of total Federal funding for such research will be made available to disadvantaged business concerns," defined to mean any concern with 51% of the stock owned by Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women or Disabled Americans.

40 C.F.R. §33.240 (1994): Environmental Protection Agency (EPA) procurement requirements provide that "[i]t is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction, and services."

40 C.F.R. §35.936-7 (1994): Grantees of EPA state and local assistance grants "shall make positive efforts to use small business and minority owned business sources of supplies and

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

services. Such efforts should allow these sources the maximum feasible opportunity to compete for subagreements to be performed using Federal grant funds." See also 40 C.F.R. Part 35 APPENDIX C-1 (14.) (consulting engineering agreement).

40 C.F.R. §35.3145(d) (1994): State Water Pollution Control Revolving Fund requirement "for the participation of minority and women owned businesses (MBE/WBEs) will apply to assistance in an amount equaling the grant. To attain compliance with MBE/WBE requirements, the [regional administrator] will negotiate an overall 'fair share' objective with the State for MBE/WBE participation on these SRF funded activities. A fair share objective should be based on the amount of the capitalization grant award or other State established goals." See also 40 C.F.R. §35.4066(g) (1994) (grants for technical assistance).

40 C.F.R. §35.6580 (1994): Recipients under Cooperative Agreements and Superfund State Contracts for Superfund Response Actions "must comply with six steps. . .to insure that MBEs, WBEs, and small businesses are used whenever possible as sources of supplies, construction, and services," including establishment of "an annual 'fair share' objective for MBE and WBE use."

General Service Administration

41 C.F.R. §§105-71.121(j), 105-72.302(j) (1994): General Services Administration (GSA) Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" recipients to use minority-owned and women-owned banks.

41 C.F.R. §105-72.504(b) (1994): " All recipients of GSA grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations are to establish written procurement procedures to provide for "positive efforts. . .to utilize small businesses, minority-owned businesses, and women's business enterprises, whenever possible" and to ensure that such businesses "are utilized to the fullest extent practicable."

48 C.F.R. §552.219-9(1994): Small business subcontracting plan prescribed for General Service Administration contracts requires "[g]oals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns and, if an individual contract is involved, women-owned small business concerns as subcontractors."

Health and Human Services

42 U.S.C.S. §3027: State plans for grant program on aging "shall provide assurances that special efforts will be made to provide technical assistance to minority providers of services."

42 U.S.C.S. §3035d: Provides that the Assistance HHS Secretary "shall carry out, directly or through grants or contracts, special training programs and technical assistance designed to improve services to minorities" under the Older Americans Act.

42 C.F.R. §52c.2(1994): Minority Biomedical Research Support Program makes grants to higher educational institutions with 50 percent or other "significant proportion" of ethnic minority enrollment.

42. C.F.R. §62.57(h) (1994): Among factors considered in making certain State loan repayment grants to State applicants is "[t]he extent to which special consideration will be extended to medically underserved areas with large minority populations."

42 C.F.R. §64a.105(d)(2) (1994): "Preferred service" for purposes of obligated service requirement for mental health traineeships includes service in any public or private nonprofit entity serving 50 percent or more specified racial or ethnic minorities.

45 C.F.R §§74.12(h), 92.21(h), 602.21(h) (1994): Department of Health and Human Services (HHS) general administration requirements "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members. Similar provisions may be found at 45 C.F.R. §§1050.13, 1157.21, 1174.21, 1183.21, and 1234.21.

45 C.F.R. §1010.30-2(c)(1),(2) (1994): Civil rights program requirements of Community Service Act grantees provide that the Office of Human Rights will consider when selecting for compliance reviews "[t]he relative disparities between the percentage of eligible minority or female populations, if appropriate, receiving program benefits and the percentage of eligible minorities or females, if appropriate, in the eligible population."

48 C.F.R. §319.705-4(d)(i)(ii) (1994): HHS small disadvantaged business subcontracting regulation require contracting officer to insure that "[s]ubcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory thresholds. . ." See also §§319.705-6, 319.706.

Housing and Urban Development

24 C.F.R. §84.22(j): " All recipients of Department of Housing and Urban Development (HUD) grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations "shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members)." Same provisions apply to use of lump-sum grants under this program, 24 C.F.R. §84.82(c)(2), a related HUD state and local grant and cooperative agreement program, 24 C.F.R. §85.21(h) (1994), and comprehensive planning assistance grants at 24 C.F.R. §600.410(k)(2) (1994).

24 C.F.R. §84.44(b): All recipients of HUD grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations are to establish written procurement procedures to provide for "positive efforts. . .to utilize small businesses, minority-owned businesses, and women's business enterprises, whenever possible" and to ensure that such businesses "are utilized to the fullest extent practicable." Same provisions apply to procurement standards used by recipients for the procurement of supplies, equipment, real property and other services with federal funds. 24 C.F.R. §84.84(e)(2)(i).

24 CFR APPENDIX A and B to SUBTITLE A §425(a)(8) (1994): Rating factors for award of certain HUD Public and Indian Housing Home Ownership funds to accord maximum 10 points for "[t]he extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses". . ."but may not include awarding contracts solely or in part of the basis of race or gender."

24 F.F.R. §572.320(e) (1994): HUD will assign points in rating applications for certain single-family home ownership grants based on "[t]he extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses". . ."but may not include awarding contracts solely or in part on the basis of race or gender."

24 C.F.R. §§850.33(o), .35(b), .399b)(9) (1994): Applications for Section 8 Housing Assistance Programs and Section 202 Direct Loan Program must include a "description of minority and women representation in the ownership of the

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

project" and "a minority and women-owned business development plan which shall contain specific and measurable goals and an affirmative strategy to promote awareness and participation of such businesses in the contracting and procurement activities generated by the project." In addition "[m]ore favorable consideration will be given to projects with the higher percentage of minority or women representation in the ownership of the project."

24 C.F.R. §968.110(b) (1994): Public housing modernization program requirements include: "the [public housing authority] shall take every action to meet Department goals for awarding modernization contracts to minority business enterprises. The PHA shall take appropriate affirmative action to assist women's business enterprises."

24 C.F.R. §968.320(d)(7)(vii): Public Housing Modernization program includes requirement of comprehensive plan certifying that "[t]he PHA has adopted the goal of awarding a specified percentage of the dollar value of the total of the modernization contracts, to be awarded during subsequent FFYs, to minority business enterprises and will take appropriate affirmative action to assist resident-controlled and women's business enterprises. . ."

48 C.F.R. §2419.901 (1994): Department of Housing and Urban Development (HUD) Office of Socially Disadvantaged Business Utilization is responsible for "Department-wide goals" for contract awards "to women-owned businesses" and monitoring and reporting with respect thereto.

48 C.F.R. §2426.101 (1994): States the policy of the Department of Housing and Urban Development "to foster and promote Minority Business Enterprise (MBE) participation in its procurement program, to the extent permitted by law and consistent with its primary mission." For this purpose, "minority" is defined as "Black Americans, Hispanic Americans, Hispanic Americans, Native Americans, Asian Pacific Islanders and Asian Indian American, and Hasidic Jewish Americans. *See also* 48 C.F.R. §2452.219-70 (Small Business and Small Disadvantaged Business Subcontracting Plan to include percentage goals).

Interior

25 C.F.R. §276.3(c) 1994): Uniform administrative requirements for grants by the Bureau of Indian Affairs "encourage" grantees to use minority banks.

43 C.F.R §§12.61(h), 12.922(j) (1994): Department of Interior Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members.

43 C.F.R. §12.944(b) (1994): Department of Interior procurement requirements provide that "[i]t is EPA policy to award a fair share of subagreements to small, minority, and women's businesses. The recipient must take affirmative steps to assure that small, minority, and women's businesses are used when possible as sources of supplies, construction, and services."

43 C.F.R. §27.6 (1944): Affirmative action plan requirements for recipient of financial assistance from the Department of Interior include "specific goals and specific timetables to which its efforts will be directed, to correct all deficiencies and thus to increase materially the participation of minorities and women in all aspects of its operation."

48 C.F.R. §1419.901 (1994): Department of Interior socioeconomic program regulations state that "[a]nnual goals for contract awards to women-owned businesses shall be established as prescribed in 1419.202-70."

Justice

P.L. 103-322, 108 Stat. 1796, 1860, §31001 (1994): Not less than 10 percent of the amount paid from the Local Government Fiscal Assistance Fund created by the Violent Crime Control Act shall be expended on contracts or subcontracts with socially and economically disadvantaged and women-owned small businesses, historically Black colleges and universities, and higher educational institutions with more than 40 percent Hispanic student enrollment.

28 C.F.R. §O.18a (1994): Provides that Director of the Office of Small and Disadvantaged Business Utilization within the Department of Justice shall "[e]stablish Department goals for the participation by small businesses, including small businesses owned and controlled by socially and economically disadvantaged individuals, in Department procurement contracts."

28 C.F.R. §42.206(c)(1) (1994): Recipients of Criminal Justice Improvement Act funds shall be selected for post-award compliance reviews in part on the basis of "[t]he relative disparity between the percentage of minorities, or women, in the relevant labor market, and the percentage of minorities, or women, employed by the recipient."

28 C.F.R. §66.21(h) (1994): Uniform requirements by the Justice Department for administration of state and local grants and cooperative agreements "encourage" grantees and subgrantees to use minority banks at least 50 percent owned by minority groups.

Labor

29 U.S.C.S. §718b(b): Directs the Commissioner of the Rehabilitation Services Administration to develop an "outreach" policy for "recruitment of minorities into the field of vocational rehabilitation, counseling and related disciplines" and for "financially assisting Historically Black Colleges and Universities, Hispanic-serving institutions of higher education, and other institutions of higher education whose minority enrollment is at least 50 percent."

29 U.S.C.S. §771a: Authorizes grants for personnel projects relating to training, traineeships and related activities to historically Black colleges and universities and other higher educational institutions with at least 50% minority student enrollment.

20 C.F.R. §627.430(g) (1994): Recipients and subrecipients of Job Training Partnership Act funds are "encouraged to use minority-owned banks (a bank which is owned at least 50 percent by minority group members)."

20 C.F.R. §653.111(a), (b)(3) (1994): State agencies participating in the administration of Services for Migrant and Seasonal Farmworkers, under the United States Employment Service, are to develop affirmative action plans which contain "a comparison between the characteristics of the staff and the workforce and determine if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the workforce in the local office service area(s)." "On a statewide basis, staff representative of the racial and ethnic characteristics in the workforce shall be distributed in substantially the same proportion among (1) all 'job groups'. . .and (2) all offices in the plan(s)."

29 C.F.R. §§89.52(d), 89.72(d), 95.22(j), 97.21(h), 1470.21(h) (1994): Administrative requirements for Department of Labor (DOL) Project Grants to State and Local Governments, higher educational institutions, and other programs, "encourage" grantees to use minority banks.

29 C.F.R. §95.44(b) (1994): " All recipients of DOL grants and agreements awarded to institutions of higher education,

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

hospitals, and other non-profit organizations are to establish written procurement procedures to provide for "positive efforts ...to utilize small businesses, minority-owned businesses, and women's business enterprises, whenever possible" and to ensure that such businesses "are utilized to the fullest extent practicable."

48 C.F.R. Part 2919, §1919.202-70 (1994): Small disadvantaged business program regulations of the Department of Labor require "Heads of Contracting Activities [to] develop annual goals for each category of small business and small disdavantaged business utilization programs, which shall include projected acquisition awards to small businesses, minority businesses, 8(a) concerns, women-owned businesses, and HBCU."

National Aeronautics and Space Administration

42 U.S.C.S. §2473b: NASA Administrator is required to annually establish a goal of at least eight percent of the total value of prime and subcontracts awarded in support of authorized programs to be made to small disadvantaged businesses and minority educational institutions.

48 C.F.R. §1819.705-4 (1994): Small disadvantaged business subcontracting regulation of the National Aeronautics and Space Administration (NASA) states that "NASA contracting officers may accept as an element of a subcontracting plan the prime contractor's intention to use total small business, small disadvantaged business, women-owned business, historically black college and university, or minority educational institution set-asides in awarding subcontracts so long as such set-asides are competitive and awards are made at reasonable prices." See also §1819.7003 (agency goal of 8 percent of total value of prime and subcontracts for disadvantaged businesses); and §1815.219-76 (prescribed clause for NASA contracts incorporating 8 percent goal for "small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (including women), Historically Black Colleges and Universities, and minority educational institutions").

Small Business

41 U.S.C.S. §417a: "Each Federal agency shall report to the Office of Federal Procurement Policy the number of small businesses owned and controlled by women and the number of small business concerns owned and controlled by socially and economically disadvantaged businesses, by gender, that are first time recipients of contracts from such agency."

13 C.F.R. §115.30(c) (1994): The Small Business Administration (SBA) Surety Bond Guarantee program indemnifies sureties for 90 percent of losses incurred on certain bonds "issued on behalf of a small concern owned and controlled by socially and economically disadvantaged individuals," including "Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, and other minorities or any other individual found to be disadvantaged by SBA..."

13 C.F.R. 125.4 (1994): Small Business Administration requirement "[t]hat separate goals for the participation by small business concerns and small disadvantaged business in Government procurement contracts and subcontracts thereunder shall be established annually by the head of each Federal agency following consultation with the SBA, and that the Administrator of the Office of Federal Procurement Policy shall establish the goal whenever there is disagreement between a Federal agency head and the SBA..."

13 C.F.R. §143.21(h) (1994): Grantees and subgrantees under SBA program of grants and cooperative agreements with state and local governments are "encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members)."

State Department and Foreign Affairs

22 U.S.C.S. §4852(d): Not less than 10 percent of the amount appropriated for diplomatic construction or designed projects each fiscal year shall be allocated to the extent practicable for contracts with American minority contractors.

22 U.S.C.S. §4864(e): Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings shall be allocated to the extent practicable for contracts with minority small business contractors.

P.L. 103-306, 108 Stat 1608, §555 (1994): Provides for a 10 percent set- aside of the aggregate amount of certain appropriations to the Agency for International Development-the Development Assistance Fund, Population, Development Assistance, and the Development Fund for Africa—for socially and economically disadvantaged U.S. businesses and private voluntary organizations, historically black colleges and universities, and higher educational institutions with more than 40 percent Hispanic student enrollment.

Government procurement agreements. The United States has entered into procurement obligations under the North American Free Trade Agreement (NAFTA) (Chapter Ten) and the Uruguay Round Agreement on Government Procurement under which the United States agrees, among other things, to accord national treatment to products, services, and suppliers of other parties with respect government contracts entered into by named agencies above certain threshold amounts. In both the NAFTA and the Uruguay Round Agreement (as well as in earlier trade agreements), the United States has taken a reservation stating that agreement obligations will not apply to set asides on behalf of small and minority businesses (NAFTA, Chapter 10, Annex 1001.2b, General Notes, Schedule of the United States, Note 1; Uruguay Round Agreement on Government Procurement, Annex of the United States, General Note 1).

22 C.F.R. §145.44(b) (1994): All recipients of Department of State grants and cooperative agreements awarded to institutions of higher education and other non-profit organizations are to establish written procurement procedures to provide for "positive efforts...to utilize small businesses, minority-owned businesses, and women's business enterprises, whenever possible" and to ensure that such businesses "are utilized to the fullest extent practicable." Same provisions apply pursuant to uniform administrative requirements prescribed by 22 C.F.R. 518.44(b) (1994).

48 C.F.R. §652.219-70 (1994): Clause in Department of State contracts requiring disadvantaged and minority subcontracting goals. See also 48 C.F.R. §619.201(b), 619.708-70.

48 C.F.R. §706.302-71 (1994): Agency for International Development (AID) requirement that "[e]xcept to the extent otherwise determined by the Administrator, not less than ten percent of amounts made available for development assistance and for assistance for famine recovery and development in Africa shall be used only for activities of disadvantaged enterprises," which includes minorities and women.

48 C.F.R. Part 419 (1994): Socioeconomic Program policies of AID state that "[w]here practicable and desirable, small business and minority goals will be established" for procuring activities (§719.270(e)); and mandates that the AID Office of Small Disadvantaged Business develop "a plan of operation designed to increase the share of contracts awarded to small business concerns, including small minority business enterprises" (§719.271-2(6)). Disadvantaged enterprises include socially and economically disadvantaged concern, historically

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

black colleges and universities, and higher educational institutions with more than 40 percent Hispanic student enrollments (§§726.201, 752.226-1,2).

Transportation

49 U.S.C.S. §47107(e)(1): Requires federally aided airport operators to insure "to the maximum extent practicable" that at least 10% of contracts for consumer serviced to the public be placed with "small business concerns owned and controlled by socially and economically disadvantaged individual..." The statute incorporates the Small Business Act definition of that term "except that women are presumed to be socially and economically disadvantaged." (49 U.S.C.A. §47113(a)(2)).

P.L. 102-240, 105 Stat. 1914, 1919, §1003(b) (1991): "Except to the extent that the Secretary [of Transportation] determines otherwise, not less than 10 percent of the amounts authorized to be appropriated" under various Titles of the Intermodal Surface Transportation Act of 1991 "shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals;" the statute incorporates the SBA presumption in favor of racial minorities (15 C.F.R. §637(d) and further provides that "women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection."

49 C.F.R. Part 23, subpart C (1994): Minority-business enterprise program requirements for recipients and applicants under Department of Transportation financial assistance programs. DOT approved MBE affirmative action programs are to include recipient's "overall goals and a description of the methodology to be used in establishing them" (§23.43) and separate "contract goals for firms owned and controlled by minorities and firms owned and controlled by women, respectively" (§23.45). Rules for counting MBE participation toward meeting applicable goals (§23.47). The regulations further provide that a prime contractor unable to satisfy a particular contract's minority goal may nevertheless be awarded the contract if its "best efforts" were made to achieve the goal (§§23.45(g)(2)(ii), 23.45(h)). Several elements are considered in determining whether a prime contractor failing to meet its goal in fact made a good faith effort to comply (§23.45, app. A).

49 C.F.R. Part 23, subpart D (1994). Implementation of §105(f) of the Surface Transportation Assistance Act of 1982. DOT regulations establish a rebuttable presumption that women, Black-Americans, Hispanics, Native Americans, Asian-Pacific Americans, Asian-Americans and those individually certified under §8(a) of the Small Business Act are socially and economically disadvantaged (§23.62). Recipients of surface transportation funds must establish overall goal for disadvantaged business participation on funded projects (§23.64) and, absent a waiver by the DOT Secretary, must insure that at least ten percent of monies expended on federally assisted projects go to such enterprises (§§23.61(a), 23.63). "If a recipient fails to meet an approved goal, it shall have the opportunity to explain to the Administrator of the concerned Department element why the goal could not be achieved and why meeting the goal was beyond the recipient's control," failing which the recipient is subject to "appropriate remedial sanction" (§23.68).

49 C.F.R. §23.95 *et seq.* (1994): Minority business enterprise participation standards under §511(A)(17) of the Airport and Airway Improvement Act of 1982 provide that sponsors of airport improvement projects "shall establish an overall goal for the participation of DBE's" as concessionaires and "[t]o the extent practicable, shall seek to obtain DBE participation in all types of concession activities." "Where not prohibited by state or local law and determined ... to be necessary to meet DBE goals, procedures to implement DBE set-asides shall be established. The DBE plan shall specify the concessions to be set-aside."

49 C.F.R. §265.13 (1994): Federal Railroad Administration regulations barring discrimination in federally assisted programs require "where there are deficiencies based on past practices, and with respect to future plans for hiring and promoting employees or awarding contracts, the development of specific goals and timetables for the prompt achievement and maintenance of full opportunities for minority persons and MBEs with respect to programs, projects and activities subject to this subpart.

Veterans Affairs

38 C.F.R. §43.21(h) (1994): Department of Veterans Affairs Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members.

48 C.F.R. §819.202-5(c) (1994): Department of Veterans Affairs regulations require "all acquisition activities [to] submit information and procurement preference goals" for "minority direct business awards," "women-owned business awards," and "[s]ubcontracts to be awarded to small disadvantaged business concerns."

Other

36 C.F.R. Part 906 (1994): Affirmative action policy and procedures, including goals and timetables for women and minorities, "to assure full minority participation in activities and benefits that result from implementation of the Pennsylvania Avenue Plan—1974."

36 C.F.R. §1207.21(h) (1994): National Archives and Records Administration Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members.

44 C.F.R. §§13.21(h) (1994): Federal Emergency Management Agency Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments "encourage" grantees and subgrantees to use minority banks at least 50% owned by minority group members.

EQUAL EMPLOYMENT OPPORTUNITY LAWS

The evolution of federal law and policy regarding affirmative action in employment may be traced to a series of executive orders dating to the 1960's which prohibit discrimination and require affirmative action by contractors with the federal government. The Office of Federal Contract Compliance Programs, an arm of the U.S. Department of Labor, currently enforces the E.O. 11246, as amended, by means of a regulatory program requiring larger federal contractors, those with procurement or construction contracts in excess of $50,000, to make a "good faith effort" to attain "goals and timetables" to remedy underutilization of minorities and women. Another early Executive Order, No. 11478, was a precursor to the 1964 Civil Rights Act and mandates affirmative action hiring and employment policies by all federal executive department and agencies.

Public and private employers with 15 or more employees are also subject to a comprehensive code of equal employment opportunity regulation under Title VII of the 1964 Civil Rights Act.[20] Except as may be imposed by court order to remedy "egregious" violations of the law, or by consent decree to settle

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

pending claims, however, there is no general statutory obligation on employers to adopt affirmative action measures. But the EEOC has issued guidelines to protect employers and unions from charges of "reverse discrimination" when they voluntarily take action to correct the effects of past discrimination.[21] Federal departments and agencies, by contrast, are required to periodically formulate affirmative action plans for their employees and a "minority recruitment program" to eliminate minority "underrepresentation" in specific federal job categories.

Section 717 of 1972 Amendments to Title VII of the 1964 Civil Rights Act empowers the Equal Employment Opportunity Commission to enforce nondiscrimination policy in federal employment by "necessary and appropriate" rules, regulations, and orders and through "appropriate remedies, including reinstatement or hiring of employees, with or without backpay." [22] Each federal department and agency, in turn, is required to prepare annually a "national and regional equal employment opportunity plan" for submission to the EEOC as part of "an affirmative program of equal employment opportunity for all. . .employees and applicants for employment." [23]

Section 717 was reinforced in 1978 when Congress enacted major federal civil service reforms including a mandate for immediate development of a "minority recruitment program" designed to eliminate "underrepresentation" of minority groups in specific federal job categories.[24] The EEOC and Office of Personnel Management have issued rules to guide implementation and monitoring of minority recruitment programs by individual federal agencies. Among various other specified requirements, each agency plan "must include annual specific determinations of underrepresentation for each group and must be accompanied by quantifiable indices by which progress toward eliminating underrepresentation can be measured." [25]

In addition, the following statutes and regulations relate to employment policies of the federal government or under federal grant and assistance programs:

5 U.S.C.S. §4313(5): Performance appraisal in the Senior Executive Services to take account of individuals' "meeting affirmative action goals, achievement of equal employment opportunity requirements, and compliance with merit principles. . ." [26]

5 U.S.C.S. §7201: Establishes a "Minority Recruitment Program" for the Executive Branch and directs each Executive agency, "to the maximum extent possible," to "conduct a continuing program for the recruitment of members of minorities for positions in the agency. . .in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited."

22 U.S.C.S. §4141(b): Establishes the Foreign Service Internship Program "to promote the Foreign Service as a viable and rewarding career opportunity for qualified individuals who reflect the cultural and ethnic diversity of the United States. . ."

29 U.S.C.S. §1781(a): "A contractor subject to the affirmative action obligations of Executive Order 11246. . .may establish or participate in training programs pursuant to this section. . .which are designed to assist such contractors in meeting the affirmative action obligations of such Executive Order."

42 U.S.C.S. §282(h): The Secretary of HHS, and the National Institutes of Health, "shall, in conducting and supporting programs for research, research training, recruitment, and other activities, provide for an increase in the number of women and individuals from disadvantaged backgrounds (including racial and ethnic minorities) in the fields of biomedical and behavioral research."

45 U.S.C.S. §§797b, 907, 1004: First right to hire of certain previously separated or furloughed railroad employees subject to exceptions for vacancies covered by "(1) an affirmative action plan, or a hiring plan designed to eliminate discrimination, that is required by Federal or State statute, regulation, or Executive order, or by the order of a Federal court or agency, or (2) a permissible voluntary affirmative action plan."

Executive Order 11246: Prohibits employment discrimination because of race, color, religion, sex, or national origin by nonexempt federal government contractors and requires inclusion of an affirmative action clause in all covered federal contracts for procurement of goods and services. Pursuant to Labor Department regulations, larger federal contractors are required to adopt goals and timetables to correct "underutilization" of minorities and women. See 41 C. Part 60 (discussed *infra*).

Executive Order 11478: States the policy of the United States government "to provide equal opportunity in Federal employment for all persons, to prohibit discrimination because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive agency and department."

Federal Regulations

5 C.F.R. Parts 729, 720 APP. (1994): Affirmative Employment Programs of the Office of Personnel Management and Guidelines for Development of A "Minority Recruitment Program" to Implement 5 U.S.C. §7201.

14 C.F.R. §152.407, .409, .411 (1994): All grantees, sponsors, or planning agencies, with 50 or more aviation employees who participate in projects which receive federal airport aid funds are required to maintain "affirmative action" plans containing "goal and timetables" derived from "(a) comparison. . .of the percent of minorities and women in the employer's present aviation workforce. . .with the percent of minorities and women. . .in the total workforce" in the SMSA or surrounding area.

23 C.F.R. §230.111 (1994): On-the-job training program rules for federally assisted highway construction projects provide that "[t]he Washington Headquarters shall establish and publish annually suggested minimum training goals. . .based on the Federal-aid apportioned amounts and the minority population. A State will have achieved its goal if the total number of training slot. . .equals or exceeds the State's suggested minimum annual goal."

23 C.F.R. Part 230 APP. A (1994): State Highway Agency Equal Employment Opportunity Programs. Affirmative action plans are to set "specific, measurable, attainable hiring and promotion goals, with target dates, in each area of underutilization" of women and minorities.

29 C.F.R. §§30.3-30.8 (1994): Affirmative action requirements of the Department of Labor (DOL) for registered state apprenticeship programs include "goals and timetable for women and minorities." "Compliance with these requirements shall be determined by whether the sponsor has met its goals within its timetables, or failing that, whether it had made good faith efforts to meet its goals and timetables."

32 C.F.R. Part 191, §191.5(a)(8) (1994): DOD Civilian Equal Employment Opportunity Program establishes affirmative action guidelines and procedures for all DOD components and directs the Assistant Secretary of Defense to "[e]nsure that realistic goals that provide for significant continuing increases in the percentages of minorities, women, and people with disabilities in entry, middle, and higher grade positions in

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/95/$0+$1.00

all organizations and occupations are set and accomplished until the overall DOD objective is met and sustained."

34 C.F.R. Part 100 APPENDIX VII.C. (1994): Department of Education guidelines for eliminating discrimination in vocational education programs provide that "[w]henever the Office for Civil Rights finds that in light of the representation of protected groups in the relevant labor market there is a significant underrepresentation or overrepresentation of protected group persons on the staff of a vocational education school or program, it will presume that the disproportion results from unlawful discrimination. This presumption can be overcome by proof that qualified persons of the particular race, color, national origin or sex, or that qualified handicapped persons are not in fact available in the relevant labor market."

40 C.F.R. Part 8 (1994): Environmental Protection Agency (EPA) equal employment opportunity and affirmative action compliance requirements issued pursuant to E.O. 11246 as applied to EPA contracts and EPA assisted construction contracts.

41 C.F.R. Part 60 (1994): Sets forth the body of administrative rules issued by the Office of Federal Contract Compliance Programs within the Department of Labor to enforce the affirmative action requirements of E.O. 11246 on federal procurement and construction contractors. All contractors and subcontractors with federal contracts in excess of $10,000 are prohibited by the Executive Order from discriminating and required to take affirmative action in the employer of minority groups and women. Federal contractors and subcontractors with 50 or more employees and government contracts of $50,000 or more must develop written affirmative action compliance programs for each of their facilities. OFCCP rules direct these larger contractors to conduct a "utilization analysis" of all major job classifications and explain any underutilization of minorities and women by job category when compared with the availability of qualified members of these groups in the relevant labor area. Based on this analysis, the contractor's affirmative action plan must set forth appropriate goals and timetables to which the contractor must direct its "good faith efforts" to correct deficiencies. In addition, OFCCP has established nationwide hiring goals of 6.9 percent for women in construction, and regional and local goals for minorities in construction, which are set out in an appendix to the agency's affirmative action in construction regulations. 41 C.F.R. 60-4.

48 C.F.R. 22.804 (1994): Affirmative action program under Federal Acquisition Regulations requires written affirmative action plans of federal nonconstruction prime and subcontractors with 50 or more employees that comply with DOL regulations to assure equal opportunity in employment to minorities and women.

48 C.F.R. 52.222-23, 52.222-27 (1994): Prescribes clause for inclusion of federal contracts that requires "[g]oals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area" and "to make a good faith effort to achieve each goal under the plan in each trade in which it has employees."

48 C.F.R. 922.804-2 (1984): Department of Energy regulations implementing the affirmative action plan requirements of E.O. 11246.

It is hoped that this is of assistance to you.

/s/ Charles V. Dale
Legislative Attorney

[1] As per discussions with your staff, however, we have not included federal civil rights statutes, such as Title VI of the 1964 Civil Rights Act and related laws, that place nondiscrimination requirements upon recipients of federal financial assistance without mandating racial, ethnic, or gender preferences *per se*. Nor are regulations of the various federal departments or agencies under Title VI included for the similar reason that, although they almost uniformly authorize "affirmative action" by recipients to "overcome the effects of prior discrimination" or otherwise, they do not explicitly define the obligation in terms of "goals" or "set-asides," or other forms of preference for minorities or women. *See* e.g. 15 C.F.R. 15.3(b)(6)(1994)(Department of Agriculture Title VI regulations). Also beyond the scope of this study are the remedy provisions in federal laws like Title VII of the 1964 Civil Rights Act (42 U.S.C. §2OOOe-5(g)), or the Fair Housing Act, 42 U.S.C. §3613, which authorize "affirmative" relief by the courts in discrimination actions, and have been the basis for judicial preference orders in certain circumstances, but do not explicitly direct the imposition of "timetables, goals, set-asides, and quotas" on their face.

[2] 42 U.S.C. §2000e-16(b).

[3] 5 U.S.C. §7201.

[4] 15 U.S.C. §637(a).

[5] 15 U.S.C. §637(a)(5).

[6] 13 CFR §124.105(b).

[7] The statute, 15 U.S.C. §637(a)(6)(A), defines economic disadvantage in terms of:

> socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others who are not socially disadvantaged, and such diminished opportunities have precluded or are likely to preclude such individuals from successfully competing in the open market.

[8] 15 U.S.C. §637(d). *See* also 13 CFR §124.106.

[9] 15 U.S.C. §637(d). Criteria set forth in the regulations permit an administrative determination of socially disadvantaged status to be predicated on "clear and convincing evidence" that an applicant has "personally suffered" disadvantage of a "chronic and substantial" nature as the result of any of a variety of causes, including "long term residence in an environment isolated from the mainstream of American society," with a negative impact "on his or her entry into the business world." 13 C.F.R. §124.105(c).

[10] P.L. 100-656, §502, 102 Stat. 3887, codified at 15 U.S.C. §644(g)(1).

[11] *See e.g.* 49 C.F.R. §§23.64(e), 23.65 (setting forth waiver criteria for the Department of Transportation.

[12] 15 U.S.C §637(a)(5).

[13] See 49 C.F.R. Pt. 23, Subpt. D, App. C.

[14] P.L. 103-355, 108 Stat. 3243, 3374, §7106 (1994).

[15] As amended by §3(a) of the Resolution Trust Completion Act, P.L. 103-204, 107 Stat. 2369, 2375 (1993).

[16] Opinions may reasonably differ as to whether federal programs that exclusively aid "historically black colleges and universities" or other minority institutions are a form of racial "preference." Without expressing any view on that policy issue, however, such programs are included here only because they employ racial and ethnic criteria or classification as the basis for distribution of federal benefits and, accordingly, at least arguably fall within the ambit of your inquiry.

[17] 59 Fed. Reg. 47279 (September 15, 1994).

[18] The provisions listed in 24 C.F.R. Part 84 are not yet codified by may be found at 59 Fed. Reg. 47010 et seq. (September 13, 1994).

[19] 59 Fed. Reg. 38281 (July 27, 1994).

[20] 42 U.S.C. §§2000e *et seq.*

[21] 29 C.F.R. Part 1608 (the guidelines state the EEOC's position that when employers voluntarily undertake in faith to remedy past discrimination by race- or gender-conscious affirmative action means, the agency will not find them liable for reverse discrimination).

[22] 42 U.S.C. §2OOOe-16(b).

[23] 42 U.S.C. §2OOOe-16(b)(1).

[24] 5 U.S.C. §7201

[25] 5 C.F.R. §720.205(b)(1991).

[26] As amended by P.L. 103-424, 108 Stat. 4361, §6 (1994).

End of Text

Copyright © 1995 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037

0418-2693/95/$0+$1.00

The Washington Times FEBRUARY 23, 1995

Affirmative action twisting slowly in GOP House wind

By Nancy E. Roman
THE WASHINGTON TIMES

The House is inching toward reconsidering affirmative-action policies, driven in part by a vote on ending gender and racial preferences in the tax code and a report showing that 159 federal laws call for such bias.

Rep. Charles T. Canady, chairman of the House Judiciary subcommittee on the Constitution, is amassing information that will form the basis for legislation to end preferences.

"There is widespread concern in the Congress about the abuse of affirmative action and the problems with racial, gender and ethnic preferences," said the Florida Republican. "There will end up being widespread support for their repeal. This is going to cross political boundries."

Mr. Canady did not specify a time frame but said, "We need a comprehensive approach — whether you would have a series of bills, or one big bill — I don't know."

He also said his subcommittee will hold oversight hearings in the second half of March on the Justice Department's enforcement of civil rights laws.

Clint Bolick, vice president of the Institute for Justice, expressed shock over the speed with which momentum is building on Capitol Hill to curb affirmative action.

"The political landscape on this issue is changing on a daily basis," said Mr. Bolick, who is part of a group of civil rights specialists studying affirmative action.

"It has already become an issue in the presidential campaign, and that is helping to fuel the momentum," he said. "I would expect to see a serious comprehensive proposal introduced within the next two months.

Mr. Bolick has been working with Mr. Canady and Senate Majority Leader Bob Dole "to develop legislative ideas to eliminate racial preferences."

He said Tuesday's overwhelming House vote to end tax breaks for those who sell broadcast licenses to blacks, Hispanics or other minorities demonstrates the political viability of eliminating race and gender preferences.

After vociferous partisan debate, the bill passed on a 381-44 vote.

The House action was prompted by a business deal in which multi-billion-dollar conglomerate Viacom Inc. had sought to reap between $440 million and $660 million in a tax break for selling its cable subsidiary to a firm in partnership with a minority broadcaster. The vote killed the tax break.

Mr. Dole last weekend received a 32-page list of "every federal statute, regulation, program and executive order that grants a preference to individuals on the basis of race, sex, national origin, or ethnic background."

The Kansas Republican said a "working group" of senators will review the list and determine which of the laws should be repealed.

Dole spokesman Clarkson Hine said no time frame has been set.

In a memorandum to Mr. Dole dated Feb. 17, the American law division of the Congressional Research Service (CRS) found 159 such preferences, which "include, but are not limited to timetables, goals, set-asides and quotas."

The CRS report said Congress and the executive branch have crafted "a wide range of federal laws and regulations" authorizing race- or sex-conscious strategies in relation to jobs, housing, education, voting and governmental contracting.

"Basically, [the report] confirmed the two hypotheses we had about federal race preferences," Mr. Bolick said. "First, they permeate the federal government from end to end.

"Second, almost all of them are the creatures of regulation and executive orders rather than congressional mandates," he added, saying that fact would make it easier to eliminate preferences via a comprehensive civil rights bill.

According to the CRS report, the historical model for federal affirmative-action policies are found in executive orders of the 1960s that imposed minority hiring requirements on federally financed construction projects.

It also says the Small Business Act "provides the statutory prototype for a host of federal programs to increase minority and female participation as contractors or subcontractors on federally funded projects."

The report notes that the Small Business Act "presumes, absent contrary evidence, that small businesses owned and operated by members of certain groups — including Blacks, Hispanics, Native Americans, and Asian Pacific Americans — are socially disadvantaged."

House Speaker Newt Gingrich said yesterday he favors rewriting affirmative-action laws so they favor the poor instead of certain ethnic groups.

AFFIRMATIVE ACTION

The Congressional Research Service reported yesterday that 159 U.S. affirmative-action laws are on the books. The analysis came in response to a request from Senate Majority Leader Bob Dole for "a comprehensive list of every federal statute, regulation, program, and executive order that grants a preference to individuals on the basis of race, sex, national origin, or ethnic background. Preferences include, but are not limited to, timetables, goals, set-asides, and quotas."

Federal grant and procurement laws

Category	Number of laws and regulations
Federal acquisitions	4
Agriculture	15
Banking	10
Commerce	5
Communications	5
Defense	7
Education	19
Energy	7
Environment	5
General services	3
Health, human services	8
HUD	9
Interior	5
Justice	4
Labor	8
NASA	2
Small business	4
State	7
Transportation	7
Veterans Affairs	2
Other	3
Subtotal	**139**
Equal employment opportunity laws	**20**
Total	**159**

The Washington Times

Weather
Today: Morning flurries, mostly cloudy, cool, afternoon drizzle. High 44. Low 38.
Sunday: Mostly cloudy, drizzle possible. High 48. Low 40. Wind southeast 6-12 mph.
Yesterday: Temp. range: 32-40.
AQI: Good-20. Details on Page B2.

The Washington Post

118TH YEAR · · · · No. 89 SATURDAY, MARCH 4, 1995

EXE... OFFICE OF THE
PRESID... LIBRARY
308 OEOB
DC 20500

Clinton Cites GOP 'Hostility'

In Shift, President Supports Affirmative Action Based on Needs

By Ann Devroy
Washington Post Staff Writer

President Clinton yesterday used his first news conference of the year to draw a sharp distinction between his administration and congressional Republicans, accusing the GOP of "outright hostility" toward government even as he warned of too much politicking this early in the election cycle.

At the same time, Clinton expressed a preference for affirmative action programs based on economic need, not race or gender, signaling a move away from the traditional liberal approach. Of the review of these programs his administration is conducting, he said, "I want us to emphasize need-based programs where we can because they work better and have a bigger impact and generate broader [public] support."

Clinton opened the 50-minute session with a call on Republicans to propose a budget that moves toward the same goal as the proposed constitutional amendment to balance the budget defeated in the Senate Thursday. He rejected a House GOP challenge that he produce such a budget, saying he would "wait until they do their constitutional duty, which is to present a budget, which is something that has not happened. Then I will work with them."

But Clinton found much to criticize in spending priorities Republicans have begun to lay out. The GOP, he said, "now has proposed to cut education, nutritional help for mothers and schoolchildren, anti-drug efforts in our schools, and other things, which to me appear to target children in order to pay for tax cuts for upper-income Americans."

Asked to square his campaign promise to usher in a new era of ethical government with the investigations now underway of him and Cabinet members, Clinton responded with a vigorous defense of his administration. He said Washington's climate of suspicion and proliferation of investigations may discourage people from serving in government. [Related story, Page A10.]

See CLINTON, A9, Col. 1

BY FRANK JOHNSTON—THE WASHINGTON POST

"We can't have everybody all torn up and upset about playing politics here for the next six, seven months...."

—President Clinton

House Passes Landowner Rights Bill

Sen. Campbell Moves to GOP

Budget Amendment Fight

Abroad at Home

ANTHONY LEWIS

Brown V. Board

BOSTON

Forty years ago tomorrow the Supreme Court started this country on an extraordinary undertaking: to undo 300 years of legally enforced racism. That was the effect of Brown v. Board of Education, decided on May 17, 1954.

There is a certain skepticism now about the Brown decision. After all, it is said, race remains the American dilemma. Blacks as a group still suffer enormous disadvantages. What difference did it make?

But the skeptics have forgotten, or never knew, what it was like in the South back then. As Andrew Young remarked to Robin Toner of The New York Times recently: "People don't realize how bad things were. They can't imagine."

In 1954, and still 10 years later, black Americans were kept from voting in Mississippi, much of Alabama and Louisiana and parts of Georgia, South Carolina and Tennessee. A black who tried even to register in some communities risked his job, his home, his life.

Throughout the Deep South blacks were forbidden by local law to enter most restaurants or other places of public accommodation. They were barred from "white" hospitals and ambulances. A Birmingham ordinance forbade them to ride in "white" taxis: a rule that was considered an extreme example of petty apartheid in Johannesburg.

The Brown case was about public schools; the Supreme Court held that segregated education was "inherently unequal." But the message was far more profound. From now on the constitutional guarantee of "the equal protection of the laws" would mean just that.

> America's nonviolent revolution.

"Among other things the Brown decision sent a message to blacks," Burke Marshall, Assistant Attorney General for civil rights from 1961 to 1964, said last month at a conference at the John F. Kennedy Library here. "Students like John Lewis simply knew their time had come."

John Lewis was the founder and leader of the Student Nonviolent Coordinating Committee, which protested against racial oppression with amazing courage. Today he is a Congressman from Georgia.

"This country is a different country now," Representative Lewis told the Kennedy Library conference. "It is a better country. We have witnessed a nonviolent revolution."

In 1964, Mr. Lewis noted, there were fewer than 100 black elected officials in all the Southern states. Today there are nearly 7,000. Forty members of Congress are black. One is from Mississippi: something utterly unimaginable in 1964.

To achieve that result required a combination of legal, social and political action. The white Southern political structure resisted the desegregation orders of the courts with success for years. As late as 1960, six years after the Brown decision, not a single black child was in a public school or even a state university with whites in Alabama, Georgia, Louisiana, Mississippi or Virginia. The courts could not end legally enforced racism alone.

What happened was that protests and brutal suppression of those protests by white officials aroused the conscience of Americans who had not known or cared much about segregation. President Kennedy made the first speech ever from the White House calling racism a moral issue. President Johnson pressed for action.

The result was the Civil Rights Act of 1964, outlawing discrimination in jobs and public accommodations. The Voting Rights Act of 1965, as it was enforced, opened the voting rolls and transformed Southern politics.

That is what Congressman Lewis meant by a nonviolent revolution. It really was that: a revolution in the law of race relations as decisive as the transformation we have just witnessed in South Africa.

To note this anniversary, and celebrate it, is not to overlook the injustice and inequalities that remain. Too many black American children are born into a ghetto life that stacks the odds overwhelmingly against them.

But what America did accomplish was remarkable. Roger Wilkins, who is as aware as anyone of the task that remains, wrote in The Nation magazine that the Brown decision brought enormous social change. Segregation ended, and "blacks moved into positions undreamed of in the pre-Brown world — Chairman of the Joint Chiefs of Staff, quarterback in the N.F.L., Mayors of major cities . . ."

For blacks in the middle class, many barriers are down. The terrible reality that remains is the underclass. That is a crisis not for blacks alone but for all of us. □

The Washington Times
FRIDAY, NOVEMBER 3, 1995 ★

Racial fixations on the right

By Glenn C. Loury

Evidently, there is confusion in right-of-center political circles about why someone like myself, an outspoken black conservative, would object so vigorously to Dinesh D'Souza's new book, "The End of Racism: Principles for a Multiracial Society."

Because my problems with Mr. D'Souza's book closely parallel my growing discomfort with the larger discussion among conservatives of questions related to race in American society, a concise statement of these concerns may be helpful.

First, let me say what is *not* objectionable. Mr. D'Souza, who is not black, has every right to discuss openly and in unvarnished terms what he calls "the pathologies of black culture." To suggest otherwise would be to preclude a person like me from discussing, let's say, the "pathologies of white politics." Although Mr. D'Souza's tone is sometimes needlessly offensive, his arguments should be judged on their merits, without recourse to ad hominem invective. The black conservative who called him "the Mark Fuhrman of public policy" erred grievously, and certainly did not express my own sentiments in this matter.

Nor is it a problem for me that Mr. D'Souza sets out to refute widely held historical interpretations, arguing that American slavery bore no necessary connection to race, and that segregation was intended to protect blacks by keeping them out of the reach of hostile whites. I may not agree with him on these points, but they are fair game. If his historical arguments lack nuance, this is a fault he shares with many liberal blacks who simplify and distort our unfortunate racial history for their own purposes — to coerce reparations from guilt-ridden whites.

The fatal flaw I see in this book, and by extension in much conservative argument, is that it advances what, by my definition of the term, is a "racialist" vision for America. As such, it is more likely to delay than to hasten "the end of racism." Mr. D'Souza would, of course, deny this. He defines racism as belief in the biological inferiority of one group relative to another, and explicitly (if weakly) argues against such a view in his book. But a *biological* definition, focused on beliefs about inherent human capacities, is less compelling in the American context than a *political* definition, focused on beliefs about who belongs to the national community of concern.

A racialist is one who says "too many of *those people* have low IQ's, high illegitimacy rates, or high crime rates," rather than saying "too many of *our people*" suffer these conditions. He is one who advises blacks about "what *you people* must do," rather than speaking of "what *we Americans* must do." He sees blacks as the Other, aliens, apart from and a threat to American civilization, rather than as inseparably interwoven constituents of the larger social fabric. Nobody who has spent more than half an hour with "The End of Racism" can fail to see that Mr. D'Souza *is*, in this sense, a racialist. And he is not alone.

Conservatives talk incessantly nowadays about "black crime," "black illegitimacy," "black school failure," "black social pathology." But what has race to do with these problems, per se? Is there a difference in the average IQ, or the illegitimacy rate, between those living within a 100 mile radius of Knoxville and a 100 mile radius of Boston? Probably. But even the most well-informed social analysts would be hard pressed to say just what the difference is, because we do not conduct our public affairs in those terms. Nothing in the conservative governing philosophy requires race to be an essential category of social analysis, and much militates against this.

Conservatives talk incessantly nowadays about 'black crime,' 'black illegitimacy,' 'black school failure,' 'black social pathology.'

Liberals racialized our politics by arguing that "black suffering" required race-based remedies. Afrocentrists took a further step by projecting this divisive outlook back into history. These racialist efforts by the Left were wrong in principle, as well as in fact. They not only asserted erroneous conclusions (regarding the causes of "black suffering" or the African origins of Western thought), they framed the discourse in improper (that is, racial) terms from the start. It is a serious mistake for conservatives, determined to refute the liberals' factual claims, to maintain and reinforce the Left's mistaken racialist outlook.

But this is precisely what Mr. D'Souza does. He declares victory over the Afrocentrists by noting that their search for a black Shakespeare has ended in failure. But he misses the larger point. Such a search was unnecessary all along, because Shakespeare belongs every bit as much to the ghetto-dwelling black youngster as he does to the offspring of middle class whites. He upbraids cultural relativists for placing "other cultures . . . on the same plane as the West" and for thinking that "minority groups are entitled to a presumption of moral and intellectual equality with whites." But he misses the deeper truth: America's great problem is *moral* not *cultural* relativism; we are too reluctant to enforce the common, Western standards that are embraced by blacks and whites alike.

The key conservative principle in the area of race relations should be the colorblind ideal. We should uphold it when discussing the allocation of benefits — in education, employment or government contracting, as the conservative criticism of affirmative action emphasizes. But, in the interest of fostering a wholesome, non-racialist conception of the national community of concern, the colorblind ideal should also govern how conservatives discuss the various maladies and deficiencies which plague the American people. We should be colorblind as we gaze upon welfare mothers, juvenile felons and the cognitively deficient. In the face of such personal failings, we should see human beings with problems, not races of people plagued by pathology.

That Mr. D'Souza does not even try to do this is what most disturbs me about his argument. I do not intend to deny that cultural and historical influences exist, which affect blacks and whites differently. But, we have a broad degree of discretion as to how we see, report upon and think about these problems. The challenge to be colorblind is, or at least it should be, deeper and more thorough-going than a mere restraint on government actions. The moral imperative here is that of *transcendence* — rising above our particularities, seeing beyond the parochial, looking more deeply than the surface of a person's skin.

We do not have to look upon our social and political world so unrelentingly through a racial lens. Liberals have done so, greatly to their discredit. I urge conservatives not to make the same mistake.

Glenn C. Loury is a professor at Boston University and the author of One by One from the Inside Out (Free Press).

PHOTOCOPY
PRESERVATION

The conservative case for immigration reform

By Robert Charles Hill

Conservatives and liberals alike are fragmented by the politics of immigration. With Congress poised to debate major reform bills in the House and Senate, serious law and order conservatives and "English-only" advocates have joined forces with radical environmentalists and the population control lobby in a provocative call for a "moratorium" on legal immigration. Libertarians and Washington business lobbyists, on the other hand, have teamed up with the ACLU, the organized immigration bar and immigrants rights activists in a well-organized effort to shame Congress into preserving the status quo by suggesting that Republicans are about to do some pretty mean-spirited things to immigrants.

Both extremes have it wrong. Immigration reform makes sense and conservatives should lead the way. This is one conservative's case for urging Congress to take on the tough issue of immigration reform now.

For the record, the House Republican leadership appointed me to the U.S. Commission on Immigration Reform – the "Jordan Commission" – in 1991. What I describe in this essay are the Commission's bipartisan consensus recommendations. But I am making the case from my own perspective, as a pro-life, pro-growth, anti-Communist who served for three years in Ronald Reagan's White House and another five in his State and Justice Departments, where I was a grunt in the ideological war against Soviet and Cuban Communism and the one-world collectivism of UN bureaucrats.

From this point of view, here's what immigration reform looks like – it's about setting priorities and limits that ordinary people can understand and making them real; it's about reaffirming our commitment to the traditional nuclear family; it's about letting American business compete; it's about keeping faith with American workers; and it's about preserving America's calling as a haven for immigrants by welcoming new Americans as citizens.

Immigration is not an entitlement. It is not guaranteed to anyone in the Constitution. We choose to admit immigrants because it is in our national interest to do it; because it is good for America.

In abstract theory, unlimited immigration may look good. But in the real world, American workers lose real jobs, and American taxpayers pay real costs. And, in a lawless world, we simply cannot have open borders. So we have choices to make. We must set priorities and limits.

And our first priority must be to enforce the law. The American people decide who will be invited to enjoy the privileges of membership in our society. We make the rules. We cannot allow anyone, no matter how sympathetic the circumstances, to abuse the process. Disrespect for the law or for the rights of the others who patiently obey it cannot be tolerated.

Unfortunately, enforcement of our borders alone will not deter the continual flow of unlawful migrants seeking jobs. Fully half of all new illegal aliens remaining in the U.S. each year enter legally, with temporary permission to be here. But they stay indefinitely because they find jobs — jobs taken from Americans fully capable of doing the work in most cases. Effective worksite enforcement of our laws is absolutely critical. Serious enforcement at the worksite will reduce the pressure for more troublesome Prop 187-like enforcement in neighborhood hospitals and schools.

Rhetorical images like an "electronic tattoo" (read "Social Security Number") are disingenuous. The issue is enforcement of our laws against illegal entry and employment, and the paper chase constructed under "employer sanctions" laws has failed miserably. Either we make the law work or abandon the fight. Opponents of effective measures of verifying work authorization want to repeal employer sanctions and allow employers to hire illegal foreign workers. Fine. But if we repeal employer sanctions, we must be prepared for the virulent backlash against lawful immigration that will most surely follow our failure to control illegal immigration.

Getting serious about illegal immigration is only one side of the coin. The other side – legal immigration – needs work too. Legal immigration tied to family relationships has been a positive influence in the building of America. Immigrants from every part of the world have brought to this country a strong devotion to family and a determination to better the lives of their children through hard work and education. Encouraging that kind of sacrifice requires setting priorities that people can rely upon.

The first priority for family unification must be the traditional nuclear family; moms, dads, and kids. There are roughly one million nuclear families now waiting to end their separation or to get out from under a cloud of ambiguity created by current law. And most of those families won't be able to do that for years unless Congress changes things.

The only way to unite these families rapidly is to reduce existing backlogs. But we have to stop creating new ones while we do it. Permitting extended families to immigrate creates unending waiting lists, as new arrivals acquire eligibility to sponsor still more distant relatives. This is commonly called "chain migration" and it treats access to this country as an entitlement. Every year a number of extended family members are allowed in, while some nuclear families continue to wait. Sure, extended families wait, too — but it doesn't make sense to use limited visas for adult children or brothers and sisters at the expense of husbands, wives, or young children. And we certainly shouldn't be setting up yet another "marriage penalty" in federal law by letting in "never-married, childless" adult children but keeping the married folks out. Instead, Congress should end chain migration and reaffirm its commitment to our top priority, the nuclear family.

Any selection system designed to attract skills-based immigrants should have one overriding priority – to enhance America's competitiveness. And that means ensuring that American business has a competitive edge in an increasingly "global" market place. But it also means ensuring that American workers acquire the skills needed to give us that edge. There is no aspect of public policy in which the responsibility to put America – and Americans – first is more obvious.

And so the Commission has crafted a set of proposals that would ensure that employers have adequate access to needed skills by raising the total number of employment-based visas to 10% above actual current demand, by eliminating entirely a failed regulatory system that now has government bureaucrats second-guessing hiring decisions, and by allowing employers themselves to make those decisions based on the demands of the market. At the same time, the proposals would keep faith with American workers by making sure they get first crack at new job opportunities for which they are qualified or that they get the education and skills they need to compete for those jobs in the future if they can't do them now.

We have a special obligation to American workers who by reason of youth, disadvantage, or low-skill levels are most vulnerable to economic dislocation. Most new jobs today are being created in fields that require high levels of education or skill; low skilled jobs are actually disappearing and are tough enough for Americans to find. Real welfare reform will result in large numbers of unskilled Americans entering the job market for the first time. It's not in the national interest to force them to compete with foreign workers. Congress should end the immigration of unskilled workers.

Let me be clear; it is precisely because he is so right on reaching out to expand opportunity for disadvantaged Americans that Jack Kemp – after Ronald Reagan, the conservative I have most admired for fifteen years – is wrong on immigration. Unlimited immigration is not a rising tide that lifts all boats. It swamps some, too.

We've been told continuously for more than a decade that there are jobs out there that Americans can't do. Schools aren't channeling American kids into the sciences and high-tech fields of the future. Government training and jobs programs have proven inadequate. We simply must build effective private-sector training and education initiatives, perhaps beginning in the early school years, that will develop a competitive American labor force for the twenty-first century.

Ironically, it is the Commission's recommendation to do this while simultaneously eliminating the regulatory system that governs skilled immigration that irks the Beltway most. It now costs taxpayers $60 million a year to run the Department of Labor's labor certification program, which approves 90% of all applicants — eventually. In parts of the country, it takes more than two years to navigate the system and costs an employer as much as $10,000 to $15,000 in associated legal fees, advertising expenses, and administrative costs for every worker hired.

And like the current employer sanctions paper chase, the system just doesn't do what was intended. It doesn't prevent foreign workers from getting jobs Americans can do. It doesn't encourage recruitment and hiring of those qualified Americans. And it doesn't help an employer get highly skilled foreign workers when they are really needed.

There is a better way. If employers really do need workers who happen to have skills not readily available in the domestic labor market — and want to hire them now — they should be willing to pay for them in part by redirecting the substantial fees and costs they already incur into private sector training and education initiatives for Americans. In return, they should get what they pay for — promptly.

Lobbyists have attacked this plan harshly. It has even come under fire from a number of pro-growth conservatives who should know better than to defend a failed regulatory system against an alternative based on the market. Labor certification serves no useful purpose. We should eliminate it. The market test will work and save the taxpayers a bundle.

Finally, there is one issue that should unite us all on immigration; Americanization. Immigrants should be learning English, starting businesses, educating their children, participating in our communities — becoming Americans. And the process by which they become citizens — naturalization — needs to be more efficient and implemented more effectively. Long backlogs of folks waiting to be citizens caused by paperwork problems is unacceptable. That's not only reform; it's what immigration is all about.

Conservatives calling for a moratorium or defending the status quo are both mistaken. They are wrong politically because pro-family Hispanics and Asians will increasingly vote Republican if we give real priority to the traditional nuclear family and let them know they are welcome. They are wrong economically because immigration contributes to the growth and prosperity of all Americans, so long as the most vulnerable are not forgotten. They are wrong socially because the United States is still a melting pot where diverse groups of immigrant families become Americans, sharing common beliefs and values despite our differences. That is what we as conservatives should expect and enthusiastically ask of them.

Robert Charles Hill is a Washington lawyer, and a Republican appointee to the U.S. Commission on Immigration Reform.

The Washington Times
FRIDAY, NOVEMBER 3, 1995

PHOTOCOPY PRESERVATION

Newsweek

DATE: 4·8·96

PAGE: 38

VOICES

The Quiet Race War

Hostile toward preferences and discrimination, voters are stalking a political middle ground

Defensive moves: *'I've been a victim of racism,' says Don Miller, a teacher. 'A lot of people have.'*

BY JOHN LELAND AND JOHN MCCORMICK

BACK TALK

THERESA CANADY REmembers when contractors in Moreno Valley were building 4,000 houses a year. It was the mid-'80s, and this bland strip of California desert, 90 minutes east of Los Angeles, was one of the fastest-growing towns in America. Families swarmed in from Orange County and L.A.—Latino and Anglo commuters, Vietnamese boat people, Guamanians, Filipinos, inner-city blacks—seeking safer streets or cheaper housing. But when the California recession struck in the early '90s, it hit Moreno Valley hard. Canady, like a lot of her neighbors, found herself unemployed, with a daughter to support. "I hadn't been without a job since I was 15," she says. "The idea of collecting unemployment was horrifying. I went out and got two jobs."

Like many here, as she eyes the presidential race, Canady, a real-estate agent and consultant, worries about the economy. She is a wary Republican. "All these other issues—abortion, school prayer—I don't want to hear about." Instead, she is moved by issues closer to home. Pointing to her daughter, who has a mild learning disability, she says, "She's supposed to get one-on-one help. But she's in a class with too many kids because of illegal immigrants."

Illegal immigration and affirmative action, which haven't yet caught fire in the national campaign, stir passions in places like Moreno Valley—struggling suburbs where multiculturalism has brought both promise and growing pains. The area, known as the Inland Empire, is considered a political indicator. Moreno Valley's congressional district, the 44th, voted for Bush in '88 and Clinton in '92; two years ago it swept conservative Sonny Bono into the House. Many here now blame minorities for a rising presence of gangs and violence. According to the national NEWSWEEK Poll, people around the country share these worries. And as the economy has stalled, anxieties over contracts—and minority preferences—have grown bitter.

This is ideological turf that either Bill Clinton or Bob Dole might exploit. But the traditional pigeonholes—Democrats arguing against discrimination, Republicans against preferences—seem obsolete here. Voters hold more elaborately calibrated positions: equally strong disgust for both discrimination *and* racial preferences, or ardent passion in favor of immigration and against *illegal* immigration. "People are sensitive to the fact that we're paying for people who are on the dole," explains Dave Briggs, who sells insurance and securities. "Washington makes the rules, and we have to pay for illegals' education, health care and welfare. The government is codependent. They're enablers."

No defense: At Canyon Springs High School, Don Miller presides over a class out of a Benetton ad—black, Latino, Asian, even a blond kid with a new mohawk. But the school has been divided by racial unrest, and last year Miller was called a racist over his support for a white administrator. "This was a small town," he says. "We weren't used to the urban, confrontational behavior. The idea of a 14-year-old getting in my face—I'm still shocked." Miller, a Democrat, is "ambivalent" about affirmative action. "When a charge of racism comes, for a white person there's no defense. I'm convinced I've been a victim of minorities. A lot of people have."

Charlie Ledbetter, at 73 a pillar of Moreno Valley, knows what it's like to lose a job over affirmative action. In the late 1970s, as the only African-American on the school board, he pushed to hire the first black teacher. He was promptly voted off the board. These days, back on the board, he wants no part of preferences, just a level playing field. But he is under attack again. Many blacks are furious that the black-majority board recently hired a white superintendent. "Let's not play this race game," he counters. Of his critics, he says, "I'm doing this so their kids can get a job."

In a knotty twist, Ledbetter, a Democrat, finds himself supporting Clinton *despite* his support for racial preferences, rather than because of it. But affirmative action, like immigration, is a thorny issue in 1996. It cuts in a more complex mesh than the parties like to acknowledge. In Moreno Valley, the crosshatchings draw the topography of a community in anxious flux. It is a map of the city, waiting for a candidate who can read its intricate code.

With ANDREW MURR *in Moreno Valley*

Complicated Codes

Affirmative action and immigration are slowly simmering in Campaign '96.

- **54%** of voters who have seen a recent influx of immigrants say the newcomers have hurt their communities; only **21%** say they have helped.
- By a 2-1 margin—**39%** to **18%**—more voters believe reverse discrimination against whites is a bigger problem than racism. But **78%** of employed white voters don't think they would have a better shot at promotion if they were of a different race.

FOR THIS NEWSWEEK POLL, PRINCETON SURVEY RESEARCH ASSOCIATES INTERVIEWED 500 REGISTERED VOTERS BY TELEPHONE MARCH 8-10. THE MARGIN OF ERROR IS +-5 PERCENTAGE POINTS. THE NEWSWEEK POLL © 1996 BY NEWSWEEK, INC.

Newsweek

DATE: 4.8.96
PAGE: 6

SUPREME COURT

Will He Step Aside?

THE WHITE HOUSE IS NERvously awaiting a probable Supreme Court battle over a University of Texas law-school admissions program that could determine the fate of affirmative action. But NEWSWEEK has learned that if the justices, as expected, review a lower-court ruling barring the use of racial preferences, conservatives may lose a key ally: Justice Clarence Thomas. Court watchers say Thomas will likely have to recuse himself from the case because he worked on the Texas plan as an official in Ronald Reagan's Education Department. Thomas, now a vocal opponent of affirmative action, then pushed to strengthen the plan with numerical quotas. A Thomas spokesperson declined to comment.

Justice Thomas

HUMAN SERVICES

Older Americans Act Changes Approved by Senate Labor

The Senate Labor and Human Resources Committee endorsed legislation May 8 that would reauthorize and revamp the Older Americans Act of 1965.

The panel approved the measure (S 1643) on a party-line vote of 9-7 after debating proposed changes to funding formulas used to determine how much money each state would receive.

The bill aims to consolidate food, transportation and employment programs for the elderly by giving states more flexibility in providing services and encouraging competition among groups vying for federal grants in job training and employment services.

Bill sponsor Judd Gregg, R-N.H., said the measure would drive more federal money to states and local communities, allowing them to tailor programs to meet the social and economic needs of seniors.

The measure would reauthorize the act through fiscal 2001 at unspecified sums. About $1.4 billion was appropriated in fiscal 1995.

Funding Formula Change

The bill, as introduced by Gregg, proposed a new funding formula to include the latest changes in each state's population age 60 and over. The current formula is based on 1985 census figures.

Lawmakers, however, accepted an amendment by Daniel R. Coats, R-Ind., that would give more weight to areas with large concentrations of very elderly people to ensure that money is available to meet their needs. For example, seniors age 85 and over would be weighed more heavily than seniors age 70-74. The vote on Coats' amendment was 12-4.

Coats said his formula would be phased in over the five-year life of the bill. He said states would lose no more than 4 percent of their funding or gain no more than 3.75 percent each year.

In addition, Coats' formula would consider a state's taxable wealth, a factor not used in Gregg's proposal.

The money would be dedicated to nutrition and other support services such as abuse prevention, senior advocacy programs and assistance for long-term nursing care.

The bulk of the funding, however, would go to support the popular Meals on Wheels program, which delivers meals to groups of elderly at senior centers as well as to those who cannot leave their homes.

Funding for employment and training programs under the act, known as the Senior Community Service Employment Program, would be figured separately and paid for through a block grant to the states.

Panel members rejected, 5-11, an amendment by Barbara A. Mikulski, D-Md., that proposed to retain the current formula for determining how much money would go to the states.

Mikulski argued that a formula change would "cause a serious disruption in services" for those states that would lose funding.

Coats defended his amendment, saying that it was "not my intent to boost some states and not others." He said his proposal updated the formula with new population figures and made payments to the states more equitable for taxpayers. ■

By Annie Tin

BOXSCORE

Bill: S 1643 — Reauthorization of the Older Americans Act.

Latest action: Senate Labor and Human Resources Committee approved the bill May 8.

Next likely action: Senate floor consideration.

Background: The bill aims to give states more flexibility in providing the elderly with food, transportation and employment services.

Reference: Senate committee action, Weekly Report, p. 1227; House committee, p. 705.

CQ's Congressional Monitor MONDAY MAY 13, 1996

Debate Over Fiscal Priorities Back on Floors

Senate leaders may set gas tax aside if tomorrow's cloture vote fails; House set to consider defense authorization loaded with controversy

THIS WEEK IN CONGRESS

Lawmakers return to the 104th Congress' unending budget struggle this week as both the House and Senate plan to take up budget resolutions mapping federal spending for fiscal 1997.

Disputes over all aspects of the Republican budget blueprint are certain. Democrats are expected to seek more funding in areas such as education and environmental enforcement, more limited curbs on entitlements and reductions in tax benefits for the wealthy. And many Republicans are expected to seek an expansion of tax cuts, including capital gains tax reductions.

The Senate Republican resolution approved in committee last week aims to balance the budget by 2002 with $576 billion in net deficit reduction, including $296 billion in savings from discretionary spending programs.

House and Senate GOP leaders want to steer the budget resolution through conference and final floor action before Memorial Day. The draft Senate measure may be on the floor for no more than 50 hours.

The Senate today resumes debate on an effort by Majority Leader Bob Dole, Kan., to repeal the 4.3-cents-per-gallon gasoline tax increase of 1993. Meanwhile, Democrats are insisting on a vote to raise the minimum wage. Members vote tomorrow on invoking cloture and proceeding to a vote on the gas tax repeal.

If the deadlock is not resolved, Senate leaders are expected to move to consideration of the budget resolution.

Before its budget debate, the House is scheduled to consider a $267 billion defense authorization bill that includes a variety of sensitive social policy provisions, including a ban on homosexuals in the military and a ban on the sale of pornographic magazines and videos at military bases.

■ **MINIMUM WAGE**

Senate Minority Leader Daschle (D-SD) says he'll offer new plan to Majority Leader Dole (R-Kan) that would allow separate clean votes during the week of May 13 on the gas tax repeal, minimum wage, and the TEAM Act ..... A - 19

■ **NAFTA**

As part of solution to U.S.-Mexico dispute over cross-border trucking, labor authorities from both countries agree to evaluate labor legislation and regulations applicable to land-transport workers in each country ..... A - 12

■ **NLRB**

NLRB forecasts rule-making activity for the next 12 months ..... *C - 2, E - 63

■ **PRODUCER PRICES**

Producer prices for finished goods rose a less-than-expected seasonally adjusted 0.4 percent in April, mostly due to continued increases in the price of energy, the Labor Department reports ..... *D - 1

■ **RAILROADS**

Brotherhood of Railroad Signalmen and the nation's freight carriers reach a tentative five-year agreement ..... A - 5

■ **SEXUAL HARASSMENT**

Rep. Schroeder (D-Colo) and Del. Holmes Norton (D-DC) send letter to EEOC Chairman Casellas asking whether commission has the "resources" it needs for sexual harassment lawsuit against Mitsubishi Motor Manufacturing of America Inc. ..... A - 9

■ **STRIKER REPLACEMENTS**

District of Columbia Circuit votes 9-2 to reject the government's petition for rehearing on the Chamber of Commerce challenge to President Clinton's executive order barring government contractors from permanently replacing lawfully striking employees *AA - 1, E - 66

■ **TAXES**

Bill would let individuals deduct Social Security taxes from income tax ..... A - 7

■ **UNEMPLOYMENT**

Legislation that would provide a 13-week extension of state-financed unemployment benefits to New Jersey workers who have exhausted their 26 weeks of regular jobless benefits passes state Assembly by margin of 76-2 ..... A - 14

TEXT IN THIS REPORT

Semiannual regulatory agenda of the Labor Department ..... E - 1

Semiannual regulatory agenda of EEOC ..... E - 58

Semiannual regulatory agenda of NLRB ..... E - 63

TABLE OF CASES

Anderson v. Gus Mayer Boston Store of Delaware (DC ETexas) ..... A - 1

Anderson v. Unisys Corp. (DC Minn) ..... A - 15

Beverly Health and Rehabilitation Services Inc. and Service Employees International Union (NLRB Region Six) ..... A - 11

Chamber of Commerce v. Reich (CA DC) ... AA - 1

EEOC v. St. Elizabeth Hospital of Chicago Inc. (DC NIll) ..... A - 17

McDonnell Douglas Corp. v. EEOC (DC EMo) ..... A - 10

Utility Workers Union of America, Local 246 v. Southern California Edison Co. (CA 9) ..... A - 4

(For full details, see pages indicated in Section A)

** Also digested in Today's Summaries*

Copyright © 1996 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037

THE WALL STREET JOURNAL

DATE: 9/6/95

PAGE: A5

Clinton, in Pete Wilson's Backyard, Takes Tough Affirmative-Action Stance

By MICHAEL K. FRISBY
Staff Reporter of THE WALL STREET JOURNAL

SELMA, Calif. – Stumping in Gov. Pete Wilson's backyard, President Clinton grew tougher on affirmative action, even taking credit for killing a program his administration tried to preserve.

Gov. Wilson, in his quest for the GOP presidential nomination, has scored points for seeking to end affirmative action and stop illegal immigration. On his visit to the state, Mr. Clinton apparently saw the need to embellish his own credentials in these controversial areas that Californians care about.

Mr. Clinton brought up affirmative action in a speech Monday, saying "there are problems" with the federal government's programs. "I've already abolished one that I thought was excessive," the president said. "And I was glad to do it."

Aides said Mr. Clinton was referring to the Federal Communications Commission program that gave capital-gains tax deferments to media companies that sold outlets to minorities. But his references didn't accurately portray either his or his administration's role in killing the program. It was the type of slip that often occurs in the heat of an election campaign, but for Mr. Clinton it recalls past statements that seem to shade the truth and appease people on both sides of an issue.

Earlier this year, there was an outcry from affirmative-action critics when a partnership including Frank Washington, an African-American businessman, sought to buy Viacom Inc's cable holdings for $2.3 billion; the FCC affirmative-action program would have saved Viacom as much as $640 million in taxes.

Congressional Republicans moved to kill the program and to do it retroactively to single out the Viacom deal.

The FCC and Treasury Department testified at Finance Committee hearings in favor of reforming rather than repealing the program. But when Republicans wouldn't compromise, Mr. Clinton signed legislation abolishing the program when it was included in a bill providing a 25% tax deduction to self-employed individuals who purchase health insurance.

In the past, even during his major speech on affirmative action in July, Mr. Clinton hadn't tried to claim credit for killing the program. Yesterday, Michael McCurry, the White House press secretary, acknowledged that Mr. Clinton didn't favor abolishing the program altogether, but said, "We felt all along there was a problem and it needed to be reformed."

When asked why Mr. Clinton portrayed himself as enthusiastically killing it, Mr. McCurry, said, "It would be impossible for the president to summarize the lengthy congressional debate in a speech that required a shorthand formulation."

The president did restate his support for the goals of affirmative action. But much of his speech here had a different tone than the July speech in which he strongly supported affirmative action, but said that some changes would be required. On Monday, however, he said, "I'm against quotas. I'm against reverse discrimination. I'm against giving anybody unqualified anything they're not qualified for. But I am for making a conscious effort to bring the American people together."

In the same speech, Mr. Clinton offered up tough talk on immigration, saying, "We have too many illegal immigrants in the country. We've done what we could to close the borders and to send people back."

But Mr. Clinton courted the other side, too. He reminded the crowd that "this is a nation of immigrants," and more importantly, he said social issues, such as immigration, affirmative action and welfare, are not what is hurting the middle class today. He seemed to be unveiling a blueprint for dealing with these difficult social issues that the Republicans may use in a bid to divide working-class voters. Mr. Clinton's strategy: point the finger at stagnant wages, a topic his aides hope will take some steam from other issues.

dence that a confession was not voluntary." In other words, if an officer holds a gun to someone's head and forces him to confess to a crime, the burden would be on the defendant to prove that his confession was forced. The Fifth Amendment says no one "shall be compelled in any criminal case to be a witness against himself." But this, and other provisions, would seriously damage the presumption of innocence so fundamental to our system of justice.

It is said that a society gets the kind of police it deserves. Today, those who want law and order at any price appear all too ready to authorize the police to ride roughshod over the citizens' constitutional rights. Yet when innocent people are shot, beaten, or killed by government agents in their homes, the tendency is to close one's eyes and pretend that nothing happened. This lays the basis for abandoning freedom to a small group that has the power to coerce the people.

In the first wiretapping case before the Supreme Court, Justice Louis Brandeis warned of the dangers in compromising the Fourth Amendment: "If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to be a law unto himself; it invites anarchy. To declare that in the administration of the criminal law, the end justifies the means ... would bring terrible retribution."

Unfortunately, Congress has not learned the lesson of Waco and Ruby Ridge.

Lawrence Criner is associate senior editor of the World & I magazine, a monthly publication of The Washington Times Corp.

[Washington Post 5/25/96]

Minority Contractors May Face Closer Inspection

Proposed Administration Policy Tightens Use of Race-Based Preferences, Directs New Studies

By Peter Behr
Washington Post Staff Writer

The Washington region's large contingent of minority-owned government contractors faces closer scrutiny under the Clinton administration's new affirmative action policy that seeks to cut off firms that don't qualify for help in competing for contracts, officials said.

Responding to a 1995 Supreme Court decision that tightens the use of race-based preferences for contractors, the administration plan would impose a two-year suspension of set-aside programs that earmark certain contracts for minority firms. Qualified minority-owned companies could still get a price advantage in bidding competition with white-owned firms.

The policy, announced this week and subject to a 60-day comment period, directs the Commerce Department to study major industries to determine whether minority-owned firms require special assistance in winning contracts to offset past discrimination. If not, the government could limit such help to minority firms entering the industry.

"If an industry doesn't need continued use of sheltered markets, we would consider limiting access" to preferential programs, said John P. Spotila, general counsel of the Small Business Administration.

The policy also aims to improve detection of white-owned firms that are posing as minority contractors, officials said.

The effect of the policy on the Washington region, home to the nation's largest concentration of minority-owned contractors, will not be clear until the Commerce Department explains how it will conduct its industry studies.

In 1994, minority and women-owned firms in the Washington area received $2 billion in federal contracts, more than any other region of the country, according to the General Services Administration.

"Are there some firms in the Washington area that may get less than they once had or hope to have? That's probably true," Spotila said. "But it doesn't mean all Washington firms will do worse because they've had disproportionate success in the past."

Spotila said the SBA also will push minority-owned firms harder to develop business that does not depend on government help.

Minority-owned companies accepted into the SBA's Section 8(a) program, its most important affirmative action initiative, are expected to "graduate" in nine years, after which they are not eligible for assistance.

Companies are required to show how they will make that jump, but "not all firms have taken [that requirement] seriously," Spotila said. "If they're not trying at all, that would give us serious concern. . . . We are going to be careful not to hurt firms that are developing their businesses in a reasonable way."

See POLICY, F2, Col. 4

PROPOSED REVISIONS

The Clinton administration's revision of affirmative action policies for minority contractors would include:

- Commerce Department studies to see whether minority contractors still require preferential treatment.
- Two-year suspension of set-aside programs that reserve some federal contracts just for minority firms.
- Action by the Small Business Administration to prevent its minority contracting assistance from becoming too concentrated in parts of the nation.
- Closer scrutiny of ownership and control of contractors to detect firms that are fraudulently posing as minority-owned companies.

PHOTOCOPY PRESERVATION

Minority Contractors Face New Policy

POLICY, From F1

The two-year suspension of set-aside programs drew sharp criticism from some representatives of minority contractors.

"Set-asides are the most effective tool for providing opportunities for minority enterprise. Putting on a two-year moratorium could be very harmful, particularly when there is no justification for it, except politics," said Anthony W. Robinson, president of the District-based Minority Business Enterprise Legal Defense and Education Fund.

"Putting on a two-year moratorium could be very harmful, particularly when there is no justification for it, except politics."

— Anthony W. Robinson, president of the Minority Business Enterprise Legal Defense and Education Fund

The two-year moratorium, which the administration said will provide time to study the need for set-asides, is too long and unnecessary, said Weldon H. Latham, general counsel of the National Coalition of Minority Business. "There is already a 100-year study on the history of discrimination."

But Latham did not echo Robinson's criticism of the administration. "They tried their best to balance the requirements of the Supreme Court decision with the needs of minority contractors," he said.

The administration's conservative critics contend that the policy is a way to preserve the status quo for most minority contractors by employing the complex evaluation process by the Commerce Department.

Some minority contractors warn, on the contrary, that the political and legal battle over affirmative action has already pressured some federal contracting officials to scale back assistance to minority firms.

Data on federal contract awards so far this fiscal year do not answer the question. From October 1995 to March 1996, awards under the SBA 8(a) program had dropped about 9 percent compared with the same period a year earlier.

But more recent data, from October to May, show awards rose by 11 percent from the prior year.

The disruption of federal contracting because of last year's government furloughs is distorting the interim tallies of contract awards, the SBA said.

PHOTOCOPY PRESERVATION

WIKTOR SADOWSKI FOR TIME

er, and following was an act of faith. Now sheer, unexpurgated information accelerates history. It is also hell on mystique. The media help create leaders and then eat them alive—a sort of electronic Aztec sacrifice.

A citizen in a bad mood sees a long devolution from the original giants, a fragmentation of American purpose and identity, a collapse of the nation's organizing energies. Which, according to this pessimistic reading, is where leadership stands now: at the feuding, fifth-cousin stage.

A citizen in a good mood sees that, all things considered, the fifth cousins are doing well enough for themselves—leading the world, for example, in the information fields that will shape the next century. Reports of the death of American vitality are exaggerated.

MUSSOLINI REMARKED, "IT'S NOT SO MUCH THAT IT IS DIFFICULT TO rule Italy. It's useless." Surveying the postelection wreckage, Bill Clinton may be tempted to endorse a similar thought. But the age of Mussolinis has ended (one trusts) in what are now the Western democracies. The age of pre-eminently powerful presidencies may be over as well. The focus of leadership disperses. The real "thousand points of light" in America are the new multiple centers of leadership in business, the sciences and arts, politics, religion, community life and so on.

There is no sense in getting too inspired or sanguine. In the 1990s a cynic's eye reads a certain rotted sociology in important places—an America disuniting into self-righteous tribalism (gridlocking interest groups; the indignant, victim-singing, litigating, on-the-make cousins, who are fighting over a national patrimony spread too thin).

It is not coincidental that the crisis of leadership arises at a time when a baby boomer sits in the White House and his generation has inherited positions of power throughout the society. In a traditional sense, the baby boomers never learned leadership. They did not inherit self-confidence and instinctive ease as leaders. They taught themselves, in fact, that leadership was suspect, corrupt, sinister and patriarchal. During the 1960s Americans began a decisive journey across the moral border from the old territory of duty to the new land of rights. The old culture of duty encouraged the skills of leadership and assumed its legitimacy. Then, in part because of the disastrous exercise of American "duty" in Vietnam, duty gave way to the very different universe of rights and, after that, of entitlements (which represent the decadence of the American guarantee). John Kennedy's Inaugural "Ask not" was a perfect expression of the duty ethic. The new culture of rights reversed the flow from individual to society: it said, "Ask what your country can do for you; you are a victim, and everyone owes you."

The need for leadership in national crisis is always clear. If leadership fails, disaster results: cause and effect. The imperative for leadership in today's America—a mature democracy in relative peacetime, ramshackling along on cruise control (though with engine knocks, a hole in the muffler and rust on the underbody), not quite dysfunctional—is not nearly so clear and immediate.

And yet problems remain. They have much to do with the world's problems now (the economy, trade, environment, nuclear proliferation, foreign policy to address immense slaughter and tumult elsewhere), as well as sizable issues at home, moral and otherwise (crime, poverty, drugs, education, abortion, affirmative action).

Old-style leaders were expected to have a vision, a solution, and then lead followers to it. This was, of course, sometimes dangerous: suppose that the leader, endowed with charisma and a gift for keeping the military happy, turns out to be a visionary monster, a Hitler? Such leadership is always a temptation, the path of least resistance, especially during unstable times.

But for the moment, a new story of American families seems to be emerging, along somewhat less traditional leadership lines. The sort of leader needed today is the kind who can assume a reasonably well-educated and informed electorate but help it sort through the inundations of information and opinion (much of it corrupt, self-serving, pseudo-moral) toward solutions. Americans need leaders who will not so much enforce a vision (though visions remain indispensable) as lead people to understand the problems they face together and the costs and effort necessary to solve them—the changes in behavior and attitude sometimes, the sacrifices and above all the need to think and adapt. The key to leadership now is to get Americans to act in concert and take responsibility for the courses that they have set for themselves.

The energy and the real light sources—the new leaders—are there. The job for Americans—after passing through a stage of disunion and redefinition—is to try to find their way toward common ground again. Enough of the Pluribus, for the moment; a little more of the Unum. ■

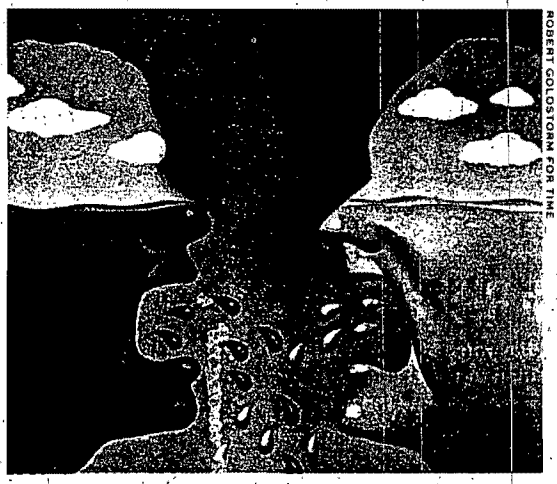
40

Lance Morrow

The Cure for Racism

IN 1966, VERMONT'S SENATOR GEORGE AIKEN PROPOSED that the U.S. disentangle itself from Vietnam by declaring victory and withdrawing. America should think about a variation on the Aiken scenario in order to begin leaving behind its fatal domestic quagmire of race. The nation should decide that, in order to rescue everyone's honor—above all, that of African Americans—it is time to withdraw from an untenable dynamic, from the racial equivalent of what the French generals in Indochina called "bad country."

The legal and rhetorical overemphasis on race in the past generation (busing, affirmative action, quotas, punitive political correctness) has ended by compounding the oldest American melodrama. What should have been, at most, a temporary tactic (like Lincoln getting Congress to suspend habeas corpus during the Civil War) has become a permanent installation of bad principle—a way of life.



ROBERT GOLDSTOMM FOR TIME

The supposedly virtuous high road of race preference has taken the nation into dubious terrain. America's chattering classes have been beguiled by the idea of compensatory unfairness. They have not recognized it for what it is: a flirtation with the devil, a deepening reliance on the principle that formed the foundation of slavery, the Ku Klux Klan and Jim Crow. This was the poison at the center of apartheid and Hitler's Nuremberg Laws.

What affirmative action affirms covertly—the hidden premise, growing more powerful—is a proposition not distant from the conclusions of Messrs. Herrnstein and Murray in *The Bell Curve*. In an America where all the genes of the world have settled and hope to succeed, the only way to justify open-ended affirmative action for blacks is to shake one's head and say, "Well, you know, we have to do this: African Americans are inherently inferior." Who would have thought the mind-set of a Kluxer would turn up as U.S. government policy?

We must presumably distinguish between the good, official racism (which is polyunsaturated) and bad racism (which is the saturated fat of the redneck). Well, good racism does not drive out bad. It is weak-minded and dangerously innocent to think one can enlist an immoral principle (sorting out individuals by race) in the service of social justice. The battle against bad racism becomes (like the war in Vietnam) not only unwinnable but self-perpetuating. And worse: the effort to combat racism grows evil in itself.

Ideological corruption flourishes in government agencies, as it does in the universities—a kind of moral hiv. It destroys immune systems. A liberal icon teaching at Harvard whispered to me one day, "Affirmative action poisons the university for everyone. The students, both black and white, know it is crooked. The professor knows it is crooked. You cannot teach in these circumstances." The Federal Reserve Board at the moment is considering a new regulation that would require all small businesses applying for bank loans to identify themselves by race and gender. To what one-thousandth will the Fed measure my bloodline? (Was there a trace of some pristine, non-white, non-European victimness four generations back?) All is well. Subdividing bureaucratic determinism files away more millions of citizens in its racial pigeonholes.

If I were something like the Pope of black America and had the moral authority to make such suggestions, I would propose that no African American use the terms racism or racist. The words are a feckless indulgence, corrosive to blacks and whites alike and to relations between them. Such rhetoric has given blacks a leadership that has built its career upon mere race-grievance agitation, and is therefore profoundly, almost unconsciously committed to its perpetuation. As in a hateful Strindberg marriage, each party somehow requires the abuse of the other. It is a catastrophic pattern. The lingering ghost of the plantation haunts it.

The word racism has degenerated to being a mere ritual term of abuse and self-pity, part of the Kabuki of manipulation. Any grownup knows there is racism in America. There is racism almost everywhere in the world. The Chinese refer to Africans as hei gwei, or "black devils." (They refer to whites, by the way, as "white devils.") The Chinese were used as virtual slaves in the American West during the 19th century. In Egypt (which many African Americans embrace as the founding mother of black civilization), even people with moderately dark skins refer to themselves as "white." In the Dominican Republic, citizens despise Haitians with an appalling frankness. Racists? Try Russia. Visit Japan. Tour the world. Racism is an evil constant. America stacks up better than most societies on this subject.

At the Lincoln Memorial, Martin Luther King said he looked forward to the day—his "dream"—when his four little children would not be judged by the color of their skin but by the content of their character. He was right then, and now. But from the time of King's death to the present, the country has sunk deeper into the swamp, the essential error.

It is time to regress to Martin Luther King's ideal. The content of one's character, not the color of one's skin, is the sole decent American criterion. ■

48

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TOP OF THE NEWS

Compiled by the Office of Communications & Legislative Affairs

Selected News Articles

for

December 2, 1994
SUPPLEMENT

We strive to make a difference.

U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE
Thursday, Dec. 1, 1994

CONTACT: Reginald Welch
Michael Widomski
(202) 663-4900
TDD: (202) 663-4494

EEOC CHAIRMAN ANNOUNCES TASK FORCES TO ADDRESS OPERATIONAL ISSUES; RELEASES FY 1994 ENFORCEMENT RESULTS

WASHINGTON -- At the first meeting of the U.S. Equal Employment Opportunity Commission (EEOC) since April 12, 1994, new Chairman Gilbert F. Casellas announced the formation of three task forces to address critical issues facing the EEOC.

At Chairman Casellas' request, Vice Chairman Paul M. Igasaki will chair the Task Force on Charge Processing, Commissioner Joyce E. Tucker will chair the Task Force on Fair Employment Practices Agencies (FEPAs), and Commissioners Paul Steven Miller and R. Gaull Silberman will co-chair the Task Force on Alternative Dispute Resolution (ADR).

Since arriving at EEOC on October 3, Casellas has been examining the agency's operations and considering various options for improvement. "I want these task forces to play a significant role in the development and implementation of a strategic plan to reduce the agency's pending charge inventory and to make it operate more effectively," said Chairman Casellas.

The Charge Processing Task Force will study ways to improve the current system, with the twin goals of reducing the existing number of pending charges and developing more effective and efficient procedures for resolving charges.

In urging that a "clean sheet" approach be taken, Casellas said the reviews should be done "with an eye toward improving efficiency, eliminating redundant or unnecessary steps, and reducing time, while ensuring due process for the individual charging parties and respondents."

The Fair Employment Practices Agencies Task Force will evaluate EEOC's partnership with these state and local agencies to ensure maximum effectiveness. EEOC has worksharing agreements with FEPAs around the country to process charges. In fiscal year

- more -

(FY) 1994, FEPAs received 41 percent of a total of 155,612 charges filed under EEOC-enforced statutes.

The Alternative Dispute Resolution Task Force is asked to recommend appropriate options for the use of ADR by the Commission. The task force will base its recommendations on an evaluation of the EEOC pilot ADR program and its review of the many existing studies of ADR.

Chairman Casellas has asked that the Charge Processing and the ADR Task Forces prepare recommendations to the Commission within 90 days, and the FEPA Task Force to present its recommendations within 60 days.

Today's meeting coincides with the release of information on EEOC's enforcement activity during FY 1994, which ended only days prior to Casellas' arrival at the agency. The report from last year "reinforces the need for bold initiatives to improve the way we serve those who come to us for help," Casellas said.

FY 1994 marked the third year in a row that the agency received a record breaking number of charges alleging job bias, increasing the number of charges awaiting investigation to nearly 97,000 at the end of FY 1994.

Chairman Casellas reported that EEOC received 91,189 new charges of discrimination between Oct. 1, 1993 and Sept. 30, 1994 -- 3.7 percent over the record number of 87,942 charge receipts in FY 1993 (see Table 1)[1]. The EEOC's pending inventory of 96,945 charges represents a 32.6 percent increase over the pending 73,124 charges at the end of FY 1993 (see Table 2).

The most significant increases from FY 1993 in discrimination charges by basis include disability related charges, up 23.5 percent, and retaliation based charges, up 14.2 percent. There were also increases in sex and religion based charges, as well as a small increase in charges filed under the Equal Pay Act. Race, age, and national origin based charges declined slightly from last year's totals (see Table 3).

Discharge continues to be the most often alleged employment discrimination issue, comprising 47 percent of all charges in FY 1994, down slightly by 1.9 percent from FY 1993. Other issues that decreased in frequency in FY 1994 were hiring and layoff, down 8.2 percent and 2.3 percent, respectively. Issues showing an increase over FY 1993 figures are sexual harassment (+13.2 percent), harassment of a non-sexual nature (+12.5 percent), and terms and conditions of employment (+10.4 percent) (see Table 4).

Investigators resolved 71,563 charges in FY 1994, the second highest number of resolutions in EEOC's history and only 153 fewer than last year's record total.

Monetary benefits to victims of discrimination obtained through administrative enforcement efforts reached an all time high of $146.3 million, compared to $126.8 million in FY 1993.

Preliminary data from the Office of General Counsel show the Commission filed 428 lawsuits and resolved 456 in FY 1994. Monetary benefits of $29.2 million were recovered through litigation, primarily in the form of back pay, down from the FY 1993 total of $34.4 million.

EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex, or national origin; the Age Discrimination in Employment Act; the Equal Pay Act; the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector and state and local governments; prohibitions against discrimination affecting individuals with disabilities in the federal government; and sections of the Civil Rights Act of 1991.

Table 1. Comparison of Receipts[2]

	FY 90	FY 91	FY 92	FY 93[3]	FY 94
Receipts	62,135	63,898	72,302	87,942	91,189
Change From Prior Year	4.6%	2.8%	13.2%	21.6%	3.7%

Table 2. Pending Inventory

	FY 1990	FY 1991	FY 1992	FY 1993	FY 1994
Pending	41,987	45,717	52,856	73,124	96,945
Change/Prior Year	4,084	3,730	7,139	20,268	23,821
Percent Change	-8.9	8.9	15.6	38.3	32.6
Months Pending	7.9	9.0	10.4	12.2	18.8

Table 3. Basis

Basis	FY 1993	FY 1994	Percent Change
Race	31,695	31,656	-0.1
Sex	23,919	25,860	8.1
Age	19,884	19,571	-1.6
Disability	15,274	18,859	23.5
National Origin	7,454	7,414	-0.5
Religion	1,449	1,546	6.7
Equal Pay	1,334	1,395	4.6
Retaliation	12,627	14,415	14.2

Table 4. Issues

Issue	FY 1993	FY 1994	Percent Change
Discharge	43,565	42,756	-1.9
Terms/Conditions	13,618	15,029	10.4
Harassment	10,364	11,657	12.5
Sexual Harassment	7,273	8,234	13.2
Promotion	7,715	8,060	4.5
Hiring	7,900	7,252	-8.2
Wages	6,301	6,482	2.9
Layoff	5,507	5,382	-2.3

# # #

1. The statistics to follow represent charges filed with and processed by EEOC only. They do not include charges received and processed by FEPAs.

2. Data were compiled on 11/15/94 by the Office of Program Operations from EEOC's Charge Data System's National Data Base. EEOC's computerized Charge Data System is continually updated as data are submitted to EEOC headquarters by EEOC field offices around the country; therefore, statistics may change slightly over time.

3. FY 1993 was the first full year EEOC enforced Title I of the ADA.

U.S. Equal Employment Opportunity Commission

NEWS

FOR IMMEDIATE RELEASE

CONTACT: EVE G. LOWE
Senior Lead Trial Attorney
(305) 530-6008

ANGELO FILIPPI
Supervisory Trial Attorney
(305) 530-6004

STANLEY KISZKIEL
Regional Attorney
(305) 530-6000

HELIA PICO
Program Analyst
(305) 530-6024

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
One Biscayne Tower
2 South Biscayne Blvd.
Suite 2700
Miami, Florida 33131
Telephone: (305) 536-4491

DATE: November 29, 1994

EEOC SETTLES TITLE VII LAWSUIT AGAINST MARTIN MARIETTA INFORMATION SYSTEMS GROUP, INC.

Miami, Florida - The Miami District Office of the Equal Employment Opportunity Commission announced today that a Consent Decree has been approved by the United States District Court for the Middle District of Florida, pursuant to the EEOC's lawsuit filed under Title VII of the Civil Rights Act 1964 against Martin Marietta Information Systems Group, Inc. The suit was filed in federal court in Orlando, Florida, to correct unlawful employment practices on the basis of sex, and to make whole Ms. Allison Addington. The lawsuit contended that Ms. Addington was subjected

to unwelcome sexual harassment and then discharged because of her sex.

To settle the lawsuit, the Defendant will pay Ms. Addington $141,757.00 and purchase an annuity for her to guarantee retirement benefits of $477.22 per month, beginning the month when Ms. Addington becomes 55 years of age and continuing thereafter for as long as she lives. Defendant will also provide Ms. Addington with a letter of reference for any future employers. The Commission also obtained injunctive relief in the form of a Consent Decree for the term of 2 years. The Decree enjoins Defendant from engaging in conduct which constitutes sex discrimination and requires that the Commission be notified of every sex and/or sexual harassment complaint made during the next 2 years. As a voluntary initiative on Defendant's part, Defendant's managers and employees at its Lake Underhill facility are being provided with sexual harassment training.

The EEOC enforces Title VII of the Civil Rights Act of 1964, as amended, which covers discrimination based on national origin, sex (including pregnancy and sexual harassment), race, color, and religion. The Commission also enforces the Age Discrimination in Employment Act of 1967, (for persons age 40 and over); the Equal Pay Act of 1963, which prohibits sex-based wage discrimination; the Rehabilitation Act of 1973, and Title I of the Americans with Disabilities Act, which prohibits employment discrimination against qualified people with a disabilities.

PRESSRIO.MOM

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TOP OF THE NEWS

Compiled by the Office of Communications & Legislative Affairs

Selected News Articles

for

December 1, 1994

We strive to make a difference.

BNA's Daily Reporter System

DAILY LABOR REPORT

CURRENT DEVELOPMENTS

RENO PUTS CONGRESS ON NOTICE THAT DOJ IS FIRM ON CIVIL RIGHTS

The Justice Department has no plans to back off from its policy of strict enforcement of civil rights laws, including those that affect the workplace, U.S. Attorney General Janet Reno said Nov. 30, dismissing any suggestion that the Clinton administration's policies are "fanatical."

The Republican sweep of Congress has raised some speculation that forces on Capitol Hill will target the administration's civil rights policies for tighter scrutiny, Reno told a conference.

"We would welcome the opportunity" to further explain "why civil rights matters" to this administration, she said during a symposium on race relations marking the 30-year anniversary of the Civil Rights Act of 1964.

Reno described civil rights laws, such as the Americans with Disabilities Act, as "moral imperatives" that the administration is committed to fully enforcing.

Policies to ensure opportunity, equality, and fair play at the workplace do not just make good moral sense, Reno said, they make "good business sense and good economics." Not everyone knows this, she said. "We must do a better job in ensuring people know that doing right is good for business," she said.

Reno pointed to the department's involvement in the settlement of the discrimination case involving Denny's Restaurants as the type of activity Congress can expect to continue under this administration. Denny's parent company in May agreed to pay $46 million in damages to settle Justice Department charges of racial discrimination against black customers (99 DLR A-8, 5/25/94). As part of the settlement, the company admitted no wrongdoing.

Reno said she "will be happy to talk to Congress and critics" who question the administration's role in such cases. People who ask why the country needs the prohibitions on discrimination contained in the Civil Rights Act, ADA, and other anti-bias laws clearly do not understand the "profound impact" these laws have on people's lives, she said.

The Justice Department will not "shy away from the challenge," Reno said, adding the administration will continue to pursue its agenda.

The administration is not asking employers to hire unqualified applicants, Reno noted, but instead is requiring that employers give the "millions" of qualified job seekers a fair chance, regardless of sex, color, religion, or disability, she said.

The symposium was sponsored by Community Relations Service, an agency in the Justice Department, that the Civil Rights Act of 1964 created to help resolve racial discrimination, including discriminatory employment practices, through a cadres of mediators and conciliators.

- 0 -

WORKERS VOTING ON PROPOSED SATURN REVISIONS; ROTATING SHIFT SCHEDULE TO REMAIN IN PLACE

DETROIT—Saturn Corp. workers are voting on contract modifications that offer pension, retirement, and other improvements but leave intact the controversial rotating shift schedule, United Auto Workers officials said Nov. 30.

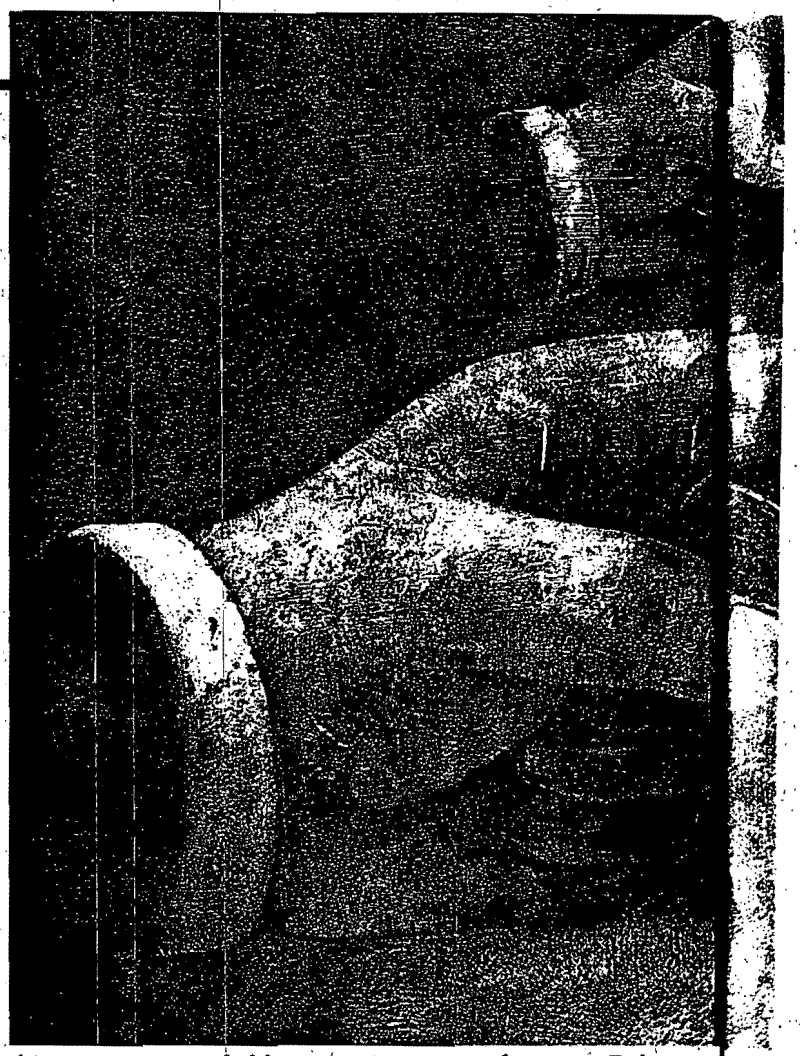
Copyright © 1994 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/94/$0+$1.00

LEADERSHIP

The Real Points of Light

Its charter fading, its goals diverging, the nation needs to redefine what leadership means

By LANCE MORROW



THE STORY OF AMERICAN LEADERSHIP—AND ITS STATUS now—owes something to the sagas of great American families. Read the classic plot as an allegory:

A founding giant—visionary, ruthless perhaps—establishes the fortune. His sons try to consolidate it. As the generations follow one another, the founder's energy dissipates, like gases flung out from a star. Heirs proliferate. They squabble. Trust funds thin out. Distant cousins go for one another's throats. By the fourth or fifth generation, they are turning up with guilt complexes about the family name and about the founder's long-ago crimes of piracy. Some take to drugs, others to environmentalism. Some heir will tithe his trust fund to a cult. An heiress will be arrested in Saks for shoplifting. Some of the cousins will embrace penitential political correctness, the noblesse oblige of overcompensating élites. Everything—power, glory, wealth, dignity—will be ground down at last to the merely human and the occasionally scandalous. The family no longer breeds giants, just threadbare eccentrics and problem cases and a preponderance of ordinary Americans; the family will have evolved, so to speak, into a kind of democracy with a famous name.

Like America.

These are some of the plot elements of American leadership. The complex maturity of the national success brings with it, paradoxically, a diminution and dispersal. Hierarchies flatten out. Presidents of the U.S. and lesser leaders will be ground down, as the great families were. Scandals, like boll weevils (or special prosecutors), will chew into their administrations. Anyone's 15 minutes of fame is liable to end in a poofing flameout of indignity.

But the story ends to begin again. Each dispersal regroups in a new coalescence. America, for all its disorder, has tremendous energy still. The nation remains programmed to reinvent itself. Fresh leadership somehow still manages to burst up from the chaotic but creative mix. New generations—even of a degenerating family—produce surprises, occasionally geniuses, just as new immigrants still struggle into the country full of fire, hoping to establish their own American sagas.

But these energies are pouring into altered formats. Leadership was once attended by a certain amount of mystery. Today leadership is a subject enveloped not so much by mystique as by mystification. Just what is leadership? How does it work? Publishers churn out books on leadership by the hundreds—mostly treatises on technique, on how to function as an agile and adapting leader in the high-velocity channels of global business.

The premise of the books is basic: the great family model of authority is defunct. The world has changed, and with it the context of leaders and followers—even the conception of what it means to lead.

- The end of the cold war—the vanishing of a huge external threat that helped give focus and a context of significance to both leaders and followers—has left Americans in a state of moral disorientation, as if they had lost a defining purpose.
- The rise of global competition has cost America its triumphant, unassailable postwar leadership in the world.
- Each expansion of democracy and power (for women, for example, or for minorities) in effect rewrites the social contract and thus disturbs the previous arrangement of leadership. Inundations of immigrants confuse the American sense of identity, of what it means to be an American.
- Cultural relativism rattles the self-confidence so critical to strong leadership and undermines the authority of established leaders. Challenges from constituencies all over the cultural, sexual and ethical map leave leaders confused not only about their priorities but also about their basic framework of right and wrong. How to accommodate gay rights, for example, to traditional religious beliefs?
- Equally destabilizing has been the almost inconceivably rapid democratization of information—the electronic saturation of the world. Once, the leader was the one who knew things and therefore understood what the followers did not: knowledge was pow-

39

1010 South Flower Street, Suite 302
Los Angeles, California 90015-1428
(213) 748-2022 • Fax (213) 748-0679

FOR IMMEDIATE RELEASE
NOVEMBER 6, 1996

CONTACT: KATHAY FENG (ext. 12)
OR BONNIE TANG (ext. 31)
(213) 748-2022

ASIAN PACIFIC AMERICAN VOTERS IN SOUTHERN CALIFORNIA
VOTE OVERWHELMINGLY
FOR PRESIDENT CLINTON AND
AGAINST PROP. 209

LOS ANGELES– Asian Pacific American voters at **over 20 poll sites** scattered throughout Southern California were polled as part of a three city effort by the National Asian Pacific American Legal Consortium ("NAPALC"). The local affiliate of NAPALC, the Asian Pacific American Legal Center of Southern California ("APALC") covered precincts in Little Saigon (Westminster and Garden Grove), the South Bay (Gardena, Carson, and Torrance), San Gabriel Valley (Monterey Park and Alhambra), and Koreatown.

The exit poll asks voters about their political preferences and their bilingual voting needs. The voters represented a broad cross-section of Asian Pacific ethnicities and political party membership. Of **over 900** voters surveyed, Asian Pacific Islanders - Republicans, Democrats, and Independents - resoundingly voted in support of President William Clinton over Senator Robert Dole and Ross Perot. On local ballot initiatives, Asian Pacific Americans voted overwhelmingly **against Proposition 209** and **for Proposition 210.**

The Asian Pacific American Legal Center also sent poll watchers to some 30 poll sites to monitor bilingual voter assistance and to observe any incidents of **voter intimidation.**

A **press conference** will be held to discuss the findings of the exit poll and the poll watching on **November 7, 1996, at 11:30 a.m.** at:

Asian Pacific American Legal Center
1010 S. Flower Street, Los Angeles
Room A, 1st Floor

Speakers will include Stewart Kwoh, Executive Director of APALC; Professor Don Nakanishi, Director of the UCLA Asian American Studies Center; Warren Furutani, Executive Director of the Asian Pacific Policy and Planning Council; Van Thai Tran, Esq., President of Vietnamese American Voters Coalition; Art Takei, Asian Pacific American Labor Alliance; and Dennis Arguelles, Project Director of YouthBuild.

###

1010 South Flower Street, Suite 302
Los Angeles, California 90015-1428
(213) 748-2022 • Fax (213) 748-0679

PRELIMINARY RESULTS FROM THE
1996 ASIAN PACIFIC AMERICAN EXIT POLL

The following are preliminary results from the exit poll conducted on November 5, 1996 of over 900 Asian and Pacific Americans (APA) voters:

1) **Presidential race, generally:**
* 53.2% of those APAs surveyed voted for President William Clinton.
* 40.8% voted for Senator Robert Dole.
* 3.9% voted for Ross Perot.

2) **Presidential race, Los Angeles County:**
*61% of those APAs surveyed voted for President William Clinton.
*32% voted for Senator Robert Dole.
*6% voted for Ross Perot.

3) **Presidential race, by ethnicity:**
* 65% of Chinese Americans surveyed voted for President William Clinton.
* 60% of Korean Americans surveyed voted for President William Clinton.
* 56% of Japanese Americans surveyed voted for President William Clinton.
* 51% of Filipino Americans surveyed voted for President William Clinton.
* 46% of Vietnamese Americans surveyed voted for President William Clinton.
(51% of Vietnamese Americans surveyed voted for Senator Dole.)

4) **Proposition 209, generally:**
* 76% of those APAs surveyed voted against Proposition 209.
(24% voted for Proposition 209.)

5) **Bi-partisan opposition to Proposition 209 was found:**
* Of the Republican APAs surveyed, 72.8% voted against Prop. 209.
* Of the Democratic APAs surveyed, 78.5% voted against Prop. 209.

6) **Proposition 210, generally:**
* 66% of all APAs surveyed voted for Prop. 210.
* 34% of all APAs surveyed voted against Prop. 210.

7) **First time voters:**
*33% of those APAs surveyed were first time voters.

factsht.pr

1010 South Flower Street, Suite 302
Los Angeles, California 90015-1428
(213) 748-2022 • Fax (213) 748-0679

Background on the 1996 APA Exit Poll

The Asian Pacific American Legal Center of Southern California conducted a non-partisan exit poll of over 900 Asian Pacific American voters as part of a three city effort directed by the National Asian Pacific American Legal Consortium. The survey was designed to ascertain the need for bilingual voter assistance in Asian languages and to gather information about Asian and Pacific American ("APA") political attitudes.

APA voters in four Southern California communities were targeted: Koreatown; San Gabriel Valley (Monterey Park and Alhambra); South Bay (Carson, Gardena, and Torrance; and Little Saigon (Westminster and Garden Grove). The poll sites within each of these communities were chosen based on the high percentages of Asian Pacific Americans residing in those precincts.

Non-partisan volunteers, including students and community members, surveyed voters as they exited the polling places. The voters represented a broad cross-section of APAs including: Cambodian Americans, Chinese Americans, Filipino Americans, Japanese Americans, Korean Americans, Samoan Americans, Thai Americans, and Vietnamese Americans. Democrats, Republicans, and Independents were all well represented in the sample.

The project is sponsored in part by the Asian Pacific Policy and Planning Council, the Japanese American Bar Association, the Southern California Chinese Lawyers Association, Vietnamese American Voters Coalition, the Japanese American Citizens League, and the Korean Immigrant Workers Advocates.. Special thanks go out to the Asian Pacific American Labor Alliance which donated $1,000 and provided volunteers for the effort.

Both USC and UCLA generously provided research and volunteer support to the Exit Poll. The UCLA Asian American Studies Center generously provided academic consulting and students to conduct the exit poll. The USC Asian Pacific American Student Services graciously provided facilities, computer support, and volunteers to process the data.

Asian Law Caucus

Asian Law Caucus, Inc.
468 Bush Street, Third Floor
San Francisco, CA 94108
Phone: (415) 391 1655
Fax: (415) 391-0366

Thursday, November 7, 1996 - Noon PST

2 Pages

For Immediate Release

Contacts:
Prof. Larry H. Shinagawa - (707) 795-9278
Lora Jo Foo/Angelo Ancheta - (415) 391-1655

ASIAN LAW CAUCUS STUDY SHOWS VOTING PATTERNS OF ASIAN AMERICANS IN S.F./OAKLAND

- Study Shows Solid Opposition to Prop. 209 -

The Asian Law Caucus, in conjunction with the National Asian Pacific American Legal Consortium (NAPALC), today released preliminary results of an exit poll study of San Francisco and Oakland focusing on the growing Asian immigrant communities. The study, conducted by Professor Larry Hajime Shinagawa, Chair of American Multicultural Studies at Sonoma State University, and assisted by Professor Timothy Fong of Holy Names College, shows that Asian Americans united in their opposition against Proposition 209, voted heavily Democratic, and voted overwhelmingly for President Clinton.

According to Angelo Ancheta, Executive Director of the Asian Law Caucus, "The new statistics are very telling about trends in the Asian American electorate. Asian Americans, especially the newly naturalized immigrant populations, are becoming aware of their right to vote and are exercising it decisively."

Professor Larry Shinagawa, the principal investigator states, "The study refutes much of the charges of voter apathy among Asian Pacific Americans, and shows that Asian Pacific Americans vote decisively on issues that affect them personally. The study also confirms a longheld belief that bilingual access to the vote remains a continuing need in the growing Asian pacific American community."

Below is a summary of the preliminary results of the exit poll, based on a pool of voters that included over 500 Asian Americans:

Asian Americans Opposed Proposition 209

* 84.1 percent of Asian Americans polled voted "No" on Proposition 209, while 15.9 percent voted "Yes"

* In San Francisco, 83.3 percent of Asian Americans voted "No" on 209, while 16.7 percent voted "Yes"; on Oakland, 84.4 percent of Asian Americans voted "No" on 209, while 15.6 percent voted "Yes"

Asian Americans Voted Democratic

* 74.5 percent of Asian Americans polled voted Democratic, while 9.5 percent voted Republican, with 13.2 percent declining to state or stated another party

* In San Francisco, 64.3 percent voted Democratic, 15.2 percent voted Republican, and 20.5 percent declined to state or stated another party; in Oakland, 77.3 percent voted Democratic, 9.5 percent voted Republican, and 13.2 percent declined to state or voted for another party.

Asian Americans Voted for President Clinton

* 82.8 percent of Asian Americans polled voted for President Clinton, 8.6 percent for presidential candidate Dole, and 14.8 percent declined to state or voted for someone else.

* In San Francisco, 76.8 percent voted for Clinton, 13.4 percent voted for Dole, and 9.8 percent declined to state or voted for another candidate; Oakland was higher in its support for Clinton. 84.5 percent voted for Clinton, 7.2 percent voted for Dole, and 8.2 percent declined to state or voted for another candidate.

Language Assistance for Chinese Americans

The study also found that among Chinese Americans, over 50 percent chose to use the Chinese exit poll survey rather than the English version, indicating a widespread and continuing need for bilingual assistance and materials. (Bilingual ballots in Chinese are required in San Francisco and Alameda County under the federal Voting Rights Act.)

Final results of this study will be released in the next two weeks, detailing added information about pan-Asian voting patterns, the effects of naturalization, and information about voting on specific candidates and propositions not listed above.

For further information contact Professor Larry Hajime Shinagawa (707) 795-9278 or either Lora Jo Foo or Angelo Ancheta at Asian Law Caucus, (415) 391-1655.

###

H:\1107POLL.EXT

ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
99 HUDSON STREET, 12th FL, NEW YORK, NY 10013-2869 212 966-5932 FAX 212 966-4303

PRESS RELEASE

FOR IMMEDIATE RELEASE
Thursday, November 7, 1996

FOR FURTHER INFORMATION
contact: Margaret Fung, Exec. Dir.
212-966-5932

3,200 ASIAN AMERICAN VOTERS IN NYC POLLED ON ELECTION DAY; 70% OF ASIAN AMERICANS SUPPORT CLINTON

Over 3,200 Asian American voters participated in an exit poll in Tuesday's Presidential election, making it the largest survey of Asian Americans ever conducted in New York City. The non-partisan exit poll was a joint project of the Asian American Legal Defense and Education Fund (AALDEF), the Chinatown Voter Education Alliance, Coalition for Korean American Voters, and the Indian/South Asian Community Organization of Eastern Queens.

The exit poll, staffed by 100 multilingual volunteers speaking several Chinese dialects, Korean, Japanese, Tagalog, Hindi, Urdu, Gujarati, Bengali and Malayalam, was conducted at 14 polling sites in Manhattan, Queens and Brooklyn, where the largest concentrations of Asian American registered voters reside.

Despite low voter turnout both nationally (49%) and citywide (52%), it appears that voter participation among Asian Americans was high, especially in Flushing, Queens, where an Asian American candidate for New York State Assembly appeared on the ballot. Almost 18% of those polled were first-time voters who became naturalized citizens within the past two years.

Preliminary results indicate the following trends among the Asian American voters polled:

• 71% of Asian Americans supported President Bill Clinton, favoring his re-election by a wide margin, with 21% for Bob Dole, and 2% for Ross Perot. Citywide, 59% of all New Yorkers voted for Clinton, with 31% for Dole and 8% for Perot. The poll indicates that Asian American voters in New York City, consistent with a national trend, supported incumbent candidates and did not believe a change in leadership was needed.

• For the first time, a majority of Asian New Yorkers polled--51%--are now registered as Democrats, with the remainder evenly divided as Republicans (19%) and those not enrolled in any political party (20%). This reflects a steady increase in Democratic enrollment among Asian American voters in New York City, which was 40% in the 1992 Presidential election and 43% in the 1994 congressional elections. Republican enrollment among Asian American voters remained steady at 24% in 1992 and 1994, dropping to 19% in 1996.

• Among first-time Asian American voters who are new citizens (having naturalized within the past two years), an even higher percentage of those polled--79%--voted for President Clinton. 60% of first-time Asian American voters were registered as Democrats--also a higher rate than other Asian New Yorkers. Only 11% of first-time Asian American voters registered as Republicans, and 19% did not enroll in any political party.

(more)

• The candidacy of Asian American Steven Chen, who ran against incumbent Brian McLaughlin in the 25th NYS Assembly District in Queens, was clearly a factor in encouraging greater voter turnout in Flushing's fast-growing Asian American community . Chen lost the election by a wide margin, receiving 28% of total votes cast, as compared to McLaughlin's 72%. However, 71% of Asian Americans of all ethnic backgrounds--Korean, South Asian, and Filipino, as well as Chinese--support the Asian American candidate Chen, while 29% of Asian Americans polled voted for McLaughlin. In addition, many Asian American voters crossed party lines to support the Republican/Conservative candidate Chen. Among the 1200 Asian American voters polled in Flushing, 51% are registered as Democrats, 19% are Republicans, and 21% are not enrolled in any party.

Since major polls have often overlooked Asian American voters, there is little data about Asian American voting patterns and political attitudes. In addition, poll takers rarely speak Asian languages, so Asian American voters not fluent in English are routinely omitted from random sampling. While Asian Americans are only 3% of New York City's registered voters, their growing numbers--estimated at over 80,000 registered voters--could constitute a relevant bloc in close local elections. AALDEF has conducted Asian American exit polls since 1988, using large, non-probability samples of at least 600 Asian American voters. In the 1992 presidential election, 2,297 Asian American voters participated in the exit poll.

The 1996 Asian American Exit Poll was conducted at 14 sites throughout New York City, with around 1,000 Asian American voters polled in Manhattan's Chinatown; 300 Asian American voters in Brooklyn's Sunset Park; 1, 200 Asian American voters in Flushing, Queens; and 700 Asian American voters in Elmhurst, Floral Park, Bellerose and Whitestone, Queens.

An analysis of Asian American voting patterns in the 1996 Presidential election and more detailed exit poll findings will be available soon.

* * *

Following Slavery's Legal Trail

History professor finds untold stories in the records of Southern courthouses

Because slavery will always remain a shameful chapter in American history, it is easy to forget that it was once as commonplace as any economic institution and as such was regulated, legislated and litigated.

Across the antebellum South, slaves and slaveholders frequently went to court. Lawsuits involving slaves were no different than those involving other business matters, with all the accoutrements of depositions, motions and appeals. And remarkably, hundreds of thousands of these documents—amounting to a legal trail of slavery's history—have lain untouched for years in county courthouses throughout the South.

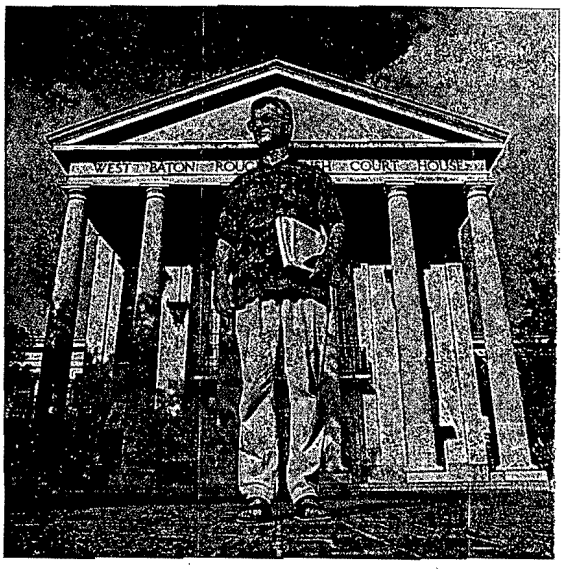
"These are economic documents about slavery," said Loren Schweninger, 53, a professor of history at the University of North Carolina at Greensboro. For three years he has traveled the South compiling the records for a National Archives project entitled, "Race, Slavery and Free Blacks: Petitions to Southern Legislatures and County Courts, 1776-1867."

Schweninger, who first happened across the material while working on his dissertation in the early 1970s, said he often finds himself at the courthouses opening packets that were wrapped in the 1800s.

"Incredibly no one who has researched slavery has looked at this material," he said. "It's a whole new body of evidence about slavery. It's very matter of fact, and you look in vain for any kind of comment about the personality of the slave, or protection or sympathy or compassion."

"It's a whole new body of evidence about slavery. It's very matter of fact, and you look in vain for any kind of comment about the personality of the slave, or protection or sympathy or compassion."

—Prof. Loren Schweninger



ABAJ/CARL LEBOEUF

Thousands of Documents

The courthouse material is so extensive that Schweninger had to limit his work. In all, he will collect some 16,000 petitions, representing about 12,000 cases. His best estimate is that about a quarter million slave-related court petitions exist.

Besides reviewing court records, Schweninger has compiled legislative material from the 10 states where it still exists: Alabama, Delaware, Florida, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Texas and Virginia. The 2,150 petitions to legislatures he has studied generally focus on changing laws to improve control of or to free slaves.

For example, following the Denmark Vesey slave uprising in 1822, named for a free black who led the conspiracy, South Carolina passed a law to restrict freed slaves from entering or leaving the state. Following that, Gov. John Wilson asked the state senate to allow the wife of a freed slave, Charleston innkeeper Jehu Jones, to be allowed to re-enter the state. She was in New York when the law was passed.

Other states passed laws that barred blacks from moving from county to county without permission and that required legislative action to free a slave. And, paradoxically, Schweninger found a handful of petitions from freed slaves seeking to return to slavery from 1859 to 1860. He explained that they were seeking protection from hostile whites at the beginning of the Civil War.

Other legislative records show slaves had developed an internal economy of trading goods and holding property, on a wide enough scale that nonslave merchants complained and got laws passed in the 1820s on who could trade in slaves' goods.

Perhaps because the court records are coldly factual, they can be chilling. The documents range from actions dealing with slaves as part of an estate, to prosecutions for theft, murder or escapes, and petitions for freedom or divorce.

"One thing I found that was really interesting is how the court system functioned with remarkable effectiveness in dealing with slavery," Schweninger said.

The right of slaves and former slaves to enter court varied from state to state. In Louisiana, he said, free blacks had legal rights fairly comparable to whites. In some courts, he was surprised to learn, blacks were able to succeed on claims they were barred by statute from bringing. He said he came across several "astonishing" cases in Kentucky in the 1840s where free blacks sued whites in property disputes.

In other interesting cases:

▶ Mary Jackson, of Greene County, Ga., sought separation from her husband, Joseph, a rarity in 1806. Her petition was successful because she was white and Joseph was involved with a black woman.

▶ A slave in Tennessee told to watch a baby drugged the child with laudanum so she could spend time with her lover. The baby died, but the woman's murder conviction was overturned because it was tried in the wrong court. The slave was ordered back to the family, who then petitioned the court to sell the woman whom they viewed as a constant reminder of their dead child.

▶ A Virginian traveling to Louisiana traded two black babies for a couple of horses in Kentucky. The horse seller decided he was cheated and filed a suit claiming the babies, both under a year of age, were "extremely delicate, sickly and feeble." The case alleged the horses were worth $160 and that "said children are worth nothing at all."

"Just about every day I come across something incredible," Schweninger said. "I think I can't be surprised any more but every day it happens."

—Henry J. Reske

EEOC News Clips

for

March 8, 1996

Compiled by
The Office of Communications and Legislative Affairs

HOUSE SUBCOMMITTEE APPROVES BILL BARRING FEDERAL PREFERENTIAL TREATMENT

Comprehensive, Republican-supported legislation that would eliminate virtually all preferential programs within the federal government, including those administered by the Labor Department's Office of Federal Contract Compliance Programs, was approved on a party-line vote by a House Judiciary subcommittee March 7, following nearly three and a half hours of contentious debate.

The Equal Opportunity Act of 1996 (HR 2128, S 1085), jointly introduced last summer by House Judiciary Subcommittee Chairman Charles Canady (R-Fla) and Senate Majority Leader Bob Dole (Kan), mounts a direct attack on President Clinton's endorsement of affirmative action, and the antagonism between the Republicans and Democrats over the issue surfaced quickly in the crowded Capitol Hill committee room.

Political rhetoric and personal vindictiveness between members raged, as subcommittee Republicans rebuffed several modifying amendments offered by Democrats, before voting 8-5 to send the measure on to the full committee.

Existing federal affirmative action programs "are flatly inconsistent with our national commitment to equal treatment and nondiscrimination" and "are impermissible departures from bedrock American values," said Canady. The legislation "says unequivocally that the federal government will treat all Americans equally and without regard to race and gender."

The panel's ranking Democrat, Rep. Barney Frank (D-Mass), responded that anti-discrimination laws "are not enough" to address the racism "legally enshrined until very late in our history." Affirmative action, he said, is still needed "not as an end in itself, but as a tool." The legislation, he added, would go "far beyond" the Supreme Court's June 1995 *Adarand* decision (67 FEP Cases 1828), which set out stricter standards for defending federal affirmative action programs.

The legislation would prohibit the use of racial and gender preferences in federal government programs and would specifically not allow the government to "require or encourage" federal contractors or subcontractors to grant such preferences. The bill defines "preference" in sweeping language as "an advantage of any kind and includ[ing] a quota, set-aside, numerical goal, timetable, or other numerical objective."

Among the programs that would be eliminated under the legislation is the 30-year-old executive order program, administered by the Labor Department's Office of Federal Contract Compliance Programs, which requires most federal contractors to maintain written affirmative action plans with goals and timetables.

Substitute Adds Recipients Of Federal Aid

The substitute version of the legislation offered by Canady and approved by the subcommittee incorporates several changes, which are largely clarifying and procedural, according to a committee aide.

The major addition is an extension of the bar on preferential treatment to recipients of federal financial assistance. The legislation already prohibited preferential treatment in connection with federal contracts or subcontracts, federal employment, and federally conducted programs or activities.

Another change drops a provision which would have extended the legislation to consent decrees entered into by the federal government.

In addition, the legislation now sets out an exemption for federal immigration and nationality laws.

The new version of the bill also includes other minor "language and clarifying changes," the aide explained.

Democrats on the subcommittee offered only five amendments, which were either defeated—nearly always on a party line vote—or withdrawn.

Frank proposed a modification to the legislation that would have eliminated the prohibition against "goals," observing that the language "literally says you couldn't measure your progress" in hiring minorities and women. But Canady rejected that interpretation: Goals, he said, "have inevitably been treated as quotas by the federal government, as something binding that must be met or else there will be a consequence."

The amendment was the only one to garner a Republican vote, from Rep. Michael Flanagan (Ill), but still went down to defeat on a 6-6 vote.

Other amendments would have eliminated the provision allowing bona fide occupational qualification, privacy, and national security classifications based on sex, changed the definition of preference, and eliminated the reference to the immigration laws.

Copyright © 1996 by THE BUREAU OF NATIONAL AFFAIRS, INC., Washington, D.C. 20037
0418-2693/96/$0+$1.00

Frank also agreed to work with Republican subcommittee member Martin Hoke (Ohio) on a modification to eliminate current wording that bars the government from "encouraging" any preferential treatment.

Democrats have "other reservations and objections" to the bill and will continue to make them known through the legislative process, he added.

Shirley Wilcher, the deputy assistant secretary of labor who is the director of OFCCP, also had harsh words about the proposed legislation as she watched the contentious debate. Wilcher cited the long-standing, bipartisan support for the program and expressed anger over the current efforts to eliminate OFCCP and other federal programs.

"Affirmative action represents a long history of inclusion, not exclusion," she told BNA. "Nothing has changed. Only the political climate."

Full Committee Vote Soon

Following the vote, Judiciary Committee Chairman Henry Hyde (R-Ill), told BNA he expected a vote before the full committee soon, although he declined to speculate further.

Hyde cited immigration and product liability legislation pending before the committee and expected to go to the floor shortly. But Hyde expressed his own support for the Canady measure and said he expected to schedule a vote on that measure as well. "We have a full platter in front of us," he said. "I hope we'll vote soon."

A committee aide speculated that the full committee is likely to address the measure later this spring.

(Text of the legislation as approved by subcommittee and an analysis of the bill appears in Section E.).

—By *Nancy Montwieler*

House Panel Approves Affirmative Action Bill

WASHINGTON (AP) - A House panel endorsed a bill that would reduce race and gender-based government contracting.

In an 8-5 party-line vote Thursday, the House Judiciary subcommittee on the Constitution approved a bill making it unlawful for the federal government, in connection with a contract or employment, to "grant a preference to any person or group based in whole or in part on race, color, national origin or sex."

The Justice Department is now reviewing new government procurement rules that would prohibit setting aside a specific number of contracts for minorities in compliance with a federal court decision last summer, a White House official said Thursday.

But after meeting new strict standards for proving discrimination, agencies could still narrowly tailor their contracting to raise the participation of minority businesses to a level that would have existed had there been no bias.

"They still have some more work to do before they finalize these regulations," the official said, adding the President Clinton has not yet signed off on them.

In a Colorado case, the Supreme Court ruled last June that race-based preferences in federal programs could be allowed only if they are "narrowly tailored" to address identifiable past discrimination.

The following month, Clinton called fro the elimination or reform of any affirmative program that creates quotas, produces reverse discrimination or is continued after equal opportunity programs have been achieved.

Several agencies, including the Defense Department and the Federal Communications Commission, have already discarded their set-aside programs under the court's ruling.

Clinton, however, said he wanted a new set-aside program targeting government contracts to small companies, regardless of their race or sex, that located in poor communities.

The House Republican bill would allow the federal government to encourage women or minorities to seek federal contracts or jobs but states that once they enter the applicant pool, there can be no discrimination.

Current affirmative action programs, said the bill's sponsor, Rep. Charles Canady, R-Fla., are "based on the belief that in order to overcome discrimination, we must practice discrimination. That perverse logic has created a system that undermines the fundamental values it was intended to protect."

But Attorney General Janet Reno said Thursday the administration "feels very strongly that there is still a need for addressing the vestiges of racial discrimination."

[affirmative&action]

The New York Times Magazine

November 6, 1994 / Section 6

Of Course Clinton Listens To the Polls
By Garry Wills

The Third Platoon's Path of Glory in Haiti

Henry Rollins's Big Ugly Mouth

Humiliation, Sunny Side Up

Denny's struggles to make up for years of blunt prejudice against thousands of black customers. Was racism corporate policy?

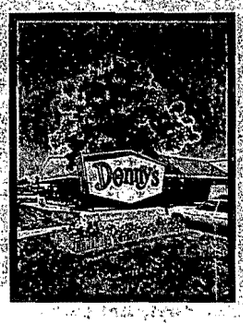
By Howard Kohn

PHOTOCOPY
PRESERVATION

SERVICE WITH A SNEER

THE DENNY'S CHAIN IS PAYING MILLIONS TO BLACK CUSTOMERS DISCRIMINATED AGAINST IN ITS RESTAURANTS. WAS RACISM AN INSTITUTIONAL STRATEGY FOR TURNING PROFITS?

BY HOWARD KOHN



Up top, front and center, is the familiar red script on a yellow background, and below is an "Open 24 Hours" sign. This is the Denny's restaurant at the intersection of Highway 101 and Tully Road in San Jose, Calif., where Robert Norton was assigned to work in 1990. It's the same restaurant where, as Norton says, he watched with astonishment late one night when young African-American customers stepped out of their cars into the illuminated parking lot only to find themselves in a race

Jerome Richardson, left, the chief executive. From the beginning he has characterized the allegations against Denny's as isolated incidents.

PHOTOGRAPHS BY BART EVERLY FOR THE NEW YORK TIMES

PHOTOCOPY
PRESERVATION

to the front doors. Denny's employees rushed to lock up, and the blacks were left to wonder at the baldfaced claim, "We're closed." Only after they had gone were the doors reopened.

"I couldn't believe it," says Norton, who is white. "I said to the duty manager: 'This is ludicrous. How can you be doing this?' But I was told this was how the game was played."

Norton heard more detailed explanations during talks with his supervisors that occurred one on one at the Denny's on Tully Road or at regular district meetings for the eight restaurants in the area. According to Norton, he was told that "A-A's" — in-house code for African-Americans — posed a problem because they could not be counted on to follow the protocols of restaurant-going: they offended other customers by being boisterous; they alienated waitresses by leaving skinflinty tips; they cost the company money by skipping out on the bill.

"We were told we should take whatever measures we could to keep A-A's to a minimum," Norton recalls. "You could seat white customers ahead of A-A's. You could put A-A's in the rear and stall on serving them. You could ask A-A's to pay before eating. Or, if you really wanted to get the job done, you could lock them out." This practice was called "blackout," and the point of it was to make African-Americans feel unwelcome. "You were to eliminate them from your restaurant. No questions asked, just get it done."

One supervisor, Norton says, was extremely blunt. "A district leader pulled me aside and told me, 'There are two kinds of Denny's managers, ones who let blacks run them, or ones who know how to run blacks.' "

The "blackout" practice in San Jose and dozens of other cities and towns across the nation might never have come to light but for two special sets of customers. In 1991, a group of 18 teen-agers, most of them members of the N.A.A.C.P. Youth Council in San Jose, were told they would have to pay for their food on ordering. While this is standard in fast-food restaurants like McDonald's or Hardee's, where you pick up your order at a counter, it is not at Denny's, which has table service.

The second incident, in 1993, involving six young black Secret Service officers, occurred at a Denny's in Annapolis, Md., and gave rise to Dan Rather's one-sentence summation that these agents "put their lives on the line every day, but they can't get served at Denny's."

In the past year and a half, following class-action lawsuits filed by the N.A.A.C.P. teen-agers and the Secret Service agents, thousands of complaints came in from around the country. Attorneys with the United States Justice Department concluded they were dealing with the largest case ever in the history of the public accommodations section of the 1964 Civil Rights Act.

While only the rare Denny's manager resorted to the extreme of locking out blacks, other variations of the "blackout" practice were commonplace: prepayments, minimum-purchase requirements, gratuities added to the bill, denials of free birthday meals previously advertised, interminable delays, back-room seating and service so disrespectful it would be hard to deny racist intent. Black customers were forced to pay in advance at as many as 150 to 200 Denny's in California, Illinois, Oregon, Oklahoma, Maryland, Ohio and Florida, according to plaintiffs' attorneys. The claimants included military officers, police officers, teachers, college administrators and government officials, as well as a teen-ager in a wheelchair. Kenneth Hoyt, an African-American Federal judge from Houston, recalling an incident at a Denny's in California involving rudeness and racial epithets, said, "It was a kind of helplessness that came over me."

That so many Denny's employees chose to treat customers in a fashion reminiscent of the Old South, a generation after the lunch-counter sit-ins, caught much of the country by surprise and raised a number of questions. For all the good intentions of civil rights laws, were America's black citizens still widely accorded second-class treatment? Or, as some of the evidence indicated, was there a deliberate corporate policy at work? Not only did the Denny's prepayment practice seem to be an indisputable violation of the law, it seemed to reflect a corporate tone.

"Denny's top management may never have intended to do anything wrong," says John P. Relman, a lead attorney for the Secret Service agents. "But did the very existence of the prepayment policy send the wrong message, intentionally or not? Did managers infer from the prepayment policy that discrimination would be tolerated? I believe there is an almost unavoidable conclusion that Denny's management closed their eyes to what the field staff was doing. There must have been some message being inferred from some level of management which freed up the inhibitions of local managers to act on their racist impulses."

JEROME (JERRY) RICHARDSON, 58, A PHYSICALLY imposing man with a big breakfast smile, is chairman and chief executive of Flagstar Companies, which owns the Denny's chain. In August, I accompanied Richardson as he toured several of his newly modernized restaurants around Houston. "Had you ever heard of the word 'blackout?' " Richardson asked a regional manager. "Before all the publicity, I mean, had you ever heard of 'blackouts' at Denny's?"

"No, never."

"I'll tell you, I've asked around, and I can't find anyone who'd ever heard of 'blackout' either," Richardson said. "Not before this all came out."

The regional manager reacted a little uneasily. "Well, I wouldn't swear we didn't have a few bad apples in the barrel. After all, we hire from the population. We get the bad with the good. But" — he gave Richardson a nod — "yeah, it makes you wonder if this wasn't blown way out of proportion."

From the beginning Richardson characterized the allegations against Denny's as isolated incidents. After reviewing the case of the N.A.A.C.P. teen-agers, he believed so strongly that "there was no intent to discriminate" that he spurned a chance to pay damages and perhaps cut short the escalation of complaints. Later, even as the evidence

Pay First, Eat Later

Kristina Ridgeway, one of the N.A.A.C.P. teen-agers from San Jose who brought Denny's "blackout" practices to light.

Howard Kohn is at work on a book, "We Had A Dream," about desegregation a generation after the civil rights movement.

PHOTOGRAPHS BY BART EVERLY FOR THE NEW YORK TIMES

PHOTOCOPY
PRESERVATION

of one of the San Jose teen-agers. 'Here was the Old South, back in our face again.'

piled up nationwide, Richardson continued to take the position that very little wrong had actually been done and that the whys and wherefores of a controversy in which Denny's became the butt of disparaging editorials and talk-show jokes were for the most part a mystery to him. "If our African-American guests were mistreated, was it because of racism?" Richardson said to me. "I can't tell you. It's impossible to know what's in a person's heart."

Finally, in May, Richardson decided not to contest the class-action litigation on the advice of Flagstar attorneys, who were not eager to face potential witnesses like the girl with paralyzed legs who tried to celebrate her prom night at a Denny's in Tampa and was kept waiting two hours without food. Flagstar eventually paid $54.4 million to settle the claims.

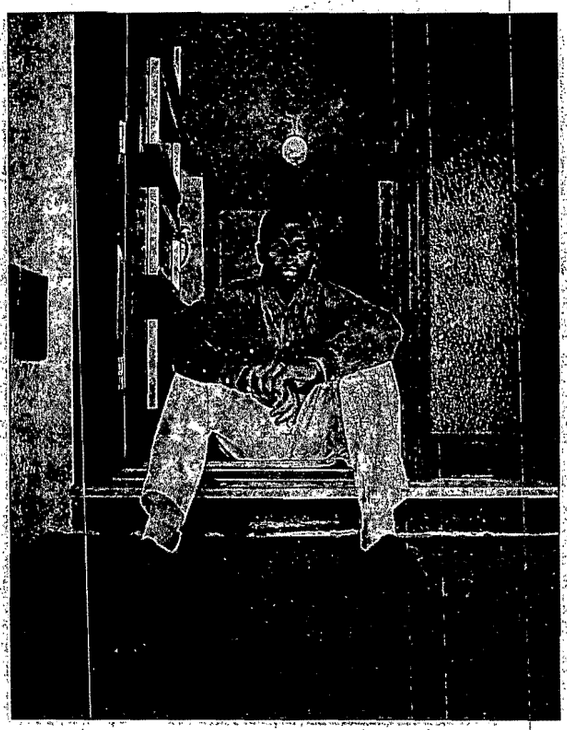
Richardson's own interest in getting to the bottom of things, he said, has now been superseded by a desire to "put this whole damn mess behind us." Because the case is settled, the official search for evidence has been cut off. Three company executives were interviewed under oath prior to the settlement, but their depositions remain confidential under court order.

To judge from the accounts of former and current employees and from court documents, however, there is little doubt that Denny's, a predominantly white organization, has had a longstanding problem with discrimination. It became a serious problem at least in part because of a cash-flow crisis that began in 1987, the year Richardson's company acquired Denny's.

Senior executives at headquarters reacted with a series of orders that were widely interpreted by employees to mean they had to improve profits or lose their jobs. The orders went from headquarters down a chain of command. Because about half of the 600 regional managers and higher executives were being laid off in a restructuring, the pressure to save money fell most heavily on about 140 district supervisors, who typically have charge of eight or nine locations in a metropolitan area, and on the individual restaurant managers. It appears that a number of those supervisors and managers then decided to scapegoat their African-American customers.

Inside the Denny's organization, few objections were raised. It is not clear how complicitous senior executives were, but it is clear that the employees who engaged in discrimination were seldom, if ever, challenged or corrected.

Today there is a reform era at Denny's. Employees must watch a 16-minute videotape about diversity, "What Color Am I?" Managers must attend sensitivity seminars that include a session on the business advantages of serving a multiracial clientele. Yet the real problem for so long at Denny's was the theory held by employees that black customers were bad for business. The fact is, the problem of discrimination at Denny's did not come out of the blue; it had existed for years.



Activism Awakened

Rodney Braddock, like most of the San Jose teen-agers, lived in a white-collar world and wasn't used to such blunt intrusions of racism.

DENNY'S HAD ITS ORIGINS IN LAKEwood, Calif., in 1953 as a single doughnut stand. The first owner expanded by locating restaurants strategically at highway exits, taking advantage of the Interstate system. Customers came to know Denny's as a place that offered a full meal any time of day or night, with reasonable prices and waitress service at sit-down tables.

There are two Denny's, for instance, on the outskirts of Spartanburg, S.C., the quintessential Middle American town where Jerry Richardson and his wife, Rosalind, have lived during most of the past 40 years. After growing up in Fayetteville, N.C., the son of a barber and a department store saleswoman, and spending summers working on an uncle's tobacco farm, Richardson graduated from Wofford College in Spartanburg.

Richardson left Spartanburg in 1959 to play wide receiver for the Baltimore Colts. A long-shot draft choice, he made the team through hard work and the luck of the draw in a roommate, the quarterback Johnny Unitas, who helped him shine in exhibition games. In Richardson's rookie season, he caught a touchdown pass to clinch the championship against the New York Giants, but a year later he quit during a contract dispute that hinged on $250 — his request of $10,000 versus an offer of $9,750 — and returned home with his pregnant wife and two children.

The best opportunity to come along in Spartanburg was a fast-food restaurant, the first franchise in the Hardee's chain, and Richardson grabbed it, risking his leftover football earnings. Today he oversees not only the 1,500-plus Denny's restaurants, about two-thirds corporately run and one-third licensed to franchisees, but also 600 Hardee's and more than 400 restaurants under the trade names Quincy's Family Steakhouse and El Pollo Loco. Total revenue last year was $2.6 billion.

Upon taking over the Denny's chain in 1987, Richardson proceeded to impose his populist philosophy. Relocating briefly to Denny's headquarters in California, he set staff meetings for 4 A.M. to pre-empt rush hour and had the executive signs in the parking lot removed by blowtorches. Richardson also brought to Denny's his habit of paying unannounced visits to his restaurants. One thing not to his liking was the California headquarters; he wanted to be closer to home and to consolidate his operations. Now it is on Main Street in Spartanburg, the town's lone skyscraper, 17 stories of tower with a promenade of wisteria, crepe myrtle and boxwood.

In 1989, as the new headquarters was going up, Coniston Partners gained control of the company, and Richardson was named president and chief executive. In 1992, when Kohlberg, Kravis, Roberts & Company invested $300 million, giving it 47 percent of the company, Richardson also became chairman of the board. Despite the infusion of cash, the company was still more than $2 billion in debt. "I wake up knowing we have to earn $900,000 every day just to pay the interest," he says. He demonstrated how the debt feels to him by standing over a companion seated in a chair and pressing hard on the man's shoulders until the man squirmed.

ROBERT NORTON WAS HIRED IN 1988 BY Denny's after 15 years with other discount-food chains and worked at several Denny's in the San Jose area until he was promoted in 1990 to manage the Tully Road restaurant. The routine in San Jose was for the district supervisors to meet two to four times a month with managers and assistant

PHOTOCOPY
PRESERVATION

managers to discuss tasks like mixing pancake batter. At one of the meetings a supervisor declared what Norton took to be a state of emergency over corporate finances: "Headquarters was obsessed with saving money," says Norton, whose burly arms and heavy, sagging chest give him the look of a former boxer. "It was either produce or we could kiss our jobs goodbye — that was the message."

Some Denny's managers in San Jose began to demand minimum purchases and to renege when customers asked for free birthday meals. The changes were applied primarily to black customers. At Denny's elsewhere in the country, other managers were adopting the same methods. By 1989 managers at the local level had a great deal of leeway because of the earlier management cutbacks. It is plausible that certain changes were instituted locally without the knowledge of senior executives. On the other hand, prepayments and minimum-purchase requirements were known to Richardson, who had approved of them.

Of all the undesirable customers, the most undesirable were the walkouts. In 1988, the installation of a computerized network gave Denny's executives a new technological tool. As the computers came on line (the process of installing them restaurant by restaurant took four years), executives could identify the restaurants where an above-average number of customers were eating without paying. Memos were sent from Spartanburg to the district meetings: "Headquarters wanted us to crack down on walkouts," Norton says. "We had to find ways to get control of the situation." The solution for a number of managers was the "blackout."

"It didn't matter if a black kid walked in flashing money or not," Norton says: "He was presumed to be a walkout. The short of it was A-A's were not welcome. It was a business calculation: They were more trouble than they were worth. The company just didn't want to contend with walkouts. They trusted Caucasians, Hispanics and Asians, but they did not trust African-Americans."

Glenda Cappuccilli, a white assistant manager who had attended some San Jose meetings, confirmed Norton's basic account. "The first time I heard a manager make reference to 'blackout' I thought that there had been an electrical problem," Cappuccilli said in testimony submitted in the Denny's litigation. "As the meeting progressed, I began to understand that they were talking about reducing the black clientele." The supervisors issued orders "to get control of our black clientele because they are costing us money due to 'walkouts.'" Cappuccilli's attempt to argue the point proved useless. "They just ignored me and went on with the meeting as usual." Norton also raised an objection to the policy, but it was "brushed under the carpet."

Renegade Manager

Robert Norton evaded the blackout policy at his Denny's in San Jose. Then a district supervisor delivered an ultimatum.

Although the district supervisors never clarified whether "blackouts" were authorized by someone higher up in the corporate structure, Norton assumed that. Certainly it seems to be more than coincidence that other supervisors in other districts used the same tactics. Tyrone Jackson, 39, a black man who was hired by Denny's to work in Los Angeles in 1987 and moved up to a manager's job in 1990, says his training included two instructions in regard to black customers: they were to pay in advance, and they were to be seated at whichever table was the farthest possible distance from the exits. Denise Perryman, a black former waitress in the college town of Champaign, Ill., said she had to operate under similar orders, and when she disobeyed in 1991, she was fired.

According to Richardson, the prepayment practice was supposed to be racially neutral. Nonetheless, as he acknowledges, it was put into effect on an "as needed" basis at "high risk" locations, which, for the most part, happened to be restaurants frequented by many young African-Americans.

The Denny's chain had developed in proximity to highways and outlying areas of towns; the original base of customers was from the older, car-owning generation of white Americans who had come of age before the civil rights movement. By the 1980's, though, America's demographics had changed. Areas once considered white now could be considered black or mixed, and restaurants located in some of these areas became classified within the company as "high risk." The risk was associated with general crime statistics and with a few individualized crimes that registered with senior executives, like the murder of a Denny's manager in Los Angeles during a robbery. But the company must have been influenced as well by stereotypes.

Norton, who today manages clinics for recovering alcoholics and drug addicts in San Jose, says he was initially able to evade implementing the "blackout" practice at his restaurant, though not so other managers. "One night another manager called me and said he'd just locked down so I might be getting a flood of blacks. Sure enough, several black guests came in, and I calmed them down and assured them that getting the doors shut in their face was wrong." He then let them in the restaurant.

In early 1991, computerization came to San Jose, and Norton immediately felt extra pressure. "The top management put their foot down with a stronger force," he says. A friend of Norton's, Andy Lujan, a retired Santa Clara County sheriff's deputy, says he happened to be at Denny's one lunch hour in the spring of 1991 and witnessed an ultimatum being delivered to Norton. "I was sitting in the next booth, and I heard the supervisor talking in a loud, angry voice: 'Look, we're giving you a direct order here. Either start implementing' — the word he used was 'blackout' — 'or we'll find somebody who will.'" Right after the incident, Norton went on stress disability leave, and six months later was terminated.

IT WAS SHORTLY AFTER MIDNIGHT ON DEC. 30, 1991, when 18 San Jose teen-agers arrived at a Denny's on Blossom Hill Road, hoping to wind down after taking part in a daylong forum sponsored by Tuskegee University. At first they did not know what to make of the manager's insistence on being paid in advance. "When we challenged this, the manager got hostile and threatened to call the police," says Rodney Braddock, then 18 and a Tuskegee freshman. The young Braddock is the kind of wisecracking kid who normally gets the rest of the crowd to lighten up. "But the way the manager was acting, I was starting to get mad."

Kristina Ridgeway, then 17 and a high-school senior, says, "We volunteered to break our bill down by twos or fours if that would make it easier, but the manager was adamant about having us pay first." While the group was arguing with the manager, Kristina recognized six white school-

PHOTOGRAPHS BY BART EVERLY FOR THE NEW YORK TIMES

PHOTOCOPY
PRESERVATION

would not acknowledge her own mixed-race son when she served him.

mates at a table. "I asked them, 'Did you have to pay before you got served,' and they said, 'No, of course not.'" Looking about, she noticed nine other teenagers — whites and Latinos — and learned that they, too, had been able to order without prior restraints. By now Kristina and her friends understood that prepaying was designed for groups thought most likely to be walkouts, which only infuriated her further. "Here I was getting ready for college, planning to be an attorney, and Denny's saw me as a criminal who's going to eat and run."

In fact, many of the 18 are children of a white-collar, privileged world connected with San Jose's high-tech industries. Rodney's father, Reginald, 48, is a software engineer with 21 years at Lockheed; Kristina's father, William, 52, a marketing executive, has put in 27 years at I.B.M. Several of the 18 are also children of the civil rights movement. The elder Braddock was arrested in 1961, at age 16, for trying to buy a hamburger and french fries at the whites-only lunch counter in his native Ocala, Fla. Every summer from 1962 to 1967 he was a volunteer with voter registration drives in the South. In Alabama, he met his future wife, Vannette, whose two cousins were killed by a Ku Klux Klan bomb in a Birmingham church. The elder Ridgeway grew up in a rural area of Alabama where in the 1950's black sharecroppers were paid in currency minted by a white landowner. Ridgeway's boyhood dream was to change Jim Crowism, and, by 1959, having moved to California, he thought he had at least escaped it.

William Ridgeway was awake, folding clothes, when Kristina came home, kicked off her shoes and began explaining what had happened at Denny's. "Put your shoes back on," he told her. "We're going to see about this." Tall like his daughter, he is a soft-spoken man with a silver-flecked goatee. At Denny's, he says, his questions were not treated seriously. "They asked me, did I want a free meal? I wanted answers, and they thought they could buy me for eggs and sausage!" Reginald Braddock, a stocky man given to bursts of passion, was not told of the incident until a few days later. "My son chose not to bring it up, knowing it might touch a sore spot in our family. When I did hear about it, it really did hurt because it was the nightmare revisited. Here was the Old South, back in our face again."

An activist group of parents, many of whom already were friends, soon formed around the San Jose 18. They contacted attorneys and the news media.

A month after learning of the San Jose incident, Richardson formally did away with the prepayment practice as well as the minimum charges. In July 1992, nearly half a year later, however, Sylvia Skeeter, 35, a former Army captain training with Denny's in Orlando, Fla., was told by an instructor: "Please try to obtain money from young blacks as soon as they enter your store. This will discourage them from coming in, which is what you want. Most of them are going to be walkouts anyway." Skeeter, who is black, says: "I vividly recall the ease at which young blacks were equated with the criminal class. I was stunned into silence a minute, then I put up my hand and asked why does it have be just blacks, and the justification was, well, this applies to stores in predominantly black areas."

The New Order

A worker at a Denny's in Houston. All Denny's employees must now watch "What Color Am I?" a video celebrating diversity.

ON APRIL 1, 1993, 21 MEMBERS OF THE Secret Service stopped for breakfast at a Denny's near a U.S. 301 exit just outside Annapolis. Arriving about 7:30 A.M., the officers were working against a 9:30 deadline, by which time they had to set up portable metal detectors at the Naval Academy for a visit by President Clinton. Everything at the restaurant went according to routine, cups and glasses filled, plates of country breakfasts slapped down, except at the table occupied by Alfonso Dyson and five other black officers. Dyson, 26, is a bespectacled man who cuts his hair at crew length and has a taut build. At about 8:10, it was apparent that the waitress was bringing second helpings to the other tables while those at his table were still nursing coffee and juice. There could be no mistaking that the six officers were part of the Secret Service detail. Each agent was in full uniform — dark pants with wide gold stripes, white shirt with Presidential patch and gold badge, dark tie, pistols in flap holsters. "I had never before been to a restaurant where I became aware of being discriminated against," says Dyson.

The white, middle-aged waitress, he says, gave him only perfunctory replies to his three complaints about the poor service. With her back to to the table, according to William Winans, a white officer, the waitress melodramatically rolled her eyes, then made a mocking comment. As of 8:20, Dyson's table still lacked the main course. A complaint to the manager elicited no satisfaction. "His attitude was so nonchalant, you knew where he was coming from," Dyson says. The only explanation came from one of the cooks, who said steaming hot breakfasts for the six officers had been sitting for more than half an hour on a serving counter and had been pointedly ignored by the waitress.

In the months after the agents sued Denny's, many people who had either worked or eaten at a Denny's came forward with a wide range of complaints. Sylvia Skeeter, who, after her training, was assigned as a shift manager to a Denny's in Columbia, S.C., says the reception black customers repeatedly received from three white waitresses was "they would kind of glare, with their hands on their hips, and then they'd go back to talking among themselves, like a black person standing five feet away didn't exist." When a black minister, an assistant pastor and two visiting gospel singers got the frozen treatment, it was more than Skeeter could take, and she resigned, though not before confronting the waitresses. The manager at the Columbia restaurant shrugged off the actions of the waitresses as "that's how they were raised, and there's nothing I can do about it."

By one theory, discrimination took hold at Denny's many years ago. Mari Mayeda, a lead attorney for the San Jose lawsuit, says the investigation turned up allegations from thousands of African-American customers who felt that the practice of discrimination at Denny's dated back to the 1970's. "The employee guidelines at Denny's were so subjective and unclear it was easy for the waitress, the shift manager, the district leader to assert their own improper behavior, and this situation went on for years and years," Mayeda says.

A white Denny's manager in Milwaukee from 1981 to 1987 says he *Continued on page 58*

PHOTOCOPY PRESERVATION

Continued from page 47

had a waitress staff on one shift that was all black, and was criticized by upper management and even by his own assistant managers. "The feeling was we'd lose the white business." A high percentage of the Denny's business was — and still is — based on an older white clientele that eats out several times a week, and some managers saw the hip-hop generation as a threat. "They felt that blacks coming into their restaurants would cause the white repeat customers to stay away," Robert Norton says.

The theory that prejudice was insinuated into the Denny's culture over a lengthy period is supported by Sandy Patterson, 55, a waitress in California for 15 years, beginning in 1974. She is white and was then married to a black man. All through her employment, she said in court papers, the hostility toward black people was such that she felt she couldn't have her husband pick her up at work or attend the company picnics. According to her, prepayments were required only for black customers or other people of color in the 1980's. She felt so intimidated she would not acknowledge her own mixed-race son when she served him and his friends. She was later reprimanded for not requiring prepayment from the group.

In Patterson's opinion, her supervisors were less concerned with crime than they were with keeping the restaurants as "white" as possible. To prevent black customers from lingering after their meals, she said, she was told to limit them to one complimentary refill of coffee, whereas white customers could have all the refills they wanted.

At a Denny's in downtown Portland, Ore., the issue seems not to have been security, nor concern over the decorum of customers. Kristen Siegrist, a white woman who sells perfume wholesale, inadvertently carried out a textbook test of the prepayment practice during two visits to the restaurant at the end of 1989. When in the company of her roommate, a black professional woman, Siegrist was required to prepay, she says, but then one night just before Christmas, acting spontaneously, she treated three unshaven, ill-dressed homeless men to meals at the same Denny's. She expected to be asked for money in advance, and was surprised to have food served without question. The only issue, it seems, was race: the homeless men were white.

Masood Kasim, 32, who worked for Denny's in Tulsa, Okla., from 1980 to 1991, working his way up from dishwasher to restaurant manager to district training manager, says he and his co-workers had an ad hoc approach when deciding which customers should prepay. "If somebody put in a big order, an appetizer, soup, steak, the works, we'd ask him to pay first, or if somebody acted suspicious, or if they stuck out as different from normal." There was no formal policy to discriminate, he says, although in reality that was how it turned out. "The big majority of who got affected were blacks. Most of our customers were white, and I think that's why the blacks got affected — they stuck out."

A GLUM-LOOKING JERRY Richardson says, "There are people in America today who've read things in the press and believe I condone discrimination, which I do not." Richardson is usually a gung-ho presence, but, he says, "This has been personally a very painful time." We are on his corporate jet, an eight-seat, no-frills Hawker 700, en route from Houston to Spartanburg. Shoes off, his stockinged feet on a hassock, he digs fingers into his palms. "How do you prove you're not a racist?"

A paradox of the Denny's case is that, while the company has become a symbol of race discrimination in the 1990's, the man in charge is seen in his own community as someone who has done pioneering work in race relations. Back in the 1960's Richardson's South Carolina Hardee's restaurants underwent a peaceful transition to integration. More recently, Richardson broke ranks with white civic leaders by supporting James Talley's candidacy to be Spartanburg's first black mayor. Talley, 54, who is a retired teacher and football coach but is also a veteran of lunch-counter sit-ins, won the election. The two men are good friends; sometimes they spent weekends at Richardson's mountain home on Lake James. They met in the late 1970's when Richardson's two sons, Mark and Jon, played for the Spartanburg high-school football team, then coached by Talley.

Early in 1992 The Spartanburg Herald-Journal reported that the president of the local N.A.A.C.P. chapter, Charles Davis, 42, was getting the runaround from "Richardson's staff in the matter of a black employee discharged by the company. No more than two hours after the newspaper hit his porch, Jerry Richardson was on the phone to me," says Davis. Meetings with Richardson commenced. "A lot of white people will invite you in to humor you. He was different. He was genuine."

In July 1993 Richardson signed a "Fair Share" agreement with the national N.A.A.C.P., spanning a seven-year period at a cost to Flagstar of $1 billion. The agreement calls for Flagstar to add significant numbers of African-American managers, franchise owners, and subcontractors, along with naming the first African-American to the board. A year after the pact, the percentage of black managers at Flagstar is 7 percent, up from 5.3 percent. At Denny's, black managers make up 10.6 percent, up from 7.5 percent. During the same time period, the percentage of black hourly workers has remained essentially the same, at 13 percent.

"You have to understand, by Spartanburg standards, this agreement was bold, extremely bold," Davis says. Richardson was also sized up by national N.A.A.C.P. officials. "Jerry is a straight-up guy, who comes right at you, a plain old country boy," says Fred Rasheed, the N.A.A.C.P. director of economic development. "He seems to be a basically decent human being."

As the Fair Share agreement was being completed, an earnest-faced Richardson went before cameras and recited a cued-up script: "Everyone who comes to our restaurants deserves to be treated with respect." This became the essence of a plaintive and artless 60-second commercial named "The Pledge," which was telecast in 41 television markets and on the Black Entertainment Television cable channel. No one in the advertising industry could remember a C.E.O. ever going public with such an obvious reference to a company's civil rights inadequacies.

It is understood Richardson felt he had no choice but to try to counter the hue and cry of unfavorable publicity generated by the lawsuits. But to what extent was he acting out of expediency? In 1993 Richardson was in the thick of a competition to win a National Football League franchise, and the potential for trouble with the N.F.L. became obvious when the Secret Servicemen sued. Almost immediately Richardson accelerated the N.A.A.C.P. negotiations. "Things were moving slowly until the Annapolis incident," Rasheed says. "That definitely expedited the signing." In October, three months after the Fair Share signing, the N.F.L. owners

Continued on page 78

Three of the six Secret Service agents who sued Denny's. They each got $35,000 in the settlement.

PHOTOGRAPH BY RON EDMONDS/ASSOCIATED PRESS

PHOTOCOPY PRESERVATION

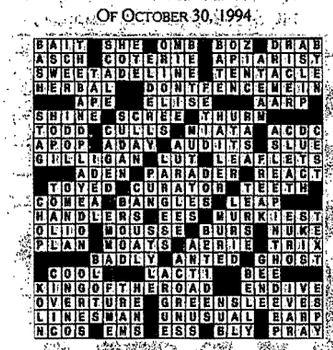
San Jose 18 and their parents had gathered to talk about their experience. Kristina Ridgeway, now a student at California State University at Northridge, said, "I've heard all the Denny's managers have to be trained in cultural sensitivity, but I think the corporate heads need to take that training, too." Rodney Braddock, a senior at Tuskegee, added: "I'm glad we confronted Denny's because they know they did wrong. They might not want to say it publicly, but I think they know it in their hearts."

The younger Braddock had traveled in mid-July to Chicago for the N.A.A.C.P. national convention, at which he received a special tribute on behalf of the 18. While in Chicago, he was also called on to help stage a sidewalk demonstration outside a local Burger King after the hostess, a middle-aged white woman, reportedly refused to admit several young N.A.A.C.P. delegates, telling them, "You make me nervous." To Mari Mayeda, there is a larger truth about the nature of discrimination. "I think African-Americans in this country face subtle discrimination frequently, weekly, daily. The Denny's case just happened to be a nice crystallizing example of racial interactions," she said. Antonio Lawson, another attorney for the 18, concurred. "It took these very blatant incidents to bring it out in the open, but these things go on all the time at many businesses besides Denny's."

Asked to define any lessons he learned, Reginald Braddock said: "I had gotten complacent in my life, and this woke me up. We didn't complete the job 30 years ago, and I realize now it's going to take more than my lifetime to complete it." William Ridgeway interjected. "My daughter says my favorite expression is, 'Welcome to being black in America!' I don't know. Will there be a time when we can stop reliving the past and get on with the rest of our lives? I think back on the occasions I used to go to Denny's and sit there and justify the slow service as, well, the waitress is busy. Now, if I go into any restaurant, I have to wonder, am I being subjected to slow service because of what I look like? That's some of the baggage I carry. You try to shake it." ■

ANSWERS TO PUZZLES

OF OCTOBER 30, 1994



(LINCOLN) DIAMANT: CHAINING THE HUDSON — Throughout early summer, as Washington awaited the arrival of the British fleet . . . he kept his ten thousand "ragged boys" occupied with pick and shovel, throwing up earthworks across . . . Manhattan and on the heights of Brooklyn across the . . . river.

SCHOOLS

CO-ED BOARDING

New York Military Academy

We Teach... ★Leadership (Jr. ROTC) ★Citizenship ★Discipline ★College Prep ★Study Techniques ★SAT Prep ★Drug Awareness ★Computer ★Intramural/ Interscholastic Sports ★Co-ed Grades 5-12 ★Horsemanship

We Offer... 100%★ College Acceptance Structured ★ Environment Interpersonal★ Relationships Small Classes★ Caring Faculty★ Rich Variety★ of Activities Locked-In Tuition★ Generous Tuition★ Assistance

A PREPARATORY SCHOOL FOR IMPROVED ACADEMIC PERFORMANCE

5 Miles from West Point | Write: Peter C. Wicker, Director of Admissions 28 Academy Avenue, Cornwall-on-Hudson, NY 12520 Tel: (914) 534-3710 · Fax: (914) 534-7121 | Day Students Welcome

JANUARY & FEBRUARY ADMISSIONS AVAILABLE

SPECIAL

DOWN SYNDROME - LIFETIME OPPORTUNITY

Pathfinder Village is a private residential community exclusively for persons with Down Syndrome located in scenic central New York. Reminiscent of Williamsburg, VA, it offers special education, recreation, music, art, vocational training, a wholesome environment and a productive lifestyle. Convenient to NYC, New England and Mid-Atlantic. Limited scholarships available.

Pathfinder Village, Edmeston, NY 13335 Call (607) 965-8377

Camp and School Advertising appears in The New York Times Magazine every Sunday. For more information please call 212-556-8081

The Cedars Academy

A residential preparatory school enrolling:
• students with learning, attention, sequencing, or processing difficulties
• students with difficulties in esteem and interpersonal confidence

(302) 337-3200
PO Box 103, Bridgeville, DE 19933

Camp and School advertising appears in The New York Times Magazine every Sunday

For more information, please call 1-800-348-9162 or (212) 556-8081

BOYS BOARDING

JANUARY ENROLLMENT

Valley Forge. The Right Step To Your Son's Success.

Individual attention, a superior academic program and a structured approach to learning lead to college success. • Middle school grades 7-8, high school and 2 years of college • Student to faculty ratio 10 to 1 • Required evening study • Sports and equestrian programs • Internationally renowned band and choir. • Please call 1-800-234-VFMA.

VALLEY FORGE
America's Foremost
MILITARY ACADEMY & COLLEGE
Wayne, Pennsylvania
© VFMA

Your Son Will Succeed!
ST. THOMAS MORE SCHOOL
Educating Underachievers Since 1962
★ New Students Admitted Throughout the Year. ★
★ Grades 6 -12, Postgraduate ★ Small Classes, Study Skills ★
★ SAT Prep, College Placement ★ ESL, Language Lab, TOEFL ★
WRITE: JAMES T. HANRAHAN, Headmaster
ST. THOMAS MORE SCHOOL, 45 Cottage Rd., Oakdale, CT 06370
CALL: (203) 859-1900 • Fax (203) 859-2989

TO PLACE A CAMP OR SCHOOL AD
212-556-8955
The New York Times

CARSON LONG MILITARY INSTITUTE
165th Year - Boys Grades 6-12. Helping the average boy reach full potential. Structured environment, ESL course and How-to-Study. Public Speaking. Supervised Study. JROTC Honor School. Traditional values. $9,000 includes uniforms. Accredited. Non-discriminatory. Preparing young men for college and life since 1836. Box 88B, New Bloomfield, PA 17068. (717) 582-2121

CAMPS

CO-ED

Theater MUSICALS DRAMA·TV MODELING DANCE
LEARN BY DOING — Acting, Musical Comedy, Dance (ballet, modern, tap, jazz) Modeling, TV Acting, Voice, Stagecraft, Costuming, "Hands-on" Tech Theater program.
••• DAILY CLASSES at Beginning & Advanced Levels. •••
LEARN BY PERFORMING — 5 THEATERS, 6 DANCE Studios, 2 TV Studios
Every camper is in a show at all times.
••• And our Campers PERFORM AT MAJOR RESORT HOTELS •••
SUPERB ACCOMMODATIONS — Carpeted rooms. Air Conditioned Theater & Dining Room.
NON-COMPETITIVE SPORTS INCL. — Tennis, Swimming, Basketball, Volleyball, Horseback
ACA and AIC Accredited . . . BOYS and GIRLS 8 to 18 YRS
••• OUTDOOR and INDOOR SWIMMING POOLS •••
STAGEDOOR Manor PERFORMING ARTS TRAINING CENTER
• 3 Week, 6 Week and 9 Week Sessions
PHONE (914) 636-8578
WRITE: STAGEDOOR, LOCH SHELDRAKE, NY 12759-9702

Camp and School Advertising appears in The New York Times Magazine every Sunday. For more information please call 212-556-8081

THIS IS IT! LONG LAKE CAMP FOR THE ARTS
3, 6, & 9 Weeks OF FUN! UNLIMITED ADVENTURES:
PERFORMING ARTS Drama, Dance, Music, Circus, Video, Radio. PERFORM EVERY WEEK!
FINE ARTS Unleash your imagination in 14 great art studios!
SPORTS & THE GREAT OUTDOORS All Land & Water FUN! Bsktbl, Tnns Sccr, Quads+ SAILSKI EVERYDAY!
Ages 7-16 / Near LK GEORGE NY
For Video/Brochure: 33T Western Dr. Ardsley NY 10502 800-767-7111

PHOTOCOPY PRESERVATION