DOCKET WATCH

BY TONY MAURO

It's the End of Affirmative Action. Maybe

The affirmative-action case of *Adarand Constructors v. Peña*, No. 93-1841, set for argument Jan. 17, could be the civil-rights case of the decade—or much ado about very little.

The case pits Adarand Constructors, a white-owned highway-construction firm from Colorado, against the Clinton administration, which is defending a race-conscious highway-funding program that Adarand claims cost it a contract.

But rarely have opposing sides in a case cast the issues in such different terms.

On one side will be William Perry Pendley, president and chief legal officer of the conservative Mountain States Legal Foundation, with an in-your-face argument on behalf of Adarand that the program at issue is race-conscious. As such, he will argue, the program is subject to strict scrutiny, and fails under that standard.

William Perry Pendley

On the other side, in something of a defensive crouch, will be Solicitor General Drew Days III, arguing that the program is not what it appears to be, is not primarily race-conscious, and isn't much worth fussing over.

The focus of the program, Days insists, is helping "disadvantaged" contractors regardless of race. The fact that minority-owned businesses are automatically regarded as disadvantaged, he says, is nonetheless a "rebuttable presumption" that Adarand never tried to rebut.

Days and other groups—notably, including the NAACP Legal Defense Fund—even go so far as to argue that Adarand does not have standing because the company cannot prove that the program caused it injury.

"The Court could uphold this progam and it wouldn't have much impact," says Stephen Ralston, senior staff attorney at the LDF. "It's not a set-aside program, it's not like *Fullilove*." He is referring, of course, to the minority set-aside public-works program challenged and upheld in 1980 in *Fullilove v. Klutznick*, 448 U.S. 448.

The fact that Days and the amicus groups on his side are trying so hard to portray the contracting program as something less than meets the eye—and less than *Fullilove*—probably reflects their concern over the Court's decision to take the case in the first place.

Looming over the civil-rights community is the arithmetic of the Supreme Court's last affirmative-action ruling, *Metro Broadcasting v. FCC*, 497 U.S. 547, Justice William Brennan Jr.'s final ruling, decided June 27, 1990. Of the five justices in the majority, only John Paul Stevens remains on the Court.

Dissenters Sandra Day O'Connor, Anthony Kennedy, Antonin Scalia, and William Rehnquist, have been joined on the right by Clarence Thomas at the very least. Other newcomers, David Souter, Ruth Ginsburg, and Stephen Breyer, may or may not all join Stevens on the side of affirmative action; but even if all of them do, they add up to only four.

So when the Court granted cert in *Adarand*, the unspoken message seemed clear to some.

"I doubt this will be the end of affirmative action, but if they were going to uphold *Fullilove* and *Metro Broadcasting*, it seems like they would not have taken the case," says Todd Welch, senior attorney at Mountain States. "There has not been another time in history when there has been such a significant shift in ideology on the Court."

That is why, Welch says, the government has undertaken what he calls a "last-gasp effort" to portray the highway program challenged in *Adarand* as unlike either *Fullilove* or *Metro*.

Days may be the best person for the job. It was he who argued the *Fullilove* case on behalf of the Carter administration when he headed the Civil Rights Division of the Justice Department.

Drew Days III

The effort will be futile, says Welch, because "there is no question this is a race-based or race-conscious program." Though the program is framed in terms of benefiting disadvantaged businesses, "the government has presented no evidence that any white-owned companies are disadvantaged."

Welch notes that many of the amicus curiae groups on the government's side are business groups representing minorities.

"There isn't any United Association of Disadvantaged Businesses in there," Welch says.

On the *Adarand* side, several of the other conservative foundations are represented: Atlantic Legal Foundation, Pacific Legal Foundation, Washington Legal Foundation, and a chapter of the Federalist Society for good measure. Welch says there was little, if any, coordination between the groups.

Civil-rights groups are trying not to think about what will happen if the highway program is struck down as a minority set-aside.

"It's hard to see how any program that even thinks about race could survive if that happens," says LDF's Ralston.

Docket notes: Robert McDuff of Jackson, Miss., had little time to prepare for his argument Jan. 10 in *Swint v. Chambers County Commission*. He was busy representing Jesse DeWayne Jacobs, the Texas death-row inmate who was executed after two eleventh-hour appeals were rejected by the Supreme Court last week. . . . Three assistants to the solicitor general, all former Court clerks, make their Supreme Court argument debuts this session: Paul Wolfson, Richard Bress, and Paul Engelmayer. . . . On Monday, Jan. 9, Deputy Solicitor General Lawrence Wallace steps to the podium for his 128th oral argument, surpassing the late Erwin Griswold's record of 127, and homing in on John W. Davis' 20th-century record of arguing 140 cases before the Supreme Court.

The Court's January calendar follows:

PHOTOCOPY PRESERVATION

LOS ANGELES TIMES (first-edition)
Page 1 for Monday, Feb. 10, 1997:

Top of page:

Col 1: From the start, the hospital neurosurgeons knew the family's 10-year-old daughter had no chance of survival and decisions to treat her had always been about futility: there was a difference, though, after the family insisted on continuing treatment after the girl had been pronounced brain-dead for months. (FUTILITY, moving Monday.)

Col 2: House Ways and Means Committee Chairman Bill Archer says that the GOP-led Congress would fight any attempt by the Clinton administration to restore federal assistance to legal immigrants. (CLINTON-BUDGET, moved.)

Cols 3-6: Vice President Rosalia Arteaga becomes interim president of Ecuador under a compromise reached to end a political crisis that saw three people claiming the right to lead this Andean nation. (ECUADOR-TIMES, moved.) (with art.)

Above fold:

Col 2: A U.S. government investigation of a former U.S. envoy to Taiwan, which began with charges that he had improperly solicited foreign contributions to President Clinton's re-election campaign, has expanded to new allegations that he used his diplomatic position for private business pursuits. (DONATE-WOOD, moved.)

Cols 3-4: Local crime poll.

Col 5: Recent appointments of military officers to key federal law enforcement posts are fueling a debate about the worrisome new civilian role of Mexico's enigmatic armed forces. (MEXICO-MILITARY, moving Monday.)

Bottom of page:

Cols 1-3: John McCain, R-Ariz., and Russell D. Feingold, D-Wis., have become a quintessential odd couple on Capitol Hill, forging an unlikely alliance to lead successful drives to ban most gifts to members of Congress and to require unprecedented disclosure by lobbyists. (MCCAIN-FEINGOLD, moving Monday.)

Cols 5-6: Desert lovers worry that the largest off-road vehicle organization in the nation wants to buy 331,000 acres of public land in the Mojave Desert; the potential acquisitor? The U.S. Army. (DESERT, moving Monday.)

Proposed Tax Breaks for Education Raise Questions (Washn) By Marlene Cimons and Elizabeth Shogren (c) 1997, Los Angeles Times

WASHINGTON, Ask David Merkowitz what he thinks of President Clinton's tax proposals to help families finance higher education and he'll tell you a funny story about his car insurance.

Merkowitz, who has a daughter in college, receives a discount on his premium if she keeps a B average a break that works like the $1,500 tax credit proposed by the president.

The only problem is that Merkowitz's daughter attends an experimental college that doesn't give out grades and he had a tough time last year convincing his insurance company that she was in good standing. To be sure, Merkowitz, a spokesman for the American Council on Education, and numerous other education analysts are thrilled that Clinton has put education at the top of his second-term agenda.

Middle-class Americans increasingly have become worried over the costs of college tuition and fees, which are expected to increase at nearly twice the rate of inflation. Education analysts predict that college costs will be at least 80 percent higher by 2005 than they are today.

Thus, many experts consider the president's goal of helping parents finance higher education for their children an important and positive message.

At the same time, however, they fear that a patchwork of logistic and possibly even ethical glitches could emerge as the administration tries to apply the program nationwide to thousands of widely diverse colleges and universities.

Traditionally, college financial aid has come in the form of government-financed grants that are awarded to the neediest students and through private, government-backed loans the mainstay of middle-class attempts to finance a college education. Nearly two-thirds of U.S. college students borrow money to go to school, according to the National Association of Student Financial Aid Administrators. And Department of Education figures show that total loan volume increased 50 percent between 1992 and 1996.

Never before has student aid come in the form of tax relief. ``This would be a very substantial change in the way we do student aid," Merkowitz said.

As a result, the proposals have raised some troubling questions. Will the tax credit, for example, put the IRS in the position of checking up on student grades? And, in an attempt to ensure that a B is a B, will Uncle Sam impose a new level of regulation on higher education?

Institutions envision a paperwork nightmare in attempting to administer the plan, particularly juggling the requirements of the typical financial aid year where the work gets done between July and the following June with tax issues, which are tied to the calendar year.

Some critics also have raised the disturbing possibility that such tax breaks will inspire tuition hikes, and that the president's proposals aimed squarely at the middle class will make it even harder for lower-income students to go to college.

The centerpiece of Clinton's plan is the ``Hope scholarship" tax credit of up to $1,500 per student for the first year of college and an additional $1,500 for a second year, as long as the student earned a B average during the first year.

The proposal, estimated to cost $18.6 billion over five years and help 4.2 million middle-income students by 1998, is modeled after a Georgia state program with the same name.

But unlike Georgia, which has statewide standards for grades, ``there is no national standard for what a B average is," said Marvin Carmichael, chairman of the NASFAA and director of the financial aid office at Clemson University in South Carolina.

Numerous educators point out that students who leave high school face unusual adjustments and new pressures during that critical first year of college, a situation that could make maintaining good grades difficult.

``It's unrealistic to expect that students who come in with a B average (from high school) will keep it, especially that first year," Carmichael said. ``At Clemson, about 30 percent to 40 percent of our students have a B average or better but 85 percent come in with it."

Some suggest that students even might decide to choose easier courses during their freshman year to ensure their grades will preserve the financial help.

Experts are eager to know the extent of IRS involvement in requiring proof of grade average would the agency, for example, ask for college transcripts? This potential situation already has raised privacy-violation concerns among educators.

``The last thing we want is the federal government determining what

a B average is," Merkowitz said. ``Records now are highly protected, and colleges do a very good job protecting privacy."

Some critics also have predicted that college fees could rise in response to the program, offsetting the potential benefits although others insist that it is too soon to tell.

``I know there are some people who think that some schools will have a tendency to raise prices," said Lois Dickson Rice, an education finance specialist at the Brookings Institution think tank in Washington, ``but I don't think we have enough data yet to determine whether or not this will happen. ... I think it depends on the plight of institutions and the states, and how they will respond to price changes."

Merkowitz said he believes that the opposite will occur that some colleges could respond to the tuition tax credits by lowering their fees.

``Private institutions devote 50 percent or more of marginal revenue they gain from increased student aid back into student aid, so that (costs are) discounted for other students," he said. ``If anything, I think, the additional student aid will bring less pressure on institutions which may mean further moderation of tuition increases.

``Higher education is a market, a highly competitive market," he added. ``There is not a lot of price elasticity in the market. We know Harvard could charge whatever it wanted and there would be people who would pay it. But they don't. For most other private institutions, it's a very competitive market sensitive to price changes. Some schools are lowering tuition because such a high percentage of their students were getting aid and not paying the full price."

David Longanecker, assistant secretary of Education for higher education, said he believes that there could be a nasty public backlash if colleges respond to the program by hiking tuition.

``We're very hopeful that higher education recognizes the intent of this and doesn't undercut it," he said. ``This has a lot of public appeal. If this passes, people will be expecting the benefit to accrue to them. If they find out that the institutions are taking advantage of that, there are going to be a lot of unhappy campers."

GOP to Fight Restoration of Benefits to Legal Immigrants (Washn) By Marlene Cimons (c) 1997, Los Angeles Times

WASHINGTON A leading House Republican said Sunday that the GOP-led Congress would fight any attempt by the Clinton administration to restore federal assistance to legal immigrants.

``The word is out that it is easy to come to America and go on welfare," House Ways and Means Committee Chairman Bill Archer, R-Texas, said on a television interview show. ``That's not what America is all about. And we were elected to protect the taxpayers from this kind of abuse."

Archer and other congressional Republican leaders also sent President Clinton a letter Sunday urging him to propose a massive tax-simplification plan by May 1. They complained that the income tax code ``has grown so horribly complex that many Americans despair that only someone with advanced degrees can even hope to figure it out."

But a White House spokesman said some steps making it easier to file taxes have already been taken, and that Clinton would instead press for enactment of his budget plan, which makes room for some small tax cuts on the way to a balanced budget by 2002.

Archer, speaking on CBS-TV's ``Face the Nation," said requests for federal assistance from legal immigrants had increased 580 percent recently, compared with a 49 percent rise in applications from citizens. ``This is wrong," he said.

Clinton's fiscal 1998 budget calls for restoring welfare benefits, Medicaid and food stamps to disabled legal immigrants. Administration officials believe that this population was hurt more than any other by last year's overhaul of the nation's welfare system.

The administration's budget proposal would provide $9.7 billion to maintain benefits for about 350,000 of the 500,000 immigrants who are slated to lose their benefits in August and September.

Republicans have already made it clear that they will resist any moves to tinker with the welfare reform legislation, although they have left open the possibility of providing some kind of relief through a block grant or other special funding to those states most deeply affected by the measure.

The law would end all benefits for legal immigrants, including food stamps, Supplemental Security Income which provides monthly checks to low-income individuals who are disabled, blind or elderly and Medicaid, which pays physician and hospital costs for the poor.

Despite insisting that congressional Republicans would balk at restoring benefits to legal immigrants and despite other differences with Clinton and congressional Democrats Archer said he hoped a bipartisan budget effort would succeed.

``Let's concentrate on where we've gotten together already," he said. ``We have won the crusade for a balanced budget with tax relief. That wasn't true two years ago. So we're starting from a position of bigger common ground than we had two years ago. And we shouldn't ignore that.

``We are encouraged that (Clinton) has tax relief for families it's different than ours we think it can be improved on. We still think there's too much spending and too much taxes, and that's an area that we are going to have to resolve."

In their letter asking Clinton to draft a tax-simplification plan by May 1, Archer and other leading Republicans complained of the ``abysmal quality" of enforcement of the tax laws. They blamed not the Internal Revenue Service but the tax code.

Civil Rights Group Criticizes Clinton Record (Washn) By Sam Fulwood III (c) 1997, Los Angeles Times

WASHINGTON Describing the Clinton administration's civil rights record as positive in tone but lacking real accomplishments, a minority-rights watchdog group will issue a report Monday urging the White House to develop a more aggressive plan to combat racial discrimination during President Clinton's second term.

``While the president has spoken with understanding and empathy about the plight of people trapped in racial and economic isolation, he and his administration have yet to put forth a positive agenda that will provide opportunity to those who still lack it," according to the Citizens' Commission on Civil Rights, a bipartisan group that monitors federal civil rights policies.

The commission was formed in 1982 by the late Arthur Flemming after President Reagan fired him from the U.S. Commission on Civil Rights in a dispute over affirmative action and other issues.

In its report, the fifth advising the president and Congress on civil rights issues, the commission praises Clinton for defending federal affirmative action programs. However, the report states, that act stood as the ``one notable exception" to an administration that ``has hardly followed a straight line" in protecting the rights and opportunities of poor, disadvantaged and minority Americans.

``Although the president's July 1995 affirmative action speech demonstrates the White House's capacity to respond to a crisis when necessary, the president has not put forth a positive agenda providing opportunity to those who still lack it," the report said.

The Los Angeles Times obtained a copy of the 262-page document and its 12-page executive summary. White House officials had no immediate comment on the report.

William L. Taylor, vice chairman of the commission and a visiting professor at Stanford Law School, said the administration's record on civil rights was much more favorable than those of the Reagan and Bush administrations. But, he added, Clinton has failed to act aggressively enough to counter a rightward drift of policies under the GOP-led Congress.

The report also condemns the 1995-96 Congress for seeking to cut labor, health and education programs. It noted that those efforts were ``stymied by election-year pressures and the desire by the Republican majority to avoid blame for more government shutdowns."

In the harshest attacks on the White House and Congress, the commission says enactment of last year's legislation to overhaul the nation's welfare system represented a setback for minorities and the poor. Using language that recalled similar attacks on Reagan White House efforts to undo federal social programs, the report said: ``President Clinton signed a bill that turns back the clock on this country's struggle for equal opportunity and social justice."

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."

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 NEW YORK TIMES, WEDNESDAY, JANUARY 11, 1995

70 Changes Urged to Insure Airline Safety

By MATTHEW L. WALD
Special to The New York Times

WASHINGTON, Jan. 10 — A two-day emergency conference on airline safety ended today with 70 recommendations for sweeping changes in equipment and training. But many of those recommendations have been made before, and industry experts and government regulators alike agreed that one problem is that the Federal Aviation Administration has been slow to act in the past.

The recommendations were made by about 950 experts summoned to Washington by Federico F. Peña, the Secretary of Transportation, after five air crashes late last year. They ranged from improving pilot and maintenance training to faster installation of new technologies, including de-icing equipment and radar to avoid runway collisions.

Amid evident frustration, Mr. Peña promised that the Department of Transportation would work harder to install improvements. But his first step seemed bureaucratic; he said that within 30 days the department would rank the recommendations, with a target date for each.

Speaking at the end of the conference, the Secretary asked each airline to consider creating an independent safety office within its corporate structure, and to perform its own audit of the systems it uses to assure safety. This is in addition to an F.A.A. audit that he said last month would be performed on each airline. He said on Monday that he did not know when that would be done.

When pressed, David R. Hinson, the F.A.A. Administrator, said he hoped it would be within six to nine months.

Amid public reassurances from the airline executives, aviation agency personnel, pilots, airplane manufacturers and others at the meeting about the safety of the air transportation system, there also was criticism of the Government's regulatory abilities.

John R. Ryan, a vice president of the Air Transport Association, the airline industry's main trade association, waved a pile of papers in the air and said the recommendations of his group were the same as those in "a host of studies that just needed to be dusted off and acted upon."

Mr. Ryan, who was chairman of a workshop session on air traffic control and weather, listed three reports on weather and one on the threat of runway collisions, "which I don't have but I had yesterday; it has been purloined, hopefully by someone in F.A.A., who will read it now and act upon it."

Among the experts' recommendations were these:

¶Taking maintenance delays out of the on-time statistics kept by the Government, because including them creates bad incentives for mechanics at an airline that is trying to compete with a good on-time record.

¶Training to instill teamwork in maintenance personnel, dispatchers and flight attendants, as is already being done with cockpit crews.

¶Sending "real-time" weather maps to crews in flight, similar to the ones home computer users can call up over telephone lines.

¶Approving navigation equipment based on Global Positioning System satellites, which give longitude, latitude and altitude to within a few inches, instead of using the existing radio beacons.

¶Standardizing such airport features as signs on runways and taxiways.

¶Installing anti-collision radar systems on more airliners, and installing radio transmitters on more small planes to make them more visible to the anti-collision systems on the bigger planes.

A major theme: the F.A.A. needs to act more quickly.

The recommendations, which are overlapping in some cases, were developed in six separate workshops that began on Monday morning. Some of the participants worked well into the evening in sessions that were closed to the public.

When they came together today for a public briefing, leaders of some workshops repeated as a major theme that the F.A.A. needs to adopt new technology more quickly, to add to safety and to take advantage of better technology already aboard newer planes.

The chairman of one workshop, Jeff Ariens of Continental Airlines, said: "The challenge now is to take what we have and make something happen with it. We don't want to come to a meeting two years from now and say, 'Here's what happened at the safety summit back in 1995.' "

Exactly how the F.A.A. will move faster is not clear. Last month, in a rare instances of moving up the clock, Mr. Peña said the agency would issue proposed rules within 100 days on bringing commuter airlines up to the safety standards of bigger planes, and the agency is racing to meet that deadline.

The 70 recommendations made today "will require substantial additional resources to prosecute," said Roger Fleming, a spokesman for the Air Transport Association. "They don't have the work force, the way they are organized now, and I have difficulty comprehending how they can be expected to comply with even the high-priority recommendations."

The F.A.A. has a procurement process that officials acknowledge is cumbersome, and it analyzes technical changes painstakingly.

And some of the recommendations would require agreement from players with differing interests. For example, some experts want a better analysis of operating data to spot problems before they can contribute to crashes. But all parties agree that better reporting of minor mishaps could leave airlines open to huge damage suits if similar mishaps were shown later to contribute to crashes. And pilots fear penalties if each flight they make is scrutinized by computers for minor deviations.

Airline representatives also said that some of their efforts to improve safety were delayed by the slow pace of regulatory approvals, especially in fields like approving simulator-based pilot training programs.

No one would estimate the cost of putting the recommendations into effect, but some appeared likely to save money. For example, Walt Coleman, president of the Regional Airline Association, said that if small planes were allowed to use the global positioning system for instrument approaches, many airlines would leap to do so.

"We can shoot precision approaches to a lot of runway ends that are never going to get ground-based navigation aids," he said, adding that in this way a new system would improve efficiency along with safer operations.

26 Air Controllers Return

OKLAHOMA CITY, Jan. 10 (AP) — Thirteen years after President Ronald Reagan dismissed thousands of air traffic controllers in a bitter strike, the first 26 to be rehired reported today for training. Mr. Reagan dismissed 11,400 striking controllers in 1981, forcing a reconstruction of the air traffic control system. President Clinton lifted a ban on rehiring the controllers. Nearly 5,000 reapplied to the Federal Aviation Administration.

The Washington Times MONDAY, JANUARY 9, 1995

Justices to assess race issue for schools

Has Kansas City judge overstepped?

By Frank J. Murray
THE WASHINGTON TIMES

A1

The U.S. Supreme Court will hear arguments Wednesday on whether the federal judge supervising Kansas City school desegregation has again leaned too far toward running the schools instead of judging them.

Chief U.S. District Judge Russell Clark already was reversed twice for personally imposing higher taxes to pay the $1.4 billion costs of his desegregation orders — in 1988 for implementing a commuter tax, and in 1990 by the Supreme Court for raising property taxes.

Now the state of Missouri says the federal courts are trying to force it to provide the best education money can buy and asks the high court to recognize that vestiges of state-imposed segregation are gone from the city's only black-dominated school district, one of 13 in the city.

But Judge Clark's orders require them to prove that by showing the students score as well or better than national averages on standard achievement tests.

School district lawyers argued that holds the schools accountable for the impact of poverty, crime, drugs and parental disinterest.

COURT

From page A1

Judge Clark's repeated orders to raise salaries of district school janitors and cooks along with teachers also is being tested.

The predominantly black district sought to attract white students from elsewhere to elaborate and expensive magnet schools. That approach is not being challenged now.

L. Anita Richardson, editor of an American Bar Association publication that analyzes Supreme Court cases and a faculty member at John Marshall Law School, said the decision will be particularly important in school districts where there are more blacks than whites.

"The court has an opportunity to give specific guidance to federal courts as to the precise circumstances under which a school system can be pronounced desegregated .... despite the presence of segregated housing patterns and the operation of other factors that often result in a racially imbalanced student population," she said.

That is exactly why U.S. Solicitor General Drew S. Days III asked for and got 10 minutes during the hourlong arguments to argue for a standard to decide when to terminate federal court orders requiring a state to fund educational programs to overcome educational deficits caused by prior legally sanctioned segregation. Mr. Days said more than 200 school districts could be affected.

Kansas City's magnet-school system was started in 1985 — only in the predominantly black district — and became fully operational last September.

The most expensive and most publicized magnet was the $32 million Central High School, which provided 800 computers for 1,200 students, an Olympic-size swimming pool, and vast athletic facilities.

"For the first time this school year, the remedy is fully operating. Nothing should be done now, to interfere with what is being done," said Arthur A. Benson II, who represents the 37,000 students now enrolled in the district. The case bears the name of Kalima Jenkins, on whose behalf the class action suit was filed in the late 1970s.

The program had no significant impact in reducing segregation, according to a study by the Harvard Project on School Desegregation released in April.

"If simply funneling large amounts of money and choice into a system can produce large educational gains, we should see them in Kansas City," said Gary Orfield, Harvard professor of education and social policy and director of the project.

Mr. Orfield is one of 54 social scientists who filed a friend of the court brief opposing the tactic of measuring investments of money or time to decide if desegregation has been achieved.

They say that should be up to the court. "This determination cannot be guided by some abstract touchstone," their brief said.

In the 30 years before the desegregation plan was in place, the district's percentage of black enrollment had risen an average of 1.7 percentage points a year until it was 68.8 percent black. In the 10 years since, as hundreds of whites came into the schools, the overall percentage of blacks enrolled rose just 1.1 percent.

The state asked the federal court to end its supervision after the judge ruled in 1993 there was "substantial progress toward desegregating the schools."

In making the same determination, courts in other communities have considered such factors as whether black students were disciplined and suspended more often than whites, whether minority students dropped out more often, and college experiences of whites versus blacks.

John R. Munich, chief counsel for Missouri, argued in his brief that the court strayed from its duties by blaming "white flight" to suburbs and low academic scores among blacks on segregation.

"To the contrary, 'white flight' is a regrettable consequence of desegregation," said Mr. Munich, who argued that comparing student test scores with national achievement goes far beyond the judge's authority.

"The courts ... have lost sight of the goal of eliminating one-race schools, instead converting the remedial phase of this case into an exercise in providing the best (and most expensive) school system that the state's money can purchase," Mr. Munich said.

"Does a federal court ... have remedial authority to require districtwide improvement in student achievement — as measured by national averages or other standards — before that district can be declared unitary?" Mr. Munich wrote in his brief.

The state's position is backed by a coalition of Kansas City taxpayers and the Landmark Legal Foundation who say the test-score standard unconstitutionally expands the "equal education opportunities" mandate of two original Brown vs. Board of Education desegregation cases.

"This new standard would establish an unattainable desegregation goal premised upon failed social policy," said foundation attorney Mark Bredemeier.

Groups filing briefs asking the court to reject the state's argument that "evidence of educational outcomes is irrelevant" include the Lawyers Committee for Civil Rights under Law, the Urban League, Children's Defense Fund, NAACP Legal Defense Fund, and People for the American Way.

The Washington Times MONDAY, JANUARY 9, 1995

Wolf leaves the House, returns to den Sundays

GOP philosophy puts family on top

By Sean Piccoli
THE WASHINGTON TIMES

A1

While it may be a great place to work, the House is not a home.

Ask Rep. Frank Wolf, Virginia Republican, who can trace his change in attitude about work to the day, some years ago, that he saw a short film by family advocate James Dobson titled "Where's Dad?"

For Mr. Wolf, a husband and father of five, the answer was simple: Dad's at the office.

The film spoke so forcefully to his own fear of raising kids in absentia while he toiled away, that Mr. Wolf decided his work ethic was a little misplaced and made some changes in his life.

"I have a policy that I don't do anything [work-related] on Sundays," the eight-term lawmaker now says. "If Presidents Bush or Reagan came into my District on a Sunday, I wouldn't go."

As chairman of a House caucus tackling the quality-of-life question for congressional families, Mr. Wolf hopes more lawmakers and staff members will have freedom to vote themselves more time out. But he knows the history of House work habits — late-night votes, long-winded debates and longer hours — will be tough to overcome.

At the urging of new Speaker Newt Gingrich, the House is trying to modify its work ethic and working environment to make

see **FAMILY**, *page A12*

FAMILY

From page A1

Congress, in their words, "family friendly" for all.

The fuzzy catchphrase with the Mister Rogers lilt — "family friendly" — is the object of some ridicule on the workaholic Hill, where office lights burn late and nobody wants to be the first one to walk out the door to go home.

(As Senate Majority Leader Bob Dole of Kansas was overheard on television cautioning people to mind the icy roads Friday, reporters in the Senate press gallery sarcastically piped up: "See? That's family friendly!")

But House GOP leaders say it's no joke.

"We're going to turn values into policy and not just leave them as empty rhetoric," Mr. Gingrich said on Nov. 9 in announcing the House Family Quality of Life Advisory Committee, a 37-member bipartisan group of lawmakers, spouses, staff members and even children.

It was the first piece of business Mr. Gingrich launched as speaker-elect, and he returned to the point in his opening-day speech on the House floor.

As a demonstration project, it also could prove politically astute. Popular disgust with Congress, as captured by the latest election results and new book titles like "Arrogant Capital" and "Club Fed," is so pronounced, encouraging lawmakers to spend more time at home makes sense.

As one observer recently said, nobody gave them a mandate to spend all their time in Washington.

People on the Hill say the Wolf-led committee, which issued a report and recommendations in December, is already making differences in the quality of life.

For one, the House has a brand new "family room" for members' spouses and children in the remodeled Tip O'Neill Room. Empty yesterday except for brand new carpeting, the space soon will have playpens, cribs and a bulletin board, Mr. Wolf says.

One family member already calls it a major improvement.

"In the past, we had one tiny, tiny little room you had to follow this maze of hallways to get to," says Sharon Archer, wife of Rep. Bill Archer, Texas Republican. "And it was always locked."

Photo by Ross Franklin/The Washington Times

Michigan GOP Sen. Spencer Abraham, wife Jane and Julie and Betsy.

In a first-day hail of activity, the new Republican-majority House also passed rules restricting time allowed for floor debate and votes.

"Some days you would have eight or nine votes and each vote took 20-30 minutes, 45 minutes sometimes," Mr. Wolf says. "Now the speaker has limited all votes: Seventeen minutes plus two minutes grace period, but at 17 minutes the gavel comes down."

The House also adopted recommendations by the family committee to start certain workdays early and to adhere to agreed-upon times for adjourning. That way, members can make plans and book flights home with some confidence they won't have to be scrapped.

"If you had your cottage, if you told your wife you would be there, or told your son you would be at his little-league game, or you told a constituent you would attend something, the predictability has been the greatest problem," Mr. Wolf says. "And I think the speaker has addressed it very, very well. It will be totally, completely predictable."

Mr. Wolf says everybody wins: taxpayers, who won't have to pay lawmakers' travel cancellation fines anymore; and reporters, who are tied to the schedules of the people they cover.

But these changes fly in the face of habit and it remains to be seen whether they will stick, or succumb to the traditionally slow, devouring pace of House business.

The thought of politicians finding more time for family and less time for talking and legislating may be a happy one. But The GOP transition to House and Senate rule, for example, required many lawmakers and staffers to work seven-day weeks right up until — and in some cases, right through — the holidays.

And nobody believes the House can fulfill its "Contract With America" pledge in the first 100 days without several long nights.

Few things are more American than a 12- or 14-hour workday. The irony of the "family friendly" reforms is that many were passed during a marathon opening day that started at noon Wednesday and adjoured at 2:24 a.m. Thursday.

As midnight neared, Rep. Barney Frank, Massachusetts Democrat, stood up and mocked Republicans for stranding the debate on important new House ethics rules in a desolate hour.

"You told us you would be family friendly," Mr. Frank said. "You forgot to tell us it would be the Addams family that would be friendly, because we will be doing it at 3 o'clock in the morning."

The Washington Times

DATE: 1-12-95
PAGE: A-6

Justices spar over vestiges of segregation

By Frank J. Murray
THE WASHINGTON TIMES

Supreme Court justices punctuated their usual rhetorical questions with many of their own ideas yesterday as attorneys debated whether a formerly segregated school district must keep spending extravagantly until student test scores rise.

"You're honestly saying you can't look to see if they can read?" Justice Stephen G. Breyer demanded of Missouri Assistant Attorney General John R. Munich.

Mr. Munich said that was true.

He told Justice David H. Souter that high or low scores on achievement tests would be equally irrelevant in determining whether vestiges of segregation remain in a school system that has operated under federal court supervision for 15 years.

"Whether you've provided proper resources, monitoring and funding" should be the test, he argued.

"Do we somehow blind ourselves to the forest for the trees?" Justice Souter responded.

"Instruct the lower courts that the question of student outcomes, as opposed to allocation of resources, has no place in this case," Mr. Munich said when Justice Sandra Day O'Connor demanded that he say precisely what he wanted.

Deputy U.S. Solicitor General Paul Bender said, "We agree there is no power in the courts to force equal or excess achievement. ... But there is a power and a responsibility to remove the effects of segregation that have lingered a long time."

Solicitor General Drew Days had asked the court to give guidelines in this case on determining when vestiges of segregation are gone in schools that remain predominantly black because of regional racial patterns, saying it would affect more than 200 school districts nationwide.

Mr. Bender said that, in addition to test scores, courts could compare graduation, attendance and dropout rates.

"The state has not even attempted to meet its burden of proof," said Theodore Shaw, the New York lawyer arguing for black schoolchildren and parents.

Mr. Munich said Missouri and the Kansas City school district spent $1.4 billion in nine years to follow orders in a district of some 37,000 pupils, one of 13 in Kansas City. In that district the state spends more than three times as much per pupil than the state average — up to $13,500 per student in a state where average spending is $3,000 to $4,000.

Achievement tests show little progress and the district remains below national norms, a situation that attorneys for children and their parents want rectified

"Half the country is below national norms," Justice Antonin Scalia said, making a joke of the definition.

"That sounds to me like a fascinating sociological inquiry" that has little to do with desegregation," chimed in Justice Anthony M. Kennedy.

"The greater the intrusion into the local domain, the easier it is for the court to continue supervision. ... I just see no end to this," Justice Kennedy said.

At Mr. Shaw's mention that money might be cut off when the federal district court decides vestiges of segregation have been banished, Chief Justice William H. Rehnquist said the predominantly black Kansas City district was "walking toward a cliff" as far as future finances were concerned.

"I don't have all the answers as yet as to how this would work," Mr. Shaw responded.

THE WALL STREET JOURNAL.

DATE: 1/12/90
PAGE: A14

REVIEW & OUTLOOK

Insurance Czars See Red

Attempts to impose social control of financial services may be another casualty of the November election. The Justice Department appears to have read the returns and informed the zealous banking regulators, buried too deep in their loan data to have noticed, to back off the Community Reinvestment Act rampage. Another test will come in the insurance business, also faced with the "redlining" issue. As in banking, the supposition by activists is that an industry ignores profit opportunities because it holds to false stereotypes about blacks and Hispanics.

The National Association of Insurance Commissioners (NAIC) issued a report recently tiptoeing around that belief. Luckily, the commissioners also feel the election heat, and some on the committee that prepared these findings aren't returning to office this year. Meanwhile, congressional Democrats who were championing anti-redlining bills have been reduced to minority status. Unless Justice and a downsized HUD decide to use the Fair Housing Act to regulate insurers into submission, the matter may be back-burnered.

But where there's an underlying suspicion, such as exists about the practices of the insurance industry, it won't lay dormant forever. So now may be a good time for the carriers and policy intellectuals to deal with the subject.

To read the NAIC report is to be reminded of the blind men assaying the elephant. The commissioners try to describe this thing called a property-casualty market, noticing that underwriters allocate coverage in such a way as to favor some geographic or demographic categories of consumer and not others. The distinction has something to do with calculations of risk. The commissioners don't think this figuring is very smart or fair, though time and again they note that loss data might support the insurance industry's approach if we only knew what those numbers were.

Well, yes, the loss data would tell us a lot, just as they surely have told the carriers something. To us, that's a lot more believable explanation for why these players act the way they do in an intensely competitive business than the possibility that they choose in lockstep to exclude some groups of homeowners out of sheer bias. And we ought to be glad they're alert to risks: With average profit margins basically set by the capital markets, the big losers from ignoring the warning signs would be the rest of us, as we would be saddled with higher premiums.

To what extent is there discrimination? A survey of blacks and Hispanics in five big cities for the trade magazine Best's Review found that although many suspected bias, 95.7% said they'd never been turned down for insurance. That's not to say insurance is a model of pure competition. It requires lots of capital to enter the field, so you don't see the kind of gap-filling by marginal suppliers that you would in most businesses. (Regulation exacerbates this problem by limiting entry to keep unsound, fly-by-night outfits out.) Then, the overhead costs of underwriting are high. For this reason, companies prefer to insure more expensive homes that carry bigger policies. That means a modest or aging dwelling, or one that's had a neighborhood turn rough around it, won't be as enticing.

But the biggest deterrent to writing property insurance is the fear of loss. Urban districts that have high rates of vandalism, arson, burglary and—yes—insurance fraud are not attractive. The effect is often to punish upstanding citizens who already are suffering from the sins of their neighbors. We suspect that is part of the reason carriers have been so reluctant to make public their loss data—grouped as the statistics are, they would tar a lot of innocent people by association and be a public-relations nightmare.

An obvious challenge, it would seem, is to improve the character of these parts of town so that they look sweeter to underwriters. For one thing, it would help to have a higher percentage of homeowners (which can be a chicken-and-egg problem, in that insurance is needed to get title). Many carriers have been active on this front, working with police departments and community groups. Some organizations, such as the Neighborhood Housing Services units around the country, seem interested in helping. Others prefer to be "advocates" and extort the companies for hush money.

Repairing reputations as well as structures can be an achingly slow process, but that's what's involved on all sides in this situation. Block-by-block improvement campaigns are part of it.

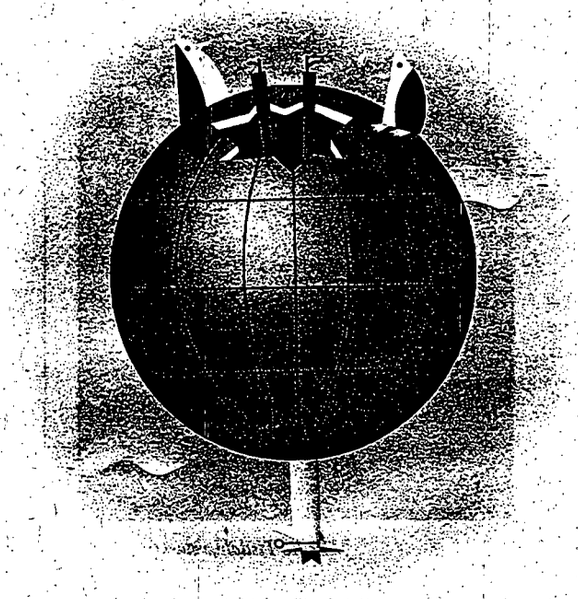
One course we can be sure won't work is a punitive move against the insurers (coverage requirements or rate rollbacks) that causes them to pull away further and leaves only the state's "assigned-risk" mechanisms at work.

The closer the insurance commissioners tiptoe to that eventuality, the more need for electorates to get their attention.

ON LANGUAGE

WILLIAM
SAFIRE

Go South, Young Man



IN THE TV SERIES "MURDER, SHE Wrote," the character played by Angela Lansbury was accosted by a police lieutenant about a suspect she was helping: "When I sent some guys over to your place to pick him up," the cop complained, "he'd *gone south*."

In the opposite direction, Adam Sandler wrote in Variety that the recent video release of "Snow White and the Seven Dwarfs" had sold more than 17 million copies and "generated *north* of $300 million in retail sales."

Now both ways: when The Washington Post's media shoofly, Howard Kurtz, hoped that ratings of the O. J. Simpson trial would "*go south*," Dan Rather on "48 Hours" on CBS responded, "The ratings were *going north*, not *south*."

Rather knows how to handle a compass: North is up, South is down. (I capitalize the directions, though not *southern* or *southward*.) Obviously, up is good news, down is bad. But this metaphor, now omnidirectional on television, has deeper roots than it seems. According to Fred Cassidy, editor of the Dictionary of American Regional English (DARE): "Evidently a part of American Indian (Sioux) belief included *go south* = to die. The sense of deterioration is not far off."

The inspiring Professor Cassidy, now 87 and still only on the letter "O" — he and his University of Wisconsin team are working as fast as they can — directed me to Mitford M. Mathews's Dictionary of Americanisms. In that 1951 lexicon, a 1746 citation, from David Brainerd's journal, about an aged Delaware Indian's opinion that the soul departing the body "would go southward" was elucidated in a Harper's Magazine article in 1894: "The Dakota tribes believe that the soul, driven out of the body, journeys off to the south, and 'to go south' is, among the Sioux, the favorite euphemism for death."

A sexual sense was added by whites who followed the American aboriginals. In the 1955 Broadway musical "Silk Stockings," based on the movie "Ninotchka," Cole Porter wrote, "I'd love to make a tour of you"; stops on this lyrical tour included "The eyes, the arms, the mouth of you/ The East, West, North and the South of you." On the surface, an innocent lyric, and never banned from the airwaves; still, when Don Ameche sang the word *South*, the sexual innuendo about the nether parts of the body was unmistakable.

Financial reporters took up the compass metaphor to enliven their language about the direction of the stock market. "The markets headed south today" is an all-too-frequent usage in finance. Lou Dobbs of the CNN program "Moneyline" tells me, "While I've heard many analysts and market gurus talk about stocks *going south*, I've never heard anyone say a market is *going north*."

At least the directional metaphor of North (up, good news) and South (down, bad news) is clear. For example, when there is good statistical news on the jobless or inflation fronts, and those figures drop, you do not hear "Unemployment figures and inflation rates are headed south." Thus, the metaphoric meaning of "headed South" is not so much "downward" as "bad news."

That clarity cannot be claimed by *uphill* and *downhill*. "Your column and the crossword puzzle get my week off to a civilized start," Patricia Patricelli of Boston writes. "Usually it's all downhill from there. (Or is it *uphill*? I've never really understood that expression. Going *downhill* is easier, but it sounds negative to me, i.e., sinking, down in the depths.)"

It's all downhill from here. Does that mean "From now on, it's easy — no more struggling uphill" or does it mean "This is as good as it gets, and now we're headed for the pits"?

"I always thought that if someone were going *downhill*, that signified deterioration," Steve Conn of New York writes, "whereas *uphill* meant getting better. Tell me: should we prefer to go *uphill* or *downhill*?"

Allan Metcalf of the American Dialect Society notes that "*Downhill* has been going figuratively downhill since the O.E.D.'s first record of its use, in 1591: 'Th' Icie down-Hils of this slippery Life.' Whether we weep or rejoice in any particular instance depends on whither the icy downhills lead — to a decline, or to an Olympic skiing record."

John Algeo, the neologist of American Speech, points to the two-way working of the metaphor: "If one thinks that the top of the hill is the place to be, then *going downhill* is declining. But if one thinks about effort, then an *uphill struggle* is bad, and *coasting downhill* is good. The difference is between metaphorical place ('up' good, 'down' bad) and metaphorical effort to move on an inclined plane ('uphill' hard, 'downhill' easy)."

Though the first use of downhill, about the slippery life, was pejorative, a more famous use — by Daniel Defoe in his 1719 "Robinson Crusoe" — was upbeat: "a very short cut, and all down-hill," which was quicker and easier for the castaway and his man Friday than the long way uphill. "Perhaps a human tendency to look on the dark side favors the pejorative sense," Professor Algeo says. "Metaphorically, both work."

But they work at semantic cross-purposes. The hills are alive with the sound of confusion. My advice: forget the hill metaphor and try something nautical: *smooth sailing* and *rough sailing*, or if you go for the icy slopes, *easy sledding* or *hard sledding*. Ban the hills; if you want bad news, *go South*.

I WROTE IT MYSELF

President Clinton has taken to running down his speech writers in public, boasting about rejecting prepared remarks and doing the writing himself; this is to show that what he says comes from the Real Him. I suspect that these lines are written by speech writers falling on their pens, mightier than their swords.

In Mr. Clinton's pre-Christmas "Middle Class Bill of Rights" speech (bottomed on Nixon's "Economic Bill of Rights" statement, which we stole from F.D.R.), I was pleased to hear his pickup of the "government that is leaner, not meaner" phrase; was ambivalent about his "raise their children" (purists differentiate between *raising* cattle and *rearing* children, and in formal speech that distinction should be made, but Mr. Clinton, even when wearing a dark suit in the Oval Office, prefers the folksy), but was stunned, stunned (one cut above "shocked, shocked") by "Some people do take advantage of the rest of us by . . . flaunting our immigration laws."

To *flaunt* means "to show off, to parade ostentatiously"; the verb the President meant was *flout*, "to disregard contemptuously, to mock or scoff at." Even kids raised with the laid-back Merriam-Webster's Dictionary of English Usage are told that mistaking *flout* for *flaunt* is "a genuine error" and, by confusing these verbs, "you do run the risk of giving some of your listeners the mistaken impression that they are smarter than you are." ■

ILLUSTRATION BY TERRY ALLEN

36

212

like Republicans than did white Democrats elected from districts with insignificant numbers of black voters.

In fact, when Tim Valentine represented a district that had a substantial, but not majority, black electorate in the 1980's, his voting record was notably conservative. After studying roll call behavior, Morgan Kousser, a professor of history and social science at the California Institute of Technology, concluded, "White politicians in North Carolina have overwhelmingly considered their primary obligations to be to whites, while they have largely ignored the opinions of the black parts of their constituencies."

In other words, the debate about redistricting begs the larger question: Namely, who gets to decide the interests of *any* voter in choosing representatives? To some extent *all* redistricting is gerrymandering. Critics who assail majority-black districts for artificially predetermining election outcomes are on to something about districts in general. But it is not only black districts that do this; it is all districts.

Our form of "winner take all" districting is simply unfair. It allows self-interested politicians to classify voters by where they live or what color they are, instead of by what they believe. In effect, a Congressional powerhouse can greatly influence the legislature in defining a district, deciding which group will be the majority.

This system crudely overcompensates the majority: a candidate who wins with even 50.5 percent of the vote gets 100 percent of the power, while someone like former Speaker Tom Foley, who got 49.5 percent of the vote in November, gets nothing. In 1994, 67 Congressional candidates won with 52 percent or less of the vote, yet each represents 100 percent of the district's constituents.

All voters, not just black voters, are affected by this. In cities, heavily Democratic voting districts often submerge Republican voters; in Republican-dominated suburbs, the voices of Democratic voters cannot be heard. All political constituencies suffer. Women cannot join forces with like-minded voters who don't live in their neighborhood. Ruth Shaw, the lead plaintiff in the landmark case challenging the newly created majority-black districts in North Carolina, described her objections this way: No one ever asked her whether she wanted to be represented as a woman. And in this sense, she is right: Territorial districting cannot recognize dispersed, nongeographic-based interests. Women who would like to identify politically as women are not represented per se.

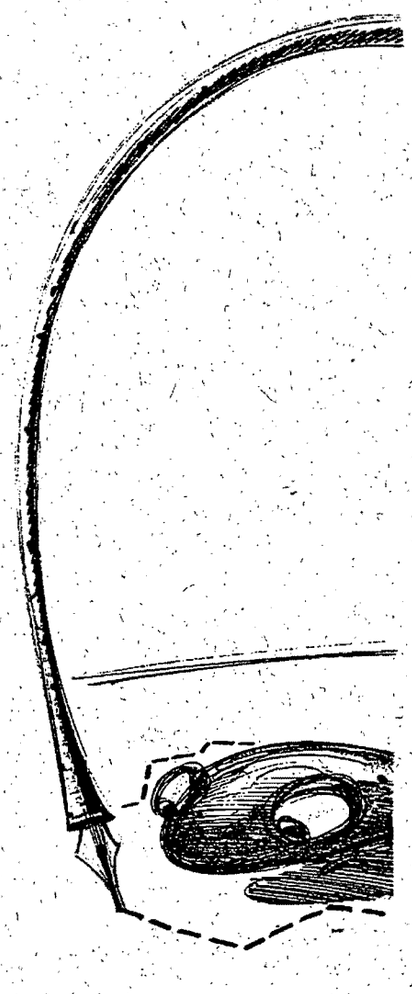
How can we avoid denying minority voters fair representation? One solution is to expand legislative accountability to *all* voters, by endorsing as a universal principle *the equal opportunity to vote for a winning candidate*.

There are many electoral systems that protect the value of all voters' votes. In its first all-race elections, for example, South Africa tried a party-list system. Voters voted for a political party, not a political candidate. Each party then filled legislative seats in proportion to its percentage of the total vote. Political parties representing the white minority got legislative seats according to the number of votes they got. Their supporters' votes were not wasted, as they would have been under our rules; all votes counted in the election of officials, including those associated with parties receiving substantial votes, though less than 50 percent.

Choice — so highly valued in the commercial marketplace — is even more important in the marketplace of ideas. Where elections do not result in only one winner, diverse viewpoints can be represented. Women like Shaw could pool votes to support candidates with their concerns. Blacks, too, could form electoral coalitions of like-minded, not like-colored, voters.

Consider the alternatives. We have become a deeply divided society. In the 1960's, we thought inclusion would come if we simply nurtured the hope of unity. Since then we have learned that unity is elusive. A Democratic coalition that is ashamed of its electoral dependency on black voters is fragile and easily fractured by a juggernaut of zealous, angry and highly motivated voters. A Republican victory is precarious when it depends on chasing away 60 percent of the electorate.

Neither politicians nor judges should underestimate the role of race. But we shall never transcend race if we think only in terms of how many districts are allocated to people of color. This is not about the election of more Democrats or fewer Republicans. America's democratic future depends on turning principles of political equality into reality for all voters, not on turning back the clock. American democracy should be a dynamic method of governance open to all groups of voters rather than a battle for total victory in the control of "winner take all" districts. This means more-participatory democracy, not more Democrats, and a commitment to genuine republican government, not just to a Grand Old Party. ■



It's not redrawn black districts that lost the Democrats the House. All redistricting is gerrymandering, and it crudely overcompensates the winning side.

29

DON'T

SCAPEGOAT THE GERRYMANDER

By Lani Guinier

AS THE NEW CONGRESS convenes, a fight is unfolding under the banner of the Voting Rights Act, threatening conventional assumptions about strategies for black empowerment. Proponents of black voting rights have won the ballot, but may be losing the war. The Congressional Black Caucus's funds have been cut off by the new Republican majority, 20 black committee and subcommittee heads have been deposed and 36 of 38 black House members now vote with the minority party.

The 1982 amendments to the Voting Rights Act secure the right of minority groups to an equal opportunity to elect candidates of their choice. For the first time, the back-room deal-making of incumbents was tempered by a simple command: *Do not exclude*. As a result, 16 new black elected officials joined the 1992 Congress, each elected from newly drawn majority-black districts.

Some blame these districts for handing Republicans a working House majority. When Lyndon Johnson signed civil rights legislation in 1964, he told a young aide, "I think we delivered the South to the Republicans for the rest of your lifetime." Some Democrats are convinced that Johnson's prophecy was realized in the 1994 midterm elections. They see an unholy alliance between Republican operatives and Justice Department officials to enforce the Voting Rights Act for blacks and other minorities, ironically winning greater political influence for Republicans. These pundits accuse Republicans of siphoning off the most loyal Democratic voters into majority-black districts, leaving surrounding districts ripe for G.O.P. plucking. Conservative Democrats like former Representative Tim Valentine of North Carolina also suggest that once districts like his were shorn of black voters, Republicans were able to recruit better candidates.

No doubt some majority-black districts were created that left other districts whiter, more conservative and more Republican. Simultaneously, Republicans deliberately declined to put forward truly competitive candidates in some races to keep black turnout down. And the new black districts may have depressed black turnout by inadvertently excluding the majority of black voters — who don't live in those majority-black districts. Indeed, 58 percent of voting-age blacks in the South still reside in districts that have white majorities.

But focusing on the political fallout in isolated cases could lead to scapegoating these districts for a much larger political problem. The truth is, of course, that the Democrats lost for many reasons. Three stand out. First, white voters fled the party. Second, the Democratic Party gave its traditional base — minorities, labor and city dwellers — little incentive to vote, courting marginal Democratic voters with big television buys rather than turning out its core constituency. Third, about 62 percent of all eligible voters stayed home: both parties are turning off voters. Thirty-six Republicans won previously Democratic seats with fewer votes than unsuccessful Republicans got in 1992.

The fact is, Democrats did no worse in the nine states that drew new black districts after the 1990 Census than in states with no new black districts. Nowhere in America did incumbent Republican representatives lose; this outcome was not driven by newly drawn black districts. And although Republicans did run stronger candidates, they recruited talented Republicans all over America, not just in the South. Moreover, Congressional boundaries did not change between 1992, when Democrats gained 41 seats, and 1994, when the G.O.P. gained at least 52. Finally, Democrats also lost control of the Senate, which, of course, has no black districts.

As an example of the costs of creating black districts, some cite Newt Gingrich's old Georgia district, which he won by a mere 974 votes in 1990. After the 1992 reapportionment, he won with ever-increasing margins — representing, however, entirely different voters. It was not just the 19.5 percent black voters who had been dispersed; his district had been dismembered. Before, his district was largely blue collar, rural and southwest of Atlanta; today, it is north Atlanta, suburban — and the most Republican district in Georgia. In the end, Gingrich wound up with what he himself wanted: a "low-maintenance district."

WHATEVER THE MERITS OF the argument, talk about ridding our political landscape of black, Latino or Asian districts without proposing alternative remedies to insure minority representation is, in reality, talk about resegregating Congress and disfranchising African-, Latino- and Asian-Americans. When state legislatures were not monitored by the protection of the Voting Rights Act, some created weirdly shaped white districts, splitting every black precinct to make sure that all districts had a white majority. One influential state legislator from New Orleans defended Louisiana's 1982 Congressional plan, which had no majority-black districts, by declaring that he didn't want to see "another nigger big shot" elected; they already had "one nigger mayor."

Race still matters. In the 1980's in North Carolina, more than 80 percent of white voters would not vote for a black candidate even when their only other choice was to vote for no one. Because of racial-bloc voting, only four blacks were elected to the House from districts with white majorities. Racial-bloc voting has prompted some Southern white Democrats to neglect issues that are identified with black constituents. Data from 1970 through the early 1980's show that white Democrats in North Carolina who were elected from Congressional districts with white majorities but substantial numbers of blacks tended to vote more

1/2

Lani Guinier, a law professor at the University of Pennsylvania, is the author of "The Tyranny of the Majority."

ILLUSTRATION BY VICTOR JUHASZ

THE NEW YORK TIMES, SUNDAY, JANUARY 8, 1995

PHOTOCOPY PRESERVATION

28

year later, in 1967, the show booked a guest who would change Ailes's life: Richard Nixon. The two men argued about television in Ailes's office. Nixon, who would soon declare his Presidential candidacy, insisted that it was a gimmick; Ailes predicted that no candidate would ever again be elected without knowing how to use it. A few days later, Ailes was summoned to the Plaza Hotel in Manhattan to meet with Nixon and his aides. He left behind his first wife and his plans to become a network producer.

The victory for Nixon began Ailes's career as a Republican kingmaker. It also sparked his paranoia about the press. In his book "The Selling of the President 1968," Joe McGinniss depicted Ailes as a new breed of cynic, a jaded, sleazy salesman who molded the deplorable Nixon into an acceptable consumer product. "It was totally unfair that Ailes was singled out," says Robert Squier, the Democratic strategist, who ran Hubert Humphrey's media campaign against Nixon. "We were all doing the same thing. The only difference was that he helped elect candidates that people simply didn't like."

Throughout the 1970's and 1980's, Ailes designed high-priced media campaigns for Republicans nationwide. He also dabbled in the theater, producing, with Kermit Bloomgarden, the 1973 Off Broadway hit "Hot L Baltimore." In 1981 he married Norma Ferrer, a television producer; he did a short stint as Tom Snyder's executive producer on "Tomorrow Coast to Coast," and considered returning to television for good. "People think I stayed in politics because I wanted conservatives to run the world," he says. "Actually, it was the money."

Along the way, he earned a reputation as an abrasive — if often hilarious — foil for journalists. He destroyed one reporter's television camera at a 1988 George Bush campaign appearance; afterward, he was asked why. "Because I couldn't reach his neck," he said.

In a 1984 Reagan-Mondale debate, it was Ailes who counseled the 73-year-old President to diffuse any attack on his age with the now-famous lines: "I will not make age an issue in this campaign. I am not going to exploit for political purposes my opponent's youth and inexperience."

Ailes's greatest coup may have been the 1988 Presidential campaign, in which he overcame Bush's limp, lap-dog reputation and pushed him to a come-from-behind win over Dukakis. No matter how rewarding the victory, Ailes now says, it wasn't worth the misplaced bashing he received over the Willie Horton commercial, which attacked Massachusetts's prison-furlough program by focusing on a black inmate who raped a white woman while on a weekend pass. The commercial was made by two former Ailes employees for an independent pro-Bush group. But many reporters were convinced that Ailes himself had orchestrated its blatantly racist message, despite a nearly two-year Federal investigation that couldn't prove the connection.

"There was no evidence that he had anything to do with the Willie Horton spot," says Susan Estrich, who was Dukakis's campaign manager. "His own commercials about the furlough program didn't even mention Horton. It was Bush who kept harping on Horton in every speech he gave. In a weird way, the press punished Ailes for being better than we were."

After the Bush victory, Ailes bought a farm in Virginia and immersed himself in corporate consulting; he also joined Squier for a regular debate on "The Today Show." He turned his back on politics completely when he was excluded from — or, according to Ailes, declined to join — the Bush re-election team. "They did it without me," he says, "and they fell on their faces."

Within months, Ailes returned to television with a vengeance, championing Rush Limbaugh's media crossover. While Ailes and Limbaugh regularly get together these days to eat steak and bash the Clintons, Ailes denies they are soul mates. "Rush likes to poke fun at people's life styles," he says. "I don't care if Clinton slept with Gennifer Flowers or smoked marijuana. I don't think the Government should dictate whether a woman can have an abortion. My brand of conservatism is very meat and potatoes. I believe in a strong defense and that less government is always better. That's about it."

A budding network czar, out to rewrite his own history.

By even the most critical reckoning, Ailes has not turned CNBC's prime time into a blur of Rush hours. "The most interesting thing I've discovered about Roger," says Andy Friendly, "is that he is much more interested in making watchable television than in purveying his own agenda." Which is not to say that he doesn't still participate in the occasional partisan sarcasm. Last spring, for instance, on Don Imus's syndicated radio show, he jokingly warned listeners about Hillary Clinton, pointing to the three lawyers she had brought to Washington. One, Ailes noted, was being investigated by the Justice Department; another, "was forced to resign," he added, "and one's dead. I wouldn't stand too close to her." Soon after, Dee Dee Myers, then the White House press secretary, led off a daily news briefing by denouncing Ailes.

It seems all those old campaign-trail habits die hard. Geraldo Rivera, who credits Ailes with "giving me back my career, my self-respect," admits that his new boss "can be blunt to the point of cruelty."

"Roger," agrees Friendly, with a sly smile, "stabs you in the front."

AILES, NOW SEPARATED FROM FERRER, lives alone in a small penthouse apartment on the East Side of Manhattan. It is sparsely furnished and nominally lived in; the empty Jacuzzi, with a commanding view of the city, is strewn with stray hardware. Although Ailes has spent his life running interference for future Presidents, he displays only one photograph to prove this. Ailes is a tiny figure in the background; in the foreground, George Bush has been caught in mid-guffaw. He is laughing so hard that he is almost horizontal. With his head thrown back and his legs outstretched, he looks like he is reclining in an invisible Barcalounger. "I was telling him a dirty joke," says Ailes, smirking at the photo.

The apartment, a relatively modest two-bedroom duplex in a slightly shabby high-rise, is dominated by a shiny Yamaha piano. Ailes admits sheepishly that he is teaching himself to play. He reaches under the keyboard and flips a switch. The keys begin to dance on their own, tapping out a jaunty rag. "It's got one of those player-piano attachments," he says, smiling crookedly. "Sometimes you've just got to have the sound of piano music in the background."

But Ailes does not spend many nights home alone, listening to the ivories tickle themselves. He has become an A-list fixture, and not just at the homes of high-end Republicans like Georgette Mosbacher and Henry Kissinger. Not long ago, he attended a party given by Marie Brenner, the author and magazine journalist, that was flush with media celebrities. "I guess she invited me as the token fat nasty Republican slob," Ailes says, leaning forward, fishing for a contradiction. He knows perfectly well that he made the list for a more pedestrian reason: every day, he comes closer to fitting in. ■

PHOTOGRAPH BY NIGEL PARRY/C.P.I. FOR THE NEW YORK TIMES

3/3

PHOTOCOPY
PRESERVATION

21

Roger Wilkins

Great Things That Gingrich Could Do

As an unabashed liberal—and a black one to boot—I was astonished last Wednesday to find myself concluding that Speaker Newt Gingrich's maiden oratory was moving me more than any political statement I'd heard since LBJ introduced the Voting Rights Act almost 30 years ago. While there was much in Gingrich's statement that requires respectful thought and discussion, I will confine myself here to those eloquent passages dealing with the need to attend to black children in poverty and in peril.

Gingrich recalled his breakfast at which two black House members talked about their feelings of helplessness on seeing doomed schoolchildren, and then he said: "for some reason, . . . that got through. I mean, that personalized it. That made it real, not just statistics, but real people."

He hooked me there. I've found, over the years, that many white people have a hard time learning from black people. For a political leader in the full flush of victory to tell of such a learning experience while laying out his political intentions is virtually unknown in America.

Nevertheless, my caution signals blink furiously, because this is still Newt Gingrich. Despite reaching out to Democrats and to minorities on Wednesday, he is still the man who casually suggested that the Great Society was the product of the counterculture. And he is the man who has said time after time that "American Civilization," as he likes to call it, worked just fine from the mid 18th century to the 1950s. Pardon me, but I don't think my slave ancestors would agree, nor, having been born in segregation in the '30s, would I.

Moreover, Wednesday's Newt Gingrich told Democrats that we could learn from—among others—Govs. John Engler of Michigan and George Allen of Virginia. David Broder has just assessed some of the programs of these governors in this newspaper and has concluded that Allen's tax cuts "will largely be paid by the poor." Turning to Engler, Broder cited a University of Michigan study of the 80,000 general welfare cases that the governor dropped; it concluded that the people affected "were less likely to have up-to-date skills, less likely to be hired in entry positions and more likely to have acquired physical and mental health problems." The Michigan researchers concluded that these people needed what they had always needed: jobs and better training.

So, what is one to guess about the speaker's meaning when he says he wants to "truly replace the current welfare state with an opportunity society." As a person who grew up in the civil rights movement, I have always yearned for America to be a true opportunity society for everybody. And, as a former welfare worker in Cleveland, I can surely attest to the limitations of our welfare system.

But if all Gingrich means is that we should balance the budget by hacking away at government and giving the poor the "opportunity" to fend for themselves in what is for many of them a racist and job-parched environment, as Allen and Engler seem intent on doing, then this splendid speech will have turned out to be the cruelest and most brutal hoax imaginable.

Poor children need families, and in a culture where almost half the marriages end in divorce, the very least the most vulnerable citizens need for a chance to form and keep families is a real shot at earned income. But America is going through a profound economic upheaval that is pinching middle-class people, doing severe damage to unskilled whites and devastating unskilled blacks.

Thus, while Gingrich rivets minds with lines about babies in dumpsters and 12- to 17-year-olds drowning in social pathology, nobody remembers to mention that blacks have suffered double digit unemployment for the past two decades or that (according to the Urban Institute) in 1993 53 percent of black men 25 to 34 (the prime family forming and keeping ages) were either unemployed or earning too little to lift a family of four out of poverty.

So, in the spirit of the new speaker, I would suggest a book for him. It is Chicago Professor William Julius Wilson's "The Declining Significance of Race," the biggest lesson of which is definitely *not* its title. Wilson teaches powerfully that poor blacks have advanced in this country at times such as the world wars and the mid 20th century boom when their labor was desperately needed. When the need collapses, they suffer acutely.

The fact is, as Edward Luttwak has pointed out in this newspaper, America's grip on what he calls "turbo charged capitalism" is piling up enormous social costs every day. The bottom 60 percent of the wage scale is feeling it, and the only answers the political system seems to be yielding up are tax cuts and less government.

The speaker professes great admiration for Franklin D. Roosevelt. My own sense is that Roosevelt would have faced our current economic problems candidly as he did those of 1933. He acknowledged to the nation that our troubles were enormous and that he didn't have all the answers. Then he enlisted the best minds in the nation to try this and try that and try the other thing until some things began to work.

I remember back then my first personal encounter with a white person in Kansas City, my segregated hometown. It was 1937, and I was about 5, and the man was working on a sewer a few doors from my house. I watched him work. In that cultural context, I must have looked like a futureless little pickaninny to him, but he asked me my name, and I told him and asked him his. I will never forget his answer:

"Little boy," he said in the weariest voice I've ever heard, "I'm too poor to have a name. . . . just Mr. Roosevelt's little job here."

In 1944, Roosevelt told us America needed an economic Bill of Rights, saying: "Necessitous men are not free men. People who are hungry and out of a job are the stuff of which dictatorships are made."

Proceeding from these thoughts, which are close to some expressed by the speaker on Wednesday, Roosevelt went on to outline his program. According to his biographer, Doris Kearns Goodwin, the economic Bill of Rights "must include: the right to a useful and remunerative job; the earnings sufficient for adequate food and clothing and recreation; to decent housing; to adequate medical care; to protection from the economic fears of old age and unemployment; to a good education."

Government worked for that white man in Kansas City, and self-help, jobs and government worked to lift a few million blacks to the middle class in the wake of the civil rights movement. FDR sketched a powerful vision of a true opportunity society. I hope that when the speaker talks so powerfully about his vision and about House members swapping district visits to deepen their understanding and their collegiality, he comprehends the need to confront the current economic security crisis head-on. Verbal dexterity and ideology won't work. Neither will punishing the poor.

FDR backed up his eloquence with brilliant use of the nation's brainpower and its government to achieve his immortality. All of that could be within this speaker's grasp.

The writer is a professor of history at George Mason University.

Spending a Little to Save a Lot

The National Gallery's struggle against an outdated heating and cooling system [Style, Dec. 3] is a vivid example of the challenges faced in many commercial and government buildings.

The federal government operates buildings at thousands of sites in the United States. The Department of Energy estimates that modern efficiency measures would save nearly $1 billion annually for heating and cooling those buildings. President Clinton issued an executive order requiring agencies to reduce their building energy use by 30 percent by 2005.

However, even if agencies know about the latest technologies, they often lack the up-front capital needed to pay for money-saving projects. That is where our Federal Energy Management Program (FEMP) comes in. FEMP offers grants for projects that promise to pay dividends to agencies and the federal taxpayer. For every dollar invested, $4 of savings will be realized.

The National Gallery will become the fifth federal facility to receive one of these grants. The gallery will install a building automation system and other energy upgrades that will improve control of its indoor environment, lower energy bills and protect the gallery's priceless art collection. Energy savings will more than pay for the new system.

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Assistant Secretary
Energy Efficiency and Renewable Energy
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Washington

WASHINGTON POST TUESDAY, JANUARY 10, 1995

CAPE COD DIARIST

Symbolic politics

"SYMBOLS," WROTE RILKE IN ONE of his *Sonnets*, are "where we truly live." This is the case in religion, and it is the case in politics as well. Symbols can be uplifting; sometimes, many times, they can disappoint. Symbols and symbolic acts can also be ugly. The ugliest of these in recent memory was the almost clandestine midsummer rehabilitation of Kurt Waldheim by Pope John Paul II. The Pope turned the war criminal into a Knight of the Ordine Piano. The order, founded by Pius IX in 1848, honors individuals, "for outstanding service to Church or society." I've been interested in the macabre career of Dr. Waldheim for almost fifteen years: it was in TNR where you—or anyone else, for that matter—first read that the then-secretary-general of the United Nations had been both a Nazi and an officer in military units of the Reich guilty of unspeakable atrocities, including the liquidation of Salonician Jewry and the killing of British prisoners of war. It is precisely because of Waldheim's complicity in these barbaric events that the United States has banned him from entering the country. Paradoxically, his culpability ensured his ascendancy at the U.N. Although Waldheim had fooled some governments (we do not know whether he actually fooled our own) about his past, the Soviets knew his record very well. And he knew they knew. Which is why he was a virtual partner in Moscow's international adventures. The present Pope has had an inexplicable soft spot for Waldheim, receiving him when only Communist and Arab rulers would do the same. How strange that his career should end with honors from the Vicar of Christ. Still, the very fact that the Vatican tried to play its tribute sotto voce demonstrates that the Holy Father knew exactly what his imprimatur means. Alas, the knighting also shows that the hatred of Jews is still no impediment to the esteem of the Church. Some say it was Waldheim's only qualification.

IT'S NOT ONLY THE ROMAN CATHolic hierarchy whose moral compass is more than a bit off. Just about a year ago the Greek Orthodox Church named Radovan Karadzic, who might aptly be called the butcher of Bosnia, "Knight (first rank) of the Sovereign Greek Order of Saint Dionysius of Xanthe." The 900-year-old order's knighthood, which honors "humanitarian achievement," was devolved on Karadzic because he is "one of the most prominent sons of Our Lord Jesus Christ working for peace." Were these Dionysians drunk? As the investiture was taking place, Karadzic's armies were enforcing ethnic cleansing on Sarajevo.

A DIFFERENT KIND OF SYMBOLIC politics is being played out in Washington. Confronted with the problem of crime in our cities, the right has fixed on the death penalty as the answer to our prayers, and that's why it was put into the crime bill. It's also one reason why the crime bill went down to defeat. After all, one person's totem is another's taboo. But, in federal legislation, the death penalty is sheer symbolism. Most federal crimes are white-collar; the crimes in which blood flows are state crimes. The death penalty for killing someone on an Indian reservation or murdering a postal inspector will do exactly nothing to tame the killer instincts loose on the streets. The administration has its own symbolic palliative to the fears that stalk the citizenry; it's for outlawing assault rifles. Don't get me wrong. I'd be willing to ban B.B. guns, and all other weapons, too. But in most of the cities and states where murder is a statistically significant cause of death, the arms that kill are, at the very least, registered and "controlled." I could no more carry an exposed semiautomatic down the streets of Cambridge without getting nabbed than I could drink from an open beer bottle. Lots of things are illegal in America. There are illegal drugs, there are illegal immigrants. To what effect? Adding some guns to the federal illegal category might advertise where our hearts are. But I doubt it will put a dent in the mugging and murder numbers of Atlanta and Detroit.

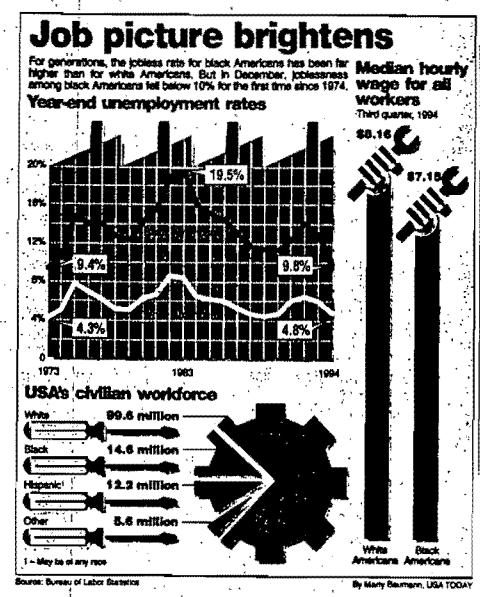
FROM THE VERY BEGINNING PRESIdent Clinton all but announced that he would play symbolic politics with his appointments. And he has. There were some jobs that were open only to women, some only to blacks. And the top foreign policy jobs were open only to white men. The two men who now run our foreign policy were also gatekeepers to the top two foreign policy jobs (and not only these). With Bill Clinton's indifferent assent they appointed themselves. If the Israelis weren't cooperating in giving him make-work, Warren Christopher would already be back in Los Angeles. His mark on U.S. foreign policy: exactly nothing. He's lucky. The disasters all bear the fingerprints of Anthony Lake, the national security adviser, who'll soon be back milking cows in western Massachusetts. This is an administration mostly populated by second-raters and lesser minds: Lloyd Bentsen, Janet Reno, Mike Espy, Dr. Elders. Of course, there are exceptions (I won't burden them by saying who they are), and they're probably accidents. Maybe the problem is that the president and Mrs. Clinton don't care about either brains or wisdom. What they mean by smarts is fast talking, and they think of experience as a history of fidelity to themselves. It didn't have to be this way. The independent-thinking stratum of American society is still largely Democratic. It could have been the resource pool for years to come. There was even a text to follow: Arthur Schlesinger's *The Coming of the New Deal.*

DEVAL PATRICK IS NO second-rater. A respected partner at Boston's tony Hill and Barlow, which does a lot of my own legal work, he's the black lawyer who was sent in to fill in as assistant attorney general for civil rights, the job left vacant by the dumping of Lani Guinier. Late in July Patrick petitioned a federal court to allow the Department of Justice to switch sides in a case involving a woman teacher who had been fired by Piscataway High School in New Jersey. The woman, who was white, had been fired to make room for a black. No one charged past discrimination on the part of the Board of Education or a racial imbalance among the staff. In the initial case the feds were the principal plaintiff on behalf of the fired teacher, and they and she won the day. This summer the school board appealed the court's ruling. Suddenly Patrick said that the United States had changed its mind and wanted to be the prime appellant litigant in reversing the ruling. The government's new position is, then, that white people can be fired for no other reason than the color of their skin if that firing advances affirmative action. A 1986 Supreme Court case (*Wygant* v. *Jackson Board of Education*) makes hash of the argument. No matter. Patrick has his views and, like it or not, they are effectively Bill Clinton's. Doubtless this is the kind of ugly symbolic politics the administration will not want on the front pages or the front burner. Having disposed of Professor Guinier for what he decided were her embarrassing opinions, the president is now stuck with Patrick's far more mortifying actions.

MARTIN PERETZ

83

TUESDAY, JANUARY 10, 1995 · USA TODAY



COVER STORY

Jobless rate for blacks hits 21-year low

Gannett

BRIMMER: Blacks sharing in strong economy.

By Mark Memmott and Anne Willette
USA TODAY

For the first time in 21 years, the unemployment rate among black Americans has fallen below 10%. It slid to 9.8% in December, the Labor Department says.

And while that jobless rate is more than double the 4.8% among white Americans, the news that it has fallen below the 10% line is being hailed by many black economists, executives and entrepreneurs.

"Whereas a rising tide does not necessarily lift all boats, in this case it did lift the boats of black Americans," says Andrew Brimmer, an economist and former Federal Reserve governor. "This is a good thing. In this case, black Americans are sharing in the strong operation of the U.S. economy — something blacks have not done since the 1960s."

"I was absolutely thrilled to hear this," says Frank Savage, chairman of Alliance Capital Management International, a unit of Alliance Capital — an investment management firm with $123 billion in assets. "I said, 'My God, this is incredible! This may indicate more African-Americans have entered the economic mainstream than we realized.' "

But despite such optimism, whether the good news for black Americans is the start of a long trend or a blip to be followed by disappointment is still unclear. It's also unclear just how much black Americans should celebrate. A few experts say it's too soon to get excited.

It's "still quite dismal for African-Americans" who need work, says Delorese Ambrose, whose Pittsburgh consulting firm, Ambrose Consulting and Training, advises *Fortune 100* companies on diversity issues.

Please see COVER STORY next page ▶

Work eludes young blacks

Continued from 1B

So dismal, she points out, that many young black Americans apparently have given up trying to find work in or around inner cities. And that means they aren't even counted in the official unemployment statistics — putting the "real," or unofficial unemployment rate among blacks well into the double digits.

Among the signs that many blacks still don't think there is any reason to look for a job: the participation rate — the percentage of eligible adults and teens are working or looking for work — among blacks last month was 63.1%. The participation rate among whites: 67.2%. Among black teens, the participation rate was 36.6%, vs. 56.9% for white teens.

Though problems remain, it's still true that three key forces have helped cut the official jobless rate among black Americans about 4 percentage points in just two years, from 14.2% in Dec. '92:

▶ A strong economy that is creating jobs across the nation. Labor said employers added 2.7 million jobs to their payrolls last year, including 744,000 the past two months. The jobless rate among all Americans fell to 5.4%, its lowest level since July 1990 (the month the economy peaked after a record peacetime expansion of eight years).

▶ A red-hot auto industry that is rehiring and adding workers in many urban areas. Manufacturing jobs, especially at automakers, have historically been a key source of employment for black Americans in urban areas. It was a roaring manufacturing sector, for example, that pulled unemployment among black Americans below 7% in the late 1960s.

▶ The increasing acceptance of black Americans in nearly all professional, service and white-collar occupations. Black Americans aren't routinely excluded anymore, and that means good times no longer generate good jobs just for whites in those sectors of the economy.

Many black people land jobs in those white-collar occupations because in today's competitive corporate world, it's experience, skills, talent and ability — not race — that determine how long it takes to find work, says Carleton "Tony" Palmer, managing partner at the Atlanta office of EnterChange, a corporate placement and career transition firm. Typical length of time it takes one of his white-collar clients, whether white or black, to find a job: Four months. "Everybody succeeds at pretty much the same rate," Palmer says.

Those experts who are concerned about the sustainability of the good news for black Americans worry that when the economy slows and the auto industry runs into its next downturn, blacks will lose many of their gains.

"It's quite likely we'll find the people at the bottom end of the seniority ladder will be more vulnerable than those with greater seniority," says Roger Brinner, economist at consultants DRI/McGraw-Hill. "I'm afraid minorities of color will have a disproportionate burden to bear." That happened when the economy fell into recession in July 1990. From a low 10.5% in June, the jobless rate among blacks jumped to 12.3% by year's end. The jobless rate among whites rose far less, from 4.5% to 5.3%. The jobless rate among blacks peaked at 14.5% in mid '92. Around the same time, it peaked among whites at 6.8%.

Another trend also threatens the gains black Americans have made. Increasingly in an ever-more-complex economy, the ability to find and keep a job depends on an individual's education and training. But just 16.5% of blacks in the workforce have college degrees, vs. 27.8% of whites.

> "Opportunities are broadening for African-Americans and that's going to mean more role models (for black youths)"
>
> — Roger Brinner, economist

But other experts are optimistic that black Americans can now better withstand economic downturns and the challenges of a changing economy. "Opportunities are broadening for African-Americans and that's going to mean more role models" for black youths, Brinner says. The entrepreneurs and professionals that succeed today, he argues, will help inspire young blacks.

"That is the classic American experience," Brinner says. "When you look at the Irish or the Italians or other groups that have been in disadvantaged positions, it takes time, but eventually they work their way into the mainstream."

What experts say won't happen for many years, however, is a sharp enough decline in black Americans' unemployment rate to bring it in line with that of whites. Discrimination hasn't disappeared, they say. Nor have the lingering effects of past injustices.

"If we're talking about job openings for systems analysts, computer programmers, trial lawyers — and if whites have a higher proportion of people with that training — they're going to get (many of) those jobs," says Audrey Freedman, president of consultants Audrey Freedman & Associates in New York.

That's why education and training are so important, experts say. There's a desperate need for more apprentice programs to smooth the transition from school to work for black youths, Ambrose says. "We give a big speech at high school graduation — 'go out there and do us proud' — and we haven't given them a single skill that would enable them to succeed at a job other than flipping burgers," she says.

Those, of course, are worries about the near future. But for a moment, many experts say, it's OK to rejoice in the good news of improved jobless rates among black Americans.

"I'd like to see this hold up and I worry a little about that," Savage says. "But what I really feel is that this is wonderful to see and I don't care what caused it. I'm just happy."

School Desegregation Model Shows Price of Rebuilding

Missouri Effort Offers Lessons for P.G.

THE WASHINGTON POST MONDAY, JANUARY 9, 1995

By Retha Hill
Washington Post Staff Writer

A1

KANSAS CITY, Mo.—Just a few years ago King Middle School, located in one of this city's poorest neighborhoods, was the worst middle school in one of the worst districts in the country. The school, with its orange, early '70s decor and equally outdated curriculum, consistently underperformed on every national, state and district measure.

Today, King is ranked near the top in the district. Its language-arts students score above the national norm on standardized tests, and its praises are sung by education experts as a model for Latin instruction. Just as astonishing is the student body, which has gone from all black to more than a quarter white, despite the school's location.

What happened to King Middle School and the entire Kansas City, Mo., school district was the most ambitious rebuilding effort ever undertaken in the United States under the mantle of desegregation. Spurred by a federal judge who found that the school system had "literally rotted away" through decades of state and local neglect, school officials dismantled the system. They tore down the decaying buildings, threw away the dated texts and provided the best buildings, equipment, materials and teachers that money could buy. The cost over the past decade has been more than $1.3 billion.

SCHOOLS, From A1

The Kansas City experiment provides lessons for other districts, including Prince George's County, Dallas and Topeka, Kan., as they work on their own expensive school reorganizations. The Kansas City plan, like the one being crafted in Prince George's, sought to make schools work for children of all races. Experience, according to educators who have studied Kansas City, is showing that success requires tremendous investments of money and time, along with aggressive oversight by the federal courts. Educators cannot say with certainty how much money is enough.

So far, Kansas City's spending program has produced slight gains in student achievement and racial balance. Although city school officials want the state of Missouri to continue funding the ambitious effort, the state is telling the courts it should not be forced to spend more under the plan. The U.S. Supreme Court will hear the dispute this week in a case that could affect other communities with school desegregation plans.

Both the Prince George's school system and the Kansas City school district have long been under court supervision because of past policies of segregation. Both systems are majority-black and have achievement levels near the bottom in their states. Prince George's, however, is home to one of the nation's most affluent African American populations, while African Americans in Kansas City, population 435,000, are less affluent, and two-thirds of the 36,300 students in the Kansas City school district are impoverished. Per-pupil spending in the 116,600-student Prince George's system is $6,110. Spending per pupil in Kansas City is a matter of dispute, with the school district putting the figure at $7,665 and the state, $9,412.

The two systems have traveled similar roads toward eliminating racially isolated schools and improving levels of performance among minority students.

Last summer, the Prince George's school board unveiled a desegregation plan that would end race-based busing and return most students to neighborhood schools. The board is asking county and state government to spend nearly $346 million over six years to build or expand schools, upgrade equipment and materials, and improve instruction so that all children can do well, regardless of race. So far, political leaders have balked at the cost. The NAACP, the plaintiff in the suit that led to race-based busing 22 years ago, has not said whether it will join the school board in asking the federal judge who monitors county desegregation efforts to end busing and allow the alternative plan to go forward.

Alvin Thornton, the school board member who heads the committee that drafted the new proposal, said county residents have a right to hold the school system accountable for the success of the program. If the test scores for minority children do not rise by the middle of the next decade, he said, the public should sue the school system.

In Kansas City, U.S. District Judge Russell G. Clark ordered the massive restructuring program after he found that racials policies of the state and school district had created a majority-black system that was inferior. He also found that decades of neglect had caused the physical plant to literally rot away.

"Before, we had old-fashioned water fountains, and most were broke, toilets that didn't work. We had exposed wires that were hanging for 12 years," said Lonnie Jackson, principal of Kumpf Elementary School, where until recently lead paint was peeling off the walls and lighting was dim.

To close the gap in achievement between black and white children, Clark ordered educational improvements that would include reduced class sizes, full-day kindergarten and before- and after-school programs. The judge later ordered comprehensive magnet school programs that would redistribute students voluntarily and would attract white students from suburban and private schools. He also mandated that all schools be renovated or replaced. The state was ordered to pick up 75 percent of the cost of the educational improvements and 50 percent of the construction costs. And in a controversial move, Clark nearly doubled Kansas City's property tax rate so that the city could pay its share, a move later endorsed by the U.S. Supreme Court.

Now, after 10 years and hundreds of millions of dollars in school expenditures, the state of Missouri is trying to end its court-imposed commitment to the Kansas City plan.

"The point is that we have put unprecedented resources in the school system," said Missouri Attorney General Jay Nixon, who on Wednesday will ask the U.S. Supreme Court to review Clark's original orders. "We spend $3,000 more per pupil [in Kansas City] than in any other school district in the state. Black and white children throughout Missouri who are not in the Kansas City [school district] have suffered."

The state argues that it has satisfied the court's order that Kansas City schools have quality programs that are comparable to those of suburban districts. The programs include innovative magnet curricula at all but a few schools, such as computer and classical Greek education at a $32 million dual-theme high school and a working farm area at an agricultural school. Systemwide, the schools got 9,000 computers, and every employee got a raise.

A team of educators chose the magnet school themes because they were not available in other area schools and would most likely attract white students. Latin grammar, the theme at King Middle School, was selected because educators believed it would help children with English and reading comprehension if they understood the roots of the language. The program, along with requirements for uniforms and signed contracts from students and parents governing discipline and homework, has made the school widely popular with black and white parents. Last year, the entering sixth-grade class was 30 percent white.

While acknowledging that integration has been furthered, state attorneys argue that in the course of the litigation, "the courts below have lost sight of the goal of eliminating one-race schools."

School officials and attorneys representing the children of Kansas City schools said overhauling the schools was necessary to reverse low achievement.

Kansas City Superintendent Walter L. Marks said that he is disappointed that test scores have not improved faster, especially on the secondary school level, but that there are signs of progress. For example, spring 1994 test results show elementary scores at or above the national norm in language, science, social studies and math in all grades except fourth-grade math, and elementary scores improved in 1994 from 1993. Middle and high school student 1994 scores improved from the previous year but lag behind national norms in most cases.

Marks said the program needs more time. He said it has been in effect for three years—not 10 as the state argues—because the early years were spent rebuilding the most basic functions of a school system.

Even as the millions of dollars flowed in, Marks said, there was chaos as the system rushed to build buildings and hire staff members who could teach such subjects as Latin or robotics technology.

Aside from modest gains in test scores, supporters of the effort cite other progress. White flight has been halted, and more than 1,600 white children have transferred voluntarily from suburban and private city schools to the Kansas City public schools.

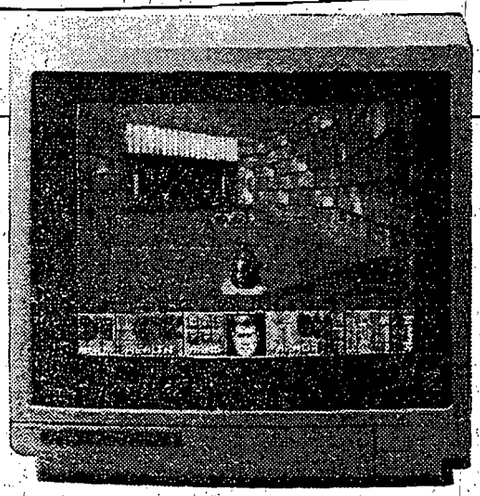
Sam Nachum, an Israeli-born artist, said he put his three young children in Kansas City public schools rather than in the Hebrew academy because the programs are far superior. His son attends a math and science magnet, a daughter is at a French immersion magnet school and his youngest attends an art magnet.

At Central High School, the much ballyhooed $32 million sports and computer magnet school—with its Olympic-size pool, indoor track, and computers for almost every student—test scores have remained flat. But Jennifer Sapasap, 16, who is white, said she would not trade Central for any school in her suburban community. She decided to attend Central "when I saw this facility, the sports program," said Sapasap, who is brought to school each day by a school district sedan.

Senior Terrence Lasker, 17, who is black, has traveled internationally for fencing meets, a sport he took up in gym class, and in which he now holds the national junior title. That exposure to a world outside his neighborhood and the confidence that comes from it are not measured on standardized exams, Vice Principal Dorothy Phillips said.

Gary Orfield, who as director of the Harvard Project on School Desegregation has studied both the Kansas City and the Prince George's effort, said the effort is beginning to pay off.

"You can't expect miracles," Orfield said. "It took a long time to get [the Kansas schools] messed up as they've been. . . . Educational change, even with lots of money, is complex and difficult, and it will take a while."



Allen Zaps Games From Computers

Va. Workers Playing on Job Results in Statewide Ban

By Rajiv Chandrasekaran
Washington Post Staff Writer

A1

For Kim Emerson, it was a game of solitaire before work started. Ed Holt loved hearts at lunchtime. And Kevin Chisnell was wild about Minesweeper competitions with his co-workers.

But for all three and thousands of other state employees in Virginia, the games are over.

Concerned that some state workers were playing when they should be working, Gov. George Allen (R) has ordered that games be deleted from every state-owned computer. An administration memo called computer game-playing "nonproductive and nonefficient" and stated that "time spent by employees playing such games should be considered an improper use of taxpayer funds."

The memo was passed out to agency heads in mid-December but, because of the holidays, began making its way to workers only last week, raising the eyebrows of everyone from secretaries to university professors.

"It's getting to a level of micromanagement beyond the usual," said Robert L. Ake, a chemistry professor and chairman of the faculty senate at Old Dominion University in Norfolk. "What's next? Will we be asked to submit a requisition when we walk away from our desk or be asked to keep a tally of every second of our day?"

As computers with high-resolution color screens and sound cards become ubiquitous in the U.S. workplace, managers increasingly are having to deal with issues of game-playing at work, industry specialists say.

Some corporations turn a blind eye, hoping that a few minutes of game-playing will increase workers' morale and productivity. Others have taken to reminding employees to refrain from playing games during work hours. But several computer industry watchers call Virginia's sweeping ban—which eliminates playing even during lunchtime and breaks—unprecedented.

"I've never heard of anything like this applying to so many people," said Russell Glitman, execu-

See GAMES, A10, Col. 1

GAMES, From A1

tive editor of PC World magazine. "It's a question of where you draw the line."

A spokeswoman for the governor said the ban was conceived because Allen and Chief of Staff Jay Timmons had received complaints from some state employees that their co-workers were spending too much time playing games—many of which were pre-installed on new computers.

Over the last three years, several state offices have upgraded their computers and purchased Microsoft Corp.'s popular Windows operating software, which includes two games: solitaire, a card game, and Minesweeper, a logic puzzle made of up square tiles. Some versions of Windows contain other diversions, including the card game hearts.

According to Microsoft, the games are intended to help new Windows users become familiar with the point-and-click functions of the computer's mouse. But for many, the seemingly innocuous training exercises can turn into an addiction.

Emerson, a secretary in the physics department at James Madison University, started playing solitaire two months ago, when she was given a new computer. At first, she played to get accustomed to the mouse. Soon, though, it was as essential as her morning cup of coffee.

"I'd play it before work started," said Emerson, 34, who has gone cold turkey since she heard about the ban. "It was great to get the blood pumping."

Although Virginia may be one of the largest employers to crack down so severely, other organizations recently have started to rein in games. Sears, Roebuck and Co. is removing some games from its employees' new computers before the machines arrive on their desks. Intel Corp. and Microsoft have asked workers to stop playing certain games, including the popular combat game Doom, because they clog internal computer networks.

The federal government lets individual agencies set regulations on computer use, an Office of Personnel Management spokesman said. At certain facilities, such as the Los Alamos National Laboratory in New Mexico, systems operators prowl the network to look for non-work-related files.

Industry specialists estimate that the rise in employees playing games has significant costs for businesses. A 1993 survey of 1,000 corporations by a San Rafael, Calif., software company found that, on average, workers spent 5.1 hours a week playing games and doing other non-job-related tasks on their computers, which would translate into $10 billion annually in lost productivity nationwide.

"People need to realize their computers are a tool and not an expensive Game Boy," said Richard Koch, director of marketing for the software company SBT Corp.

Although removing the games from Windows is easy—a Microsoft technician said only two files need to be deleted—getting to the thousands of computers in each Virginia state agency is expected to be a time-consuming task. At the University of Virginia, which has 6,000 computers, campus officials are relying on the honor system, asking employees to remove the games themselves.

Even after games are deleted, employees can bring new games to work on disks or copy them from electronic bulletin boards. And many games have "boss keys," or a series of keystrokes that will pop up a bogus spreadsheet or chart on the screen instantly to make even the most indolent worker appear productive.

Virginia's ban "will be almost impossible to enforce," Glitman said. "If someone really wants to play games, they can, and I'm not sure that's a bad thing."

An Allen spokeswoman took exception to that logic.

"It's a very serious problem to have people using taxpayer funds to play games," Melissa Herring Dickie said. "We're trying to look at how to reduce the state's work force . . . and this is not in line with the policies of this administration."

Chisnell, a materials technician for the Virginia Department of Transportation, questioned what harm would be caused by playing with a computer that's already turned on during his lunch hour.

"It's not like I'm putting miles on a state car," he said.

With no more Minesweeper competitions at noontime, what do Chisnell and his co-workers do?

"We pretty much just eat lunch and stay away from the computer," he said. "We read the paper and talk about Governor Allen's policies."

SENATE Committee Meetings

SCHEDULED TODAY

Governmental Affairs

REGULATORY MORATORIUM

Senate Governmental Affairs Committee (Chairman Roth, R-Del.) will hold a hearing on pending legislation.

9:30am SD-342 Dirksen Bldg. **Feb. 22**

Agenda:

S 219 - A bill to ensure economy and efficiency of federal government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes.

Witnesses scheduled:

Sally Katzen - administrator, Office of Information

★ *New listing*

2/22/95
Washington Times

Making English official

Rep. Peter T. King, New York Republican, introduced legislation yesterday declaring English to be the official language of the United States.

His National Language Act would end all federal programs that discourage the use of English by promoting bilingualism.

"By encouraging new Americans to continue to use their native language and offering no incentive for them to learn English, the government is helping to exclude these immigrants from mainstream society and any access to economic progress," Mr. King said.

Senate Future Meetings

FULL COMMITTEE MARKUP: REGULATORY MORATORIUM

Senate Governmental Affairs Committee (Chairman Roth, R-Del.) will mark up pending legislation.

10am SD-342 Dirksen Bldg. **Feb. 28**

Agenda:

S 219 - A bill to ensure economy and efficiency of federal government operations by establishing a moratorium on regulatory rulemaking actions, and for other purposes.

Note: This markup was originally scheduled for Feb. 23.

Wall Street Journal
2/22/95

Affirmative-Action Assault Is Being Prepared by GOP

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON – Republicans stepped up their rhetorical attack on federal affirmative action, as Senate Majority Leader Robert Dole released an exhaustive compilation of 160 laws and government policies that favor racial minorities or women.

Private conservative activists, working with staff members for Sen. Dole and other GOP members of Congress, said the 32-page list released late yesterday will be used as an artillery map in a coming legislative assault on race- and gender-preference rules.

The list ranges from large and well-known set-aside programs for minority-owned contractors to obscure provisions such as one that authorizes the Agriculture Department to distribute research money on the production of alcohols and industrial hydrocarbons in a way that encourages "full participation of minority groups." Some of the entries overlap, but conservatives plan to use its length to underscore the degree to which affirmative action permeates government spending and employment. The list was compiled by the congressional Research Service for Sen. Dole.

Clinton Directs Agencies To Review Regulations

By a WALL STREET JOURNAL *Staff Reporter*

WASHINGTON – Vowing to "bring back common sense" to government regulations, President Clinton directed federal agencies to review their rules in the next three months and identify those that are obsolete or overly burdensome.

In unveiling the initiative, Mr. Clinton painted a sharp contrast between his approach and that of House Republicans. They are pushing a bill that would impose a moratorium on virtually all federal regulations until the end of the year, or until the passage of a separate bill requiring an extensive cost-benefit analysis of all regulation that costs the economy more than $25 million. The moratorium would be retroactive to Nov. 20, 1994.

While the president didn't say explicitly that he would veto the Republican bill, as he has threatened to do with a GOP rewrite of crime legislation, he asserted that a moratorium is "extreme," would "cost lives and dollars" and, therefore, "is not acceptable."

The rhetoric marked another attempt by Mr. Clinton to make clear the differences he has with the Republican majority in Congress.

insurance; government and individuals pay for the rest. The Health Insurance Association of America says 2 million long-term care policies are in effect, most of them sold to elderly individuals.

Any Medicaid savings to be derived from HR 8 would depend on how many people could buy the coverage. It may not be many: the average cost of a policy for a person age 65 in 1992 was $2,228 a year; it was $7,202 for those age 79. Says Howard Bedlin, a lobbyist with the AARP, "There are serious questions about whether these things are affordable when you hit 65 or 70." Younger people may make the difference. Some insurers say that 70 percent of working-age people can afford long-term care insurance. They argue further that by making the policies tax deductible for businesses, more employers will include the policies in their benefit packages. However, Bedlin questions how much it will help younger people when they get older. "Are they still going to be able to afford the premium 30 years later?" he asks.

Estimating the Costs

Republicans appear to have the ability to move the bill through the House as part of their fast-moving Contract With America, which they have promised to bring to the House floor for votes within the first 100 days of the new Congress.

But as with other tax proposals, they will have to find a way to pay for long-term care insurance. Just figuring out how much the provision will cost is a challenge, depending in part on assumptions about how many people will buy the policies. Before the election, Republican staff on the House Budget Committee said the cost of the long-term care portion of HR 8 would be $1.3 billion. The Treasury Department estimated the cost of the long-term care portion at $6 billion in lost tax revenues over five years.

Whether the president will sign the bill is unclear, largely because of the provision to repeal the 1993 tax increase on Social Security benefits. Before the election, the GOP House Budget Committee staff estimated the repeal would cost $17 billion over five years, which tracks with a Treasury Department estimate. The money from the 1993 increase goes into the trust fund for Medicare Part A, which pays for hospital insurance for the elderly and disabled. Those monies would be difficult to recoup. ■

LABOR

Mandatory Retirement Age Bill Gets Subcommittee Approval

A subcommittee of the House Economic and Educational Opportunities Committee approved legislation that would permit states and localities to set mandatory retirement ages for public safety workers such as police and firefighters.

Chief bill sponsor Harris W. Fawell, R-Ill., has drawn strong support from an unusual alliance.

The measure (HR 849) was approved Feb. 16 by voice vote of the Employer-Employee Relations Subcommittee. Although the American Association of Retired Persons (AARP) opposes the bill, it has attracted bipartisan support on the full committee, which could consider it within the next several weeks.

HR 849 would amend the Age Discrimination in Employment Act of 1967 (ADEA), which prohibits employers from discriminating against older workers or requiring them to retire by a certain age. Congress exempted public safety workers from the ADEA in 1986 because of the physically and mentally demanding nature of their jobs, but the exemption expired at the end of 1993.

Under HR 849, public safety workers would be permanently exempt from ADEA, which would allow local law enforcement agencies and fire departments to set mandatory retirement ages for their employees. The measure also would permit agencies to set maximum entry ages for recruits, and allow states and localities to incorporate the rules into their overall personnel policies for public safety officers.

Rep. Harris W. Fawell, R-Ill., chairman of the subcommittee and chief sponsor of the bill, said the measure has received support from an unusual alliance of Democrats, Republicans, labor unions and employers. "The field of public safety is one of the very rare exceptions where one's age is relevant to one's ability to perform," Fawell said. The panel's ranking Democrat, Matthew G. Martinez, D-Calif., also praised the bill.

Robert T. Scully, executive director of the National Association of Police Organizations in Washington, said the retirement age for public safety workers ranges from 55 to 65, depending on the locality. The maximum age for recruits is generally between 30 and 35.

However, Ted Bobrow, a Washington spokesman for the AARP, said the bill could force the retirement of workers who still can perform their duties. "People of all ages need to be judged by their ability to do the job," he said.

A better approach would be to develop ways to assess workers' abilities as they age, he said. The bill would direct the Equal Employment Opportunity Commission to establish guidelines for tests to evaluate the fitness of public safety workers, regardless of age.

Bill supporters, however, contend that creating such a test will be hard, because public safety employees work in such a variety of settings.

Two earlier attempts to enact a permanent ADEA extension for public safety workers were unsuccessful. In late 1993, a House-passed extension (HR 2722) died in the Senate. The House also approved an extension as an amendment to a 1994 crime bill, but it was removed in conference. *(1993 Weekly Report, p. 3134)*

In both instances, Sen. Howard M. Metzenbaum, D-Ohio, blocked the measure. Now that Metzenbaum has retired, the extension is expected to pass both houses easily. The Senate has not yet taken it up this session.

By Robert Marshall Wells

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LAW REVIEW

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CONTENTS

ARTICLE

Federalism and Interstate Environmental Externalities . . . . . *Richard L. Revesz* 2341

ESSAY

Freedom of Speech, Permissible Tailoring and Transcending Strict Scrutiny . . . . . *Eugene Volokh* 2417

COMMENTS

Protective Orders, Property Interests and Prior Restraints: Can the Courts Prevent Media Nonparties from Publishing Court-Protected Discovery Materials? . . . . *Giles T. Cohen* 2463

Restoring Religious Freedom to the Workplace: Title VII, RFRA and Religious Accommodation . . . . *Sidney A. Rosenzweig* 2513

Counsels, Councils and Lunch: Preventing Abuse of the Power to Appoint Independent Counsels . . . . . *Peter M. Ryan* 2537

EXECUTIVE OFFICE
OF THE PRESIDENT
NOV 20 1996
LAW

WP 3/12/95

George F. Will

Beware the Diversity Enforcers

President Clinton, toiling to re-reinvent himself, says he is rethinking racial policies and restraining Washington's overreaching. However, because of appointees he drew from among his party's unchastened and unreconstructed liberals, his administration's tendencies continue, regardless of his rhetoric.

Consider the Justice Department's remarkably meretricious attempt to coerce two Arizona counties into racial gerrymandering. The attempt annoys some of its supposed beneficiaries, local Native Americans who understand something that Justice's social engineers either cannot comprehend or consider irrelevant: The change Washington wants to impose would be injurious to the Native Americans' interests.

Because population growth has produced crowded court dockets, Coconino and Navajo counties each want to add two elected judges. But because of past discrimination, since 1972 Arizona has been one of 16 states entirely or partially "covered" by a portion of the Voting Rights Act that requires it to seek Justice Department approval for all voting "changes."

Deval Patrick, who became head of Justice's civil rights division when Lani Guinier didn't, insists that merely adding judges constitutes voting "changes." Actually, the only changes relevant to the section of the act that Patrick cites are voting process changes that cause "retrogression in minority voting strength." By his tendentious reading of the act, Patrick imposes on the counties the burden of justifying their longstanding method of electing judges (in countywide elections) before implementing an increase in the number of judges.

Patrick's next intellectual somersault is to say that elections in the two counties "are characterized by racially polarized voting." The ostensible proof of this is that although Coconino and Navajo counties are 29 percent and 51 percent Native American respectively, no Native Americans have been elected to county offices under at-large voting. To remedy this supposed denial of "equal opportunity to participate in the electoral process and to elect judicial candidates of their choice," Patrick, sitting in his Washington office, proposes Balkanizing each county into judicial districts, one of which in each county would have a huge Native American majority.

Patrick's premise is a non sequitur: The absence of Native American judges proves that Native American voters have insufficient voice in judicial selections. Each of the following three facts refutes that.

PHOTOCOPY PRESERVATION

three facts refutes that.

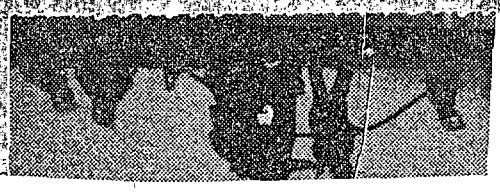
First, there are probably fewer than half a dozen Native Americans in each county who have been members of the Arizona bar for five years, a legal prerequisite for judges. Second, tribal and federal courts have jurisdiction over almost all cases concerning Native Americans living on reservations (where 90.6 percent of Navajo County and 74.2 percent of Coconino County Native Americans live). Thus even if there were created a judicial district with a Native American majority that regularly elected a Native American judge, that judge would have few cases involving Native Americans. Third, in the past decade no judge has been elected in either county without winning more Native American votes than any other candidate.

This last explains the opposition Patrick's plan provokes among some Native Americans who actually live where Patrick seeks to rearrange things. By ending countywide voting and carving within the county a Native American majority district, Patrick's scheme might well produce a Native American judge (on a court to which no Native American has ever sought election). But the scheme would do so at the cost of eliminating the decisive influence that Native American voters currently have on all the countywide judicial elections.

This absurd outcome would flow from the peculiar premise (necessary to justify blocking the counties' new judgeships) that increasing the number of judgeships decreases the likelihood of a Native American's winning a judgeship. But such is the politics of diversity-mongering.

Somebody in Washington decides that there is something wrong with the racial composition of the judiciary in two Arizona counties, and that therefore there must be something illegal about the judicial selection process, and suddenly neither logic nor the plain meaning of words or laws can inhibit the extremism of the diversity enforcers. So now Arizona learns how prescient Justice Hugo Black was when, looking askance at some provisions of the Voting Rights Act, he warned that states required to entreat federal authorities in faraway places for approval of local laws "seem to be little more than conquered provinces."

This skirmish in the federal government's ongoing assault on reason and Americans' sensibilities will not measurably decrease the president's chances of carrying Arizona, the only state to vote Republican in every presidential election since 1948. But the skirmish illustrates why, when the president talks moderation, people everywhere will do well to remember this adage about judging a politician: Don't watch his mouth, watch his feet.



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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TOP OF THE NEWS

Compiled by the Office of Communications & Legislative Affairs

Selected News Articles

for

January 11, 1995

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

AARP 1/95

Tackling age bias

New EEOC chief plans effort to renew job panel

BY ROBERT LEWIS

The new chairman of the Equal Employment Opportunity Commission (EEOC) pledges a "clean sheet" approach to strengthening the commission enforcement of the Age Discrimination in Employment Act (ADEA).

"We will seek lasting solutions to problems that have overtaken the EEOC," says Gilbert F. Casellas, who fills a slot left vacant 20 months.

The EEOC has been under fire for years for failing to combat a backlog of cases that, since 1990, has more than doubled to 97,000. Age discrimination cases account for more than 14,000 of the backlog. The rest of the backlog is divided mainly among race, gender and disability cases.

Partly because of its expanding backlog, the EEOC takes too long—an average of more than 300 days—to investigate complaints, critics say.

Another problem, they add, is that the agency dismisses too many cases—four out of five—on grounds there is insufficient evidence of bias.

"We have lost the confidence of the public," Casellas acknowledged in an interview with a Bulletin reporter.

To regain public confidence, Casellas said he plans to implement a number of key changes in coming months: use of mediators to settle some disputes; filing of a greater number of lawsuits that affect large numbers of discrimination victims, as opposed to suits affecting a single individual; and greater leeway in deciding which cases to investigate fully.

Casellas: "Laws ought to be enforced"

Casellas says he will seek a 25 percent to 30 percent increase in the EEOC's $233 million budget. Much of the extra money would be used to hire additional investigators—people he says are needed to pare the backlog.

Casellas previously had served as Air Force General Counsel, a position to which he was appointed by President Clinton in 1993. He earlier had worked for a Philadelphia law firm.

Casellas, 42, born and raised in Tampa, Fla., graduated from Yale University and the University of Pennsylvania Law School. He is a former president of the Hispanic National Bar Association.

Casellas early on stirred a minor flap when some people interpreted remarks he made at a press conference as implying that he would try to bully employers. Casellas said that's not what he meant when he told reporters, "By the end of my term, I hope people worry when they get a call from the EEOC"—as he said they now do when the Internal Revenue Service or Environmental Protection Agency calls.

What he meant, Casellas said, is that job discrimination laws "ought to be enforced just like any other law.

"Civil rights law should not be viewed as less important," he said.

Besides enforcing laws against bias on the basis of gender, race and disability, the comission enforces the ADEA, which bars discrimination by employers with 20 or more workers in all aspects of employment. It covers workers 40 and older.

Asked whether efforts to streamline EEOC operations will help cut the commission's backlog, Casellas replied he thought they would, but only marginally. "The problem is, none of these things is going to reduce the backlog until one of two things happens: cases that come in are reduced or the number of people who investigate them increases."

While additional investigators would certainly help, Casellas said he doesn't expect a drop in age discrimination cases. "I don't think, from the cases that come across our desk for litigation, that the [age bias] problem has gone away," he said.

He declined to speculate on the likelihood of getting a large budget increase from a Republican-controlled Congress. "I would hope that the appropriators in the new Congress would recall that the laws we enforce arose out of a historically bipartisan effort," he said.

"Our challenge," he added, "will be to remind the new Congress that the problems haven't been solved, that there are people who want to be productive whether they're 70 years old, whether they're black, Hispanic or women, or they're in a wheelchair."

The Washington Times

DATE: 12/31/94
PAGE: A-10

UMd. loses appeal on scholarship program

Court refuses to review panel's ruling

By Larry O'Dell
ASSOCIATED PRESS

RICHMOND — A federal appeals court yesterday refused to review a three-judge panel's decision that struck down a scholarship program for blacks at the University of Maryland.

Without explanation, the 4th U.S. Circuit Court of Appeals voted 8-3 against rehearing the case. Two judges abstained.

A 4th Circuit panel on Oct. 27 unanimously ruled in favor of Daniel J. Podberesky, a Hispanic applicant who was rejected for the university's Banneker program even though he met all the academic requirements. Banneker scholarships are given only to black students.

The appeals panel ruled the university failed to prove the program was narrowly tailored to remedy past discrimination.

Janell Byrd, a lawyer for the NAACP Legal Defense and Educational Fund, said she was disappointed with the appeals court's decision. An appeal to the U.S. Supreme Court is likely, she said.

"I certainly think this is a case of tremendous importance," she said in a telephone interview. "If this ruling stands, it's a real setback for educational opportunity for African Americans."

Evelyn Cannon, chief of litigation for the Maryland attorney general's office, did not immediately return a phone call for comment.

Mr. Podberesky's lawyer, Richard Samp, said he was happy with the appeals court's ruling.

"The fact that there were three judges who voted to rehear it means there was some serious consideration given to rehearing the case. I'm pleased they did not," said Mr. Samp, a lawyer for the conservative Washington Legal Foundation.

The Banneker program provides full tuition, room and board to about 80 black students. Mr. Podberesky, now 22 and a first-year medical student at the University of Maryland, is seeking reimbursement for the grant money he would have received if admitted to the program — about $35,000.

In its October ruling, the appeals panel disagreed with the university's contention that the scholarships could help remedy the university's poor reputation among blacks — a condition caused by past discrimination.

The university excluded blacks until 1954.

THE NATION'S NEWSPAPER
USA TODAY

DATE: 1-3-95
PAGE: 12A

Today's debate: VOTER REGISTRATION

Motor voter is good law

OUR VIEW Allowing voters to sign up at driver licensing facilities will lure more of them to the polls.

Not everybody thinks New Year's is the time to fix what's wrong with the world. Just look at the 11 states that defied a Jan. 1 federal deadline to comply with the "motor voter" law, designed to increase voter registration.

This law is so indisputably good there's no excuse for not implementing it. Motor voter requires only that states make voter registration more convenient by allowing voters to sign up at driver licensing facilities or through the mail. Registration must also be available at state offices dealing with the disabled and welfare recipients.

The purpose? To lure more Americans to the polls.

Statistics show that when Americans register, they usually vote. In presidential election years, turnout among registered voters is a rewarding 80% to 90%. The shameful fact is that another 70 million Americans could vote but do not because they never registered. Some never will vote, but a large number might if they did not have to track down hard-to-find registration offices, open only during restrictive hours.

Some state politicians such as California Gov. Pete Wilson wail about the cost, complaining motor voter is another unfunded federal mandate. He contends it will cost California alone $35.8 million annually, so he's filed suit challenging the law.

But the League of Women Voters and others challenge those assertions. League president Becky Cain says some states pad estimates by adding ridiculous costs such as new uniforms for Division of Motor Vehicle employees. And the Congressional Budget Office estimates nationwide costs at no more than $25 million a year.

So what's really going on? Politics, pure and simple. A massive infusion of voters with no track record makes insecure politicians skittish. Republicans fear new voters will be lower income and less educated and, therefore, more likely to vote Democratic. And Democrats, still reeling from the November massacre, aren't so sure these unknown voters will be their blessing.

The truth is no one can predict how these voters, many young and many with no strong party allegiance, will affect the balance of power. That does not mean they should not be encouraged to join the mix.

Attorney General Janet Reno has promised to force compliance by the scofflaws — California, Idaho, Illinois, Indiana, Kansas, Michigan, Mississippi, Montana, Nevada, Pennsylvania and South Carolina. The League of Women Voters, People for the American Way and other community groups have filed civil suits seeking the same end. The courts should back them up.

Among industrialized democracies, the United States holds the worst record of voter participation. It's the only one that puts the onus of registration on aspiring voters.

Motor voter could and should fix that.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

TOP OF THE NEWS

Compiled by the Office of Communications & Legislative Affairs

Selected News Articles

for

January 13, 1995

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

10th Martin Luther King Jr. Tribute

'I have a dream'

I am happy to join you today in what will go down in history as the greatest demonstration for freedom in the history of our nation. Five score years ago, a great American, in whose symbolic shadow we stand today, signed the Emancipation Proclamation. This momentous decree came as a great beacon-light of hope to millions of Negro slaves who had been seared in the flames of withering injustice. It came as a joyous daybreak to end the long night of captivity.

But one hundred years later, we must face the tragic fact that the Negro is still not free; one hundred years later, the life of the Negro is still sadly crippled by the manacles of segregation and the chains of discrimination; one hundred years later, the Negro lives on a lonely island of poverty in the midst of a vast ocean of material prosperity; one hundred years later, the Negro is still languishing in the corners of American society and finds himself an exile in his own land.

So we have come here today to dramatize an appalling condition. In a sense we have come to our nation's capital to cash a check. When the architects of our republic wrote the magnificent words of the Constitution and the Declaration of Independence, they were signing a promissory note to which every American was to fall heir. This note was the promise that all men would be guaranteed the unalienable rights of life, liberty and the pursuit of happiness.

It is obvious today that America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check, a check which has come back marked "insufficient funds." But we refuse to believe that the bank of justice is bankrupt. We refuse to believe that there are insufficient funds in the great vaults of opportunity of this nation. And so we have come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice.

We have also come to this hallowed spot to remind America of the fierce urgency of now. This is no time to engage in the luxury of cooling off or to take the tranquilizing drug of gradualism. Now is the time to make real the promises of democracy; now is the time to rise from the

THE DREAM

Martin Luther King Jr.'s famous speech at the Lincoln Memorial during the March on Washington in 1963 inspired the nation and the civil rights agenda. The "I Have a Dream" speech here in its entirety.

cont'd 102

The New York Times

DATE: 3-1-95
PAGE: A-19

Affirmative Action Must Go

By Shelby Steele

MONTEREY, Calif.

There are many indications that affirmative action may soon provoke what it has never provoked before: a national debate on group preferences that will be so open and contentious that no important politician will be able to avoid a hard yea or nay position.

This has all been started by the threat of another of those California statewide initiatives in which some long-simmering public bitterness explodes onto the ballot and is then argued out in the national village of talk radio. Next year, Californians are to vote on the appropriateness of preferential treatment by sex, race and ethnic origin as a form of social redress. What an odd opportunity: to vote in secret on the idea that some citizens should be preferred over others in public employment, contracting and higher education.

I wish my parents had had such a vote back in the 1950's, when I was languishing in a segregated elementary school created by white preferential treatment. My guess is that Californians will vote as my parents would surely have voted then: against preferences of any kind.

Significantly, most of the new interest in affirmative action seems to be political rather than social. The buzz is all about how the issue will wedge the Democrats into white male moderates on one flank and minorities and women on the other — an ugly resegregation of America's "civil rights" party that will make President Clinton even more vulnerable than he already is.

There is little talk about affirmative action as public policy. One reason, I think, is that affirmative action has always been what might be called iconographic public policy — policy that ostensibly exists to solve a social problem but actually functions as an icon for the self-image people hope to gain by supporting the policy. From the beginning, affirmative action could be cited as evidence of white social virtue and of emerging black power — the precise qualities that America's long history of racism had denied to each side.

Had America worked from the 1960's on to educate blacks to the same standards as whites, had it truly labored to eradicate discrimination, there would be more virtue and power on both sides of the racial divide today. The disingenuousness of affirmative action — born of the black struggle for freedom — can be seen in two remarkable facts: middle-class white women have benefited from it far more than any other group, and 46 percent of all black children live in poverty.

The perniciousness of an iconographic social policy is that you cannot be against it without seeming to be against what it purports to represent. The white who argues against affirmative action looks like a racist and the black looks like an Uncle Tom. Iconographic policies perpetuate themselves by hiding behind what they represent. This is why, after 25 years, affirmative action is one of the least evaluated social policies in American history. The price for accepting its illusion of virtue and power is ignorance.

Not only do we blind ourselves to the workings of a social policy that becomes an icon, but in search of a flattering self-image we justify the policy by vague ideals like "diversity." And the emptiness of these ideals makes the policy unaccountable for any result it may have, so it remains an icon whether or not it accomplishes anything in the real world.

Diversity policies (today's euphemism for affirmative action) exist in virtually every important institution even though no one really knows what diversity means. Both proportionate and disproportionate representation reflect diversity; integration is one kind of diversity and segregation another. Here is an idealism that destroys accountability in social policy, and a language of willed ignorance in which the words mean only that the speaker has good intentions.

Still, as much as I loathe affirmative action — for the indignity and Faustian bargain it presents to minorities, for the hypocrisy and shameless self-congratulation it brings out in its white supporters — I must admit that it troubles me to see its demise so glibly urged from the political right. The Republican Presidential aspirants are stumbling over one another to condemn it. While they are right to do so — and right is right even when it is nothing more than right — there is also the matter of moral authority. And this is something anyone who wants to dismantle affirmative action will have to earn.

I would ask those who oppose preferences to acknowledge and account for the reality of black alienation. As a black, I still fear discrimination, still have the feeling that it is waiting for me in public America. Discrimination does not justify preferential treatment, but I want to know that the person who stands with me against preferences understands the problem that inspired them.

To my mind there is only one way to moral authority for those of us who want affirmative action done away with: to ask that discrimination by race, gender or ethnicity be a criminal offense, not just civil. If someone can go to jail for stealing my car stereo, he ought to do considerably more time for stifling my livelihood and well-being by discriminating against me.

If this means there will be many trials and lawsuits, so be it. When the pressure is put precisely on the evil you want to eradicate, then individuals and institutions will quickly learn not only what discrimination is but also what fairness is — and fairness is a concept so confused by decades of affirmative action that many now believe it can be reached only through discrimination.

Ending affirmative action must involve more than bringing down an icon. It must also involve an extension of democratic principles to what might be an extreme degree in a racially homogeneous society. But in a society like ours, discrimination is the greatest and most disruptive social evil. In a multiracial democracy of individuals, you have to make it a felony. □

And what must replace it.

Shelby Steele is author of "The Content of Our Character."

THE FEDERAL PAGE

Minority Workers Discharged At Higher Rate Than Whites

By Stephen Barr
Washington Post Staff Writer

The federal government fired minority workers at almost three times the rate of white workers in fiscal 1992, according to data released by the Office of Personnel Management (OPM) yesterday.

The dismissal figures showed that minority workers were fired at a rate of 10.2 per 1,000 employees, while whites were fired at a rate of 3.7 per 1,000 workers. When the firings were calculated by sex, minority men were dismissed at the highest rate, 13 per 1,000 employees, more than three times the rate of white men.

Although the disparity in firings existed at all pay grades, some of the greatest differences involved firings of low-level and clerical workers, the data showed. In the lowest five civil service pay grades, for example, minorities were fired at twice the rate of whites.

"We're going to find the source of the problem and we're going to fix it," OPM Director James B. King pledged.

King said he could not explain why the numbers showed a disproportionate number of firings of minority workers, but compared the statistical snapshot to a "smoke detector going off. I know that something is wrong. [But] the smoke detector doesn't tell me the cause or how to keep the fire out."

OPM compiled the fiscal 1992 data at the request of Knight-Ridder Newspapers, which published the data yesterday.

House Post Office and Civil Service Committee Chairman William L. Clay (D-Mo.) said he had asked the General Accounting Office to review the OPM statistics.

> *"We're going to find the source of the problem and we're going to fix it."*
> —OPM Director James B. King

"If these numbers are true, it is alarming that minorities make up a disproportionate share of terminations and discharges in some categories. This could mean that minorities are being treated unfairly, and I think a closer look at the data is warranted to ensure that the principles of equality under the law are being applied in the firing process," Clay said in a statement.

Minorities make up 28 percent of the federal civilian work force of about 2.2 million. Nearly 12,000 federal workers were fired in fiscal 1992, and 52 percent were members of minority groups, OPM said.

A recent Merit Systems Protection Board study said that members of most minority groups hold a higher share of government jobs than those groups hold in the national labor force. Blacks, for example, hold 17.2 percent of federal jobs and 10.6 percent of private-sector jobs.

But the merit board study also found that minorities are overrepresented in the government's lower pay grades and suggested that agencies reexamine hiring and career advancement programs.

The new OPM data showed that the majority of minority workers who were fired were on probation, usually an employee's first year on the job, or were classified as temporary hires.

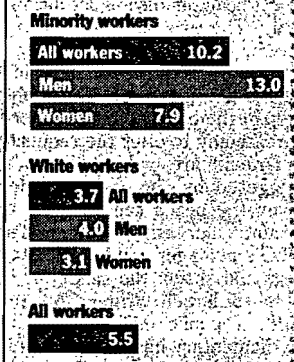
Minorities also were dismissed at higher rates than whites for misconduct, such as unexcused absences, insubordination or threats of assault, the data showed. Minorities were dismissed at the rate of 3.1 per 1,000 workers for misconduct, while whites were fired at a 0.9 per 1,000 rate.

Robert M. Tobias, president of the National Treasury Employees Union, said yesterday that his union and the Internal Revenue Service had documented in a 1991 study that the IRS disciplined minority workers more frequently than whites. The reasons for the discipline most often involved unauthorized absences, unacceptable performance and personal tax violations.

In a statement, Tobias called for "immediate action by the government to correct this problem, not just more studies and task forces." He added, "We've got to find out why and change the culture and the system."

WHO GETS FIRED

Minority employees were fired from federal jobs at a rate of almost three times that for their white colleagues in 1992. Rate of discharge per 1,000 employees.



SOURCE: Office of Personnel Management
KNIGHT-RIDDER TRIBUNE

The Washington Post

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PAGE: A6

Gephardt Defends Affirmative Action

Democrat Calls GOP Opposition to Program 'Politics of Division'

By David S. Broder
Washington Post Staff Writer

House Minority Leader Richard A. Gephardt (D-Mo.) yesterday offered a strong defense of affirmative action programs and said Republican efforts to curtail them reflect "a politics of division, of finding scapegoats."

Gephardt, in comments to reporters, supported President Clinton's decision to review federal hiring and contracting policies but took direct issue with Democrats who say the time is past for affirmative action.

"There may be abuses that should be corrected," he said, "but we should not abandon the effort to stop discrimination and to see that people are treated fairly."

Last week, Stanley Greenberg, Clinton's pollster, and Sen. Joseph I. Lieberman of Connecticut, new chairman of the Democratic Leadership Council, both said that affirmative action programs may have outlived their usefulness.

Lieberman said that if he lived in California, he would support a proposed 1996 ballot initiative that would rule out granting any kind of preference to school applicants, contractors or prospective employees on the basis of race, nationality or gender.

Gephardt said he would oppose the California initiative. He said that California Gov. Pete Wilson (R) and other Republicans backing the measure "say they want this to be a colorblind society. I agree, but we're not there yet."

Gephardt said most employers who have used affirmative action programs strongly support them. He said he was skeptical about shifting the basis for affirmative action from race and gender to economic need, arguing that the United States has no history of "discrimination against people who are in poverty" that is at all comparable to the barriers facing women and minorities.

On another subject, Gephardt said House and Senate Democrats are working with the White House to prepare an agenda for Congress that they will offer next month at the end of the 100-day deadline for enactment of the House Republican "Contract With America."

Gephardt said the Democratic agenda would focus on improving the livelihoods of middle-class families. Among its items, he said, would be a boost in the minimum wage, a tax cut targeted to financing college costs, infrastructure spending and a scaled-down health care plan. He also said he was seeking ways to "induce business to share with workers more of the gains in productivity" being recorded in the economy.

In the last seven years, Gephardt said, only one-third of the productivity gains has translated into wage increases—the main reason why families complain of stagnant living standards. Increasing that percentage would further stimulate productivity and benefit the whole economy, he said.

THE WALL STREET JOURNAL.

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PAGE: A12

Federal Preferences for Minority Firms Illustrate Affirmative-Action Dispute

By PAUL M. BARRETT
Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON – To sense just how abruptly affirmative-action programs have come under siege, consider this:

Just last October, President Clinton signed a law, unanimously approved by Congress, that significantly expanded the practice of setting aside federal contracts for small, minority-owned firms.

And almost no one noticed.

"Republicans supported it, Democrats supported it," says Clint Bolick of the Institute for Justice, one of the private conservative activists trying to galvanize an affirmative-action rollback. "This just really shows how racial preferences have quietly proliferated over the years."

More than that, though, the story of this one program helps illustrate the speed with which politicians of both parties now have revised their views and begun declaring that it's time to curtail government-sponsored racial preferences. Only six months ago, before the GOP takeover of Congress, "it wasn't even on the agenda," notes David Bositis, a political analyst at the liberal Joint Center for Political & Economic Studies.

Over $2 Billion a Year

Enacted as part of a larger bipartisan effort to streamline federal procurement, the set-aside provision could apply to more than $2 billion in annual federal spending by civilian agencies. It will take effect when final regulations are issued in coming months.

The provision provides civilian agencies with two tools to help them meet a previously established governmentwide goal of awarding to small, "disadvantaged" businesses contracts worth 5% of total federal procurement. Minority-owned businesses are presumed by law to be disadvantaged.

The first tool is a conventional set-aside: When a contracting officer determines that at least two "responsible" disadvantaged businesses will seek a contract, the contract can be removed from competitive bidding and awarded to one of the disadvantaged companies.

The second approach gives disadvantaged companies a 10% bid "preference" when a set-aside isn't applied. This means that a minority-owned business may be awarded a contract as long as its bid isn't more than 10% higher than the low bidder's.

Percentage Goals

The Defense Department already had authority to use these procedures; now other government agencies will, too. The actual language of the provision was drafted by a Senate staff lawyer whose mandate was to help civilian-agency contracting officers hit their pre-existing percentage goals for steering business to minorities.

"It was so uncontroversial, it hardly needed to be on my radar screen at all," says Steven Kelman, a senior White House management and budget official who testified in favor of the measure at congressional hearings. Now, it's definitely on the administration's screen, as presidential aides carry out Mr. Clinton's orders for a broad review of the fairness and effectiveness of federal affirmative action.

The Clinton review comes in reaction to GOP threats of a broad assault on racial preferences. But there wasn't any substantial Republican opposition to last year's set-aside measure. "I'm not sure a great many people were focusing on just what it was all about," says Rep. Jan Meyers (R., Kan.), the chairwoman of the House Small Business Committee. She criticized the provision in a floor statement but then joined the 425-0 House vote for the overall procurement-reform bill.

Rep. Meyers concedes that "with people making statements now that we have to take a second look at affirmative action, I'd have to say that this certainly goes a great deal further than most affirmative action."

Not a New Program

Rep. William Clinger (R., Pa.), chairman of the House Government Reform and Oversight Committee, helped move the legislation in the House but was "always very careful in saying this wasn't a new program; it was making government procurement rules uniform," explains spokesman Edmund Amorosi. "The affirmative-action aspect wasn't really addressed, to be perfectly honest with you."

Senior black Democrats, such as Reps. John Conyers of Michigan and Ronald Dellums of California, did push the provision as a means of, in Rep. Dellums's words, "improving access to contracting opportunities" for minority-owned small business. And Anthony Robinson, president of the Minority Business Enterprise Legal Defense & Education Fund, says his constituency needs such measures because minority-owned businesses are still subject to discrimination. For example, blacks have a harder time getting loans and insurance, and therefore a 10% bid preference merely "evens the playing field," Mr. Robinson asserts.

"Also, let's remember how small the numbers are here; we're talking tiny percentage points of the overall pie – the crumbs, really," he adds.

White Firms Cite Harm

But small, white-owned construction companies insist that, at least in some parts of the country, they have already been hurt by the set-aside used by the Defense Department. "We don't bid on half the projects [in the Washington, D.C., area] because we don't even have a chance," says Arnold O'Donnell of O'Donnell Construction Co.

Barksdale Air Force Base, near Shreveport, La., set aside all 10 of its construction contracts in 1994 – business worth $5.3 million, according to documents released by the Pentagon at the behest of the Associated General Contractors of America. This happened because there are numerous capable minority-owned construction firms in the Shreveport area, and the projects were all relatively small, according to the Pentagon. Military installations in areas where there aren't many minority-owned builders, or that require highly specialized work, might not set aside any contracts. And, of course, the truly big-ticket items, like new bombers or tanks, are purchased from large mainstream contractors.

STRICT SCRUTINY

BY DAVID COLE

Civil Rights: Out of Whose Mainstream?

Feb. 1, 1994, was a busy day for Clint Bolick. As President Bill Clinton nominated Deval Patrick to head the Justice Department's Civil Rights Division, Bolick, who is director of litigation for the Institute for Justice, took to the press. The man who had made a name for himself by bashing Lani Guinier as a "quota queen" showed up on "The MacNeil-Lehrer NewsHour" that evening and had an op-ed in *The Wall Street Journal* the next day. Like many an art-museum goer, Bolick didn't know much about Patrick, but he knew what he didn't like.

His complaint: Patrick had worked at the NAACP Legal Defense and Educational Fund (where Guinier had also worked). The LDF has fought for race quotas, busing, and minority contract set-asides. Anyone who has worked for the LDF is probably "outside the mainstream," and if so, unfit to be our nation's chief civil-rights officer.

On "MacNeil-Lehrer," Bolick took this analysis one step further, admitting that if Thurgood Marshall, the LDF's most distinguished alumnus, were around to be appointed to the Civil Rights Division today, Bolick would also oppose him. Bolick's "mainstream" is apparently so narrow that it doesn't even have room for the most widely respected lawyer in civil-rights history.

His comment regarding the late Justice Marshall suggests that Bolick, not those he criticizes, is out of the mainstream. But it may say even more about why it's wrong to use the mainstream as a standard for appointments to the Civil Rights Division.

If being in the mainstream were the criterion for the job, it is a distinct possibility that Marshall might *not* be confirmed today. After all, he was not without a controversial paper trail. He spoke his mind freely, and was not afraid to take unpopular stands in the courts and on the streets concerning the most divisive issue of the day.

In retrospect, of course, the country reveres the late Justice Marshall, and the view that he is outside the mainstream seems laughable. But, in fact, Marshall spent his life outside the mainstream. When he began his legal career, the mainstream was for whites only. When he became a Supreme Court justice, he joined a bench that had been exclusively white for 178 years. And he spent much of his career as a justice writing dissenting opinions.

Nor is Marshall alone. The entire struggle for civil rights is a battle against the mainstream. If minority rights were protected by the majority, we wouldn't need a Civil Rights Division. It is precisely because minority rights are so often ignored, overlooked, and trampled upon that we need civil-rights laws, lawyers, and divisions. To require the head of the Civil Rights Division to be within the mainstream may well be to ensure that the division will be ineffective (as it has been for the last 12 years).

Scratch the surface of Bolick's "mainstream," and it turns out to consist of the view that equality means no more than formal equality. Any concern with results as opposed to opportunity is anathema, because it suggests that race-conscious remedies, such as affirmative action, may be necessary to achieve equality.

Consider Exhibit A in Bolick's case against Patrick: Patrick's participation in *McCleskey v. Kemp*, a 1987 Supreme Court case in which a black man sentenced to death for killing a white police officer challenged the constitutionality of a capital-punishment system in which it was more likely than not that Warren McCleskey's victim's race would determine whether McCleskey faced life imprisonment or the electric chair. Bolick objects to the fact that Patrick and his co-counsel relied "solely on statistical studies" and sought to invalidate the sentence without showing specific intentional discrimination in McCleskey's case. In other words, their argument focused on results, not intent.

But look at the results. After reviewing more than 2,000 murder cases in Georgia, and factoring out 39 non-racial variables, the study in McCleskey's case showed that defendants charged with killing white victims were 4.3 times more likely to get the death penalty than defendants in analogous circumstances charged with killing black victims. Moreover, Georgia prosecutors had sought the death penalty in 70 percent of cases in which a black defendant was charged with killing a white person, and only 19 percent of cases in which a white defendant was charged with killing a black person.

It is true that McCleskey did not show that the prosecutor, judge, or jury in his case acted out of racial animus toward him or racial sympathy toward his white victim. But that is at least in part because, under traditional evidentiary rules, neither the prosecutor nor the jurors could be called to testify regarding their motives.

More importantly, McCleskey's statistics suggested that whether or not capital-punishment decision-making in Georgia was intentionally race-based in each individual case, the bottom line could not be adequately explained by factors other than the race of the victim. Maybe prosecutors and jurors acted out of conscious favoritism toward white victims, or maybe they were only subconsciously more empathetic toward victims of their own race. Given the combination of the rules of evidence and the social taboos on admitting that race matters, McCleskey could never know. All he and the Supreme Court could know was that there was a significant chance that his victim's race made the difference in whether McCleskey lived or died.

To Bolick, this is a dangerous argument, because it says that the 14th Amendment should be concerned with equal results, rather than merely a formally equal process. But is it so extreme to insist that where a man's life is on the line, and where the criminal-justice system vests virtually uncontrolled discretion in prosecutors and juries, we should not accept such racially disparate results? Bolick doesn't mention it, but McCleskey lost by only one vote in the Supreme Court.

In one sense, Bolick is right: Put McCleskey's case to a popular vote, and he would likely lose, by much more than one vote. The large majority of American citizens, who favor capital punishment and have little sympathy for those charged with committing serious crimes, might well find McCleskey's case unpersuasive.

But sometimes what the majority wants is not just, particularly when those harmed are minorities. In the short history of our nation, majorities have supported the maintenance of slavery and segregation, denial of suffrage to women, exclusion of immigrants based on their race or political views, and laws mandating that gays and lesbians remain in the closet.

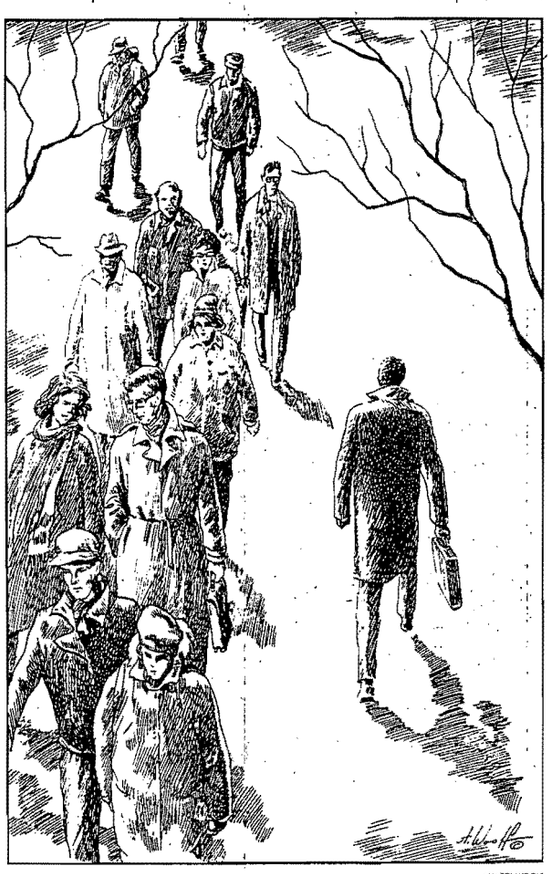
Today, Bolick contends, the majority opposes any response to racial subordination that goes beyond banning explicit, intentional discrimination. It's not clear where he gets this notion, since both Title VII and the Voting Rights Act, passed by legislative majorities, prohibit employers and local governments from adopting schemes that disproportionately harm minorities without a compelling reason, *whether or not* the schemes were motivated by racial animus.

These statutes suggest that at various times in our history, the majority has recognized that minority rights deserve greater protection than a simple ban on individual instances of intentional discrimination. For one thing, racial animus is easy to hide and difficult to uproot. For another, two centuries of racial subordination cannot be remedied simply by resolving to act neutrally in the future. And in the end, a society characterized by racial stratification, no matter what the cause, offends basic principles of equal justice.

Everyone agrees that equality of opportunity is the ultimate goal. But to suggest that equality of result is an invalid means for testing whether we've reached anything resembling equal opportunity is to blind ourselves to the vast inequality that remains in our society. Is it really fair to say that Warren McCleskey had equal opportunity?

I do not know whether Deval Patrick is in the "mainstream." But that is precisely the wrong question to ask. The question should rather be: Does he have a conception of equal justice that will move the Civil Rights Division and the nation closer toward real equality? That goal will require attention to results as well as opportunities.

Bolick's vision of the "mainstream," by contrast, makes sense only if we have already attained racial equality, so that all we have to do now is to punish the few bigots who remain. He need only step out of his office into the streets of Washington, D.C., to see that his vision is, sadly, just that.



ANATOL WOOLF

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USA TODAY · TUESDAY, FEBRUARY 28, 1995

Affirmative action debate skips women

By Kevin Johnson
and Desda Moss
USA TODAY

In the increasingly intense debate over affirmative action policy, one sizable faction of the U.S. population has been largely overlooked: women.

Although many experts agree women have been major beneficiaries of affirmative action programs, national advocates for women's issues say the debate has narrowly focused on racial preferences in hiring, school admissions and government contracting.

"There is no question that we have had very little voice," says Leslie Wolfe of the Center for Women Policy Studies. "Almost every national women's group I know supports affirmative action, but race has dominated the debate."

Judith Lichtman, president of the Women's Legal Defense Fund, says women's groups are keenly aware of the importance of affirmative action. "But it's been hard breaking through the noise already out there," she says.

The noise Lichtman refers to is a discussion centering on the "politics of race and its use as a wedge to divide people."

"The underlying attack on affirmative action is equally virulent in outcome for women," Lichtman says. "It becomes more divisive, however, when it is cast in racial terms."

Ralph Neas of the Leadership Conference on Civil Rights believes the emphasis on race is a deliberate attempt by conservatives to exclude evidence that would support affirmative action programs.

"Women have been the principal beneficiaries of affirmative action programs," Neas says. "All the information shows that, but it has been frustrating to get our points across. I think there has been a calculated strategy to portray this in racial terms."

Wade Henderson, NAACP Washington bureau director, says that several women's groups have been relatively vocal in the debate, but their words have not been heard.

"White women have been the 'quiet' beneficiaries, if you will," Henderson says. "The benefits to them have been largely ignored."

In recent weeks, Henderson says the the NAACP and the Leadership Conference on Civil Rights have met several times to discuss a coordinated response to assaults on affirmative action.

"We recognize the debate has begun, but we believe a strong fact-based argument can be made to show it's been effective and why it's still needed," he says.

But not all agree that women should be included in affirmative action policy.

"Affirmative action for women is insulting to women," says Phyllis Schlafly, president of the conservative Eagle Forum. "Women should ... not expect or accept preferential treatment."

If results of a USA TODAY/CNN/Gallup Poll are any measure, both civil rights and women's groups have their work cut out for them.

Poll respondents said affirmative action policies granting preference to women and minorities are no longer needed.

"The debate is just beginning," says Marsha Greenberger, co-president of the National Women's Law Center, adding that many female leaders have been quietly holding strategy meetings with officials in industry and government to garner their support.

"We know we are facing a major public debate on how the country looks at discrimination, and it is too costly not to get involved in that. We will get the message out."

▶ Poll, 1A

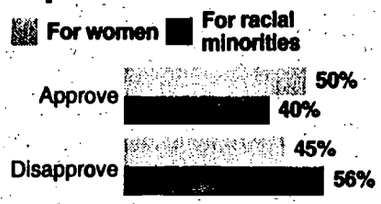
USA TODAY CNN GALLUP POLL

Affirmative action, leadership approval dip

Some affirmative action programs give preferential treatment to women and minorities in jobs and promotions, obtaining contracts and being admitted to schools. A USA TODAY/CNN/Gallup Poll found more support for affirmative action programs for women than for racial minorities.

Affirmative action

Help for women favored

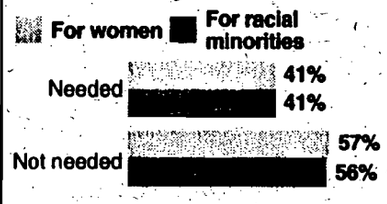


Little support if quotas are used

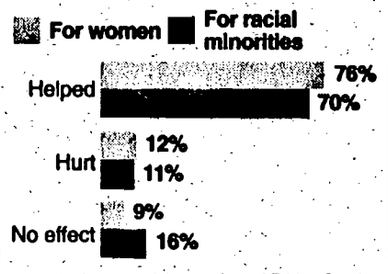
Help for the poor supported

Approval of affirmative action programs for poor Americans, regardless of race:

Most say programs not needed anymore



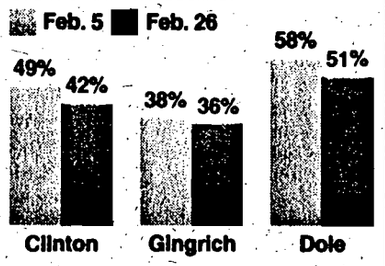
Most say programs have helped



Job approval

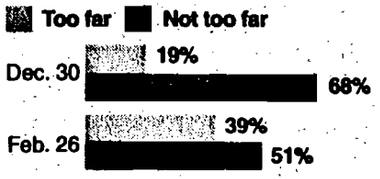
Fewer approve of leadership

The job approval ratings for President Clinton, House Speaker Newt Gingrich and Senate Majority Leader Bob Dole all fell from those found in a poll earlier this month. The decline:



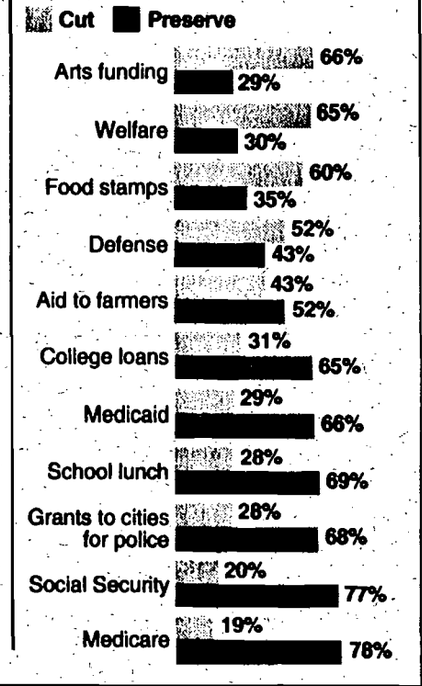
Budget cutting

More respondents say Republican proposals to cut federal spending go too far than in a December poll, but a majority still support cuts:



What should be cut

Is it more important to cut these programs to reduce the federal deficit or to preserve these programs from significant cuts?



Source: USA TODAY/CNN/Gallup nationwide telephone poll of 1,003 adults conducted Friday-Sunday. Margin of error: ± 3 percentage points.

By Marcy E. Mullins, USA TODAY

Poll: Clinton, Congress both slipping

By Richard Benedetto
USA TODAY

The public optimism that marked the early weeks of the new political season appears to be abating as President Clinton and the Republican-controlled Congress begin knocking heads over legislation and policy.

A USA TODAY/CNN/Gallup Poll finds the job approval of Clinton, Congress and congressional leaders skidding after nearly two months of gains.

Clinton's approval fell 7 points in a month, while Congress' slipped 3 points.

Merle Black, an Emory University political scientist, attributes Clinton's fall to the Republicans' leading role. Clinton "runs the risk of becoming irrelevant," he says.

But while Republicans "are still basically calling the shots," Black says, "the slowdown in action between the House and the Senate, especially on the balanced budget amendment, could be affecting the ratings."

Most people — 52% — still say GOP policies will move the country in the right direction.

And in handling major issues from welfare to budget deficits, the public shows more confidence in the Republican leadership than in Clinton.

GOP NOMINATION

Alexander 'aims for top' – the White House

By Richard Benedetto
USA TODAY

When Lamar Alexander was growing up in Maryville, nestled at the foot of eastern Tennessee's Smoky Mountains, his grandfather, a locomotive engineer, offered this advice:

"Aim for the top; there's more room there."

Alexander has lived up to that advice — Eagle Scout, class president, state piano champ, aide in the Nixon White House, two-term governor, university president, secretary of Education, and, along the way, millionaire.

Now he's back in Maryville, aiming for the top again as he announces his bid today for the 1996 Republican presidential nomination.

Like President Clinton, the man he hopes to unseat, his townsfolk figured early on that he was going places.

"I tried to get all my college girlfriends to date Lamar. I used to tell them my mother always said he was going to be president of the United States some day," says Ann Baker Furrow of Knoxville, whose mother taught him algebra.

But jumping the gap between Maryville, Tenn., and 1600 Pennsylvania Ave. will be a formidable task.

He's largely unknown despite a two-year stint as Education secretary, 18 months of televised town meetings, and a cross-country tour last summer to take the national pulse.

"He's got to go out and sell himself," says Emory University analyst Merle Black.

"He's still pretty much vanilla ice cream," says GOP strategist Tom Edmonds.

Last summer, Alexander drove his red Bronco 8,800 miles through 38 states, sleeping at strangers' homes, talking into the night.

"I'm running for president to help this country restore its optimism," Alexander said in a weekend interview. "I'd like for every child in East Los Angeles or Henning, Tenn., to have that same picture of the future I had growing up."

Listening isn't always enough. He lost his first run for governor in 1974, by his own admission because he "lacked a sense of purpose."

But running again in 1978, he said he found that purpose by donning a red-and-black flannel shirt and walking 1,000 miles across Tennessee, staying in homes and playing his trombone at rallies.

He won easily, even though his foe, Knoxville banker Jake Butcher, figured he was a rube and called him a "choirboy."

Indeed, Alexander looks like Pat Boone, also a Tennessee native. He comes across as an easy-going nice guy, an image in contrast with the hard edges of his chief GOP rivals, Senate Majority Leader Bob Dole and Texas Sen. Phil Gramm.

Alexander jokes about his image. "I can stand up and say, 'Hang them by their toes and cut out their entrails,' and everybody will say, 'What a nice speech!' "

National Education Association President Keith Geiger likens Alexander to "Dr. Jekyll and Mr. Hyde," noting that as Education secretary, Alexander assured the NEA of the need for a strong federal role in schools. Now he's calling to abolish the department.

"He put his finger in the wind and figured that's the way it was blowing," Geiger says.

Kathy Woodall of the Tennessee Education Association, who battled with Alexander over merit pay for teachers, says his "laid-back demeanor is part of the entire scenario" to get what he wants.

Alexander's financial dealings may also be a factor: He built a fortune through a series of relatively small investments that paid off big. Questions about their propriety could become issues.

When elected governor in 1978 his net worth was $151,000. By his 1991 Senate hearings as Education secretary it had grown to between $1.5 million and $3 million.

Sen. Edward Kennedy, D-Mass., said Alexander's dealings "had the appearance of using his high public office for the private financial benefit of himself and his family."

For example, Senate hearings delved into his $1 investment with Sen. Howard Baker in an option to buy the *Knoxville Journal* that he never exercised. But for helping arrange the paper's sale to Gannett, publisher of USA TODAY, Alexander got stock and options worth $569,000.

Alexander was confirmed without dissent by the Senate. He denies any wrongdoing and promises to make public all his tax returns and investments.

"I'm prepared to answer any questions anybody has, accurately, precisely and promptly," he said.

Alexander is casting himself as the only Washington "outsider" in a GOP field of Dole, Gramm and possibly Pennsylvania Sen. Arlen Specter, Indiana Sen. Richard Lugar and commentator Pat Buchanan.

"Americans know very well we're not electing a president of Washington, D.C., we're electing a president of the whole country," he says.

"If our party and our country want our most experienced, Washington-based Republican leader, it will be Sen. Dole, and there won't be much I can do about it. But I don't think so."

Still, handicappers say Alexander faces an uphill fight.

"There's nobody saying anything bad about him," says GOP strategist Tom Edmonds, "but nobody's mentioning his name, either."

Analysts don't count him out because of his reputation for planning, focus and hard work.

"I expect Al Gore to be the next president from Tennessee," says Randy Tyree, ex-Democratic Knoxville mayor. "But Lamar certainly has the energy, good health and fire in the belly to go all the way."

By Mark Humphrey, AP

ALEXANDER: Wants to 'help country restore its optimism'

ALEXANDER FILE

NAME: Andrew Lamar Alexander Jr.

AGE: 54. Born July 3, 1940, Knoxville, Tenn.

EDUCATION: B.A., Vanderbilt University; J.D., New York University Law School.

MILITARY SERVICE: None. Draft deferments as college student and law clerk.

CAREER: Senate aide to Howard Baker, 1967-68; Nixon White House aide, 1969-70; lawyer, 1970-76; TV commentator, 1975-77; Tennessee governor, 1979-87; co-founded child-care business with wife, 1987; University of Tennessee president, 1988-91; President Bush's Education secretary, 1991-93.

KEY ACHIEVEMENTS: Led efforts to improve state public schools, won merit pay for teachers; recruited Nissan, Saturn plants to state.

FAMILY: Married to former Leslee "Honey" Buhler. Children: Andrew, 25; Leslee, 22; Kathryn, 20, William, 15.

QUOTE: "I want to put humility in the arrogant empire of Washington, D.C."

USA TODAY · TUESDAY, FEBRUARY 28, 1995 ·

By Ben Margot, AP

JUST 'A FEEL-GOOD LAW': Gun expert Peter Alan Kasler with a Glock at the Gun Exchange Monday in San Francisco.

By Carolyn Bauman, AP

BACKGROUND CHECK: Fort Worth police officer Jim Cushman and Lt. Pat Kneblick look over the history of a gun applicant. At day's end, Cushman says, he 'feels like I've accomplished something.'

Brady law's scorecard: 1 year later

By Judy Keen
and Robert Davis
USA TODAY

President Clinton says the year-old Brady law has stopped stalkers, felons, drug users and fugitives from acquiring handguns.

Clinton today commemorates the law's anniversary and releases a federal study — obtained by USA TODAY — reviewing the law's effectiveness.

The Treasury Department study sampled 441,545 handgun applications and found 15,506 were denied — including those of 4,365 convicted felons, 945 fugitives, 97 people under indictment and 649 drug users.

"The American people are safer" as a result of the law requiring up to a five-day wait for background checks, Clinton said in an interview Monday. "We did the right thing."

But as the president celebrates in Washington, the law's effect on crime is still being debated across the nation.

"It's a law that's broken," says Tanya Metaksa of the National Rifle Association. "It's broken in the whole concept that it's going to get the bad guys off the streets."

Alfred Blumstein of the Heinz School of Public Policy and Management in Pittsburgh says the law "was important as a symbolic act more so than for whatever effectiveness it would have in limiting access to guns to undesirables."

But Metaksa and other critics see it as a symbol of an overreaching government.

▶ Sheriffs or citizens have filed 10 lawsuits in nine states challenging the constitutionality of the law.

▶ Five courts have said the law violates the 10th Amendment of the Constitution because the federal government requires state officials to act without providing federal funding. Three cases are pending. One was dismissed.

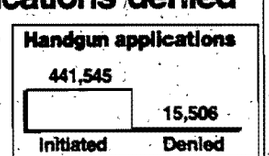
"We've been on the winning wave," says Stephen Halbrook, a lawyer who handled four of the cases.

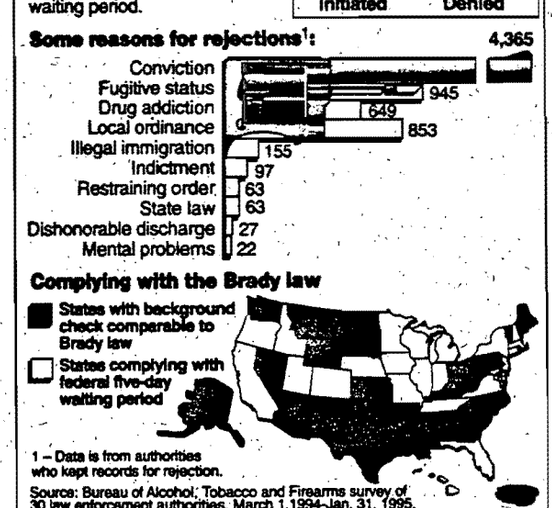
If two federal appeals courts considering the issue rule for the sheriffs, Halbrook says, they'll take the battle to the U.S. Supreme Court.

Clinton promises to fight and says, "I think we'll prevail."

Some gun applications denied

Since the Brady law took effect, 3.5% of people applying for handguns were denied, according to a new survey in Puerto Rico and the 26 states that require the federal five-day waiting period.





1 – Data is from authorities who kept records for rejection.

Source: Bureau of Alcohol, Tobacco and Firearms survey of 30 law enforcement authorities, March 1,1994-Jan. 31, 1995.

By Suzy Parker, USA TODAY

Fort Worth police officer Jim Cushman works on the front lines of the debate.

After chasing "bad guys" for 25 years, he now reaches for a computer instead of a gun, a fax instead of a radio.

And at the end of a day conducting Brady background checks, Cushman "feels like I've accomplished something."

Fort Worth tops a national survey of law enforcement agencies that have kept guns out of the hands of criminals and, some say, law-abiding people caught in red tape.

Of 114 police departments surveyed by the International Association of Chiefs of Police, Fort Worth denied 1,142 of 8,120 handgun applications, or 14%.

"What makes you feel good is when you get somebody on an outstanding felony warrant," Cushman says.

As many as 41,000 are thought to have been denied a handgun based on Brady background checks nationwide.

But "most aren't armed robbers trying to get tools for their trade," says Dave Kopel of the Cato Institute. "They're just people who got into a fight in a bar a few years ago, and they struck a plea bargain and didn't realize they had a felony conviction."

Critics say criminals will always find ways to get guns.

Clinton says, "It's pretty hard to argue that the minor inconvenience of complying with the Brady law is not worth the major, major increases in safety and welfare to the American people.

"I hope this can be just like an airport check, you know? A lot of people didn't like going through metal detectors at airports when we started it. Now ... not only are we used to it, but we'd be upset if they took them away."

Planners gear up Clinton's '96 campaign

By Judy Keen
USA TODAY

President Clinton doesn't have any trips to New Hampshire on his schedule yet, but White House aides are busy planning his 1996 campaign.

A team headed by deputy chief of staff Harold Ickes will have the re-election plan finalized in three or four weeks.

Next year's election "does cross our minds every now and then," Ickes says.

The formal process begins in April or May, when Clinton will form a committee to start collecting money. Once he's raised or spent $5,000 on his campaign, he must file a declaration of candidacy with the Federal Election Commission.

Terry McAuliffe, who was finance director of Missouri Rep. Richard Gephardt's 1988 presidential campaign, will head the fund-raising effort.

Eli Segal, head of Clinton's national service program, may be campaign chairman, but no final decision has been made.

Ickes' team includes White House political director Doug Sosnick and senior Clinton adviser George Stephanopoulos.

Their plan covers fund-raising, overall themes and political mechanics like state organizations. Once it's finalized, Clinton, chief of staff Leon Panetta and Vice President Gore will be part of the planning.

The seeds of Clinton's campaign pitch are evident in his appeals to the middle class.

"You see broad themes now: putting the economy on track, jobs, fighting for the middle class, education, reforming government," says Ickes.

"We just have to keep honing in with more precision and less diffusion."

Ickes is culling advice from a wide range of Democratic consultants, including veterans of Clinton's 1992 campaign like Paul Begala, James Carville and Stan Greenberg.

The trio fell out of favor after failing to anticipate and fend off Democratic losses last November, but Clinton and Ickes want them on the team.

"The key to the re-election is the president's record," says Begala. "It doesn't matter who the operatives are."

Clinton's strategists say that despite his low poll ratings, they aren't worried about a primary challenge or the GOP.

"There's nobody who's in it right now who can't be beaten," says Geoff Garin, a pollster advising the White House.

"I've worked for a lot of governors who have been in a lot worse shape in midterm and have been re-elected," he says.

Democratic pollster Mark Mellman, another Clinton adviser, says campaign preparations have pulled the White House out of doldrums created by 1994's losses. "People are out of the trenches and back on the battlefield," he says.

White House aides won't say publicly which GOP candidate they'd like to face. Privately, they say Texas Sen. Phil Gramm would offer the sharpest contrast with Clinton.

Canada air routes open

Flight pact could add 7 million travelers

By Becky Beyers
USA TODAY

BUSINESS TRAVEL

Fliers soon could pay less and reach their destinations faster on trips to Canadian cities.

Transportation Secretary Federico Peña awarded air routes from 12 cities in the USA to Vancouver, Montreal and Toronto on Monday as part of a new open-skies agreement between the two countries. The new routes — which airlines can start anytime — could help boost travel over the border from 13 million to about 20 million passengers a year.

Under the new rules:

▶ The number of U.S. airline flights to Montreal, Toronto and Vancouver will be limited initially. Restrictions on flights to Montreal and Vancouver will be lifted in two years. Limits on flights to Toronto end in 1998. Once rules are lifted, airlines can operate as many flights as they want to those cites from anywhere in the USA.

▶ Canada's two airlines — Air Canada and Canadian International Airlines — receive immediate unlimited access to all U.S. cities. Air Canada started twice-daily Toronto-Atlanta flights Sunday.

▶ U.S. airlines get unlimited access to other Canadian cities. So far, only a few airlines have applied for those routes but many more are expected, Mosley says. Among the first: Northwest says it will begin direct flights on May 1 from Minneapolis to Calgary, Alberta, and Regina, Saskatchewan, and from Detroit to Ottawa.

The changes could lead to lower fares and fewer hassles for fliers, says Ed Perkins, editor of the *Consumer Reports Travel Letter*. "The introductory fares could be quite good" and fares probably will stay down long term because low-fare carriers such as ValuJet are competing in the market. ValuJet was given Washington, D.C.-Montreal service Monday.

Flights to Canada

These are the 17 non-stop air routes between the USA and Canada awarded Monday:

TWO DAILY FLIGHTS	
Route	**Airline**
Atlanta-Montreal	Delta
Atlanta-Toronto	Delta
Dallas-Vancouver	American
Milwaukee-Toronto	Midwest Express
Minneapolis-Montreal	Northwest
Minneapolis-Vancouver	Northwest
Newark, N.J.-Montreal	Continental
New York (JFK)-Montreal	American Eagle
New York (LAG)-Montreal	USAir Shuttle
Phoenix-Vancouver	America West
Pittsburgh-Toronto	USAir
Reno-Vancouver	Reno Air
San Francisco-Vancouver	United
Washington (Dulles)-Montreal	ValuJet
ONE DAILY FLIGHT	
Houston-Toronto	Continental
Houston-Vancouver	Continental
Newark, N.J.-Vancouver	Continental

Source: Department of Transportation

TUESDAY, FEBRUARY 28, 1995 · USA TODAY

Chicago politics hits the streets

By Debbie Howlett
USA TODAY

CHICAGO — Dwayne Harris' hands are smooth, unmarred by the scrapes and calluses of construction work.

His platinum Rolex and diamond ring suggest not a union laborer — which he is — but a man building an empire.

"Lots of politicians come up from the streets," says Harris, 27, the leader of 21st Century VOTE, a political action committee run by former members of the Gangster Disciples street gang.

Their first test comes today in the 3rd Ward, where VOTE backs Wallace "Gator" Bradley, 43, a pardoned murderer in an uphill challenge to Alderman Dorothy Tillman in the Democratic primary.

Bradley is one of the very few who embraces the controversial group, which aims to grab a foothold in city politics as part of a larger effort to improve life in the most impoverished neighborhoods here.

"They are a positive entity within this community," says Bradley, himself a former gang member. "They're showing the youth there's an alternative to killing each other."

If that's true, asks Jack Hynes, assistant Cook County state's attorney, "How come so many of them are still dying?"

Of the 150 gang-related murders in the city last year, 25% involved Gangster Disciples, police records show.

"This is an attempt similar to what organized crime did in the '20s to legitimize criminal activity," says Hynes, who prosecutes gang crimes. "They don't empower the black community, they prey on it."

Still, police have found nothing illegal with the PAC.

The group is the brainchild of Larry Hoover, 43, who authorities say still runs the Gangster Disciples from his prison cell in Dixon, Ill., where he's serving 200 years for murder. VOTE members say he's only a respected "adviser."

"We want to change the whole community before the 21st century ... so we have a neighborhood where kids can live," says VOTE spokesman Thomas Harris.

By N. Warren Winter

ALDERMAN HOPEFUL: Pardoned murderer Wallace "Gator" Bradley says VOTE shows kids 'an alternative to killing.'

So far, the group has had mixed results:

▶ Last summer, after a public outcry, the City Council voided a $45,000 deal that called for VOTE to monitor minority hiring on a project rebuilding one of the city's elevated train lines.

▶ In 1993, VOTE turned out 10,000 demonstrators at a downtown rally and helped save city-funded health clinics.

In two years, VOTE has registered 4,500 new voters. Yet its forays into campaigning have often been rebuffed.

Mayoral candidate Joe Gardner, in an uphill battle against incumbent Richard Daley, invited VOTE leaders to his campaign kick-off but now refuses to talk about the group.

And, increasingly, news reports have spurred questions — but no charges — about the group's finances.

In less than three years, VOTE has raised $200,353 — almost all of it reported as donations of $100 or less, according to county records.

It also reports spending all of that, though $90,000 has not been accounted for in ethics filings required by the state.

VOTE is headquartered above a ramshackle beauty salon on the South Side.

Charles Kellogg, convicted of a murdering a man in a 1976 robbery, squeezes behind one of seven cramped desks.

"We reach out to the ones on the street," says Kellogg, a former Gangster Disciple. "Then we get them to go out and get others involved."

Daley grabs 63% in 'Tribune' poll

CHICAGO — Plumber Lamont Bullock was just one of the people who shook hands with Joe Gardner last week as the Democratic mayoral candidate walked on the city's West Side.

"I'll vote for him," says Bullock, 55. But even Bullock expects incumbent Richard M. Daley to win.

A *Chicago Tribune* poll last week gave Daley 63% to Gardner's 18%.

In a city where race is often an issue, Daley, who is white, has been endorsed by Sen. Carol Moseley-Braun; the *Chicago Defender*, the only black daily paper; and 100 black ministers.

Gardner, who is black, has the support of Jesse Jackson; the *Windy City Times*, a gay newspaper; U.S. Rep. Bobby Rush; and 70 black ministers.

— K.V. Johnson

Trade deal eases carmakers' fears

TUESDAY, FEBRUARY 28, 1995 • USA TODAY

China ventures less threatened

By James Cox
USA TODAY

HONG KONG — Sunday's U.S.-China trade deal came as a relief to the Big Three automakers, who feared a trade war would kill their chances for car and minivan joint ventures in China.

"The threat of stopping was hanging over our heads," says Jim Paulsen, president of Ford Motor's China operations. "I don't think this deal will jump-start or accelerate anything, but it relieves the threat of us being halted or delayed."

Sunday, trade negotiators worked out an agreement calling on China to strengthen efforts to curb widespread illegal copying of U.S. movies, books, compact discs and software.

The United States had threatened to hit $1.1 billion worth of Chinese goods with tariffs that would double their cost to U.S. importers, if it didn't get a deal by Sunday. China had vowed to retaliate by slapping duties on U.S. products and suspending joint-venture talks with the Big Three.

Ford took the threat "very seriously," Paulsen says. A U.S.-China trade war could have delayed any joint ventures with U.S. carmakers by a year or two, he says.

Chrysler was worried too. "We have enough uncertainty just dealing in this market, let alone dealing with political ramifications," says Lauren Giglio, chief representative in its Beijing office. "Now we can get back to negotiating."

General Motors agrees. "Now we feel we can comfortably get on with the business," says Andrew Andresz, GM-Asia spokesman.

Ford and GM are believed to be the two finalists for a $150 million to $200 million joint venture with Shanghai Auto Industry, which is looking for a partner to build full-size sedans. Ford would build its Taurus; GM reportedly would build its Chevrolet Caprice.

Chrysler is competing with Mercedes for a contract to build minivans in partnership with Three Star Motors. Production is expected to take place at two or more sites in southern China, including the city of Guangzhou and the island of Hainan.

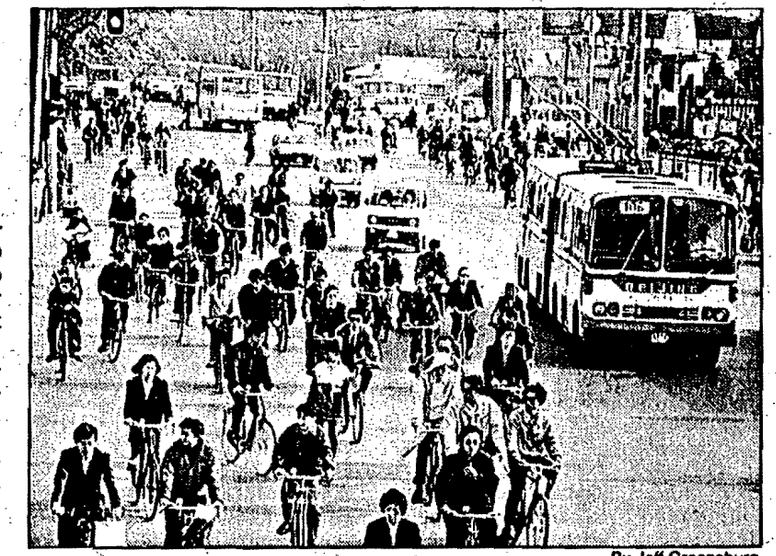
Chrysler has said it would build the NS minivan it plans to introduce in the USA this spring as its '96 Chrysler Town & Country, Dodge Caravan and Plymouth Voyager. Total investment in the project is expected to top $500 million.

The Chinese government is expected to name a partner for Shanghai Auto by May. It has postponed a decision on the minivan deal several times the past year. Japanese automakers are also competing for China's projects.

Demand for cars, light trucks and minivans in China is still relatively small. Total vehicle sales in China reached 1.3 million units in 1994, but nearly 70% were big trucks. But thanks to China's huge population — 1.2 billion people — the market has great potential. Sales of passenger vehicles are expected to climb rapidly — from roughly 500,000 a year to 1 million to 1.5 million by 2000.

One potential stumbling block still in the way of the automakers' plans: China's insistence that in some cases it be given the right to copy the carmakers' technology. Chrysler, for example, is balking at China's request that Chinese companies be allowed to copy and sell any minivans produced at a joint venture.

Chinese officials want carmakers to use only their latest technology at any plants built in China. And they want companies selected for joint ventures to begin operations with far more manufacturing capacity than is likely to be needed for several years.



By Jeff Greensburg

IN RIGHT DIRECTION: The Big Three automakers say the U.S.-China trade deal has brightened the outlook for car and minivan joint ventures in China.

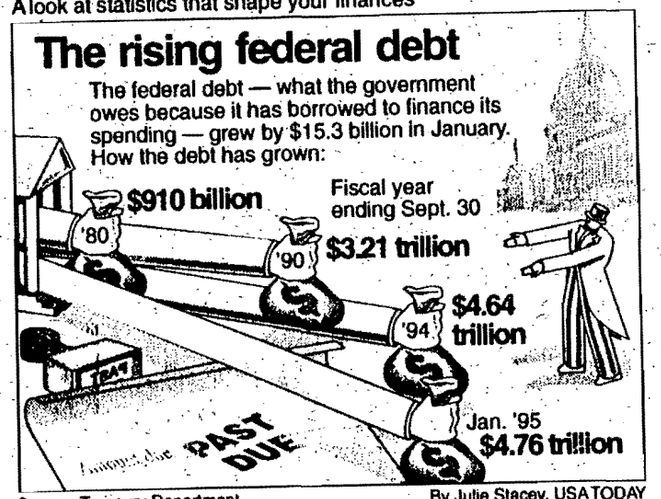
> **"I don't think this deal will jump-start or accelerate anything, but it relieves the threat of us being halted or delayed."**
>
> **— Jim Paulsen, Ford Motor executive**

USA SNAPSHOTS®

A look at statistics that shape your finances

The rising federal debt

The federal debt — what the government owes because it has borrowed to finance its spending — grew by $15.3 billion in January. How the debt has grown:



Source: Treasury Department

By Julie Stacey, USA TODAY

The New York Times

DATE: 3-5-96
PAGE: 14E

Notebook

The Presumption of Stupidity

Affirmative Action, Occupational Apartheid

Brent Staples is a waspish name: A few times a year, every year, readers write in to tell me this. Most of the writers are good-natured folks who imagined me a white Anglo-Saxon Protestant until something put them wise that I am black. Some are rabid, and even accuse me of faking the name to pass for white. Though different in intent, the two sets of letters have something in common: surprise that a preconception related to race has failed to be true.

Preconceptions about race are often deeply held — even unconscious — and thoroughly blinding. By way of example, consider the psychologist Gordon Allport's pioneering studies on prejudice. Allport would begin his classes by showing two pictures: one of a black man unarmed, one of a white man holding a knife. After the lecture, he asked the class who had the knife. The black man, of course. The presumption of criminality had caused the knife to take legs and walk.

The most venomous preconception has to do not with criminality but with stupidity — or as the neo-eugenicists put it these days, the presumption that intelligence is inherited. For young black boys in the inner city, the presumption of stupidity comes into play early and never lets up. The consequences can be disastrous. Jack Kemp, former Housing Secretary and N.F.L. quarterback, said as much when he observed that, until only recently, black football players were universally regarded as too dumb to play quarterback. This example reduces racism to its most pernicious axiom: that brain work is "white" and brawn work is irrevocably "black."

That myth is deeply etched into law and cultural iconography. It was the cornerstone of slavery and, later, of segregation, whose central premise was that blacks did not deserve education because they were too dense to absorb it. The simple-minded darkie once so favored in the movies supported this view.

Given that history, it is absurd to argue, as many critics do, that affirmative action has placed African-Americans under suspicion of incompetence, by propelling them into positions they do not rightly deserve. Bred into this country's bones, the presumption that blacks are inherently less "qualified" would be a driving force in any case. An alternative view of affirmative action is that it breaks down occupational apartheid, the notion that elite jobs are for white folks only. The process is wrenching, but how could it be otherwise?

The letters that accuse me of fabricating my "white" name invariably question my qualifications. I bet you got your job through *affirmative action*, they sneer. Not the job, but certainly the education and opportunities that led to it. In the dying factory town where I grew up, black boys who were not middle class were stamped "not college material," and shunted toward menial and factory jobs that would soon cease to exist.

In high school, I was an average student, with no plans for college. Providence appeared in the form of a professor from Widener University who talked me into going to college one afternoon on a street corner. I was accepted without S.A.T.'s, but took them for ceremonial purposes. My scores were unimpressive, and the college was right not to care. Often the scores tell more about privilege than about "merit" or potential to succeed. I graduated 26th in a class of 370 at Widener, well ahead of many white prep-school kids who had done well on the S.A.T.'s. This black boy who was "not college material" went on to earn a Ph.D. at the University of Chicago.

There are thousands of stories like this one. But in the Reaganaut 80's, many African-Americans who could tell those stories became converts to the gospel of Horatio Alger, suddenly claiming that success had been earned through hard work and rectitude alone. Poverty, they say, stems from sloth and moral laxness. The convert's role I will never play.

When I was 17, the society spotted me a few points on the S.A.T.'s and changed my life. I became a writer — and a middle-class taxpayer — as many other black men went on to prisons, cemeteries and homeless shelters. Sounds like a smart investment to me. The country would be wise to keep making it. *BRENT STAPLES*

The New York Times

DATE: 3-5-9
PAGE: 1E

My Equal Opportunity, Your Free Lunch

By DAVID K. SHIPLER

TORMENTED by their white classmates, Hispanic students at a leading law school needed reassurance. They were being told that they didn't deserve to be there because they had scored lower than whites on the Law School Admission Test. And they wanted this smear refuted.

"I tried to be very candid with them," the law school's dean later recalled. It was true, he told them: their scores on the L.S.A.T., the standard benchmark for admission, were somewhat lower. But if they worked extremely hard, he said, they could make up for "differences in past credentials."

An awful silence descended. "I just looked into their eyes as I was talking," the dean remembers, "and I thought, 'I can't bear this; it's too painful.' Their hopes and expectations about what would be said were defeated. There was just a feeling of betrayal."

The incident illustrates the discomfort and denial affirmative action arouses in a society that champions the boundless potential of individual merit. Neither benefactors nor beneficiaries like to reveal the compromises that sometimes are made to bring more minorities into universities and workplaces. But the defenders had better start talking plainly if they want to save the system, in one form or another, from the gathering storm of outrage that is about to be harnessed by conservative Republicans.

Some rough political choices lie ahead. Should affirmative action be retained? Should preference be given to people on the basis of income rather than race? Should the system be — and can it be — scrapped altogether?

How It All Began

Three decades ago, the phrase affirmative action was coined as a catch-all for racial preference programs and goals — but not rigid quotas, which courts rarely permit. The efforts have produced a legacy of tangible successes and poisonous resentments, a revolution in recruiting and hiring alongside the deepening decay of poverty.

Affirmative action has never sat well with most white Americans. Last year, only 16 percent endorsed preferences for blacks in hiring and promotion, according to a survey by the National Opinion Research Center at the University of Chicago. To the majority, affirmative action has gone too far for too long. It is ideologically repulsive, because it vitiates the myth that this country's bounty is open to anyone who has brains and works hard. How much more satisfying it would be to decide that remedial measures are no longer needed.

That appeal has already emerged as the Republicans' approach during the build-up to the 1996 elections. What looms is likely to be a coarse campaign of sloganeering that could heighten tensions along the lines of class and race. Its outcome will shape a vital dimension of the country's future by maintaining, revising or eventually eliminating institutional preferences for minorities and women.

Since affirmative action programs are supposed to be temporary remedies, the question is how much longer the country will have to take this unpleasant medicine. To anyone who wants to see women and minorities participate fully in this society, the answer seems to be that more patience is required.

Habits of interaction between sexes and races die with difficulty. Patterns of discrimination and economic disadvantage can leave deep and lasting scars on a person's "credentials." These sometimes fade after a generation, and often they do not; it is still too early to see how well the children of those who were first helped less than a generation ago will do in adulthood.

That is why the most perceptive companies and colleges look past test scores for qualities missed by conventional measurements — a fact they often fudge to avoid labeling ethnic or racial groups in a way that would undermine self-esteem and reinforce the majority's resentments.

They have a point. But self-doubts among minorities, and prejudices against them, did not begin with affirmative action. Nor are they abated by euphemism and evasion.

Making Allowances

Every statistic that is ferreted out can be turned into a weapon. Universities, well aware of this, do not publicize their students' test scores by race. But some admissions officers acknowledge that they make allowances for lower scores among blacks and Hispanic students and, at some colleges, for low-income whites.

"It would be naive to have a single standard to apply to all groups if, on a national level, you know that the test operates differently," said Karl M. Furstenberg, Dean of Admissions at Dartmouth. "We make decisions on individuals, not on groups. But we know about these national patterns, so when you read individual applications you recalibrate the criteria."

The rationale of affirmative action lies in the recognition that even if discrimination is eliminated, the handicaps of poor schooling and impoverished family life remain severe obstacles; color-blindness in choosing applicants is not enough. So, in the words of one Federal regulation, the institution "must take affirmative action to overcome the effects of prior discrimination." This means seeking the best candidates from excluded groups even if their qualifications on paper don't always match those of white men.

Affirmation action may have to change its face to survive the outrage conservatives are harnessing.

White males have long benefited from unstated preferences as fraternity brothers, golfing buddies, children of alumni and the

cont'd

like — unconscious biases that go largely unrecognized until affirmative action forces recruiters to think about how they gravitate to people like themselves. Changing or eliminating those preferences breeds backlash. Polls show most Americans believe less qualified blacks get hired or promoted over whites, though few seem to know whites who are victims of reverse discrimination.

"Blacks are such a small fraction of the population that the lost opportunities to white men are really minuscule," said Barbara R. Bergmann, an economics professor at the American University in Washington.

One strategy that may gain ground would shift affirmative action to target class, or, more precisely, income.

The most critical gateway at which racial preferences can make a difference may be entry to college, where many blacks realize middle-class aspirations. Even while most low-income blacks have been left untouched by affirmative action, the small percentage who are attractive to good colleges are wooed and financed, and later sought by graduate schools and corporations.

For years, such elite colleges as Dartmouth, Harvard and the Massachusetts Institute of Technology have mixed race and class to give low-income white youngsters admission preferences similar to those for minorities. But with Federal scholarships cut, some other schools are taking the opposite tack, satisfying affirmative-action goals with middle-class blacks and selecting other students who can pay. Fewer than 10 percent of last fall's college freshmen came from families with incomes under $20,000.

If income replaced race entirely as a tion would probably decline.

Of the 14.6 million poor Americans under the age of 18, fully 61 percent are white. And since whites tend to outscore blacks and Hispanic students on the standard admissions test even where their family incomes are the same, many middle-class black and Hispanic students would continue to need preferential treatment to make up the gap.

Within each racial and ethnic group, average Scholastic Aptitude Test scores increase as income rises, from a mean total of 766 out of 1,600 for those from families earning under $10,000 a year, to a score of 1000 in the bracket over $70,000. Consequently, economic disadvantage becomes a factor in assessing scores. If two applicants have the same grades and scores, but one is wealthy and the other poor, "I would argue that they're not performing equally," said Mr. Furstenberg, the Dartmouth dean. The low-income student's scores may "represent a greater achievement," he said.

Marlyn McGrath Lewis, director of admissions for Harvard and Radcliffe, said: "We have particular interest in students from a modest background. Coupled with high achievement and a high ambition level and energy, a background that's modest can really be a help. We know that's the best investment we can make: a kid who's hungry."

Although College Board achievement and S.A.T. scores are good predictors of freshman grades, she said, they become less reliable later. Furthermore, a study of three classes of Harvard alumni over three decades found a high correlation between "success" — defined by income, community involvement and professional satisfaction — and two criteria that might not ordinarily be associated with Harvard freshmen: low S.A.T. scores and a blue-collar background.

Doing Without

Without affirmative action, many institutions would resegregate. A Federal judge in Texas ruled as much last August in upholding the University of Texas Law School's program. The mean L.S.A.T. score of all 500 students entering the school in 1992 was 162 (on a scale from 120 to 200), putting them at the 89th percentile; the mean for blacks was 158, at the 78th percentile.

The law school argued that if only grades and test scores had been considered, the class would have had only 9 blacks instead have been tokenism.

"Until society sufficiently overcomes the effects of pervasive racism," he wrote, "affirmative action is necessary."

The four rejected white applicants who brought the suit have appealed.

The structure of affirmative action has been built by decisions of all three branches of government. Therefore, not all preferences for minorities and women are susceptible to change by Presidential order or

Some want to make income the criterion for preferences.

even by Congress. They are supported not only by intricate Federal laws and regulations, but also by court interpretations of the Fourteenth Amendment's equal protection clause and by institutional self-interest that has gone beyond original legal mandates.

In some quarters, affirmative action has been driven by pragmatism. Without a draft, for example, the military wants to tap the full reservoir of a work force in which the percentage of whites is declining. Colleges often want diverse student bodies not only to forestall discrimination lawsuits but also to enrich the educational experience.

"The curriculum has been forced to respond in a way that's more truthful and inclusive," said Mary M. Childers, Dartmouth's Director of Affirmative Action. "The social life of students is richer and more heterogeneous and conflict-ridden in a way that prepares them for the actual world out there."

The gap between mean S.A.T. scores for blacks and whites is narrowing, but it is still large. Last year, the mean totaled 938 for whites and 740 for blacks. This reinforces the determination of many admissions officers to avoid reducing people to test score results.

"Intellectual talent and other forms of human talent exist in all segments of the population," said Mr. Furstenberg of Dartmouth. "What we're trying to do is find the greatest talent."

Designing that search is also the nation's task.

David K. Shipler, a former New York Times reporter, is writing a book about race in America.

Los Angeles Times

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PAGE: A-11

Kara Hultgreen and the Codes of Prejudice

■ **Affirmative action:** The Navy has vindicated its first woman fighter pilot, who was hounded even in death by the ubiquitous slur of double standards.

By ELLEN GOODMAN

So it was the engine after all. Not the pilot. Lt. Kara Hultgreen did not die on the altar of "political correctness," or "preferential treatment" or "reverse discrimination." She died because the F-14A Tomcat stalled as it approach the aircraft carrier.

The Navy brass played the videotape of the crash over and over again last week. The officers relayed the findings of their investigation succinctly: It wasn't her fault. It wasn't her sex.

Kara Hultgreen had grown up fearless, a daredevil who believed she could do anything. At 10, she deliberately ran through a glass door. At 28, she broke the glass ceiling.

When the Navy finally lifted its ban against women fighter pilots in 1993, this gung-ho pilot who knew all the lines from "Top Gun" was the first to join an air combat squadron. Last October she became the first to die.

But before Kara Hultgreen's body had even been recovered from the sea, 4,000 feet deep, strapped to her ejection seat, the anonymous phone calls, the fax attacks, the rumors had all begun. She was a pilot only because the Navy was trying to be "politically correct" in the wake of the Tailhook scandal. She was unqualified. She was given preferential treatment. She was, in the modern slang, an affirmative-action baby.

In her too-brief career, Kara Hultgreen had flown across the whole trajectory of prejudice. At the beginning, she was banned from her job because she was a woman. At the end, it was said that she got the job only because she was a woman. One double standard was twisted into another.

Even Ted Koppel on "Nightline," probing her qualifications, asked if she had received a "kind of affirmative action." And a reporter, automatically responding in the same shorthand, said no, the Navy didn't lower its standards.

Maybe this is Lt. Hultgreen's last, unwitting service. The people who cast a shadow on her reputation have thrown some light on the debate about discrimination and affirmative action.

In today's language and climate, affirmative action has become synonymous in the public mind with lowering standards. The remedy for discrimination has become a code word for it.

Those who oppose affirmative action will say Kara Hultgreen's story proves how much these programs tarnish every successful woman or minority. Even one who rose by the most rigorous of single standards.

Those who favor affirmative action will say the story proves how far we still are from a race-blind, gender-neutral society. The people who want to keep the outsiders where they belong—down—have found a new way of expressing an old prejudice.

But either way you look at it, affirmative action is now tainted. It's become a fighting term. Politicians who want to appease those legendary angry white men promise to strike it from the policy vocabulary. California is putting the issue on the ballot. The President has vowed a top-to-bottom review of federal programs. We are in for change and we don't have a new language for it.

Affirmative-action plans, the goals and goads designed to remedy past discrimination, have made a difference in the lives of women and minorities. The statistics can tell you that.

The plans have also created antagonism between men and women, whites and blacks. The anecdotes can tell you that.

This antagonism is stirred every time an employer tries to let a white man down, falsely but easily, by saying, "We have to hire a woman." It's stirred every time a politician wants people to believe that a black American has taken "their" job, not a Sri Lankan or a Mexican.

Those who have favored affirmative action—as I have—have been too busy fighting opponents to confront our own conflicts. We haven't squarely faced the dilemma of fostering group rights to promote individual rights. Nor have we fairly computed the competing disadvantages of race and class, gender and poverty.

It's late in the day and we haven't laid out our own end game. We haven't decided when the time is up for this temporary policy. If not now, when? How will we know? It's no wonder that the country believes the temporary is permanent.

But the opponents of affirmative action also have their work cut out. As the mood of the country shifts, so does the burden. Those who would end programs that have given women and minorities a chance are now obliged to describe the tools they would use on the still-rocky road to equality. Without such a plan we can only assume that the goal is to go backward.

While this debate goes on, it's worth remembering how much prejudice there still is in this world. Enough prejudice to follow a young pilot into her grave.

Ellen Goodman is a syndicated columnist based in Boston.

THE NATION'S NEWSPAPER
USA TODAY

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Clinton teeters on high wire

But political foes aren't buying his balancing act on affirmative action. And neither should the public.

Bill Clinton is a master when it comes to clouding the issue.

In his 1992 presidential campaign, he took on Jesse Jackson by forcing him to defend Sister Souljah.

During the Senate fight over the balanced budget amendment, he convinced more than a few of its members that what was really being debated was the future of Social Security.

Now, as the battle over affirmative action preferences for minorities and women heats up, the Clinton administration has rushed into court to file an employment discrimination suit on behalf of a white man.

On Friday, the Justice Department announced it is filing a suit to force Illinois State University to open up to white men a program it runs to train blacks for janitorial jobs.

Officially, the White House is in the early throes of a review of federal affirmative action programs — remedies for discrimination, past and current — that many in the civil rights community expect him to defend vigorously.

By DeWayne Wickham

But already, it seems, Clinton has committed himself to a far different course of action.

The path he now appears to have taken was charted early last month in an unsigned, confidential White House memo dated Feb. 5, which lays out for Clinton a strategy on affirmative action that its author says "contrasts between our approach and those of the divisive Right and Old Left."

The document, which was circulated among a small group of senior White House staffers, sets forth a strategy that attempts to position Clinton between proponents and opponents of affirmative action.

And just how is the president supposed to reach this delicate political balance? By arguing that "discrimination still exists," the memo suggests, while conceding at the same time that "some voluntary and remedial measures are too extreme."

One action item in the memo calls on the administration to "identify two or three programs or practices" the Clinton administration can attack as being "too rigid or not narrowly drawn."

On its surface, the complaint against the university's janitorial-training program fits conveniently into that warped mold.

But Clinton cannot escape the coming showdown on affirmative action by throwing its opponents this bone.

The enemies of affirmative action are in no mood to compromise. They want to bring all such programs to an end, not just the few Clinton is willing to put to the sword.

Why?

> "(I'm not) backing off from giving a leg up (to someone who is disadvantaged), but we shouldn't be defending things that we can't defend. So it's time to review it, discuss it and be straightforward about it."
>
> **— President Clinton, who has called for review of affirmative action programs**

Because affirmative action threatens the privileges many white men have long enjoyed. Even with affirmative action, white men, who are just a third of the population, dominate every facet of American life. They make up 80% of the tenured professors, 90% of the U.S. Senate and 97% of all school superintendents.

Affirmative action is a remedy for their rampant abuse of power.

It is a rational means of undoing the damage that racism and sexism does.

It is the price they must pay for their discriminatory behavior — past and present — against virtually all other people in this country.

It is not an anti-poverty program.

Turn it into that, as some now suggest, and the concept of affirmative action will lose its moral authority.

The author of the White House memo that now seems to be guiding decision-making in the Clinton administration cautioned the president against talking about affirmative action as a remedy or cure for the abuses of racism because the words "invoke the language of blame."

Instead, he suggests that affirmative action be recast as "a means of empowering individuals to realize their full potential and thus contribute to the well-being of their families and communities."

That's a good-sounding political cop-out.

And Bill Clinton should say as much — to his White House staff and the American people.

The New York Times

DATE: 3-5-95
PAGE: 10

U.S. Holds Mexican in Assassination Case

By TIM GOLDEN
Special to The New York Times

MEXICO CITY, March 4 — The former chief investigator into a politically charged assassination case in Mexico was being held today by Federal authorities in the United States after being arrested in Newark as he boarded a plane for Madrid with nearly $50,000 in cash.

The former official, Mario Ruiz Massieu, was detained Friday night by Customs Service agents at Newark International Airport for having falsely claimed to be carrying only $18,000 in Mexican and American currency.

But two senior Mexican officials said today that the arrest came after the Mexican Government alerted American officials to the movements of Mr. Ruiz Massieu, 44. They said he would be charged with obstructing his own investigation into the slaying in September of the second-ranking leader of Mexico's governing party, José Francisco Ruiz Massieu, who was also his elder brother.

The officials also said Mexico would file a request for his extradition by Monday, when he is to be arraigned in United States District Court in Newark.

Mario Ruiz Massieu had left Mexico on Thursday night, just hours after testifying to federal police officials here who said he appeared to have been responsible for a series of irregularities in the inquiry.

In a statement issued on Friday, Mr. Ruiz Massieu said he was going to the United States to lecture at colleges and universities. But a senior Mexican official said today that he had instead bought plane tickets to Vancouver and Montreal, as well as Madrid, to confuse the agents tracking him, and planned to travel on to Monaco, a principality with which Mexico has no extradition treaty.

Mr. Ruiz Massieu, who was Deputy Attorney General at the end of the administration of President Carlos Salinas de Gortari, has never been charged with any crime in Mexico. He has repeatedly denied having done anything other than try to find his brother's killers.

A trip with $50,000 in cash and several plane tickets.

But the case has been a wellspring of surprises since Tuesday, when Mr. Salinas's elder brother, Raúl Salinas de Gortari, was arrested on charges of having ordered and financed the slaying. Officials said that according to information from witnesses, prosecutors and typists involved in the case, Mr. Ruiz Massieu systematically kept Raúl Salinas's name out of the investigation.

In court testimony at the country's maximum-security prison, Raúl Salinas has insisted that he is innocent. His brother has supported him, as have two daughters from a long-dissolved marriage between the victim, José Francisco Ruiz Massieu, and the sister of the Salinas brothers, Adriana Salinas de Gortari.

In what he described as a protest unrelated to his brother's prosecution, Carlos Salinas went on a water-only hunger strike on Friday to demand that the Government of President Ernesto Zedillo publicly clear him of responsibility for the country's economic crisis and for problems in the inquiry into another political assassination last year, that of a governing-party presidential candidate, Luis Donaldo Colosio.

Responding to the former President's demands, the Mexican Attorney General's office issued a statement on Friday saying it had no information to suggest that Mr. Salinas had played any role in covering up the Colosio investigation. Officials of Mr. Zedillo's administration have said the inquiry was tainted by apparent mistakes, misjudgments and phony evidence.

A more important question may be whether Carlos Salinas played a role in the investigation into the death of José Francisco Ruiz Massieu, the killing linked to his brother.

Several officials said privately that it would have been unusual for the man apprehended today, Mario Ruiz Massieu, not to have told President Salinas if Raúl Salinas was implicated in the case.

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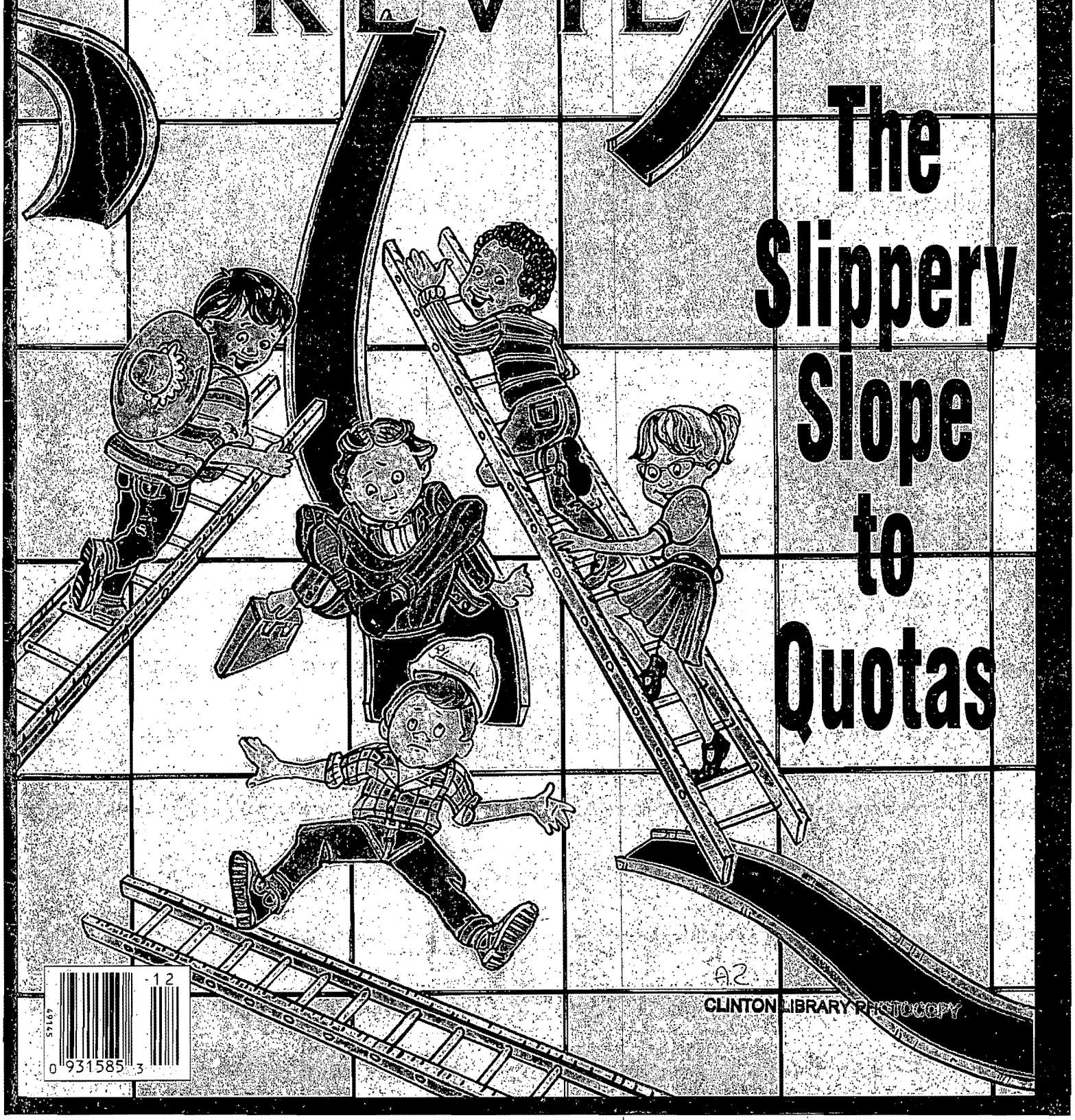
How to Win Votes by Saving the Unborn

Judicial Revenue Service? – p. 58

NATIONAL REVIEW

The Slippery Slope to Quotas



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How We Got Quotas

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Bureaucrats and judges have turned the 1964 Civil Rights Act on its head, creating a system of preferences based on race and sex. Can we restore equality before the law?

PAUL CRAIG ROBERTS & LAWRENCE M. STRATTON JR.

FORTY years after *Brown* v. *Board of Education*, the civil-rights movement has strayed far from the color-blind principles of Martin Luther King Jr. Public outrage over preferential treatment for "protected minorities" has taken the place of guilt over segregation. Americans who supported desegregation and equal rights are astonished to find themselves governed by quotas, which were prohibited by the Civil Rights Act of 1964.

In California momentum is building for a 1996 initiative, modeled on the 1964 Civil Rights Act, that would amend the state's constitution to prohibit the use of quotas by state institutions. Polls indicate that the initiative's objective of ending affirmative action is enormously popular, even in traditionally liberal bastions such as Berkeley and San Francisco. Citizens in other states are organizing to place similar measures on the ballot. The prospects for such measures are bright: surveys find that some 80 per cent of Americans oppose affirmative action in employment and education.

The hostility to race and gender preferments reflects a general sense that reverse discrimination violates fundamental norms of justice and fair play. Thomas Wood, a co-drafter of the California initiative and executive director of the California Association of Scholars, says he has been denied a teaching job because he is a white male: "I was once told by a member of a search committee at a university, 'You'd walk into this job if you were the right gender.'" Glynn Custred, a California State University anthropology professor, says he decided to join Wood in drafting the initiative because he was concerned about the destructive impact racial quotas were having on higher education, where "diversity" overshadows academic merit.

Mr. Roberts is John M. Olin Fellow and Mr. Stratton is a research fellow of the Institute for Political Economy. This article is adapted from their book, which is forthcoming from Regnery.

The California initiative has drawn support from across the political spectrum. Charles Geshekter, a teacher of African history at Chico State University and a supporter of the initiative, wrote in the August 14 *Chico Enterprise Record*: "As a liberal Democrat, I despise those who advocate preferential treatment based on genitalia or skin color. Having taught university classes on the history of European racism toward Africa for 25 years, I am appalled to watch sexist and racist demands for equality of outcomes erode the principle of affirmative equality of opportunity." University of California Regent Ward Connerly, a black businessman who supports the initiative, lamented in the August 10 *Sacramento Bee* that "we have institutionalized this preferential treatment."

The Pervasiveness of Preferences

OPPOSITION to quotas was initially unfocused, because their impact was not widely felt. The public was aware of a few celebrated cases, but they seemed to be the exception rather than the rule. This is no longer the case. Preferential treatment based on race and sex pervades private and public employment, university admissions and hiring, and the allocation of government contracts, broadcast licenses, and research grants. Consider a few examples:

—A 1989 survey by *Fortune* magazine found that only 14 per cent of Fortune 500 companies hired employees based on talent and merit alone; 18 per cent admitted that they had racial quotas, while 54 per cent used the euphemism "goals."

—A Defense Department memo cited on the November 18 broadcast of ABC's *20/20* declares, "In the future, special permission will be required for the promotion of all white men without disabilities."

—The Federal Aviation Administration officially recognizes the Council of African American Employees, the

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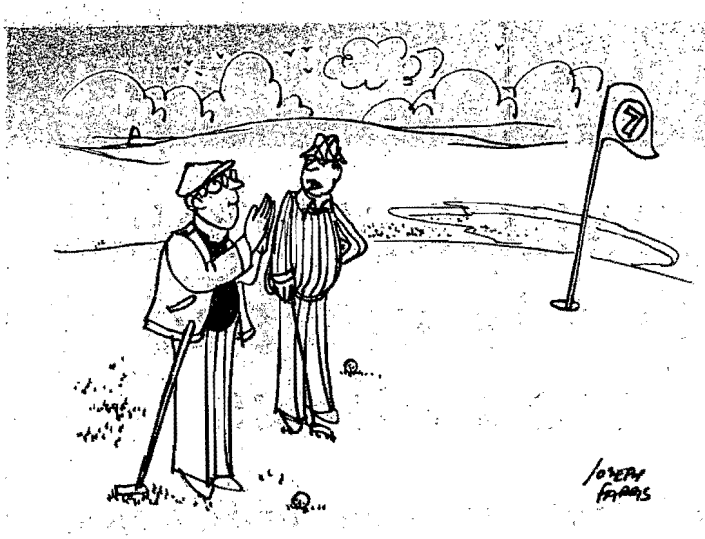

"That's not fair!"

National Asian Pacific American Association, the Gay, Lesbian, or Bisexual Employees group, and the Native American/Alaska Native Coalition, granting them access to bulletin boards, photocopiers, electronic mail, voice mail, and rooms in government buildings for meetings on government time. By contrast, the Coalition of Federal White Aviation Employees has been seeking recognition from the FAA since 1992 without success; FAA employees are even forbidden to read the group's literature.

—In the 1994 case *Hopwood* v. *State of Texas*, U.S. District Court Judge Sam Sparks found that the constitutional rights of four white law-school applicants had been violated by quota policies at the University of Texas. However, he awarded them each only $1 in damages and refused to order them admitted ahead of protected minorities with substantially lower scores.

A case that came before the U.S. Supreme Court in January shows even more clearly how preferential policies have warped basic concepts of fairness. Randy Pech, owner of Adarand Constructors, lost in the bidding for a guard-rail construction project in Colorado's San Juan National Forest because of his skin color. Pech put in the lowest bid. However, the prime contractor was eligible for a bounty of $10,000 in taxpayers' money from the U.S. Department of Transportation for hiring minority-owned subcontractors, and the bounty was greater than the difference in the bids submitted by Pech and his competitor, a Hispanic-owned firm.

Pech filed a discrimination lawsuit. When it reached the Supreme Court, U.S. Solicitor General Drew S. Days III argued that Pech had no standing to sue, even though the U.S. Government had paid the prime contractor $10,000 to discriminate against him. Whatever the technical merits of the solicitor general's argument, it reveals the system of racial preferments that today passes for civil rights. "Protected minorities" have standing to sue without any requirement of showing that they themselves have ever suffered from an act of discrimination. Today's college-aged protected minorities have never suffered from legal discrimination, yet U.S. policy assumes they are victims and provides remedies in the form of preferments. In contrast, victims of reverse discrimination have no rememdy and no legal standing.

The political repercussions of this double standard are by no means restricted to California. In November's congressional elections, white males deserted the Democratic Party in droves, voting Republican by a margin of 63 per cent to 37 per cent. The *Wall Street Journal* has identified "angry white males" as an important new political group.

But more is at stake than the plight of white males and the relative fortunes of political parties. At issue is equality before the law and the democratic process itself. As freedom of conscience, goodwill, and persuasion are supplanted by regulatory and judicial coercion, privilege reappears in open defiance of Justice John Marshall Harlan's dictum: "There is no caste here. Our Constitution is color-blind."

Color-blindness was the guiding principle of the 1964 Civil Rights Act. The basic act was full of language prohibiting quotas, and various amendments to it defined discrimination as an intentional act, insulated professionally developed employment tests from attack for disproportionately screening out racial minorities, and restricted the Equal Employment Opportunity Commission (EEOC) from issuing any substantive interpretive regulations. Senator Hubert H. Humphrey (D., Minn.), the chief sponsor of the act, confidently declared that if anyone could find "any language which provides that an employer will have to hire on the basis of percentage or quota related to color, race, religion, or national origin, I will start eating the pages one after another, because it is not in there." In less than a decade, federal bureaucrats and judges had cast aside Congress's rejection of preferential treatment for minorities and stuffed the pages of the 1964 Civil Rights Act down Hubert Humphrey's throat.

Two Models of Discrimination

THE Civil Rights Act of 1964 undertook to put millions of employer decisions through a government filter. Such a massive intrusion into private life had not previously occurred in a free society. Congress assumed that the EEOC, the agency created by the act to run the filter, would be like the state Fair Employment Practice (FEP) commissions that had been created in some Northern states after World War II.

Civil-rights activists regarded these commissions, many of which had more power than the EEOC, as ineffective. As University of Chicago economist Gary Becker observed, however, there was an explanation for the paucity of enforcement actions by the FEP commissions: discrimination doesn't pay. In his 1957 book, *The Economics of Discrimination*, Becker showed that racial discrimination is costly to those who practice it and therefore sets in motion forces that inexorably reduce it. Meritorious employees who are underpaid and underutilized because of their race will move to firms where they

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get paid according to their contributions. An employer who hires a less qualified white because of prejudice against blacks will disadvantage himself in competition against those who hire the best employees they can find.

Indeed, scholars who studied the cases handled by FEP commissions found that the complainant's problem was usually his job qualifications, not his race. Sociologist Leon Mayhew, who studied employment-discrimination complaints filed with the Massachusetts FEP commission from 1946 to 1962, found that most complaints were based on "mere suspicion" and usually resulted in a finding that the employer had not discriminated. He pointed out that most complainants were poor and lacked job skills. Thus, ordinary, profit-oriented business decisions "regularly produce experiences that could be interpreted as discrimination." This phenomenon "permits Negroes to blame discrimination for their troubles. Hence, some complaints represent a projection of one's own deficiencies onto the outside world."

This argument did not appeal to those who wanted to achieve racial integration through government policy. Activists such as Rutgers law professor Alfred W. Blumrosen, who as the EEOC's first compliance chief became the de facto head of the commission in its formative years, rejected the complaint-based, "retail" model of FEP enforcement and envisioned a "wholesale" model attacking the entrenched legacy of discrimination. In 1965 Blumrosen wrote in the *Rutgers Law Review* that FEP commissions focused too much on individual acts of discrimination and "did not remedy the broader social problems" by reducing the disparity between black and white unemployment. Seeking to redefine discrimination in terms of statistical disparity, he dismissed other explanations of economic differences between blacks and whites, such as education and illegitimacy, as harmful "attempt[s] to shift focus." Blumrosen disdained the Civil Rights Act's definition of discrimination as an intentional act, preferring a definition that Congress had rejected. In his 1971 book, *Black Employment and the Law*, he wrote:

> If discrimination is narrowly defined, for example, by requiring an evil intent to injure minorities, then it will be difficult to find that it exists. If it does not exist, then the plight of racial and ethnic minorities must be attributable to some more generalized failures in society, in the fields of basic education, housing, family relations, and the like. The search for efforts to improve the condition of minorities must then focus in these general and difficult areas, and the answers can come only gradually as basic institutions, attitudes, customs, and practices are changed. We thus would have before us generations of time before the effects of subjugation of minorities are dissipated.
>
> But if discrimination is broadly defined, as, for example, by including all conduct which adversely affects minority group employment opportunities . . . then the prospects for rapid improvement in minority employment opportunities are greatly increased. Industrial relations systems are flexible; they are in control of defined individuals and institutions; they can be altered either by negotiation or by law. If discrimination exists within these institutions, the solution lies within our immediate grasp. It is not embedded in the complications of fundamental sociology but can be sharply influenced by intelligent, effective, and aggressive legal action.
>
> This is the optimistic view of the racial problem in our nation. This view finds discrimination at every turn where minorities are adversely affected by institutional decisions, which are subject to legal regulation. In this view, we are in control of our own history. The destruction of our society over the race question is not inevitable.

Blumrosen's Agenda

BLUMROSEN figured that a redefinition of discrimination to include anything that yielded statistical disparities between blacks and whites would force employers to give preferential treatment to blacks in pursuit of proportional representation, so as to avoid liability in class-action suits. He set out to "liberally construe" Title VII of the Civil Rights Act, which prohibited discrimination in employment, in order to advance "the needs of the minorities for whom the statute had been adopted." By promoting quotas, he could "maximize the effect of the statute on employment discrimination without going back to the Congress for more substantive legislation."

Blumrosen's EEOC colleagues kidded him that he was working on a textbook entitled *Blumrosen on Loopholes*. He took pride in his reputation for "free and easy ways with statutory construction." He later praised the agency for being like "the proverbial bumble bee" that flies "in defiance of the laws governing its operation." Blumrosen's strategy was based on his bet that "most of the problems confronting the EEOC could be solved by creative interpretation of Title VII which would be upheld by the courts, partly out of deference to the administrators." History has proved Blumrosen right.

As inside-the-Beltway lore expresses it, "Personnel is policy." Blumrosen had a free hand because Franklin Delano Roosevelt Jr., the EEOC's first chairman, spent most of his time yachting. Staffers jokingly changed the lyrics of the song "Anchors Aweigh" and sang "Franklin's Away" during his frequent absences. Roosevelt resigned before a year was out, and his successors stayed little longer. The EEOC had four chairmen in its first five years, which enhanced Blumrosen's power.

The White House Conference on Equal Employment Opportunity in August 1965 indicated what was to come. Speaker after speaker described "deeply rooted patterns of discrimination" and "under-representation" of minorities that the EEOC should counter in order to promote "equal employment opportunity." The conference report stressed on its first page that the "conferees were eager to move beyond the letter of the law to a sympathetic discussion of those affirmative actions required to make the legal requirement of equal opportunity an operating reality." Another telling line said that "it is not enough to obey the technical letter of the law; we must go a step beyond in order to assure equal em-

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ployment opportunity." One panel concluded that "it is possible that the letter of the law can be obeyed to the fullest extent *without* eliminating discrimination in hiring and promotion. For the legislative intent of Title VII to be met, the law will have to be obeyed in spirit as well as in letter."

The report noted that many panelists shared Blumrosen's suspicion that if the EEOC limited its activities to responding to complaints of discrimination, the agency would never "reach the extent of discriminatory patterns." Blumrosen inserted a paragraph into the report suggesting that the agency should initiate proceedings against employers even in the absence of complaints of discrimination. Underutilizers of minority workers could be identified by using "employer reports of the racial composition of the work force as a sociological 'radar net' to determine the existence of patterns of discrimination."

Blumrosen succeeded in setting up a national reporting system of racial employment statistics despite the Civil Rights Act's specific prohibition of such data collection. An amendment introduced by Senator Everett Dirksen (R., Ill.), said employers did not have to report statistics to the EEOC if they were already reporting them to local or state FEP commissions. Blumrosen later admitted that the requirement he imposed on employers to report the racial composition of their work forces was based on "a reading of the statute contrary to the plain meaning." But what was a mere statute?

"In your earthly life, I understand you were a politician who always managed to hedge the issues."

Columbia University law professor Michael Sovern predicted that the EEOC would be called on the carpet for exceeding its authority. In a study for the Twentieth Century Fund, *Legal Restraints on Racial Discrimination*, he wrote that Title VII "cannot possibly be stretched to permit the Commission to insist on the filing of reports" and predicted that Blumrosen would "encounter resistance." But no resistance materialized. As Hugh Davis Graham observed in *The Civil Rights Era*, "In 1965 Congress was distracted by debates over voting rights and Vietnam and Watts and inflation and scores of other issues more pressing than agency records."

After Blumrosen got his way in forcing employers to submit reports, the agency developed the confidence to dispense with other statutory restrictions on its mission. The EEOC saw the reporting requirement as a "calling card" that "gives credibility to an otherwise weak statute." Blumrosen knew that "with the aid of a computer," the EEOC could now get "lists of employers who, prima facie, may be underutilizing minority-group persons" and eventually force them to engage in preferential hiring of blacks.

In mid 1965 Blumrosen sent EEOC investigators to Newport News, Virginia, to solicit discrimination complaints against the Newport News Shipbuilding & Dry Dock Company, one of the world's largest shipyards, employing 22,000 workers. Knocking on doors in black neighborhoods, the investigators found 41 complainants, later narrowed down to 4. Blumrosen then successfully pressured the company, which received 75 per cent of its business from Navy contracts, to promote 3,890 of its 5,000 black workers, designate 100 blacks as supervisors, and adopt a quota system in which the ratio of black to white apprentices in a given year would match the region's ratio of blacks to whites. One shipyard worker told *Barron's* that the EEOC had done its worst to "set black against white, labor against management, and disconcert everybody."

Armed with the national reporting system's racial data and the victory at Newport News, Blumrosen and his colleagues decided to build a body of case law under Title VII to impose minority-preference schemes on employers across the country. The barrier to this strategy was Title VII itself. An internal EEOC legal memorandum concluded: "Under the literal language of Title VII, the only actions required by a covered employer are to post notices, and not to discriminate subsequent to July 2, 1965. By the explicit terms of Section 703(j), an employer is not required to redress an imbalance in his work force which is the result of past discrimination." Fearing a storm over quotas like the one that had occurred during the congressional debates on the Civil Rights Act, the EEOC ruled out trying to amend the Act itself. The memorandum instead urged the agency to rewrite the statute on its own and influence the courts to embrace the EEOC's "affirmative theory of nondiscrimination," under which compliance with Title VII requires that "Negroes are recruited, hired, transferred, and promoted in line with their ability and numbers."

The Assault on Employment Tests

TO IMPLEMENT the "affirmative theory of nondiscrimination," the EEOC decided to assault employment tests that failed blacks at a higher rate than whites. Commissioner Samuel Jackson told members of the NAACP that the EEOC had decided to interpret Title VII as banning not only racial discrimination per se but also employment practices "which prove to have a demonstrable racial effect." EEOC lawyers formed an alliance with civil-rights attorneys at the NAACP and began a litigation drive to redefine discrimination in terms of statistical effects.

Summer riots and Vietnam protests helped activists target employment tests. The Kerner Commission's report on civil disorders described employment tests as "artificial barriers to employment and promotion." The

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Kerner Commission blamed these "artificial barriers" and the "explosive mixture which has been accumulating in our cities" on racism and concluded, "Our nation is moving toward two societies, one black, one white—separate and unequal."

The EEOC's chief psychologist, William H. Enneis, attacked "irrelevant and unreasonable standards for job applicants and upgrading of employees, [which] pose serious threats to our social and economic system. The results will be denial of employment to qualified and trainable minorities and women." Enneis said the EEOC would not "stand idle in the face of this challenge. The cult of credentialism is one of our targets," to be fought "in whatever form it occurs."

The EEOC issued guidelines in 1966 and 1970 designed to abrogate the pro-testing amendment to the Civil Rights Act introduced by Senator John Tower (R., Tex.) by defining the phrase "professionally developed ability tests" as tests that either passed blacks and whites at an equal rate or met complex "validation" requirements for "fairness" and "utility." Under the validation requirements that Enneis designed, employers had to prove that the tests measured skills they needed. The objective was to make tests so difficult to defend in court that employers would simply abandon them and hire by racial quota. Enneis testified before Congress in 1974 that he knew of only three or four test-validation studies that satisfied his guidelines. As a 1971 *Harvard Law Review* survey of developments in employment law deduced, the EEOC guidelines "appear designed to scare employers away from any objective standards which have a differential impact on minority groups; because, applied strictly, the testing requirements are impossible for many employers to follow." As a result, the guidelines "encourage many employers to use a quota system of hiring." An EEOC staffer told the *Harvard Law Review* that "the anti-preferential-hiring provisions [of Title VII] are a big zero, a nothing, a nullity. They don't mean anything at all to us."

The EEOC's attack on tests gutted not only Senator Tower's amendment but also the statutory definition of discrimination as an intentional act. The commission was well aware that it was treading on legal thin ice. A history of the EEOC during the Johnson Administration, prepared by the EEOC for the Johnson Library under the direction of Vice Chairman Luther Holcomb, detailed the EEOC's strategy of redefining discrimination and suggested that it was on a collision course with the text and legislative intent of Title VII. The history said the EEOC had rejected the "traditional meaning" of discrimination as "one of intent in the state of mind of the actor" in favor of a "constructive proof of discrimination" that would "disregard intent as crucial to the finding of an unlawful employment practice" and forbid employment criteria that have a "demonstrable racial effect without clear and convincing business motive."

Noting that this redefinition would conflict with Senator Dirksen's insertion of the word "intentional" into the statute, the history said "courts cannot assume as a matter of statutory construction that Congress meant to accomplish an empty act by the amendment" defining discrimination as intentional. The history predicted that "the Commission and the courts will be in disagreement as to the basis on which they find an unlawful employment practice" and concluded that "eventually this will call for the reconsideration of the amendment by Congress or the reconsideration of its interpretation by the Commission."

As things turned out neither the EEOC nor Congress had to reconsider the meaning of discrimination, because the courts also ignored the law. In the 1971 case *Griggs* v. *Duke Power*, the Supreme Court accepted the EEOC's rewrite of the Civil Rights Act. The opinion was written by Chief Justice Warren Burger, President Richard Nixon's first appointee to the Supreme Court. Coveting the fame of his predecessor, Earl Warren, Chief Justice Burger told his clerks that he wanted to "confuse his detractors in the press" by writing some "liberal opinions."

Blumrosen Wins His Bet

WHEN Burger declared that "the administrative interpretation of the Act by the enforcing agency is entitled to great deference," Professor Blumrosen won his bet that the EEOC's "creative interpretation of Title VII would be upheld by the courts, partly out of deference to the administrators." Burger got the acclaim he coveted. Blumrosen cheered the Chief Justice's opinion as a "sensitive, liberal interpretation of Title VII" that "has the imprimatur of permanence."

In *Griggs* the Court ignored clear statutory language and unambiguous legislative history. In fact, *Griggs* paralleled a 1964 Illinois case, *Myart* v. *Motorola*, that had troubled many of the legislators who approved the Civil Rights Act. *Myart* struck down Motorola Corporation's use of an employment test that blacks failed at a higher rate than whites. The EEOC's history for the Johnson Library noted that "many members of Congress were concerned about this issue because the court order against Motorola was handed down during the debates. The record establishes that the use of professionally developed ability tests would not be considered discriminatory." Nevertheless, the Supreme Court ruled that Duke Power Company was discriminating against blacks by requiring employees seeking promotions to have a high-school diploma or a passing grade on intelligence and mechanical-comprehension tests.

The Supreme Court agreed with the lower courts that Duke Power had not adopted the requirement with any intention to discriminate against blacks. Burger admitted that the company's policy of financing two-thirds of the cost of adult high-school education for its employees suggested good intent. But the lack of a racist motive did not make any difference to the Chief Justice. He decreed that the "absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups." Burger was mistaken when he wrote, "Con-

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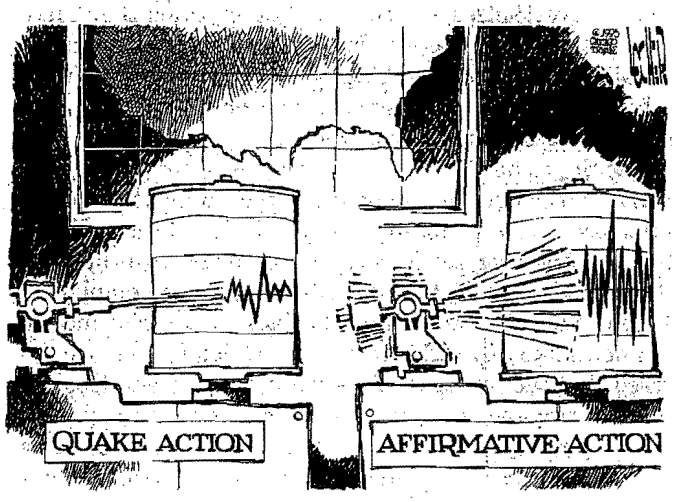
gress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation." It was precisely this misinterpretation of the statute that the Dirksen Amendment was crafted to prevent.

Burger viewed the promotion requirements as "built-in-headwinds" against blacks because blacks were less likely than whites to have completed high school or to do well on aptitude tests. He cited 1960 census statistics showing that 34 per cent of white males in North Carolina had completed high school, compared to 12 per cent of black males, and EEOC findings that 58 per cent of whites passed the tests used by Duke Power, compared to 6 per cent of blacks. Blaming these disparities on segregation, Burger said that "under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices." Burger destroyed job testing when he declared, "The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation."

Burger's casuistry was to be given a name. In the 1976 book *Employment Discrimination Law*, EEOC District Counsel Barbara Lindemann Schlei and co-author Paul Grossman called the new emphasis on consequences "disparate impact" analysis. One year later, the Supreme Court used the phrase for the first time in the case *International Brotherhood of Teamsters* v. *United States*, which dealt with burdens of proof in Title VII cases attacking union seniority systems. "Proof of discriminatory motive," the Court said, "is not required under a disparate-impact theory." Henceforth, any requirement that had a disparate impact on the races, regardless of intent or the reasonableness of the requirement, constituted discrimination. In employment and promotions, unequals had to be treated as equals. The same was soon to follow in university admissions testing. Race-based privileges had found their way into law.

In *Griggs* Chief Justice Burger said employers could escape prima facie Title VII liability only if test requirements are "demonstrably a reasonable measure of job performance." Pulling a phrase out of thin air, Burger said "the touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited." Burger invented a statutory hook for his ruling by asserting, falsely, that "Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question." It was precisely this heavy-handed intrusion into job requirements that the Tower Amendment was designed to prevent.



Burger's deference to the EEOC meant that the agency would become the national arbiter of job tests. Following *Griggs*, the agency immediately issued manuals warning employers that unless they "voluntarily" increased their minority statistics, they risked costly liability. Ultimately, it became prohibitively expensive to use job tests unless they were race-normed so that blacks could qualify with lower scores.

The Impact of Disparate Impact

IN A subsequent case interpreting *Griggs*, Justice Harry Blackmun expressed his concern that the EEOC's guidelines would lead to hiring based on race rather than merit. He warned that "a too-rigid application of the EEOC guidelines will leave the employer little choice, save an impossibly expensive and complex validation study, but to engage in a subjective quota system of employment selection. This, of course, is far from the intent of Title VII."

By then it was too late. *Griggs* had killed four birds with one stone: Senator Tower's amendment on tests, Senator Dirksen's amendment on intent, Senator Humphrey's guarantee that the Civil Rights Act could not be used to induce quotas, and the amendment introduced by Representative Emanuel Celler (D., N.Y.) prohibiting the EEOC from issuing substantive regulatory interpretations of Title VII. The EEOC wanted quotas, and thanks to *Griggs* it would get them. "At the EEOC we believe in numbers," Chairman Clifford Alexander declared in 1968. In pursuit of its goal, the agency assumed powers it did not have. In 1972 Blumrosen boasted in the *Michigan Law Review* that the EEOC's power to issue guidelines "does not flow from any congressional grant of authority."

When Burger created what would come to be known as disparate-impact analysis he did not realize its quota implications. He thought he was just attacking "credentialism." As the holder of a law degree from an obscure night school in St. Paul, Minnesota, Burger may have been thinking of himself when he wrote that "history is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees." Surrounded by Court colleagues and clerks with prestigious Ivy League degrees, Burger might have tasted credential discrimination. He thought that the Court could take away the "headwind" of credentialism that blew against blacks without creating a privileged position for minorities.

Yet before *Griggs*, any employer who was so inclined could take the measure of prospective employees and

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make bets on people with obscure backgrounds who may not have had the best chances in life. After *Griggs*, no employer could risk hiring a white male from William Mitchell Law School in St. Paul over a black from Harvard. *Griggs* made race a critical factor in employment decisions. High-school diplomas, arrest records, wage garnishments, dishonorable military discharges, and grade-point averages all became forbidden considerations in hiring decisions, because they are criteria that could have a disparate impact on blacks. Farmers have even been sued for asking prospective farm hands whether they could use a hoe, on the grounds that blacks have a greater propensity to back problems. Perfectly sensible height and weight requirements for prison guards and police officers have also been struck down for having a disparate impact on women.

The EEOC strategy that led to *Griggs* was not created in a vacuum. Civil-rights activists needed a new cause, and preferences that would enable blacks to attain equality of result became the new goal. In January 1965, *Playboy* asked Martin Luther King Jr., "Do you feel it's fair to request a multibillion-dollar program of preferential treatment for the Negro, or for any other minority group?" King replied, "I do indeed." In 1969, the U.S. Court of Appeals for the Fifth Circuit, the same court that had initiated school busing in the name of "racial balance," cast aside the prohibition of quotas in Section 703(j) of the Civil Rights Act by upholding a court order that every other person admitted to a Louisiana labor union must be black. Responding to the argument that this order clearly violated Section 703(j), the three-judge panel simply wrote, "We disagree."

President Johnson was the most prominent proponent of the shift away from the color-blind ideal. At his commencement speech at Howard University on June 4, 1965, Johnson said the disappearance of legal segregation was not enough:

> You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race, and then say, "You are free to compete with all the others," and still justly believe that you have been completely fair.
>
> Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates.
>
> This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result.

To back up his speech with action, Johnson issued Executive Order 11246, which put the phrase "affirmative action" into common parlance. The order required all Federal Government contractors and subcontractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."

Johnson's equality-of-results rhetoric and his meta-

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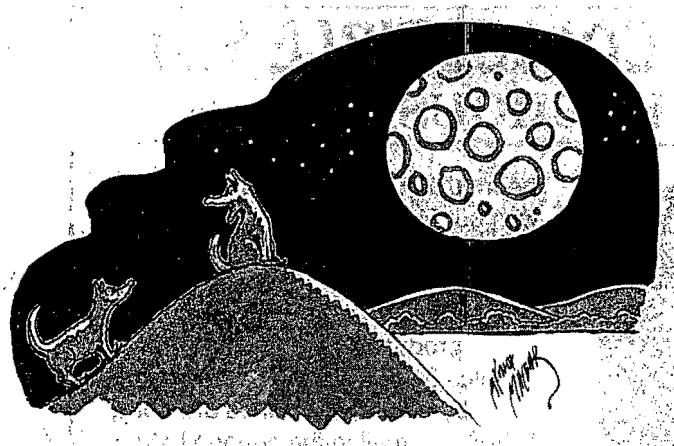
phor of helping a hobbled runner have provided the main emotional justification for "affirmative action," but the quotas that now web federal contractors under Executive Order 11246 were not implemented by his Administration. Facing strong opposition from the Department of Defense, labor unions, members of Congress, and Comptroller General Elmer Staats, Johnson's labor secretary, Willard Wirtz, dropped his plans to impose quotas on federal construction projects in Philadelphia.

That task fell to George P. Shultz, Richard Nixon's labor secretary. Just as Burger considered *Griggs* a blow against credentialism, Shultz, a labor economist from the University of Chicago, saw the Philadelphia Plan as a way of making an end run around the Davis–Bacon Act, which inflated the cost of federal construction contracts by setting wages at "prevailing union levels." Davis–Bacon meant non-union contractors and laborers (many of whom were black) could not get government contract work. Sensitive to charges that he was hostile to civil rights, Nixon wrote in his memoirs that he accepted Shultz's proposal to revive the Philadelphia Plan in order to demonstrate to blacks "that we *do* care."

On June 27, 1969, Assistant Secretary of Labor Arthur A. Fletcher, a black former businessman who had been a professional football player, announced the Philadelphia Plan in the City of Brotherly Love. He said that while "visible, measurable goals to correct obvious imbalances are essential," the plan did not involve "rigid quotas." The *Congressional Quarterly* disagreed with Fletcher's scholastic distinction, calling the Philadelphia



"Call for backup!"

Plan a "nonnegotiable quota system."

Under the plan, the Labor Department's Office of Federal Contract Compliance (OFCC) would assess conditions in the five-county Philadelphia area and set a target percentage of minorities to be employed in several construction trades, with the aim of attaining a racially proportionate work force. Potential federal contractors would have to submit complex plans detailing goals and timetables for hiring blacks within each trade to satisfy the OFCC's "utilization" targets. Arthur Fletcher said the Philadelphia Plan "put economic flesh and bones on Dr. King's dream."

In 1971 the U.S. Court of Appeals for the Third Circuit accepted the Nixon Administration's argument that "goals and timetables" were not quotas and that, even if they were, the Civil Rights Act's ban on quotas applied to Title VII remedies, not to executive orders. The Supreme Court avoided the controversial quota issue by refusing to review the case. Although the appeals court's ruling had no force outside the Third Circuit, the Nixon Administration interpreted the Supreme Court's lack of interest as a green light. As Laurence H. Silberman, who was undersecretary of labor at the time, later wrote, the Nixon Administration went on to spread Philadelphia Plans "across the country like Johnny Appleseed." The Labor Department quickly issued Order #4, which required all federal contractors to meet "goals and timetables" to "correct any identifiable deficiencies" of minorities in their work forces. The carrot of government contracts and the stick of disparate-impact liability under *Griggs* quickly established quotas. For many corporate managers, hiring by the numbers was the only protection against discrimination lawsuits and the loss of lucrative government contracts. Contractors hired minorities to guard against the sin of "underutilization," and racial proportionality became a precondition of government largesse. Arthur Fletcher estimated that the new quota regime covered "from one-third to one-half of all U.S. workers."

The Section 703(j) prohibition of quotas in the Civil Rights Act remained in the law but meant nothing. Reverse discrimination was in. When the liberal William O. Douglas, the only remaining member of the *Brown* Court, tried to get his Supreme Court colleagues to review the case of a white who was refused admission to the Arizona bar to make room for blacks with lower bar-exam scores, he argued that "racial discrimination against a white was as unconstitutional as racial discrimination against a black." Douglas failed to persuade his fellow Justices. He reports in his autobiography that Thurgood Marshall replied: "You guys have been practicing discrimination for years. Now it is our turn."

The Spread of Quotas

ALTHOUGH the phrase "federal contractor" conjures up images of workers in hard hats busy with construction projects or weapons systems, colleges and universities are also federal contractors, receiving federal funds through research grants and financial aid to students. Following the Labor Department's lead, Nixon's Department of Health, Education, and Welfare soon required similar "goals and timetables" for faculty hiring. Before long the practice had spread to student admissions as well.

In 1974 Douglas tried to get the Court to address quotas in this area. Marco DeFunis challenged the University of Washington Law School's 20 per cent quota for blacks. The school had rejected DeFunis though his GPA and test scores surpassed those of 36 of the 37 admitted blacks. Using his powers as a Circuit Justice, Douglas stayed the Washington Supreme Court's ruling against DeFunis and ordered his admission.

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By the time DeFunis's case came before the Supreme Court, however, he was about to receive his degree. This let the Court avoid the quota issue by declaring the case moot. Douglas dissented on the mootness ruling and addressed the case's merits. He viewed *DeFunis* just as he had *Brown*: "There is no superior person by constitutional standards. A DeFunis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter what his race or color. Whatever his race, he had a constitutional right to have his application considered on its individual merits in a racially neutral manner."

But time had passed Douglas by. In Douglas's mind, discrimination was still connected with merit. DeFunis's scores showed that he met a higher objective standard than those admitted in his place. But by this time any standard that had disparate impact was ipso facto discriminatory. In the eyes of Douglas's colleagues, DeFunis was simply a beneficiary of a discriminatory standard. Douglas, who had supported the *Griggs* decision, obviously did not comprehend its implications.

The quota issue re-emerged in 1978, when Allan Bakke, a white male refused admission to the University of California Medical School, challenged the school's policy of reserving 16 per cent of its slots for minorities. Each of the accepted minorities had academic credentials inferior to Bakke's. In a 156-page opinion with 167 footnotes, the Justices reached the schizophrenic conclusion that Bakke should be admitted, but that certain skin colors could nevertheless be considered grounds for college admissions if the goal was to enhance "educational diversity."

A year later the Supreme Court ruled that companies could "voluntarily" impose quotas on themselves to avoid liability. Pressured by OFCC affirmative-action requirements and the need to forestall Title VII liability under *Griggs*, Kaiser Aluminum, like many other companies, had entered into a quota agreement with its union, the United Steelworkers of America, in 1974. The agreement stipulated that "not less than one minority employee will enter" apprentice and craft training programs "for every nonminority employee" until the percentage of minority craft workers approximated the percentage of minorities in the regions surrounding each Kaiser plant. Two seniority lists were drawn up, one white and one black, and training openings were filled alternately from the two lists.

Brian Weber, a 32-year-old white blue-collar worker who had ten years' seniority as an unskilled lab technician at Kaiser Aluminum's plant in Gramercy, Louisiana, applied for a training-program slot but was denied in favor of two blacks with less seniority. After his union denied his grievance, Weber wrote the local EEOC office requesting a copy of the 1964 Civil Rights Act. When the Civil Rights Act arrived in the mail, Weber read it through and found that it said "exactly what I thought. Everyone should be treated the same, regardless of race or sex." Encouraged by the statute's words, he filed a class-action suit representing his plant's white workers and won before district and appellate courts.

During Supreme Court oral arguments in *United Steelworkers v. Weber* Justice Potter Stewart quipped that the Justices had to determine whether employers may "discriminate against some white people." Justice William Brennan's answer, for a 5 to 2 majority, was an emphatic "yes." Brennan said the meaning of the 1964 Civil Rights Act could not be found in its statutory language but resided in its spirit, which Brennan had divined. He asserted that the Act's clear statutory language and the Dirksen, Tower, and Celler amendments conveyed a meaning that was the opposite of what Congress had really intended. A literal reading of Title VII, he said, would "bring about an end completely at variance with the purpose of the statute." In enacting the Civil Rights Act, Brennan continued, "Congress's primary concern" was with the plight of the Negro in our economy. Anything that helped minorities was broadly consistent with this purpose. This included racial quotas, as long as they were voluntarily adopted by companies and not required by the Federal Government under Title VII. Brennan denied that Kaiser's plan would lead to quotas: "The plan is a temporary measure; it is not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance."

Burger Has Second Thoughts

CHIEF Justice Burger had created disparate-impact analysis in his *Griggs* opinion without realizing its quota implications. Now that quotas were upon him, he found himself joining in dissent with Justice William Rehnquist. Brennan's *Weber* opinion, they said, was "Orwellian." In *Griggs*, the Court had declared that "discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." But eight years had passed, and the Civil Rights Act had been fully reconstructed. Burger and Rehnquist's alarm showed in their dissenting language: "By a tour de force reminiscent not of jurists such as Hale, Holmes, and Hughes, but of escape artists such as Houdini, the Court eludes clear statutory language, uncontradicted legislative history, and uniform precedent in concluding that employers are, after all, permitted to consider race in making employment decisions." The Court "introduces into Title VII a tolerance for the very evil that the law was intended to eradicate," Rehnquist said. Moreover, Brennan's reading of Section 703(j) was "outlandish" in the light of Title VII's other "flat prohibitions" against racial discrimination and is "totally belied by the Act's legislative history." Rehnquist cited a congressional interpretative memorandum clearly stating that "Title VII *does not permit* the ordering of racial quotas in businesses or unions and does not permit interferences with seniority rights of employees or union members." But Burger had set the stage for *Weber* with *Griggs*, and it was the pot calling the kettle black when he accused Brennan of amending the Civil Rights Act "to do precisely what both its sponsors and its opponents agreed the statute was not intended to do."

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Having ruled in *Weber* that reverse discrimination was "benign discrimination," the Supreme Court upheld other quota schemes in subsequent cases. In the 1980 case *Fullilove* v. *Klutznick*, the Court said a federal spending program setting aside 10 per cent of public-works money for minority businesses violated neither the Constitution's guarantee of equal protection of the laws nor the 1964 Civil Rights Act.

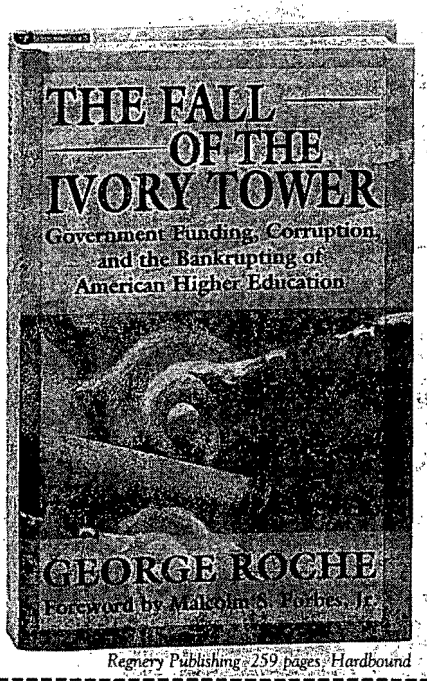
In the 1987 case *Johnson* v. *Transportation Agency, Santa Clara County*, the issue was the maleness rather than the whiteness of white males. The Court ruled that job discrimination against a white male in favor of a woman with lower performance ratings was perfectly legal under Title VII, even though the county's transportation agency had no record of prior discrimination requiring remedies. Rehnquist, Byron White, and Antonin Scalia didn't like the decision. Scalia said, "We effectively replace the goal of a discrimination-free society with the quite incompatible goal of proportionate representation by race and by sex in the workplace." He noted that civil rights had become a cynical numbers game played by politicians, lobbyists, corporate executives, lawyers, and government bureaucrats.

In 1989 there was a brief retrenchment when the Supreme Court, with its Reagan appointees, confronted the quota implications of *Griggs* and the decisions that had followed it. In *Wards Cove* v. *Atonio*, the Court ruled that statistical disparities were insufficient to establish a prima facie case of discrimination. In this case, the racial minorities who made up a majority of the unskilled work force at two Alaskan salmon canneries brought a discrimination lawsuit based on the fact that whites held a majority of skilled office positions. The suit claimed that this constituted underutilization of preferred minorities in office positions and was evidence of racial discrimination. The majority opinion, written by Justice White, rejected the discrimination claim. White noted that

> any employer who had a segment of his work force that was—for some reason—racially imbalanced, could be hauled into court and forced to engage in the expensive and time-consuming task of defending the "business necessity" of the methods used to select the other members of his work force. The only practicable option for many employers will be to adopt racial quotas, ensuring that no portion of his work force deviates in racial composition from the other portions thereof; this is a result that Congress expressly rejected in drafting Title VII.

A week after *Wards Cove*, the Court ruled in *Martin* v. *Wilks* that victims of reverse discrimination due to consent decrees that imposed quotas had the right to challenge the decrees in court. The Court noted that victims of reverse discrimination found their rights affected by lawsuits to which they were not parties. Citing

(Continues on page 80)



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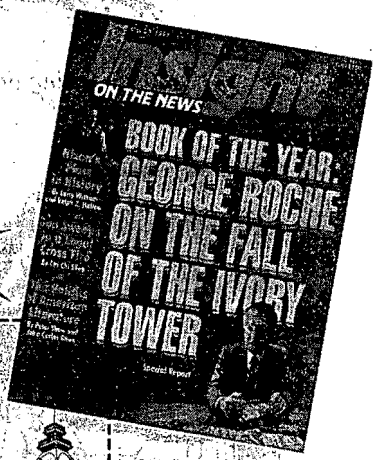

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ROBERTS

(Continued from page 51)

a long-standing legal tradition, the majority held that "a person cannot be deprived of his legal rights in a proceeding to which he is not a party."

These rulings caused an uproar among civil-rights activists, who charged that the new Reagan Court was racist. The illegal privileges that had evolved in the 18 years since *Griggs* was decided had become a squatter's right, and Congress and the Bush Administration were bullied into enacting the new inequality into law. The 1991 Civil Rights Act in effect repealed the 1964 Act by legalizing racial preferences as the core of civil-rights law. The new Act was designed to overturn the *Wards Cove* and *Wilks* rulings and to codify the disparate-impact standard of *Griggs*.

The statute also slammed shut the courthouse doors on white male victims of reverse discrimination. If statistical disparities or racial imbalance is proof of discrimination, white males adversely affected by quotas can have no standing in court. To give them standing would necessarily imperil the quota remedies for racial imbalance. You cannot simultaneously declare that anything short of proportional racial representation is discrimination and recognize the adverse impact of the "remedy" on white males. Under the 1991 Civil Rights Act, white males have no grounds for discrimination lawsuits until they are statistically underrepresented in management and line positions. They have no claims to be statistically represented as hirees, trainees, and promotees until preferred minorities are proportionately represented in management and line positions. Indeed, under Brennan's interpretation of the Civil Rights Act, which says that anything that helps preferred minorities is broadly consistent with the law, the disparate-impact standard could one day be ruled inapplicable to whites.

The 1991 Civil Rights Act added the threat of compensatory and punitive damages to the pressure for quotas. In "Understanding the 1991 Civil Rights Act," an article in *The Practical Lawyer*, Irving M. Geslewitz recommended that corporations apply cost–benefit analysis to determine whether "they are safer in hiring and promoting by numbers reflecting the percentages in the surrounding community than in risking disparate-impact lawsuits they are likely to lose." To counter charges of "hostile work environments," company lawyers want to be able to tell juries that their clients have many minority and women employees at all levels.

The day after the Civil Rights Act of 1991 became law, a *New York Times* article, "Affirmative Action Plans Are Part of Business Life," observed that quota policies are as "familiar to American businesses as tally sheets and bottom lines." A 1991 *Business Week* article entitled "Race in the Workplace: Is Affirmative Action Working?" reported that affirmative action is "deeply ingrained in American corporate culture. . . . The machinery hums along, nearly automatically, at the largest U.S. corporations. They have turned affirmative action into a smoothly running assembly line, with phalanxes of lawyers and affirmative-action managers."

The 1964 Civil Rights Act, which undertook to eliminate race and sex from private employment decisions, has instead been used to make race and sex the determining factors. Reverse discrimination is now a fact of life. Indeed, in strictly legal terms, the situation for white males today is worse than the situation for blacks under *Plessy* v. *Ferguson*'s separate-but-equal doctrine. In practice, blacks suffered unequal treatment under *Plessy*, but the decision officially required equal treatment. Under today's civil-rights regime, by contrast, whites can be legally discriminated against in university admissions, employment, and the allocation of government contracts.

In his famous dissent from *Plessy*, Justice John Marshall Harlan worried that the Louisiana law requiring racial segregation on public transportation would allow class distinctions to enter the legal system, since blacks and whites were economically as well as racially distinct. Harlan was certain that he wanted no status-based distinctions in the law. Our Constitution, he said, "is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful." Today, civil-rights activists reject Harlan's color-blind views. Privilege before the law has replaced equality before the law. □

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Los Angeles Times

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Battle Against Bias Waged on Shifting Legal Ground

■ **Civil rights:** Discrimination was banned in a 1964 law. But the prevailing view of the measure changed greatly.

By DAVID G. SAVAGE
TIMES STAFF WRITER

WASHINGTON—To read the landmark Civil Rights Act of 1964 and hear the words of those who fought for it, you would think the bitterness that exists today over the ideas of affirmative action, racial quotas and preferential treatment for minorities could never have happened.

"It shall be unlawful to discriminate" in employment or education, the statute says, "against any individual because of such individual's race, color, religion, sex or national origin."

Moreover, "nothing contained in this [law] shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group."

Lest there be any doubt, the great liberal Democrat Hubert H. Humphrey himself stood on the Senate floor during debate on the measure and declared: "I will start eating the pages" of the law if anyone can find a clause that calls for quotas, preferences or racial balance in jobs or education.

AFFIRMATIVE ACTION
Fairness or Favoritism?

■ Second in an occasional series

Within a decade, however, the prevailing view of the 1964 civil rights law changed profoundly—and with consequences that fuel today's rising controversy.

The simple ban on discrimination gave way to a policy of "affirmative action" and what the Supreme Court later called "benign race-conscious decision-making." Employers and colleges began to hire, promote or admit minorities and women not without regard to their race, ethnicity or gender but *because* of them.

"By the end of the first [Richard] Nixon Administration, a significant part of the 'civil rights' being enforced by the federal government could be described more plainly as a system of compensatory preferences for racial and ethnic groups," wrote Emory University law professor Andrew Kull in "The Color-Blind Constitution," a 1992 book tracing the evolution of the law.

How could this have happened? How did words clearly understood to mean one thing in 1964 come to mean something far different just a few years later?

The answer lies in the peculiar mix of law, politics, history and the sometimes-contradictory ideals that are the heart of the American system. And the story of how a widely applauded effort to wipe out discrimination evolved into something that many now say encourages a new form of discrimination stands as a pointed reminder of how difficult it is to achieve equality—or even a consensus on what that word means.

The change in civil rights law came in three steps, one following logically on the other.

The basic law, as its text and legislative history made clear, was a huge "stop" sign on discrimination. "To discriminate means to make a distinction . . . based on any of the five forbidden criteria: race, color, religion, sex or national origin," Humphrey said.

Henceforth, the cruel biases and prejudiced practices that had blocked minorities for 300 years of American history were prohibited in the areas of jobs, education and public accommodations. But declaring discrimination to be illegal was only the beginning. Racial bias was too ingrained to yield to mere words.

By its very nature, the anti-discrimination law imposed a duty on executive branch officials to make its promise a reality. Clearly, they could not send investigators and undercover agents into every business in the land, seeking hints of illegal bias. They could, however, gather statistics to see whether hiring and promotions appeared to follow biased patterns.

Employers could avoid federal intrusion into their hiring practices, regulators said, if the numbers showed that the ethnic and gender makeup of their work force roughly matched that of the available labor pool. It was a neat measuring stick, relatively easy to put in place and monitor. And it was the beginning of quotas.

From that large step, a smaller one followed. If employers needed to hire more racial minorities and women to meet their race and gender goals, they could be excused for giving preference to those groups. Business embraced the idea. Get the numbers up and you keep the Feds out of your personnel department.

The third step came in the courts. When white males filed lawsuits protesting the creep of hiring preferences, the courts looked back at the language of the 1964 law and decided its most important element was the government's desire to stamp out discrimination against minorities—not its literal pledge to do so without discriminating against non-minorities and men. Preferences were OK, judges said, if given for the right reason.

The circle of steps was complete. Preferring minorities and women over white males was permitted, the regulators said, as part of an effort to remedy discrimination from the past.

Before long, however, this results-driven approach to civil rights law collided with one of America's oldest and most cherished principles: That individuals are to be judged on their own merits and that no group or class of people should be favored over another by law or policy. That argument is heard often today, especially now that official discrimination is three decades in the past.

"I don't see how it is fair, for example, to say that the son of a Mexican American lawyer should get a scholarship and special treatment when an Italian firefighter's

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kid can't even get into the university" with the same academic record, says Linda Chavez, director of the U.S. Civil Rights Commission under President Ronald Reagan.

Public opinion surveys consistently find that while the vast majority of voters support equal opportunity and nondiscrimination, they oppose "preferential treatment" by race.

In a recent Times Poll, even 58% of black respondents said they opposed preferential treatment for minorities.

These days, the growing backlash against civil rights law speaks the language of the early civil rights movement.

Conservative Republicans in Congress are planning legislation to bar the use of "racial and ethnic preferences" by federal agencies.

The Supreme Court is considering a case that urges the justices to declare unconstitutional the use of race and ethnic status as a basis for awarding highway construction contracts.

And a proposed initiative in California would bar the state, its schools and contractors from using "race, sex, color, ethnicity or national origin as a criterion for either discriminating against or granting preferential treatment to any individual or group."

In legal terms, it is a case of back to the future.

In one sense, it was all inevitable, given the depth of resistance to ending bias.

Throughout the 1960s, white-controlled trade unions defiantly continued to exclude blacks and women. Many more employers professed a policy of nondiscrimination but continued to hire and promote only white males.

Impatient for visible progress, civil rights leaders and government lawyers demanded results. Employers and colleges were told to collect data by race and gender and to correct any "deficiency in the utilization of minority groups and women," as the 1972 regulations blandly put it. To head off a lawsuit, employers were told they must adopt "goals and timetables" for hiring and promoting blacks, Latinos, Asians and women.

But it is also fair to say the goal of civil rights advocates changed.

By the late 1960s, civil rights lawyers, both inside and outside the government, no longer spoke of just eradicating bias. Rather, they pressed to assure minorities and women had something akin to a proportionate share of jobs, promotions and college slots.

About This Series

In this series, The Times examines affirmative action, a policy that has left its imprint on the American workplace and college campuses over the past 30 years. With some now questioning whether the practice of giving preferences to minorities has been fair to all, this series, which will appear periodically throughout 1995, will measure the effect on America—its institutions, ideas and attitudes.

- **Tuesday:** Affirmative action comes under fire in California in what activists on both sides say is the first battle in a looming national war over the legacy of the civil rights movement.
- **Today:** The Civil Rights Act of 1964 said no employer should be required to grant preferential treatment to anyone. But within a decade, the prevailing view of the law changed, setting the stage for today's controversy.
- **Thursday:** Affirmative action re-emerges as a crucial dividing line in national politics, with particular danger for Democrats.

Among African American leaders, Martin Luther King Jr.'s dream of no longer judging people "by the color of their skin" was superseded by Malcolm X's demand for black progress "by any means necessary."

The transformation of the civil rights law began with the man who drove its successful passage through Congress: President Lyndon B. Johnson. In 1965, he addressed a Howard University commencement and signaled a pronounced shift in thinking.

"You do not take a person who for years has been hobbled by chains and liberate him, bring him to the starting line of a race and then say: 'You are free to compete with all the others.' " Johnson said in an oft-quoted line.

"Legal equity" is not enough, he said. "We seek not just equality as a right . . . but equality as a fact and as a result."

Thereafter, the government lawyers who enforced the 1964 law pushed for Johnson's goal. No longer was it good enough for employers or educators to assert they did not engage in bias. Now civil rights enforcers wanted to see the numbers.

At first, the mere gathering of such data was controversial, even with some civil rights leaders.

Clarence Mitchell, the renowned lobbyist for the National Assn. for the Advancement of Colored People, told a White House conference in 1965 that the government must bar the collection of data by race. "The minute you put race on a civil service form, the minute you put a photo on an application form, you have opened the door to discrimination."

But a year later, Willard Wirtz, the labor secretary charged with enforcing the law, declared that the government needed "statistical tools" to target areas where "concentrated action" was needed.

Construction unions in Philadelphia, Cleveland, New York and other cities were refusing to hire blacks. During the hot summers of the '60s, black sections of Los Angeles, Detroit, Washington and Newark, N.J., exploded in riots. Progress could wait no longer.

Upon taking office in 1969, Nixon's labor secretary, George P. Shultz, issued the so-called Philadelphia Plan, which required federal contractors to submit "affirmative action compliance programs" that set forth "specific steps to guarantee equal employment opportunity keyed to . . . the needs of members of minority groups."

In 1970, a regulation applying broadly to employers said bluntly: "The rate of minority applicants recruited should approximate or equal the rate of minorities in the population in each location."

By the early 1970s, numbers drove the enforcement process. Proponents say it was absolutely necessary. "The colorblind approach made no difference. It was business as usual," said Constance Rice, counsel for the NAACP's western regional office in Los Angeles.

"Every single public contract, every education institution, city governments, all were virtually 100% white," Rice said. "There was a natural set of advantages that benefits the people in the old boys' network."

The Supreme Court entered the picture in the late 1970s, issuing rulings that ratified the "race conscious" view of the civil rights act.

Deciding in 1979 against a white Louisiana steelworker who had been passed over for an apprenticeship in favor of a slightly less senior black worker, the court majority rejected "a literal construction" of the 1964 law and instead looked to its purpose.

Cont'd

affirmative action, and President Clinton has asked for a review of those plans now in use.

Three Republicans with presidential aspirations California Gov. Pete Wilson and Sens. Bob Dole of Kansas and Phil Gramm of Texas hailed the decision. ``It's now our responsibility in Congress to follow the court's lead and put the federal government's own house in order,'' Dole said.

Patricia Ireland, president of the National Organization for Women, said the decision ``does not have to be a legal and political disaster.'' But she predicted that conservatives in Congress would ``have a field day with this.''

One strange result is affirmative action aimed at giving special help to women now are to be judged under a more lenient judicial standard.

Justice John Paul Stevens wrote in dissent that now ``the government can more easily enact affirmative-action programs to remedy discrimination against women than it can ... to remedy discrimination against African-Americans.''

White House press secretary Mike McCurry said it was too early to say what impact the ruling might have on the president's deliberations. McCurry said the ruling ``does perhaps have some implications for the review.''

Administration lawyers had defended the plan that was the focus of Monday's decision.

A federal agency wrote a bonus contingency into a project for the San Juan National Forest in southern Colorado that was awarded to Mountain Gravel and Construction Co.

Mountain Gravel qualified for the bonus because it subcontracted all the guardrail work to Gonzales Construction Co. even though another company, Adarand Constructors Inc., submitted a lower bid.

Gonzales fits the Small Business Act's definition of a disadvantaged business; Adarand does not because it's owned by a white man, Randy Pech.

Adarand sued in 1990, contending that the agency's subcontracting policy was an unlawful set-aside based on race.

A federal judge and the 10th U.S. Circuit Court of Appeals ruled against Adarand.

Since a key 1980 decision, the court had used a more lenient standard of review in judging congressional attempts at affirmative action.

The court abandoned the more lenient standard, and overturned outright the rationale of its 1990 decision allowing federal officials to favor minorities in awarding broadcast licenses.

O'Connor was joined by Chief Justice William H. Rehnquist and Justices Anthony M. Kennedy and Clarence Thomas. Scalia wrote a concurring opinion.

Stevens and Justices David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer dissented.

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THE WALL STREET JOURNAL.

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Affirmative Action Hasn't Helped Blacks

By Farrell Bloch

Both supporters and opponents of affirmative action seem to accept the premise that preferential treatment policies have improved the status of minorities and women. This isn't necessarily so. The evidence demonstrates, for example, that affirmative action has not significantly enhanced employment prospects for the most disadvantaged African-Americans.

The major effect of 30 years of antidiscrimination and affirmative action regulation of the labor market has been to redistribute black workers from small and medium-sized firms to large employers and federal contractors—without increasing black employment rates overall.

While black unemployment rates have remained twice those of whites, the proportion of blacks working for firms with 100 or more employees (who must file annual EEO-1 reports to the Equal Employment Opportunity Commission), federal contractors (who are subject to Labor Department affirmative action requirements), and local, state and federal government has grown dramatically. For example, in 1966, black female managers were 40% less likely than white male managers to work in firms with 100 or more employees. But by 1980, black female managers were 50% more likely than their white male counterparts to work in these larger companies.

In the 30 years since passage of the Civil Rights Act of 1964, not only have aggregate black-white unemployment gaps not contracted, they have actually expanded in some markets, notably that for young males with little formal education. Thus, although many African Americans now working in government or for heavily regulated private firms enjoy the pay, fringe-benefit, and job-stability advantages of larger employers, most blacks have not gained ground.

Indeed, only in the South in the decade following passage of the Civil Rights Act did blacks' employment and wage rates significantly improve relative to those of comparable whites. This was probably a one-time response to the extreme conditions that prevailed in the South prior to the repeal of Jim Crow and the promulgation of anti-descrimination policies.

The past three decades have witnessed enormous growth in federal antidiscrimination law enforcement, including more than a 10-fold expansion of EEOC budget and staffing between 1966 and 1980 (with slight declines thereafter), establishment of the Labor Department's Office of Federal Contract Compliance Programs to enforce affirmative action obligations for federal contractors, the Griggs doctrine of disparate impact proscribing tests and other selection criteria that disproportionately reject minorities, and the Equal Employment Opportunity Act of 1972 that broadened coverage and expanded the EEOC's powers.

How can it be that African Americans' employment prospects have failed to improve despite massive federal intervention designed to benefit them?

Four explanations are likely. First, heavily regulated companies directly involved in or vulnerable to employment discrimination litigation apparently recruit minority employees who would otherwise be available to smaller firms that are either not closely monitored by government agencies or not regulated at all.

Second, to reduce their exposure to litigation, other employers may avoid hiring minority, female, and older workers. Employees are far more likely to file lawsuits than applicants, and judgments for current or former employees tend to exceed those for applicants, particularly in class actions. To avoid hiring people who might litigate on discrimination grounds, companies might locate in areas with few protected minorities—suburbs, certain regions of the U.S., and overseas.

Third, the laws generally cannot help those who do not discover job opportunities made known only through word-of-mouth networks that are still largely ethnically segregated. Because blacks, Hispanics and American Indians have relatively low rates of entrepreneurship, their job recruitment networks are not as fruitful as those of whites and Asian-Americans. The ethnicity of employees tends to reflect that of their employers.

Finally, in deciding which applicants will become serious job candidates, employers favor initial screening criteria that disproportionately exclude minorities. Thus, if companies in the suburbs believe that workers living near their jobs will be less likely to quit, they will summarily reject applicants living far away—therefore disproportionately excluding blacks, Hispanics and others concentrated in cities. Indeed, these employers may recruit via word-of-mouth to attract neighbors of nearby employees, or may place help-wanted ads only in local suburban papers, eschewing the major urban dailies that reach minority job seekers.

Thus, employer recruitment and initial screening practices severely limit the impact of actual or potential government regulation. It is of course possible—but not consistent with the available evidence—that antidiscrimination and affirmative action regulation has had a substantial positive effect on aggregate minority employment but that the effect is not strong enough to compensate for recent trends that tend to drive down minority employment rates: the loss of manufacturing jobs, demand shifts favoring skilled over unskilled labor, growing suburbanization of employment, and increasing drug traffic and crime that discourage business formation in inner cities. In any case, if the U.S. is going to improve employment prospects for African Americans, it doesn't look like affirmative action programs are going to do the trick.

The employment prospects of African Americans will be well served by policies that boost total employment as well as those that enhance opportunities for the low-skilled inner city residents who suffer particularly high rates of unemployment. These include removing minimum wage floors, relaxing occupational licensing requirements, decreasing taxes on low-wage workers or their prospective employers, and countering the horrific level of crime that discourages business formation and job creation in our inner cities.

Private sector charities might also consider job banks that refer disadvantaged workers to occasional short-run employment. Short-term jobs not only supplement income, but also provide workers with a second chance to acquire references that will stand them in good stead in the primary labor market.

If the current affirmative action debate extinguishes any remaining delusions that antidiscrimination law is a panacea for minority workers and focuses primary attention on barriers facing poor and minority job seekers, then African Americans and other minorities ultimately will benefit.

Mr. Bloch, an economic and statistical consultant in Washington, D.C., is the author of "Antidiscrimination Law and Minority Employment" (University of Chicago Press, 1994).

THE NATION'S NEWSPAPER
USA TODAY

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Rein in affirmative action

Clinton's vow to review programs rings hollow. He's biggest bean counter of all.

BETHESDA, Md. — Like police Capt. Louis Renault in the movie *Casablanca*, who "discovers" Rick has been running a gambling joint in the back room of his bar and then pockets his own winnings, President Clinton must be shocked to learn how rampant affirmative action is throughout his federal bureaucracy.

Last Friday, after Republicans released a Congressional Research Service study citing more than 160 federally mandated minority and female preference programs, Clinton said he would initiate a review of all affirmative action.

COUNTERPOINTS
By Linda Chavez

Sounding suspiciously like Claude Rains as Renault, this most pro-quota president in our history declared: "It is time to look at all these programs ... and ask ourselves: Do they work? Are they fair? Do they achieve the desired objectives?"

The president could begin with a cold, hard look at the 19 separate regulations that benefit "economically disadvantaged" bankers — an oxymoron if there ever was one. Most people wouldn't consider anyone rich enough to own a bank qualified for preference under programs ostensibly aimed at disadvantaged persons.

But the federal government isn't like most people — and it doesn't define disadvantaged persons the same way you or I would, either.

According to the Code of Federal Regulations: "Individuals who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinental-Asian Americans) are to be considered socially and economically disadvantaged."

Under some programs, women "shall be presumed to be socially and economically disadvantaged individuals," too.

So, by definition, if you're a woman or black, Hispanic, Asian or American Indian, you're economically disadvantaged even if you own a bank — in fact, especially if you own a bank. And the government can "encourage" its contractors and grantees to deposit their money with you as part of its affirmative action program.

But affirmative action for millionaires doesn't stop with minority and female bankers.

Federal regulations that govern the communications industry are filled with such preferences. Wealthy minorities can buy broadcast licenses from existing license holders in so-called "distress sales" for up to 75% of fair market value, while others can't even compete.

The Federal Communications Commission also exempts "minority-controlled broadcast facilities" from rules restricting multiple ownership of such facilities. And the FCC "awards a quality enhancement credit for minority ownership and participation in station management in the comparative licensing process."

This provision helps create minority millionaires by giving them bidding preferences for licenses.

In one famous case, then-mayor of Charlotte, N.C., Harvey Gantt, who is black, and his partners made a $3 million profit by obtaining a license for a TV station under the minority-preference bidding process and then selling it four months later to whites.

The biggest boons to minority and female-owned businesses, however, are the various set-aside programs for government contractors and subcontractors. Federal regulations mention literally dozens of specific requirements that both government agencies and federal contractors must follow.

The rules affect everything from "surface transportation," which requires that 10% of federal monies go to minority and female contractors, to the space program, which requires that 8% of the total value of NASA contracts go to such firms.

The precision of the government's bean counters goes from the ridiculous to the sublime.

The office that enforces affirmative action for all federal contractors, for example, has set a hiring goal for women in construction jobs of 6.9%, while the Department of Housing and Urban Development wants its contractors to include "Hasidic Jewish Americans."

Clinton's promise to review such nonsense might be more believable, however, if he weren't the biggest bean counter of them all.

Who was it, after all, who decided the most important qualification for his attorney general must be her gender?

If Clinton were really anxious to wipe out racial preferences, he could have directed his Justice Department to uphold colorblind principles in two cases now before the Supreme Court.

Instead, the Clinton administration argued for racial preferences — set by New Jersey's Piscataway School District in the first case, and by the Department of Transportation in the second.

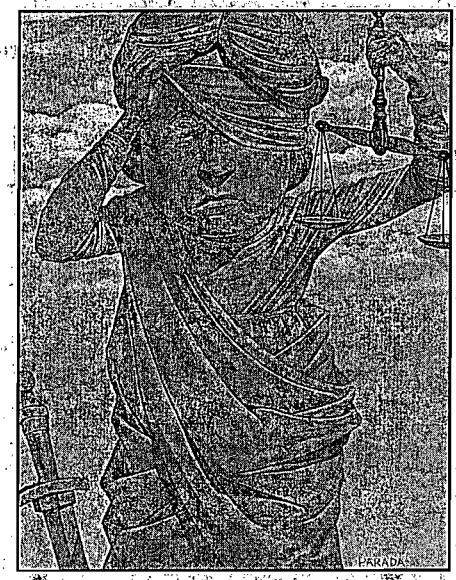
So much for a real review of affirmative action.

COUNTERPOINTS' four columnists provide views from diverse perspectives on today's issues. **Thursday:** Susan Estrich on misusing ethics allegations. **Mondays:** Tony Snow. **Tuesdays:** Michael Gartner. **Wednesdays:** Linda Chavez.

ON THE SCENE

Quitting Quotas

RICH LOWRY



Roberto Parada

WASHINGTON, D.C.

THE Educational Equity Act could have been the crown jewel of affirmative action in California. Sponsored by Assembly Speaker Willie Brown, it declared that "outreach and recruitment efforts are not enough to promote diversity in higher education. The act would have created an elaborate system for pushing state colleges to "approximate, by 2000, a diverse student body which mirrors the composition of recent high-school graduates, both in first-year classes and subsequent college and university graduating classes." In short, the act moved toward graduation by quota. It passed the state legislature handily in 1991.

"Then it went to the governor, who happened to be a Republican [Pete Wilson], and he vetoed it," says Glynn Custred, an anthropology professor at California State University in Haywood. "I thought . . . if we have a Democratic governor, it might pass next time. The press didn't say a word. . . . I thought, well, nobody is paying attention, it's just creeping along, it's going to take us over and we're going to be so deep into it that you're going to start to see young, white groups organize. Then I realized the initiative process is the only way to go."

Two years later, everyone is paying attention. The California Civil Rights Initiative (CCRI) proposed by Custred and fellow academic Thomas Wood—which would prohibit the state from discriminating in its schools, contracting, and employment—seems to have shattered affirmative action in one blow, before any of the necessary 615,000 signatures have been gathered to get the measure on the ballot.

The impact of two obscure academics whose effort might have been considered a joke (no money, no organization, no experience) derives from the same inertia that worried Custred. For two decades affirmative action simply coasted—shielded from public debate, growing without the specific sanction of law and often in defiance of it. Now that an anthropology professor and a former philosophy professor have constructed an obstacle to this momentum—a project that few prominent Republicans had the stomach for—the GOP may not only halt but begin to roll back the post-1964 civil-rights revolution.

The first step is finding out exactly what the Federal Government does to support the quota regime; it is festooned with all manner of racial preferences, most of which lack direct congressional sanction. "It's all regulations, law enforcement, and executive orders," says Clint Bolick, litigation director at the Institute for Justice. At the request of Senate Majority Leader Bob Dole, the Congressional Research Service has produced a mind-numbing 32-page list detailing federal preferences. Next will come House hearings. For starters, Representative Charles Canady (Fla.), chairman of the relevant Judiciary subcommittee, promises prompt, extensive oversight hearings on the Justice Department's Civil Rights Division. "We need to look at affirmative action in a comprehensive way," says Canady, "and there's a lot to look at."

Hearings will highlight practices like the tax break for companies selling broadcast properties to minority businesses, which the House recently voted to repeal. Such preferences make juicy targets, since they often assist minority members who are fronting for white businesses and aren't particularly needy in the first place. But Bolick and a group of former Reagan and Bush Administration officials are pushing for a broader offensive, a federal counterpart to the California initiative that would prohibit the government from using race, national origin, sex, or any other such category as "a criterion in allocating opportunities in any manner whatsoever." It's tentatively titled the Civil Rights Act of 1995. Says Bolick: "It seems to me and my colleagues that nothing less than a complete ban on racial preferences will solve the problem, that there will always be a way to circumvent anything less than a complete ban."

Localities have evaded the intent of Supreme Court decisions narrowing the grounds for contracting set-asides through "disparity studies" rigged to justify the quotas. The proposed Civil Rights Act would save them from such exertions in the future. "This would sweep up the vast majority of preference practices in the Federal Government," says Bolick, "and the government's power to force private employers or other entities to adopt such preferences."

LEFT standing would be the great bulk of affirmative action: the efforts undertaken by private employers willingly (for PR purposes) and not so willingly (to comply with laws like the Civil Rights Act of 1991). Which may be what many businesses now want. "The business interests are quite unreliable here," says Charles Fried, solicitor general in the Reagan Administration. "The fact is they've gotten used to doing business this way, and all change is unsettling to them."

Mr. Lowry is NR's national political reporter.

PHOTOCOPY PRESERVATION

Yet Republicans, once reluctant to take on affirmative action, are striding into the brewing fight confident that the public debate has turned their way. "One of my close friends from years before I was in political life was a delegate to the Democratic convention in 1972, a McGovern delegate," says Canady. "I was talking to my friend about this issue, and he told me he agreed with what I was saying, that these programs were not right, they were unfair. I think that there's a growing consensus that what we're doing may have been well intentioned, but it has resulted in a great injustice." And affirmative action reverses the usual politics of entitlements. "It's the only entitlement issue that I know of," says Bolick, "where the opponents are far more passionate and feel their interests at stake much more than the perceived beneficiaries."

There is a danger, however, that the debate will get out of hand, becoming as divisive as the racial policies in question and discrediting efforts to overturn them. Organizers in California and at the national level plan to handle their products with care. Arnold Steinberg, a seasoned politico now helping with the California initiative, explains that the effort has rebuffed early Republican backers who wanted either to make it an electoral vehicle—insisting it appear on the ballot in November 1996, when it would boost GOP candidates—or to push it with a hard-edged campaign. Initiative organizers continue to court Democrats (offering, for instance, to have the measure appear on the March primary ballot) in the hope of making a victory seem as bipartisan as possible. Bolick says the federal effort won't be led by partisan bomb throwers either. "I would like it to be a bipartisan issue," he says, "and I think there's a really good chance of that happening."

Given the weakness of the opposition, there's little incentive to be irresponsible. "The trap the Republicans are laying for the Democrats is to reflexively defend the status quo," says Will Marshall of the moderate Democratic Leadership Council's Progressive Policy Institute (PPI). "That's a disaster. But neither can the party simply acquiesce in abolishing affirmative action." That would infuriate core Democratic constituencies. "What affirmative action turns out to do," says Joel Kotkin, formerly of the PPI, "is to supercharge the careers of middle-class minorities who are increasingly really the base of the Democratic Party." How nicely the Democrats can finesse a middle ground—perhaps by embracing need-based affirmative action—may determine the fate of the party over the next two years.

There is some hope. Hal Plotkin, a recent Democratic State Senate candidate in Silicon Valley, is on the board of the California Civil Rights Initiative. He recalls a nobler Democratic tradition: "I was looking . . . at the 1948 Democratic convention, and the big fight that a lot of Californians participated in was to include a plank for non-discrimination in the Democratic Party platform very similar to the text of the CCRI. This is at the bedrock of the Democratic Party."

But finding that bedrock again will take some digging. Representative Charles Rangel (D., N.Y.) recently wrote House Ways and Means Committee Chairman Bill Archer (R., Tex.) a four-page letter explaining why he referred to Hitler in attacking the repeal of a minority tax break. "Mr. Chairman," Rangel concluded his missive, "in America we cannot afford to be color-blind." □

Decrying Wolves

VALERIE RICHARDSON

DENVER

FOR more than six years, the U.S. Fish and Wildlife Service tinkered with proposals to bring the grey wolf back to the Rocky Mountain West. Then, shortly after the November elections, wildlife biologists suddenly decided they could wait no longer. Before anyone could say, "Repeal the Endangered Species Act," Interior Secretary Bruce Babbitt's troops were ferrying the tranquilized canines to helicopters as packs of wolf groupies howled their support.

The timing could hardly have been worse. Winter storms buffeted the Rockies, making it difficult for biologists to capture the Canadian grey wolves and dangerous for helicopters to fly them to their new homes in central Idaho and Yellowstone National Park. A lawsuit filed by ranching interests sought to halt the project, and Western lawmakers were threatening to put the wolf program on ice.

Fish and Wildlife officials barreled ahead anyway, insisting the wolves had to be brought in immediately to give them time to get used to their new habitat before mating season. In all probability, the project's newfound urgency has less to do with the wolves' libido than with the carnivores in the new Republican Congress. An offshoot of the Endangered Species Act, the animal-recovery program has long had its critics among rural Westerners. With eco-warrior Democrats in charge of the Congress, their gripes weren't widely heard. But last November's Republican sweep ushered in a posse of "wise-use" conservatives who had made it clear they would try to delay or even block the wolves' arrival.

After the Fish and Wildlife Service's *fait accompli*, furious Western lawmakers sank their teeth into Mr. Babbitt at House and Senate hearings on the wolf program. "It is my sincere belief that Secretary Babbitt abused his power by rushing the introduction of wolves back into Yellowstone," said Representative Barbara Cubin (R., Wyo.), "because he realizes the 104th Congress is going to reauthorize the Endangered Species Act and make it more representative of what it was originally intended to be." Senator Babbitt denies the charge.

Even some environmentalists will admit there are problems with the wolf-reintroduction program. In a lawsuit filed by the Sierra Club Legal Defense Fund, attorneys note that grey wolves have been migrating steadily south from Canada for years. Some have already reached Montana, and wolf packs are expected to settle in Yellowstone in about thirty years on their own initiative.

So why is the Federal Government spending upward of $13 million to helicopter-lift two hundred wolves over the next five years? Wildlife biologists say thirty years is too long. They want the predators here now to help reduce Yellowstone's burgeoning elk and bison

Mrs. Richardson is Western correspondent for the Washington Times.

PHOTOCOPY PRESERVATION

Success of Military's Fight Against Bias Is Disputed

DEFENSE, From A1

to be reprimanded more often and more severely than whites. Minorities also lack the mentors who provide an important leg up for whites.

Moreover, minorities have tended to be concentrated in support jobs and other positions less opportune for rapid advancement than such specialties as aviation and combat arms. Racial disparities exist in some promotion rates.

And the system for dealing with affirmative action grievances is widely disparaged for being more likely to bring retribution against the accuser than the accused, surveys show.

A House task force, after surveying racial relations at military facilities, reported in December that its members had heard frequent expressions of racial stereotypes and often witnessed "a lack of cross-cultural understanding."

The House report said minority servicemembers complained about pressure to conform to social and institutional norms seen as predominantly reflective of white culture, while white servicemembers objected to what they perceived as favored treatment for minorities in promotions.

The military's equal opportunity training programs, the report noted, now focus more on sexual harassment than racial discrimination.

Concerned that the Pentagon had become complacent about racial issues, Defense Secretary William J. Perry recently revived the position of deputy assistant secretary for affirmative action, which had ceased to exist after 1986.

"When the office went away, there was a gradual erosion of interest in equal opportunity," acknowledged Frederick F.Y. Pang, assistant secretary of defense for force management policy. "Now all of a sudden you begin to hear about these problems again."

In the past year, Perry also has ordered all senior military and civilian officials in the Defense Department to attend two-day equal opportunity training seminars. He has elevated the importance of a Pentagon council that monitors affirmative action programs by putting the deputy defense secretary in charge, and he has requested a "pipeline" study to recommend ways of increasing some low or stagnated promotion rates for minorities and women.

The services have embarked on programs recently to improve mentoring opportunities and draw minorities into a wider number of job specialties. The services also have adopted new grievance systems mandating faster investigation of discrimination complaints and protecting complainants from reprisals.

While affirmative action programs outside the Pentagon are receiving a more critical look by the White House and Congress, defense officials say their expanded efforts at achieving racial harmony are necessary to maintain morale and fighting effectiveness.

As an example of what can happen when such harmony is missing, officials point to the racial protests and violence that erupted on a number of bases during the Vietnam War era. At that time, African Americans were sent to combat in numbers disproportionate to their presence in the population and found themselves under command of a largely white officer corps.

Clinton, at a news conference in March, described the services' affirmative action programs over the past two decades as "the most successful in our country" and credited them with achieving "the most integrated institution in our society." The programs, he added, "have not resulted in people of inferior quality or ability getting preferential treatment, but have 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."

At root, the military's approach has been geared less toward changing attitudes or beliefs of people than toward the more pragmatic objective of modifying behavior.

"It's hard to measure attitudes and values, but we can observe and measure correct behavior," said Col.

See DEFENSE, A11, Col. 1

2 of 3

Defense Seeks To Maintain Minority Goals

3 of 3

DEFENSE, From A10

Ronald M. Joe, commandant of the Defense Equal Opportunity Management Institute, which trains the military's affirmative action officers.

Promotion boards are told to be alert to the possibility of discrimination in a minority candidate's record, particularly regarding past assignments and evaluations, and to compensate accordingly if such discrimination is found. The boards also are instructed to try to select minority candidates in proportion to their representation in the pool of eligible candidates.

These selection goals are not mandatory; hence, defense officials say the Pentagon has no quotas for promotions. But boards that fall short of their targets must explain why in writing.

Achieving diversity in the force has not come by lowering standards, defense officials say. Instead, remedial programs in language, math and other basic skills are offered to help members of disadvantaged groups meet competitive standards.

Because hiring from outside is not an option, the only way for the armed forces to achieve a racial mix at higher levels is to lift minorities through the ranks. Running a closed system can be an advantage for the military in sensitizing personnel to racial concerns.

"Growing your own is important," said Sara S. Lister, assistant secretary of the Army for manpower and reserve affairs. "That's harder to do in the outside world."

The military has additional advantages over other governmental agencies and private corporations in realizing affirmative action goals. It is a highly regulated and hierarchical system, primed to respond to what the top leadership wants. It trains and indoctrinates constantly. It rotates people frequently in and out of even the most senior jobs.

And it devotes considerable time and resources to convening promotion boards.

With defense spending on the decline, military officials have worried that the reduction in forces will mean an erosion in minority representation.

The percentage of minority recruits has been falling for several years. Defense officials attribute this drop to a lower propensity generally among young people to enlist and to the opening of many more enticing employment opportunities for minorities.

"Minorities tended to go into the military in my day because it had a reputation that you didn't have to put up with all the discrimination in the private sector," said Dennis Michael Collins, who joined the Air Force in 1971 and currently, as a civilian, is deputy secretary of the Air Force for affirmative action. "Now, other opportunities have opened up."

To boost minority recruiting, the services are spending more on targeted ads and moving more quickly to offer scholarship money to minority candidates to entice them into campus reserve officer training programs.

Still perplexing for defense officials are the reasons behind the relatively low representation of minorities among generals and admirals. The Army has the greatest number, 33, with the Navy, Air Force and Marine Corps combined reaching 31.

But even in the Army, minority generals account for just 10 percent of the total, compared with 42 percent minority representation among enlisted personnel. African Americans far outnumber Hispanics and other minority groups among senior officers in all the services, 45 to 19.

Minorities also are under-represented in higher level jobs on the Pentagon's civilian side, making up about 6 percent of the total. The Defense Department ranks last of 14 federal departments in the representation of minorities in top civilian jobs, according to government statistics.

The problem, defense officials say, is not in the promotion process, which has been sensitized all it can be, but in the recruiting, schooling, assigning and evaluating of minority candidates long before they can reach senior selection boards.

Each of the services is taking steps to expand minority representation in their officer corps.

The Navy has adopted the most explicit goals—12 percent African American, 12 percent Hispanic and 5 percent Asian/Pacific Islander by the year 2000.

That compares with 5 percent African American, 3 percent Hispanic and nearly 3 percent Asian American now. The idea is to commission new officers at rates about equal to the projected racial makeup of the U.S. population.

The Navy also is introducing a new evaluation system, moving away from scoring candidates against others in the same pool and, instead, grading against a set of general standards.

COLORBLIND REMEDIES AND THE INTERSECTIONALITY OF OPPRESSION: POLICY ARGUMENTS MASQUERADING AS MORAL CLAIMS*

JEROME MCCRISTAL CULP, JR.**

> *Batson*, in my view, depends upon this Nation's profound commitment to the ideal of racial equality, a commitment that refuses to permit the State to act on the premise that racial differences matter. . . . We ought not delude ourselves that the deep faith that race should never be relevant has completely triumphed over the painful social reality that, sometimes, it may be. That the Court will not tolerate prosecutors' racially discriminatory use of the peremptory challenge, in effect, is a special rule of relevance, a statement about what this Nation stands for, rather than a statement of fact.[1]

INTRODUCTION

One of the myths we tell children and law students is that the law is or can be colorblind. This myth posits colorblindness, or inattention to race, as a moral requirement of all "right" thinking people and all good law. The truth, however, is that racial justice and colorblindness are not the same thing. Race-neutral policies are only as good or bad as the results they produce. No one thinks that economic efficiency or the labor theory of value are moral requirements independent of their impact on the components of justice.[2] In like manner, to assume that

* This essay was delivered as a lecture at the Critical Race Theory Colloquium at New York University School of Law on April 16, 1993.

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[1] Brown v. North Carolina, 479 U.S. 940, 941-42 (1986) (O'Connor, J., concurring in denial of certiorari).

[2] See, e.g., Richard A. Posner, The Economics of Justice (2d ed. 1983) (arguing that wealth maximization describes a form of justice). Posner does not assume that he can justify his position without showing that justice will result from choosing an economic efficiency system that maximizes wealth. Accordingly, though he thinks economics is justice, he spends three hundred pages proving it. He seems, however, to have rejected aspects of this view in a more recent book. See Richard A. Posner, The Problems of Jurisprudence 356-92 (1990) (arguing that pragmatic concerns rather than overarching legal principle are better for resolving legal disputes).

ignoring race in making social policy will bring about justice or achieve morality is legal fantasy.

There are several reasons that Americans nonetheless have come to mythologize colorblindness as racial justice. First, many people believe that participants in the Civil Rights Movement[3] sacrificed their blood, sweat, and tears for a colorblind world. This view of the Civil Rights Movement is best captured by Martin Luther King, Jr.'s famous exhortation that people ought "not to be judged by the color of their skin but by the content of their character."[4] If colorblindness was good enough for Martin Luther King, many argue, then it ought to be good enough for a society that still aspires to the movement's goals of equality and fair treatment.

A second reason people see colorblindness as a moral requirement is that it is easy: the colorblind principle permits judges to decide difficult issues without discussing the kind of moral system to which we aspire. In a colorblind world of mythic justice, will black people be assimilated or remain distinct? Will racial distinctions be seen as interesting flavoring in the melting pot or as important components of an individual's personality? How are race and culture connected? Rather than providing answers to these important questions, colorblindness permits us to avoid any discussion of the morality or justice of assimilation, nationalism, or cultural difference. Instead, its proponents simply assert that justice and morality are vested within colorblindness.

A final and related reason for the persistence of the colorblind myth is that Americans simply do not have a concept of justice that can take account of racial difference. Colorblindness, therefore, is thought to embody racial justice fully. Black leaders are in part to blame for this state of affairs. In fashioning policy prescriptions to

[3] I capitalize the Civil Rights Movement in order to distinguish its mythic stature in the discourse of colorblindness from the reality. The real civil rights movement originated long before the Montgomery bus boycott. Given that the history of blacks in America has been one of consistent struggle for racial equality, the Underground Railroad and the work of 19th century abolitionists must be considered part of the civil rights movement. See Henrietta Buckmaster, Let My People Go 59 (1992) (describing Underground Railroad as proving unquenchable desire of blacks for freedom); Aldon D. Morris, The Origins of the Civil Rights Movement: Black Communities Organizing for Change 277-86 (1984) (arguing that civil rights movement was not accidental production of individuals for justice, but part of larger structure of demands for racial justice). The real movement also included women, whose contributions are often ignored in discussions of civil rights. See generally Steven F. Lawson, Running for Freedom: Civil Rights and Black Politics in America Since 1941 (1991); Women in the Civil Rights Movement: Trailblazers & Torchbearers, 1941-1965 (Vicki L. Crawford et al. eds., 1990).

[4] Martin Luther King, Jr., I Have a Dream: Writings and Speeches that Changed the World 104 (James M. Washington ed., 1992).

end racial oppression, many civil rights leaders criticized the policy of racial separation for limiting the economic, legal, and social opportunities of blacks. Some people have used that criticism to bolster a claim that attention to color is always and everywhere evil, and that colorblindness is always and everywhere a moral good.

These justifications for colorblindness are all overly simplistic. Dismantling Jim Crow does not require an acceptance of colorblindness. And, as our history shows, colorblindness has often not been a defense against the oppressive effects of racism.[5] Martin Luther King, Jr., worked for civil rights for almost fifteen years. Much of his work required black people to become more, rather than less, race-conscious in their thinking in order to achieve change, and much of his program included race-conscious responses to the existing evil of racism.[6] Still, people have created a mythic Martin Luther King, Jr., and associated him with a fictional notion of colorblindness. In a similar fashion, the Supreme Court has adopted colorblindness as a legal watchword,[7] even as it systematically limits the access of blacks to jobs[8] and jury duty,[9] and permits racially disparate and onerous police

[5] See, e.g., McCleskey v. Kemp, 481 U.S. 279, 314-19 (1987) (denying black petitioner's claim and reasoning in part that if courts were to take account of race in capital sentencing then they would have to take account of race and gender in wide array of problems). For a similar approach taken by the Court more than 100 years ago, see Blyew v. United States, 80 U.S. (13 Wall.) 581 (1871). In *Blyew*, a Kentucky statute prohibited black citizens from testifying in court against white defendants charged with a terroristic murder of a black woman. Id. at 583. The Court held that the woman's murder did not affect the interests of the witnesses claiming a right to be heard because it involved neither their person nor their property. Id. at 593. The Court stated that to assert federal jurisdiction in this case would effectively oust the state courts from resolving every case involving black Americans, including those involving white victims and black witnesses to the crime. Id. at 592. The Court concluded that Congress could not possibly have intended this result. Id.

[6] For example, the Southern Christian Leadership Conference (SCLC), which King helped to found, attempted to use the black church as a political base for change. This targeted effort, while not racially exclusionary, was clearly race-conscious. See Adam Fairclough, To Redeem the Soul of America: The Southern Christian Leadership Conference and Martin Luther King, Jr. 1-2 (1987) (pointing out that SCLC was product of the black church that grew into political organization demanding social justice and equality).

[7] See Brown v. North Carolina, 479 U.S. 940, 941 (1986) (refusing to allow state to act on premise that racial differences matter) (O'Connor, J., concurring in denial of certiorari).

[8] For discussions of the Court's recent jurisprudence on race and employment, see, e.g., Paulette M. Caldwell, A Hair Piece: Perspectives on the Intersection of Race and Gender, 1991 Duke L.J. 365, 374-76 (arguing that courts generally ignore intersection of race and gender and accordingly have produced antidiscrimination rules that fail to protect legitimate interests of black women in workplace); Jerome M. Culp, Jr., Neutrality, the Race Question, and the 1991 Civil Rights Act: The "Impossibility" of Permanent Reform, 45 Rutgers L. Rev. 965, 970-83 (1993) (examining Court's analysis of race in constitutional and statutory situations); David Strauss, The Law and Economics of Racial Discrimination in Employment: The Case for Numerical Standards, 79 Geo. L.J. 1619, 1653 (1991) (discussing enforcement of employment discrimination laws).

interrogation and investigation of black Americans.[10]

Myths are often created to fill a necessary psychological space. Colorblindness has been created to help us get over the difficulty of race in a society where race is particularly powerful. In our post-civil rights legal world, race is like the nakedness in the fairy tale of the emperor's new clothes—something only the bold or the unsophisticated are willing to acknowledge.[11] The "grownups" tell us that we are clothed with a nonracial reality; indeed, we are told by many that we too could see that "race doesn't matter" if only we were appropriately committed to individual achievement and liberal justice.[12] Many individuals argue that if we simply were to extend principles of colorblindness to all aspects of our private lives, the issue of race would go away as an important legal and social phenomenon.[13] Some would extend this principle to a whole array of concerns, from gender to appearance.[14] However, this effort to make the world colorblind (or blind to

[9] See, e.g., Sheri L. Johnson, Black Innocence and the White Jury, 83 Mich. L. Rev. 1611, 1656-69 (1985) (discussing Court's treatment of racially selective use of peremptory challenges); note 135 infra.

[10] See, e.g., Florida v. Bostick, 111 S. Ct. 2382, 2384-85 (1991) (deciding whether police search and questioning on a bus is consistent with fourth amendment); Dwight L. Greene, Justice Scalia and Tonto, Judicial Pluralistic Ignorance, and the Myth of Colorless Individualism in Bostick v. Florida, 67 Tul. L. Rev. 1979, 2043-57 (1993) (providing alternatives to colorless individualism in context of police investigations); Sheri L. Johnson, Race and the Decision to Detain a Suspect, 93 Yale L.J. 214, 214-15 (1983) (discussing Supreme Court's two-tiered standard for measuring legality of detention).

[11] See Lani Guinier, Groups, Representation, and Race-Conscious Districting: A Case of the Emperor's Clothes, 71 Tex. L. Rev. 1589, 1591 (1993) (making similar analogy).

[12] See, e.g., Shelby Steele, The Content of Our Character: A New Vision of Race in America 109 (1990) (advising those in black middle class to ignore racism that they face and move on to help create colorblind system); Walter E. Williams, False Civil Rights Vision and Contempt for Rule of Law, 79 Geo. L.J. 1777, 1777 (1991) (arguing that race-sensitive policies destroy rule of law that a person's status characteristics such as race are immaterial in eyes of the law).

[13] See, e.g., Lino A. Graglia, Racial Preferences, Quotas, and the Civil Rights Act of 1991, 41 DePaul L. Rev. 1117, 1118 (1992) (arguing that use of race-conscious remedies is the adoption of the immoral for a good purpose). Even when people urge that colorblindness ought to govern all activities, they do not urge that we require colorblindness in private arenas. Instead, we are to develop racial blindness voluntarily. See, e.g., William Van Alstyne, Rites of Passage: Race, the Supreme Court, and the Constitution, 46 U. Chi. L. Rev. 775, 808-09 (1979) (arguing that government should never tolerate differential treatment on basis of race). But see Derrick Bell, Faces at the Bottom of the Well: The Permanence of Racism 197-200 (1992) (arguing that racism is endemic to American society); Richard Delgado, Norms and Normal Science: Toward a Critique of Normativity in Legal Thought, 139 U. Pa. L. Rev. 933, 945-46 (1991) (arguing that traditional jurisprudence does not create justice or the possibility of change).

[14] See Cook v. Rhode Island, 10 F.3d 17 (1st Cir. 1993). In *Cook*, the court held that section 504 of Rehabilitation Act prohibits discrimination based on obesity. Id. at 28. The employer claimed that the plaintiff's morbid obesity put her at risk of higher absenteeism and potential worker compensation claims. Id. at 27. The court said in conclusion:

THE REAL CIVIL RIGHTS DEBATE

BY SEYMOUR MARTIN LIPSET

The debate over affirmative action policies reflects a sharp confrontation between two core American values. Individualism, initially voiced in the Declaration of Independence, emphasizes equality for individuals, defined as equality of opportunity. Egalitarianism focuses on equality for groups, defined as equality of result.

Both represent key parts of the American Creed, and the collision of these two views on equality underlies the growing public controversy over affirmative action and quotas.

The egalitarian element in the American Creed created the consensus behind the civil rights revolution of the past 30 years. But the more recent focus of the civil rights movement on substantive equality and preferential treatment has forced the country up against the individualistic, achievement-oriented element in the Creed. As a result, the consensus has been broken.

The American Creed can be defined by five terms: liberty, egalitarianism, individualism, populism, and laissez-faire — all values that reflect the absence of feudal structures and monarchies and aristocracies. As a new society, the country lacked the social hierarchy of post-feudal cultures. Consequently, a stress on achievement, on moving up in the class system, linked with the widespread belief in individualism and equality of opportunity, has been greater here than in Europe.

This emphasis in the culture on achievement — on getting ahead — explains much in contemporary attitudes and behavior. As Robert K. Merton has noted, Americans have always believed that everyone should try to succeed regardless of background. Opinion poll data indicate that this value remains powerful, and that most white people now believe it applies to blacks as well. While understandably ambivalent about the promise of America, a majority of blacks also is committed to the belief that hard work and educational attainment will enable them to get ahead.

The debate over affirmative action policies reflects a sharp confrontation between two core American values: egalitarianism and individualism.

The treatment of blacks has been the foremost deviation from the American Creed throughout the history of the Republic. If we count American history as starting around 1600, blacks have been here almost from the beginning. But unlike whites, they spent their first two-and-a-half centuries, that is, until 1865, as slaves.

For the next 100 years they largely served as a lower caste group working under explicit or implicit Jim Crow policies, with little opportunity to gain educational or financial resources. Blacks have only been given a claim to political equality and economic opportunity since the 1960s.

Thomas Jefferson and George Washington voiced concern over the way the treatment of blacks would affect the future of America. Jefferson wrote in 1781, "I tremble for my country when I reflect that God is just." Anticipating in 1791 the possibility that the country might break up because it could not resolve the problem, George Washington told a friend that if this happened "he had made up his mind to move and be of the northern."

Jefferson, who wrote the Declaration, felt — correctly as it turned out — that its proclamation that "all men are created equal" would undermine slavery, and that the idea of equality would have a continuing effect on American politics.

Following the logic of Jefferson's observation, Gunnar Myrdal noted in *An American Dilemma* (1944), his classic analysis of American racism, that white Americans, including most southerners, believed in the Creed, even though their racist practices violated it. From this assumption he concluded that if blacks would organize to vigorously defend their rights and assert that they were mistreated, whites would have to give in. Once they were forced to recognize that blacks were not treated equally, whites would have to change their behavior to maintain their belief in the Creed.

The political successes of the civil rights movement in the 1960s showed Myrdal was right. Ironically, in the process of yielding politically, many among the white male political elite also have agreed to group rights, a form of equality of results.

In the U.S., the caste-like conditions facing black Americans became politically salient from the 1950s on, and resulted in efforts to find solutions at the group level. These have been defined as affirmative action. The

PRESERVATION PHOTOCOPY

term, originally used in civil rights discussions in the early 1960s, has had two meanings.

The first, which emerged in the Kennedy-Johnson administrations, involved attempts to incorporate blacks into the meritocratic race for success. Perhaps the best statement enunciating this policy was Lyndon Johnson's Howard University speech in 1965. In it he said that we want all Americans to compete, but some are not able to do so because they arrive at the starting line with shackles on their legs. He called for policies to remove these chains so that they could compete equally.

That promise became the War on Poverty, subsuming greater spending for education through programs such as Head Start, Community Action, Aid to Families with Dependent Children, and other programs to strengthen the lower-class, predominantly black, families. The policies were intended to increase opportunities for the poorest blacks and whites, to enable them to enter integrated and better financed schools where they would acquire the skills needed to succeed.

These programs were backed up by strong Fair Employment and Fair Housing legislation designed to eliminate discrimination and the effects of prejudice against blacks in the work place, the educational and housing markets, and eventually such caste-like barriers in social relations as club memberships. The policies were premised on the assumption that equal education and the full extension of political citizenship to blacks, which came with Voting Rights Acts and judicial decisions, meant that blacks, like whites, could press for their legal rights as individuals in the courts and administrative tribunals.

The second meaning of affirmative action grew out of concerns that these policies, particularly the anti-discrimination ones, were not working as quickly as was hoped, and that racial barriers still operated in different arenas. This second meaning emphasizes group-based solutions rather than equality of opportunity for individuals. It assumes that the only or the best way to improve the situation of blacks is through special preferences for jobs and educational opportunities.

Ironically, affirmative action quotas were first introduced in 1970 by the Nixon Administration, through administrative fiat. Assuming that society imposed disadvantages on blacks — educational, motivational, social, and racial — various Nixon appointees concluded that these could be countered only by giving blacks special advantages as a group.

Such policies did not derive primarily from specific demands made by blacks or the American Left; rather they seemed to represent an innovative effort by segments of the white elite to meet the objectives of the civil rights movement, its drive for equality.

George Schultz, Nixon's first Secretary of Labor, and Leonard Garment, the President's Counsel, concluded in 1970 that redress to courts and administrative agencies for anti-discrimination judgments would take too long and would not do enough to open the labor market to blacks.

With the help of then Labor Solicitor Laurence Silberman, who wrote an extensive brief asserting that racial job targets were legal exercises of Presidential powers under the Fifth Amendment's due process clause, Schultz issued an administrative order which provided for a quota for black apprentices in the Philadelphia construction industry, an area in which both employers and unions were cooperating to keep blacks out. The policy was soon extended to other cities. Similar programs were pressed with regard to faculty and students in higher education by other Nixon office holders, with the approval of the president.

At the same time, strong efforts were made to stop these policies by a Johnson appointee, Comptroller of the United States, Elmer Staats, by the trade union leadership, and by most Congressional Democrats.

They argued that the anti-discrimination clause of the 1964 Civil Rights Act, Title VII, explicitly outlawed affirmative discrimination. Staats quoted Hubert Humphrey's pledge that nothing in the Act "will give any power to the [Equal Employment Opportunity] Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or to achieve a racial balance," and the agreement by its liberal Senate floor managers that there would be no "consideration of color. . . [in] the decision to hire or promote." Congress rejected a rider to an appropriations bill which would have explicitly banned quotas. Republicans voted against the rider 124 to 41, while Democrats voted for it 115 to 84. Nixon noted: "The Democrats are token oriented — we are job oriented." The parties were soon to reverse roles.

The Nixon and subsequent administrations have applied the principle of "communal rights" to other minorities, as well as to women. This effort, designed to guarantee equal results to groups, has persisted through liberal and conservative administrations, even though opinion polls have reported repeatedly that overwhelming majorities of whites and often more than 50 percent of blacks, agree that the principle of equal opportunity should apply to individuals only.

Yet major segments of American elites feel the individualistic emphasis in the national creed has to be amended to provide remedies for blacks. This concern has been extended to other groups who are perceived to lack equal rights because of ascriptive or

PRESERVATION PHOTOCOPY

biological traits: Hispanics, Native Americans, Asians (though their relative success has put them in a different category), women, and the handicapped.

During the 1960s, various analysts, most notably Harold Cruse, a black scholar at the University of Michigan, argued that equality of opportunity and formal integration are not enough for blacks. Given a history of oppression and continued discrimination, they require recognition as a unique national minority and group rights over and beyond those sought by other minorities and by the non-black poor. Beyond the general emphasis on group-oriented policies is a claim for reparations.

Particularistic advantages certainly exist in society and handicap the disadvantaged. People everywhere tend to hire and give special preference to those they have ties to: relatives and those who are part of the same ethnic, religious, communal or cultural groups as themselves.

Universities, though meritocratic and universalistic in their explicit values, commonly have admission policies which have given preference (all other things being equal or even not close to equal) to the children of alumni, faculty, and athletes. Blacks to a large extent have not fit into such networks of privilege.

Most Americans do approve of concrete federal programs to help the disadvantaged and to combat racial discrimination. Given a choice, however, between government intervention to solve social problems and "leaving people on their own" to work out their problems for themselves, the public always chooses the latter option.

Americans make a critical distinction between compensatory action and preferential treatment. Compensatory action involves measures to help disadvantaged groups catch up to the standards of competition set by the larger society. Preferential treatment involves suspending those standards, to admit or hire members of disadvantaged groups who are unable to meet the same standards as white males. Relatively few object to compensation for past deprivations in the form of special training programs such as Head Start, financial aid and community development funds.

Americans seem to make a critical distinction between compensatory action and preferential treatment.

To return to the image of the shackled runner, Americans are willing to do more than remove the chains. They will go along with special training programs and financial assistance for previously shackled runners, enabling them to catch up with those who have forged ahead because of unfair advantages. But most Americans draw the line at predeterming the results of the competition.

In some measure, the distintion between "compensatory action" and "preferential treatment" parallels the distinction drawn between "equality of oppotunity" and "equality of results." Compensatory action is probably seen as a way to enhance equality of opportunity. Because blacks have been discriminated against in the past, it is fair to give them special consideration so that they will get a better break in the future. Preferential treatment, on the other hand, probably sounds to most whites like an effort to force equality of results by predeterming the outcome of the competitive process.

The major support for preferential treatment seems to come from the liberal intelligentsia, from the well-educated, five-to-six percent of the population who have gone to graduate school, plus those who studied liberal arts in college. It is also strong among the political elite, particularly Democrats, but many Republicans as well. The Democrats in Congress increasingly support these policies, a change which may flow from the fact that the proportion of Democratic members who can be classified as liberal on the basis of their voting record has increased steadily since the '60s.

As the United States moves into the last decade of the twentieth century, the debate over affirmative action shows no sign of moderating. Quotas were a major issue in a number of elections in 1990. The first bill introduced by the Democratic leadership in the House of Representatives (H.R. 1) in the 1991 session was a civil rights measure, described by its opponents as a quota bill. The editorial pages of the newspapers are replete with polemics and analyses about affirmative action.

The arguments surrounding quotas or preferences are increasingly seen as strengthening the Republicans, who now vigorously emphasize meritocratic standards. Their earlier support for quotas has been forgotten. Most Democrats are uneasy as to how to deal with the issue. They are faced with a dilemma: how to respond to pressure from civil rights groups and the intelligentsia on the one hand, and on the other, how to deal with the fear that a continuing identification with quotas will alienate the party's traditional base of white working class support.

It is interesting to recall that in 1965, in private White House discussions about civil rights programs, Lyndon Johnson said, "We have to press for them as a matter of right, but we also have to recognize that by doing so we will destroy the Democratic party." He anticipated that significant sections of the white South and the white working class in the North would defect on racial issues.

PRESERVATION PHOTOCOPY

The record indicates this has happened, particularly in presidential elections from 1968 to 1988.

National polls continually reveal white concern over quotas. A 1986 study by the University of Michigan's Institute for Social Research indicated that two-fifths of the whites believed that they personally or someone in their family would experience job discrimination.

Blacks are divided as well as to how much to support affirmative action policies. This debate goes back at least to the Reconstruction period when in 1871 the celebrated black abolitionist and civil rights leader, Frederick Douglass, ridiculed the idea of racial quotas, as suggested by Martin Delany, as "absurd as a matter of practice," noting that it implied blacks "should constitute one-eighth of the poets, statesmen, scholars, authors and philosophers."

Douglass emphasized that "natural equality is a very different thing from practical equality; and . . . though men may be potentially equal, circumstances may for a time cause the most striking inequalities." On another occasion, in opposing "special efforts" for the black freedmen, Douglass argued that they "might serve to keep up very prejudices, which it is so desirable to banish by promoting an image of blacks as privileged wards of the state."

Practical equality is still not with us, and 120 years after Douglass voiced opposition to quotas, writer Shelby Steele concludes that "affirmative action has shown itself to be more bad than good and that blacks . . . now stand to lose more from it than they gain." Like Douglass, he rejects the idea for leaping "over the hard business of developing a formerly oppressed people to the point where they can achieve proportionate representation on their own . . . ." He sees affirmative action quotas as undermining black morale, contributing to "an enlargement of self-doubt," for racial preferences engender the implication that successful blacks have not earned their positions, that they are inferior to whites at their achievement level.

The recurrent conflict between different visions of equality, between emphasis on the individual and on the group, will continue in all free societies. Can these conflicts be resolved? Who will yield in this clash of values? The answer as usual for such macroscopic cleavages is neither and both. Lyndon Johnson was on the right track when he emphasized the need for government action to eliminate the chains. But the ultimate goal, as he noted, is greater equality of opportunity within a free-market economy.

It is crucial that civil rights leaders, liberals and Democrats rethink the politics of special preference. The American Left from Jefferson to Humphrey stood for making equality of opportunity a reality. And by a supreme irony, the man most hated by contemporary Democrats, Richard Nixon, created a situation which has placed them on the wrong side of the issue from national values and electoral standpoints.

If the Democrats are to regain control of the White House, they must find a way back to the civil rights position they took until the late 1960s — to an emphasis on equal rights for individuals, and advocacy of social programs that are universalistic or linked to variable traits, such as poverty, not hereditary or biological characteristics.

To rebuild the national consensus on civil rights and racial justice, affirmative action should be refocused, not discarded. It is clear, for example, that quotas or special preferences will not help the poorly educated and unskilled to secure good jobs. What will help is to extend and improve education in the ghettoes through Head Start programs, financial incentives for students, teachers, and schools to do well, and youth apprentice programs that combine classroom instruction and on-the-job training. Such programs should be offered to all less privileged people, regardless of racial and ethnic origins.

The experience of blacks in the military suggests a way for young adults. In recent years the armed services have offered blacks an opportunity for stable employment, career training and upward mobility. The whole society can stand to learn from the success of a performance-oriented institution in integrating blacks and whites and offering real opportunity to move up. That experience argues in favor of a large-scale national service effort. If all youth are encouraged to volunteer for duty in national service, those with inadequate education and skills could be trained for positions which are in demand, while helping to rebuild publicly supported infrastructures or deliver social services.

Moving away from policies that emphasize special preferences need not — indeed, must not — mean abandoning the nation's commitment to guaranteeing equal opportunity for disadvantaged citizens. The concept of individual rights remains integral to the American Creed. Yet racial injustice and caste-like divisions have constituted a contradiction to the organizing principles of the nation. The American dilemma is still with us, and with it a moral obligation to ensure that race is neither a handicap nor an advantage. Until black Americans are absorbed fully into the economy and society, we should, in Jefferson's words, continue to fear a just God.

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PRESERVATION PHOTOCOPY

mon and his contemporaries had taken pride in competing head-to-head with whites even as they fought for affirmative action goals. Yet in the 1980s he and his colleagues were noticing that too many younger black officers were using affirmative action as a kind of crutch. "Some of my younger colleagues will be loath to admit this," says the chief delicately, "but for many of them affirmative action has meant that they didn't have to do some of the things they should have done to compete."

The main mechanism of affirmative action in most big-city police departments was something called "race norming," reworking test results to achieve racial balance. In St. Louis, race norming worked like this: Some blacks who scored in lower "clusters" (groups of candidates who achieved approximately the same scores) would be advanced ahead of some whites who scored in higher clusters.

Mixed emotions. Harmon saw this "cluster dipping" as a justified means of compensating blacks for years of being systematically held back by white commanders. But he also had "mixed emotions" about the practice, specifically the way it angered whites who were passed over for promotions. So did Congress, which outlawed race norming in the 1991 Civil Rights Act. After reading the statute, Harmon persuaded the St. Louis police board to stop cluster dipping. That didn't stop some white officers who had been passed over from suing for—and winning—their sergeant's stripes.

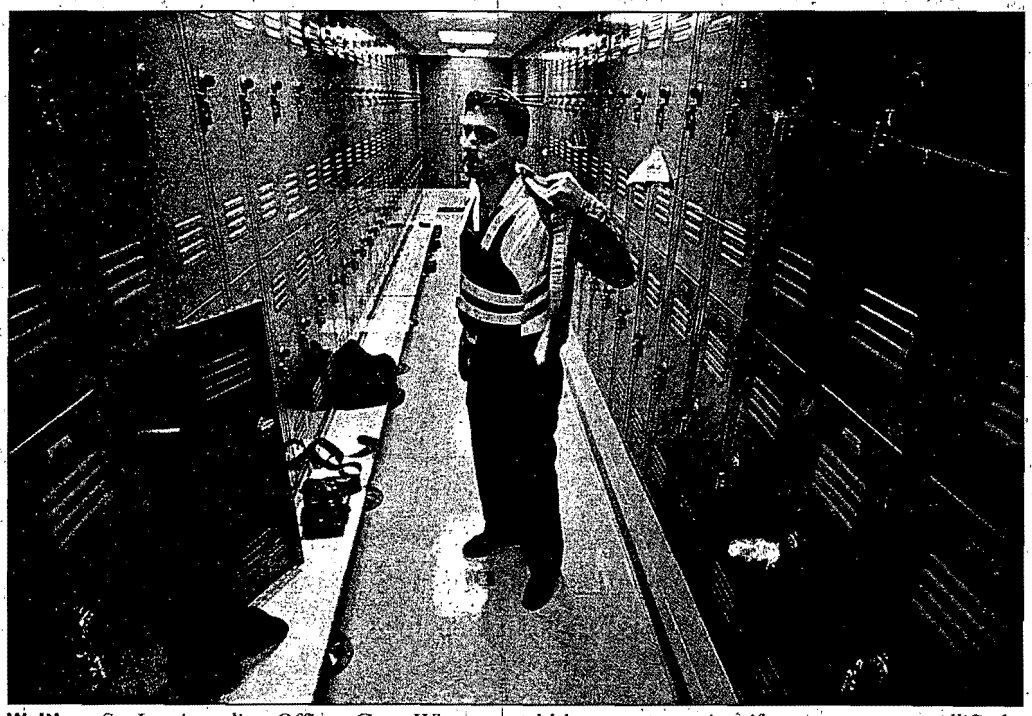
In the past, what angered police officers, black and white, more than affirmative action was that an officer generally needed "steam" (political clout) in the form of an "ace" (a political patron) to advance in the St. Louis Police Department. Under Harmon's regime, most officers agree, politics is much less important than test scores.

WOMEN REPRESENTED 6 PERCENT OF THE PROTECTIVE-SERVICE WORK FORCE IN 1972. IN 1993: 17 PERCENT.

Next week, the police board will vote on whether to accept or throw out the latest test results. Either decision could spark a lengthy court battle. Meanwhile, race relations within the department, says one headquarters staffer, are "real friggin' tense."

Yet as old-style affirmative action dies in St. Louis, a new and perhaps healthier variety is being born. Two years ago, Harmon began beefing up efforts to recruit higher-quality minority cadets. Today, disparities between black and white cadet test scores are a third of what they were in the late 1980s. With any luck, that narrowing of scores should translate into more promotions for minorities five years from now, when today's cadets are eligible to take the sergeants exam.

BY PAUL GLASTRIS



Waiting. *St. Louis police Officer Gary Wiegert could lose a promotion if test scores are nullified.*

JIM LO SCALZO – USN&WR

LOS ANGELES, CALIFORNIA

A QUEST FOR DIVERSITY

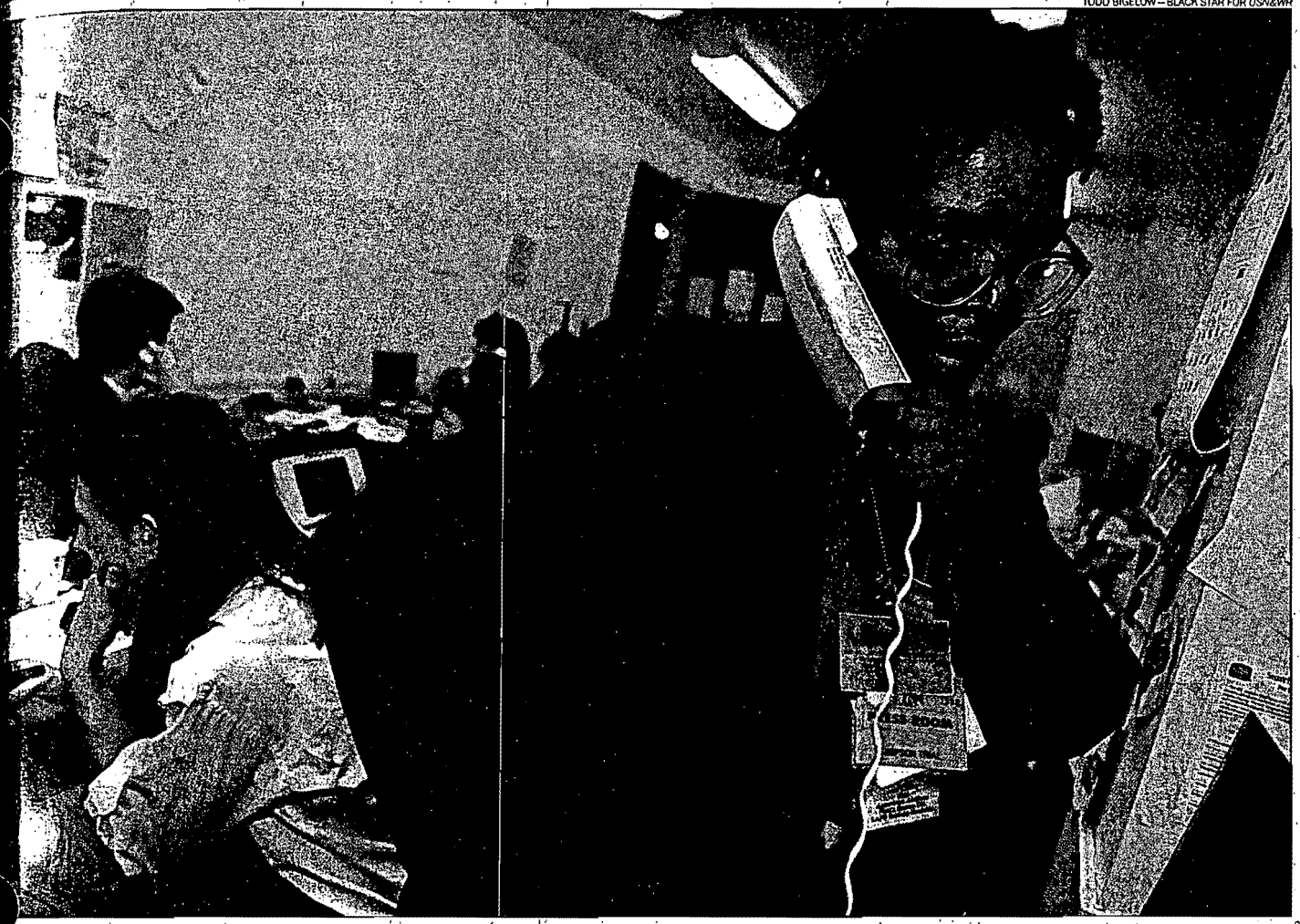
The Los Angeles Times *struggles to mirror a polyglot metropolis*

During the 1992 riots, editors at the *Los Angeles Times* rediscovered an underutilized resource: its black, Latino and Asian-American journalists. They mobilized the minority journalists from their desks and suburban posts to cover the violence, prompting reporters to snicker that they were part of "the *Los Angeles Times* busing program." Within weeks, Dean Takahashi, then a *Times* reporter, wrote an article in *Editor & Publisher* that stated: "Before the riots, the *Los Angeles Times* probably had more people covering Tokyo than we had covering South Central Los Angeles." Takahashi's biting assessment prompted the so-called Newsroom Riot, which spilled into spontaneous and angry arguments among staffers at the newspaper's downtown headquarters.

Those episodes prompted the nation's fourth-largest daily paper to re-examine its news coverage and its hiring and promotion policies. A Unity Coalition was organized; so was a Diversity Committee. The latter met in one of the *Times*'s tony executive dining rooms to draw up reforms. Early in 1993, Editor Shelby Coffey III (who was once editor of *U.S. News*) distributed a now famous "Diversity" memo to the staff. "Rarely can a single person, writing or editing a story, have the full range of experiences to see the story from all angles," he wrote. He adopted most of the committee's recommendations to enhance multicultural awareness and pledged the *Times* to a two-year goal of making at least half of all new hires minority or female.

Mixed results. Two years have passed since Coffey launched his earnest, well-intentioned reform program; other editors have also sought to address the concerns of minorities and make the *Times*'s coverage better reflect the most ethnically diverse metropolis in America. The paper has had some clear successes; it has hired substantial numbers of minority journal-

TODD BIGELOW—BLACK STAR FOR *USN&WR*



On the job. Los Angeles Times *reporter Andrea Ford, who is covering the O. J. Simpson trial, says that whites are still in charge.*

ists, for example. But it is less clear whether the *Times*'s ardent pursuit of diversity has made it a better newspaper.

The changes are undeniable. Among 852 full-time editorial employees at the end of last year, 19.6 percent were minorities, up from 10.5 percent at the end of 1988 and well above the national average of 10.5 percent for newsroom work forces. In 1994, two thirds of all new hires were women or minorities.

MINORITIES IN NEWSROOMS OF U.S. DAILIES ROSE FROM 4 PERCENT IN 1978 TO 10.5 PERCENT IN 1994.

George White, a black reporter who cochaired the first Diversity Committee, says the new recruitment efforts "can't be called affirmative action." The committee's recommendations, explains White, were about "empowering the staff to improve the workplace environment and the paper as a whole."

Still, Andrea Ford, the local head of the National Association of Black Journalists and one of the paper's two main reporters covering the O. J. Simpson trial, argues that the statistics are misleading. "Walk through the newsroom," she says. "Go to the 3 o'clock meeting [where the next day's paper is planned]. There are no black managers of the city desk or the state desk." Coffey responds that there are more minority department heads and deputy editors today than in the past: "We don't think we're at some magic point where everything in all areas has been solved, but it's part of a process."

One unintended consequence of the new policies is that some staffers question how hospitable the *Times* is to nonminority journalists. Young white males sometimes find themselves consigned to distant bureaus, filing stories but lacking such staff benefits as health care and pensions while they wait for promotions.

Nor is it clear whether the paper's coverage of minority interests has improved. New sections have been added, the City Times and Voices, which expand black and other minority news and features, as well as a weekly Spanish-language tabloid, Nuestro Tiempo. But Joe Hicks, the executive director of the Southern Christian Leadership Conference, says he hasn't "seen any sweeping changes in the way the L.A. *Times* seems to cover stories—or seeks spokespersons representing minority communities."

One prominent Hispanic journalist, who asked not to be identified because his newspaper has a business connection with the *Times*, argues that, "They're just not a good local paper anyway—their focus is on Washington and on international." On the other hand, leaders such as Stewart Kwoh of the Asian Pacific American Legal Center of Southern California believe that the paper has bolstered its coverage of Asian-American communities.

The *Times*'s record suggests at least one lesson: Creating a more diverse newsroom is easier than accurately reflecting the lives of the 4 million residents, more than 100 nationalities and 80-plus incorporated cities that make up the sprawling megalopolis that the newspaper calls home. ■

BY MIKE THARP

The Washington Post

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PAGE: A-23

William Raspberry

Needed: A Conversation About Race

I remarked to a friend the other day that President Clinton's ordering a review of government affirmative action programs had all the earmarks of a cop-out—at best an attempt to buy time while he figures out a safe course through the raging affirmative-action debate.

My friend, a Clinton supporter and something of a policy wonk, disagrees. He sees in Clinton's review order the mind of a fellow wonk.

"It seems to me that what the president is doing is turning himself into a senior policy analyst," he says. "He believes he needs intellectual mastery of this complicated issue before he can enunciate a sound policy.

"I hope, though, that he won't come out with a spirited, legally sound articulation of affirmative action—that's a narrower approach than he should take. What he ought to do is use the issue as an opportunity for America to resume its conversation about race and color."

His words came as a reminder that for all our *raging* about race—our worrying over everything from the bell curves to the anger of white men to the racially distinct beliefs about the guilt or innocence of O. J. Simpson—it's been awhile since America has had a *conversation* about race.

Throughout our history, we've had a clumsy, inconclusive and disjointed conversation about race and color. In the 1960s, we came close enough to consensus that we were able to suspend the conversation for a time. That is, we allowed racial issues to be dealt with by experts—lawyers, policy analysts and scholars.

But if that was a good thing, it had an unhappy side effect: It allowed a generation of white people to grow up without ever really confronting their hopes, anxieties and fundamental beliefs about color.

One result is a dauntingly wide gulf between blacks and whites on the importance of race. Younger whites know the cruder facts: that America once had slavery and Jim Crow and now has Colin Powell. Their sense

Simultaneous shouting is not the same thing.

(speaking very generally, of course) is of a problem confronted and mostly resolved. As they see it, since blacks of talent and integrity and drive do about as well as their white counterparts, black failure must entail some character flaw that has little or nothing to do with color.

The view from the black side is almost the exact reverse. Race not only matters still; it overrides almost everything else.

The whole problem is compounded by the fact that it is no longer just a matter of black and white; other colors have to be considered as well.

And what has this to do with the shouting match over affirmative action? I think it likely that affirmative action is a surrogate for other, deeper concerns. For whites—for the newly discovered angry white men in particular—the concern is economic insecurity. As columnist Ellen Goodman has noted, white men with a high school education or less are likely to see themselves as doing less well than their fathers did—a peculiarly upsetting state of affairs. And they do what all of us tend to do when we confront our own failure: look for someone—or something—to blame it on.

For blacks, affirmative action may be a surrogate for a societal commitment to squaring the books on a debt as old as slavery and as new as the latest snub by a white sales clerk. The value, that is to say, is less in the content of the approach than in the acknowledgment of the debt. Maybe that's why we are reluctant to acknowledge racial progress—why we refuse even to entertain the possibility that affirmative action may already have served its purpose.

These notions—and much, much more—could be elements of a resumed conversation on race and color. As my friend put it, "We can win the affirmative-action argument on programmatic or legal grounds and still lose the underlying political argument.

"And Clinton should take the opportunity to lead the conversation. There are not very many people better than he at connecting with individuals and discussing their concerns and fears. I don't want to turn him into some ersatz Oprah, but in a series of thoughtful statements he could reflect on his own history and his own sense of where the nation is now on the question of color and where we ought to be going."

There are, I know, those who think we're already having a conversation on race—that we are so preoccupied with the notion that we hardly talk about anything else.

But as my friend reminds me, what we've been doing of late is not conversing at all—only simultaneous shouting. It's not the same thing.

AP Associated Press

Officials Promise To Deport More Criminal Aliens
By MARCY GORDON
Associated Press Writer

WASHINGTON (AP) - Government officials promised Thursday to deport more aliens who commit serious crimes, and Attorney General Janet Reno showed off new technology being used to track them down.

The Clinton administration is striving to seize the politically potent immigration issue, which is likely to be a key theme in next year's presidential campaign. President Clinton recently proposed legislation for an additional $1 billion for beefed-up border control and help for states with large illegal alien populations.

"One reason for the crisis in illegal immigration is that the INS has lost control of the deportation process," Rep. Lamar Smith, R-Texas, chairman of the House Judiciary subcommittee on immigration, said at a hearing.

"The numbers are staggering," Smith said. "There are more than 4 million illegal aliens in the United States, but the INS only institutes deportation proceedings each year against slightly more than 100,000 aliens. These efforts result in the removal of 40,000 aliens."

T. Alexander Aleinikoff, general counsel for the Immigration and Naturalization Service, agreed the problem was serious. But he told the lawmakers the $177 million the agency has requested for deportations for next fiscal year, along with new programs, "will put us back on track."

"We expect to remove virtually all aliens who complete their sentences that year," Aleinikoff said. That would mean deportation of 58,200 criminal aliens next year, up from 21,992 in fiscal 1994, he said.

Anthony Moscato, director of the Justice Department's executive office for immigration review, said that office has been recruiting new immigration judges and acquiring new courtroom space to handle the anticipated rise in criminal deportation cases.

On the Senate side of the Capitol, Reno and INS Commissioner Doris Meissner showed reporters new computer systems and other equipment being used to combat illegal immigration.

The new technology represents "the beginning of true change in the capability of the INS to do their job, a change that was long overdue," Reno said.

Walking through an INS technology demonstration, the two officials questioned Border Patrol agents about three new systems: Ident, a biometric system being used in San Diego to fingerprint and photograph every illegal border-crosser who is apprehended; Cadre, which uses buried sensors to detect illegal crossers and alert the Border Patrol, now operating in San Diego, El Paso, Texas, and Swanton, Vt.; and Enforce, a computerized tracking system that INS says has greatly reduced the time it takes to process illegal aliens.

Last month, as part of an anti-crime package, the Republican-controlled House passed legislation to boot criminal aliens out of the country more quickly once they get out of prison. The measure, now in the Senate, also would expand the scope of crimes for which aliens can be deported.

The House lawmakers also agreed, as part of a prison construction bill, to give states $650 million a year for incarcerating criminal aliens.

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George F. Will

Affirmative Action: The Court's Murky Ruling ...

The Supreme Court would have made significant history, and would have made many people in the political branches ecstatic, if on Monday Justice Scalia had been giving the judgment for the court rather than merely concurring in that judgment when he said this: "Government can never have a 'compelling interest' in discriminating on the basis of race in order to 'make up' for past racial discrimination in the opposite direction."

Instead, in a case concerning racial preferences in federal contracting, a splintered court demonstrated that it is so tangled in the toils of its hairsplitting reasoning about race-based government action, so mesmerized by its classifications that do not helpfully classify and its distinctions that do not usefully distinguish, that only the political branches can rescue the nation from the racial spoils system that has been metastasizing for decades. The political branches would, as usual, prefer that the court take the heat.

The case arose in Colorado, where a highway construction contractor took a (forgive the oxymoron) legal bribe. The briber was the federal government. It offers contractors financial rewards (in this case, $30,000) for giving work to subcontractors who do not offer the lowest bids but who are owned by members of certain groups. These are groups that the government presumes—no particular proof required—to be in some sense victims of discrimination, or groups consisting of "socially and economically disadvantaged individuals."

The low bidder for a subcontract to build guardrails was a firm owned by a white male. The firm that built the guardrails is Hispanic-owned. There was no showing of past discrimination in Colorado's highway construction trade, but Hispanics enjoy the government-conferred advantage of being certified as disadvantaged. So do African Americans, Native Americans, Asian Pacific Americans and women.

We are at the shore of deep metaphysical waters: Is not the white male who owns the company that lost the guardrail contract demonstrably "socially and economically disadvantaged" because he is not the beneficiary of a government edict declaring him so?

That white male in Colorado claimed that the government's racial preference scheme denied him equal protection of the laws. A lower court disagreed, and so did an appeals court, which, following a Supreme Court ruling now overturned, held that remedial race-based actions by the federal government should be judged under a lenient standard of scrutiny. The appeals court said race-based policies are constitutional if narrowly tailored to achieve a "significant governmental purpose."

Wrong, said the Supreme Court on Monday. Henceforth, the appropriate standard for federal as well as state and local governments is "strict scrutiny," under which a race-based action only passes constitutional muster if it is narrowly tailored to serve a "compelling governmental interest." Is that clear?

Certainly not. By what standard is the "compelling" to be distinguished from the merely "significant"? The 5-4 ruling (O'Connor, Rehnquist, Scalia, Kennedy and Thomas more or less on the same side, Stevens, Souter, Ginsburg and Breyer on the other) settled nothing, except that the case must be reconsidered in a lower court.

Scalia's two-paragraph concurrence provided the thought on which the political branches should act: "Individuals who have been wronged by unlawful discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or debtor race. . . . In the eyes of government, we are just one race here. It is American." And Thomas, concurring, tartly denied that there is "a racial paternalism exception to the principle of equal protection."

Stevens, who in this case was joined in dissent by Ginsburg, has hitherto stressed that classifications based on race are potentially very "harmful to the body politic" and inherently quite "pernicious." Ginsburg, joined by Breyer in an almost laconic dissent, said that "in view of the attention the political branches are currently giving the matter of affirmative action, I see no compelling"—that talismanic word again—"cause for the intervention the Court has made in this case. . . . I would not disturb the programs challenged in this case, and would leave their improvement to the political branches."

The nation's fundamental law would be improved by incorporating the Scalia-Thomas doctrine that such programs, being starkly incompatible with the equal protection guarantee, cannot be "improved" to the point of constitutional respectability. Unfortunately, seven justices are still willing to defer, to varying degrees, to the political branches' desire to have such programs. Fortunately, although only Providence can change the court, the political branches are more malleable.

The Washington Post

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William Raspberry

... And Americans' Ambivalence

A modest suggestion: Before we resume our tribal warfare over affirmative action, can't we talk about *fairness*?

The Supreme Court ruling that, earlier this week, cast doubt on the future of one type of affirmative action—contract set-asides—is a fairly technical thing, full of lawyerly phrases like "narrowly tailored," "strictest judicial scrutiny" and "compelling governmental interest." Moreover, its close decision—5 to 4—was merely to send the case back for further consideration.

Those who oppose affirmative action as unacceptable racial preference are hailing the decision as a major victory—the beginning of the end of the hated doctrine. Those who favor it as necessary to right ancient and continuing wrongs are finding in Justice Sandra Day O'Connor's opinion hope that the concept can be preserved.

Most ordinary Americans, I suspect, are torn. We understand, on the one hand, the importance of racial (and sexual) fairness and, on the other, the occasional necessity of giving justice a boost. The evidence of the opinion polls and our ordinary experience is that we are of two minds on this vexatious subject, leaning first one way and then the other. And, incredibly, our twists and turns, the misgivings that ought to make us a bit more tolerant of opposing views, are no part of the national conversation.

If they were, we might acknowledge the irony that Justice O'Connor, who wrote Monday's majority opinion, and Justice Clarence Thomas, who wrote a separate concurring opinion, are both beneficiaries of the practice that troubles them so: affirmative action.

I mean, does O'Connor seriously believe that President Reagan, who appointed her, gave no thought to the breakthrough nature of her appointment as the first woman on the court? Can Thomas believe that President Bush, called upon to replace the retiring Thurgood Marshall, failed to notice that Thomas was black?

Reasonable people may have had other candidates for those seats, but I doubt that anyone seriously thought it a bad idea to make the court somewhat more inclusive than it had been. Virtually all of us, I am saying, support affirmative action *some* time.

The case on which the court ruled involved a white highway contractor who submitted the lowest bid on a guardrail job only to see the federal contract awarded to a higher bidder who was chosen, in part, because he was Hispanic—a minority.

Who among us isn't made a little uneasy by that outcome? It's not particularly helpful to say (as I've heard some say) that it was perfectly okay for the white firm to lose the contract *on the basis of race* because minorities have been victimized on the same basis for a long time. If the contract was put out for bids, most of us believe, it should have been awarded to the lowest-bidding firm capable of doing the job.

That's just fair.

In between are all kinds of affirmative actions on which different people might have different ideas about fairness: the highway patrol that had resisted all admonitions to desegregate its force and that finally was ordered by the courts to hire so many blacks; the university that hires a female professor with somewhat less experience than an otherwise similarly qualified male applicant; the mayor who appoints a commission that reflects the makeup of her city; the governor who tries to use the state's purchasing leverage as a way of helping minority businesses into the mainstream; the government agency that uses its hiring authority to help redress societal unfairness.

Few people would endorse all of these actions as fair; few would denounce them all as unfair. The closer you get to remedies for specific victims of discrimination, the fairer it is likely to seem. The nearer you come to denying an identifiable and innocent white person in order to help minorities generally, the unfairer it will seem.

What's fair? The answer is likely to change from one place or one set of circumstances to another, and for that reason it may be impossible for the courts to enunciate any reliable principle. It is, finally, more a political than a judicial question. That's why I think it's important that the rest of us talk about it.

TAKING ISSUE

BY STUART TAYLOR JR.

Affirmative Action and Ambivalence

Racial preferences, or affirmative action, or quotas, or call-them-what-you-will, are back in the news:

• The Supreme Court—which has picked up four new justices in four years while losing its three strongest proponents of affirmative action—has agreed to decide a racial-preference case for the first time since it struck down a state program in 1989 and upheld a federal one in 1990, leaving the law in a state of uncertainty. The case, *Adarand Constructors v. Peña,* involves the preferential award of a federal highway subcontract in Colorado.

• Likely to arrive at the Court by 1996 is *Taxman v. Board of Education of Piscataway,* a case that the Clinton Justice Department has made famous—to the delight of Republicans hoping to unseat the president—by defending a New Jersey school district's decision to lay off a white teacher and keep an equally qualified black teacher, on the basis of race.

Also headed for the Court is the most disconcerting case of all: *Hopwood v. Texas,* an appeal involving the University of Texas Law School by white applicants challenging the school's policy of seeking 5 percent black and 10 percent Hispanic enrollment by admitting several times as many minority students as would a colorblind process and passing over hundreds of whites with higher grades and test scores. Virtually every elite university in the country does the same, 16 years after the Court held in *Regents of the University of California v. Bakke,* 438 U.S. 265 (1978), that any regime that operates as a quota system driven by racial numbers was unconstitutional.

The supposedly temporary experiment with modest racial preferences on which this nation embarked in the 1970s has become a long-term, self-perpetuating addiction. With no end in sight, it is sapping the health of the body politic.

Both the benefits and the costs of racial preferences are familiar.

On the benefit side, preferences have sometimes been necessary to break down barriers to the advancement of individual victims of discrimination. While this nexus with past discrimination has become attenuated—and the irrelevance of preferences to the plight of the most disadvantaged minority-group members has become ever more clear—preferences have had the salutary effect of starting to break down the patterns of racial hierarchy and inequality that still plague our society.

On the cost side, individual whites who lose jobs (or other opportunities) because of reverse discrimination are victims no less than black victims of racism; whites who feel threatened by preferences often become embittered, cynical about civil rights, and open to racist appeals; successful black and Hispanic people are stigmatized by the perception (often inaccurate) that they owe their success to quotas; deviations from merit selection harm economic productivity and have a corrosive effect on the ideal of equality of opportunity; and preferences foment dishonesty as their advocates seek to de-legitimize perfectly reasonable measures of qualification as discriminatory if they fail to produce racially proportionate results. All this aggravates the nation's division into rival racial and ethnic factions.

So Justice Antonin Scalia's cold-turkey cure of writing into the Constitution a rule barring virtually all governmental racial preferences has its attractions, at least in principle.

But in practice, the Scalian cure would produce extremely distressing results: a drastic reduction in minority enrollments at the nation's elite universities, and thus in the minority talent pool passing through the gateways to top jobs and leadership positions. It might also bring a fateful clash between the Court and Congress, with the justices claiming as their mandate a colorblind ideal that derives more from moral philosophy than from the original intent of the Constitution.

The Scalian ideal is not the only alternative to the wholesale endorsement of racial preferences advocated by liberal civil-rights groups and (so far) the Clinton administration.

Rather, the course most faithful to the Constitution—and least harmful to the social fabric—may be for the Court to continue to restrain the use of racial preferences without frontally attacking them, and to live with messy compromises.

In *Adarand Constructors,* a suit by a white-owned company that lost a guardrail subcontract on a federal highway project in Colorado to a higher-bidding, Hispanic-owned firm, the Court should reaffirm its suggestions in past cases like *Metro Broadcasting v. FCC,* 497 U.S. 547 (1990), that Congress has broader latitude than states and localities to use preferences in pursuit of racial equality, even when there is no close nexus to past discrimination. The Court should thus uphold the preferences ordained by the federal Small Business Act, under which the government pays bonuses to induce prime contractors to hire small minority-owned subcontractors.

LAMBERTO ALVAREZ

A state or local program similar to the one now before the Court would be unconstitutional under the holding of *City of Richmond v. J.A. Croson Co.,* 488 U.S. 469 (1989). This decision requires that any such preferences in contract awards must be "narrowly tailored" to remedy past discrimination in the geographical area in question; there was no proof of past discrimination against Hispanic subcontractors in Colorado in the record before the Court.

Why should the result be different when the program is mandated by Congress? The legalistic answer is that the 14th Amendment and its equal protection clause directly bind only states and localities, while granting broad enforcement powers to Congress. And the equal protection "component" of the Fifth Amendment due-process clause, which does constrain Congress, has been construed as giving it more latitude than states and localities to use racial classifications.

The policy-based answer is that the Court owes more deference to the national majority in Congress than to local majorities, for reasons that go back to James Madison's *The Federalist No. 10,* which stressed that a large republic was less likely than a state or city to be captured by an oppressive faction. This is particularly true in the context of racial preferences. While local black or Hispanic majorities might be tempted to use preferences systematically to treat whites as second-class citizens—as local white majorities have done to blacks—it's hard to imagine the white majority in Congress oppressing itself.

And in the *Adarand* case, the impact of the reverse discrimination on the white-owned plaintiff was relatively modest: one lost subcontract.

In the New Jersey case, on the other hand, the white teacher, Sharon Taxman, lost her job. But for her race, the business teacher at Piscataway High School would have had the right to take her chances in a coin flip against the equally qualified black teacher to determine which of them would be laid off. But the school district chose to fire Taxman instead. There was no past discrimination in the school district to be remedied, nor any school-wide underrepresentation of black teachers; the only justification for the discrimination against Taxman was the supposed need for racial diversity *in the business department.*

As the Justice Department stressed—before Deval Patrick, the Clinton-appointed head of the Civil Rights Division, decided to switch sides in the case—the Supreme Court has never upheld a public employer's use of racial preference in such circumstances. It never should.

In the Texas case, the need to revisit *Bakke* is demonstrated by evidence making it clear that the law school and many other institutions around the country have been able to reach their minority enrollment goals only by systematically ignoring or evading the restraints enunciated by *Bakke.* Justice Lewis Powell Jr.'s pivotal opinion in that case barred numerical racial quotas in admissions, while holding that the goal of "a diverse student body" justified consideration of race—along with other qualities like "demonstrated compassion," ascent from poverty, and being "a farm boy from Idaho"—as a marginal "plus" factor in choosing among candidates with relatively similar academic qualifications. Powell thereby suggested, somewhat vaguely, that the finger of racial preference could not press very heavily on the scales.

As noted above, however, any serious effort to minimize the weight given to race in the admissions process would lead to a devastating decline in minority-group representation at our elite institutions. And that would be widely seen as a catastrophic turning back of the clock in race relations.

The Court should shrink from such consequences. Instead, it should recognize more explicitly that state universities—given their unique functions as gateways to opportunity in a society still plagued by racial inequality—have far greater latitude to use racial preferences in admissions than they or other state agencies do in employment or in contracting.

But the courts should strike down practices like the separate admissions committees for white and minority applicants that the University of Texas Law School used until it was hit with this suit; white applicants at least have a right to be compared as individuals with those to be admitted ahead of them, and to file individual challenges to the most egregiously unfair preferences. A poor white coal miner's daughter, for example, should not be rejected in favor of a wealthy black doctor's son who is demonstrably less qualified.

Such a resolution, like *Bakke* itself, may be little more than a tattered fig leaf for a regime that will continue to be the functional equivalent of racial quotas. But given the alternatives, I'll take the fig leaf.

Stuart Taylor Jr. is a senior writer with American Lawyer Media, L.P., and The American Lawyer *magazine. "Taking Issue" appears every other week in* Legal Times.

PHOTOCOPY PRESERVATION

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HEADLINE: 4 DECADES LATER, LEGACY OF BROWN VS. TOPEKA IS CLOUDY;
CIVIL RIGHTS: THE BELIEF IN THE BENEFITS OF INTEGRATION IS NOW CORRODED BY A NEW GENERATION OF PROBLEMS.

BYLINE: By RONALD BROWNSTEIN, TIMES POLITICAL WRITER

DATELINE: WASHINGTON

BODY:

It opened the modern era of race relations, yet it now seems to belong to a bygone time, an era when right and wrong itself was as stark as black and white.

Forty years ago this week -- May 17, 1954 -- a unanimous Supreme Court struck down racially segregated education in Brown vs. the Board of Education of Topeka, Kan. The historic decision still reverberates through American life. And yet in some respects its echo has grown faint, even discordant.

On both sides of the color line, many say, the belief in integration that the Brown case came to symbolize has weakened. Today, few leaders of any race place high priority on encouraging greater integration in housing or schools. Approximately two-thirds of African American children still attend schools that have a majority of black or Latino students, largely because patterns of racial separation in housing remain immutable.

The Brown case typified the conviction that the key to providing blacks with a better life was expanding civil rights and eliminating discrimination. Now that belief has been corroded by a new generation of problems not clearly rooted in prejudice and largely beyond the reach of legal remedies, the courts and perhaps government policy of any sort: the loss of low-skill, high-wage jobs to automation and foreign competition and the crashing waves of violence and drug abuse immersing many inner cities.

Even the decision's popular legacy of equal treatment regardless of skin color casts an ironic shadow through the years. Today, that logic is perhaps more likely to be cited by conservative critics of race-conscious affirmative-action programs.

"Brown belonged to a certain period in American history, but what we confront now is something very different," said Harvard Law School professor Randall L. Kennedy, editor of Reconstruction, a journal on race relations. "We know what we don't want -- de jure segregation, persistent discrimination. When it comes to what we want, that's where we get fuzzy and the conflict breaks out."

Brown's signal achievement was to undermine the social legitimacy of state-sanctioned inequality. Overturning the 1896 Supreme Court decision that approved "separate but equal" public facilities for blacks, the high court

ruled in Brown that in education, segregated facilities were "inherently unequal."

The court followed with decisions striking down segregation in other public facilities, clearing the way for the landmark 1964 Civil Rights Act that buried the last vestiges of Jim Crow and outlawed discrimination in employment and education.

Now, the notion that all Americans should be treated alike not only under the law but in personal relations "is not just an accepted principle, it is a valued principle," said political pollster Geoff Garin. "If you think about where the country was 40 years ago, it's striking that in every major Southern city people watch the news every night delivered by an African American anchor and never think twice about it."

But many whites have never accepted to the same degree the corollary of Brown's logic: that integration in schools and other aspects of life was a positive good for society, Garin and other opinion analysts say.

Those attitudes bounded Brown's impact. After the initial Brown decision failed to meaningfully promote desegregation, the Supreme Court in 1968 and 1971 compelled school districts to move affirmatively toward integration, with busing plans if necessary.

But in the Milliken vs. Bradley case involving Detroit, the court ruled in 1974 that federal courts could not order busing between cities and their suburbs merely to achieve racial balance in the schools; the courts had to first find that the racial separation developed from acts of official discrimination.

That decision etched the limit of Brown's reach -- and accelerated the resettling of urban areas into predominantly black inner cities ringed by largely white suburbs, many experts believe.

"Once Milliken came down, it was clear that once whites could withdraw across a municipal boundary, there was no way to promote integration in schools unless you promote integration in housing, and we as a society have been unwilling to do that over the past two decades," said Douglas S. Massey, a sociologist at the University of Chicago who has extensively studied residential housing patterns.

Residential separation by race remains intense: Though some middle-class blacks have moved into formerly white suburbs, Massey said, the overall level of segregation in cities like Chicago, Detroit, New York, Cleveland and St. Louis remains as great as 40 years ago, and in such Southern cities as Birmingham, Ala., housing segregation is actually rising.

Those housing patterns, combined with demographic trends like the powerful influx of Latino students, have hollowed Brown's promise in most urban school districts: According to a National School Boards Assn. survey conducted late last year, more than two-thirds of all black students attend schools that are primarily made up of minority pupils -- the highest figure since 1968. In the Northeast, where separation is most intense, half of the black students attend schools where at least nine out of every 10 students are members of minority groups.

"You basically had no serious sustained effort to desegregate outside the South," said Gary Orfield, a Harvard University education professor. "You never had a national Administration committed to enforcing it seriously."

Integration appears to be receding as a priority for blacks too. In a recent Gallup survey for USA Today, roughly 2-to-1 majorities of blacks said they would rather strengthen neighborhood schools than increase efforts at integration.

A recent Russell Sage Foundation survey of African Americans found that three out of five support the creation of all-black male academies within public school systems. On college campuses, minority students now often seek affirmative segregation in separate dorms, student organizations and ethnically based academic departments.

"When you look at the way these kids have latched onto some of the black nationalists, you get the sense that the rejection of integration by major forces in society makes them feel they have to go it alone," said Ronald Walters, chairman of the political science department at Howard University, a historically black college in Washington.

If faith in integration has waned since 1954, so too has the belief that ensuring civil rights is the key to narrowing the divides between blacks and whites.

Today, there's much less consensus that the most troubling trends in the black community are grounded in discrimination -- and thus capable of being reversed by the kind of legal action Brown symbolized. Though affirmative action and other legal strategies have enlarged the black middle class, such programs offer less practical help to African Americans trapped in poor neighborhoods where family structure and social order have substantially broken down and industrial restructuring has decimated high-wage manufacturing jobs.

Even some sympathetic analysts view the continuing legal battles over discrimination as far less important than combatting problems such as the explosion in gang-related violence.

"What's wrong with black America has nothing to do with rights," said historian David J. Garrow, author of a Pulitzer Prize-winning biography of Dr. Martin Luther King Jr. "It is largely internally generated and will require a kind of fundamental cultural change that is going to come very slowly."

Massey dissents, arguing that those negative cultural trends derive from the continued isolation of most blacks into segregated neighborhoods -- and that such isolation is itself rooted in continued housing and lending discrimination.

"If you segregate and isolate people . . . you build in these self-perpetuating cycles of violence and social pathology," he said.

Massey's concerns are the same that inspired the lawsuits that led to the Brown decision: overt discrimination denying minorities equal treatment under the law. But since Brown, much of the civil rights debate has shifted to different terrain: whether, to overcome past discrimination or encourage diversity, it is appropriate to grant minorities preferences in hiring and college-admissions decisions.

In the Brown decision, the Supreme Court carefully avoided ruling that the Constitution prohibits government from making any distinctions on the basis of race. But the decision was received as bearing precisely the message that all Americans, regardless of race, should be treated equally under the law.

That standard shaped the Civil Rights Act. But starting with President Lyndon B. Johnson's 1965 commencement address at Howard University, liberals have argued that government has to grant racial preferences in employment and education to produce "equality as a result" not "just legal equity."

With that historic switch, Brown's legacy became confused and contested. In one of its briefs in the case, the National Assn. for the Advancement of Colored People suggested it was unconstitutional when government "confers or denies benefits on the basis of color or race." Now conservatives routinely cite that argument against affirmative-action plans the civil rights movement promotes.

"There has been this incredible flip-flop," said Linda Chavez, executive director of the U.S. Civil Rights Commission under President Ronald Reagan. "The whole point of Brown and the civil rights movement was to make race irrelevant. Now we have come full circle and there is an attempt to elevate race and ethnicity to a category of ultimate importance."

As candidate and as President, Bill Clinton's instinct has been to leave undisturbed the liberal consensus behind affirmative action -- seeking neither its expansion nor retrenchment. But in other respects, he is moving back toward the idea of common opportunities and standards that some see as Brown's essence.

Clinton's agenda combines programs aimed at increasing opportunity without regard to race -- such as job training and expanded tax credits for the working poor -- with tougher enforcement of anti-discrimination laws in housing and credit. It also calls for moral renewal and personal responsibility.

As with Brown itself, many question whether those programs and exhortations are sufficient to bridge the chasm between white and black Americans. Indeed, there is precious little optimism that any group along the ideological spectrum holds the key to that lock.

That mist of despair marks the most stark contrast from 40 years ago. For an earlier generation, the Supreme Court's majestic Brown decision illuminated a path to equality through the dismantling of segregation. Today, Brown's beacon has dimmed, and in the gloom lurks the fear that no one knows which road now leads to racial reconciliation.

A Progress Report

In the four decades since the Supreme Court struck down state-sanctioned segregation in Brown vs. the Board of Education of Topeka, Kan., African Americans have made great progress relative to whites in some arenas but suffered reversals in others.

EDUCATION

	WHITES	BLACKS
4 YEARS OF HIGH SCHOOL OR MORE		
1950	34.3%	12.9%
1990	77.6%	66.2%

MEDIAN YEARS OF EDUCATION		
1950	9.3	6.8
1990	12.7	12.4
LIFE EXPECTANCY		
1950 (years)	69.1	60.8*
1991	76.3	69.3
MEDIAN FAMILY INCOME		
1956	$23,433	$13,189*
1992	$38,909	$21,161
OUT-OF-WEDLOCK BIRTHS		
As a percentage of all births:		
1950	2%	18%*
1990	20%	65%

* Includes other non-white races

FAMILY COMPARISON FOR 1992

The percentages of whites and blacks living in a particular type of family unit, with dollar figure showing the unit's average income:

	WHITES		BLACKS	
		Income		Income
Married Couples	82%	$42,738	47.5%	$34,196
Female householder (no male)	14.6%	$20,130	46.7%	$11,956
Male householder (no female)	4.2%	$29,671	6%	$20,678

Sources: National Center for Health Statistics, U.S. Census Bureau

Researched by D'JAMILA SALEM / Los Angeles Times

GRAPHIC: Table, A Progress Report

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HEADLINE: Under Fire;
Critics say the EEOC has turned hostile to the workers that it's supposed to protect

BYLINE: By Susan Harrigan. STAFF WRITER

BODY:

IT TOOK EXACTLY ONE HOUR for Gail Stein's 25-year career in health services to smash into pieces.

That's how long her supervisor gave Stein, a former department director at Syosset Community Hospital, to gather her belongings and leave the building three years ago.

She says she had an excellent work record, but had been verbally harassed by her twenty-something male supervisor who "didn't relate well to older people." She was replaced, she said in a recent interview, by a young man without supervisory experience.

Stein, 63, filed a charge alleging age and sex discrimination with the the Equal Employment Opportunity Commission, the federal civil rights agency that protects workers from discrimination on the job.

But Stein said the office ruled against her last December without ever giving her a chance to rebut what she said were false explanations the hospital gave for firing her. Spencer Lewis, director of the EEOC's New York region, said Stein was given a chance to respond to the charges.

Stein, now living on Social Security in Florida, said she can't afford a lawyer to take her case to court. "I was degraded," said Stein. "I wasn't even able to say goodbye to my friends. I felt like a criminal."

Armed with such case histories and EEOC performance statistics, advocates for women, older workers and minority groups charge that the EEOC today has lost sight of its mission - to make sure workers are judged by their performance, rather than their skin color, sex or some other characteristic.

The agency has come under increasing fire from civil rights groups in recent months, at a time when job discrimination issues - from sexual harassment to the "glass ceiling," which prevents the advancement of minorities and women - have gained national attention. Both presidential candidates are wooing the votes of women.

Moreover, the continuing recession, with its widespread layoffs, has prompted a surge in age discrimination complaints. And the lingering impact of the

Anita Hill-Clarence Thomas hearings has raised the agency's profile among workers looking for redress.

But under the administrations of Presidents Ronald Reagan and George Bush, civil rights groups say, the agency has been slow, inefficient, and hostile toward complainants. They say its investigations give disproportionate weight to employers' versions of events. And they cite data showing extensive backlogs of cases, declining settlements and increased rejections of cases as having no merit.

The EEOC is "a travesty in terms of people it holds itself out as representing," said Jannette Johnson, a spokesman for the National Employment Lawyers Association, an organization of 1,200 attorneys who represent plaintiffs in work-related cases.

"The real tragedy is that most of these people are poor and are relying on the EEOC."

The EEOC doesn't dispute the accuracy of data cited by its critics, but argues about its meaning. The agency says some of the numbers are misleading because they reflect procedural changes that have actually helped complainants get fairer treatment, even though investigations take longer.

"I'm not pro-employer," Evan Kemp Jr., chairman of the EEOC, said in a recent interview. "I firmly believe employment discrimination is real." Kemp, who uses a wheelchair, said disability-based discrimination has kept him from getting jobs in the past.

Other problems, the agency said, stem from an inadequate budget the agency blames on Congress; the EEOC obtained its $ 210 million budget request in fiscal 1992, but 90 percent of what it requested for 1993.

Kemp predicts the backlog of cases will get much worse because Congress hasn't allocated extra funds for enforcing the Americans With Disabilities Act and the Civil Rights Act of 1991. He says that without extra staff, average case-processing time may grow to more than three years.

EEOC defenders say some criticism is merely an election-year ploy by Democrats.

"The critics are all politically inspired," said Clint Bolick, a co-founder of the Institute for Justice, a conservative public-interest law firm in Washington.

They are frustrated, Bolick said, that the EEOC has become "more of a law-enforcement agency" and no longer a "social-engineering agency."

But civil rights groups say they are more dismayed by the EEOC's performance than at any time since it was created by the Civil Rights Act of 1964.

The EEOC is supposed to investigate charges of discrimination based on race, color, religion, sex, national origin, age and disability.

The 70,000 complaints it received this fiscal year were the most in its history. Meanwhile, its staff has shrunk 18 percent since 1980.

Critics of the agency, such as the Women Employed Institute, a Chicago-based advocacy group, point to the following statistics:

The EEOC is more than twice as likely to dismiss a discrimination complaint with a "no-cause" finding as it was in 1980. Such findings have climbed from 28.5 percent of cases in 1980 to about 60 percent this year.

Settlements, which provide relief for a claimant without a court trial, have been cut by more than half, declining from 32 percent of cases in 1980 to about 14 percent.

Average case-processing time is nine months and predicted to grow, compared to three to six months in 1980.

The backlog of cases waiting investigation has ballooned to more than 60,000.

Moreover, state and local civil rights agencies that handle federal job discrimination complaints under work-sharing agreements with the EEOC are facing almost as many problems.

In New York, where the budget for the state Division of Human Rights has been cut by more than 20 percent in the past two years, the number of pending job and other discrimination cases totals more than 16,000, and some are at least 10 years old, according to a spokesman.

To some extent, criticism of the EEOC reflects a sharp philosophical debate over affirmative action as a remedy for discrimination. Kemp and his predecessor, Clarence Thomas, have said the concept should be redefined.

Discrimination is "no longer just a black and white issue," Kemp said last month, because 26 percent of the people covered by workplace antibias laws today are black, compared with 75 percent when the EEOC was created.

Civil rights advocates say that shouldn't make any difference.

"That's playing the race card, and saying affirmative action is only for blacks," said Merrick Rossein, a City University of New York law school professor who is an expert in employment law. "Affirmative action has been very effective for women."

Despite Bill Clinton's expected support from women and minorities, it's not clear how he would handle the EEOC. The Clinton campaign position papers call for enforcement of workplace fairness rules, yet staffers refuse to discuss specifics like affirmative action.

As Arkansas governor, Clinton tried to push a civil rights law through the state legislature last year, but Arkansas remains one of two states in the nation without such a law.

Still, civil rights advocates expect he would appoint an aggressive EEOC chairman.

Ed Dorn, a senior staff member at the Brookings Institution, said that a Clinton administration might try to strengthen civil rights enforcement on the grounds of economic necessity.

"They might alter the language, and call it 'managing work force diversity' rather than 'equal opportunity and affirmative action,' " Dorn said.

At the current EEOC, critics charge, EEOC investigators are too quick to accept management's side.

For instance, a waitress in Dallas, who didn't want to be named, said her supervisor demanded oral sex as a condition for promoting her to bartender. After she refused and filed a sexual harassment case with the EEOC, she was fired. She is a single mother with four children.

"The kids were a nervous wreck - we almost became homeless," said the woman, who said she couldn't find another job for several months.

The woman said the supervisor admitted making the request for oral sex. But the EEOC recently ruled against her, she said, because the demand hadn't occurred repeatedly.

The union representing most EEOC workers said "no-cause" findings inevitably result from what it calls "impossible" quotas of 72 to 84 cases a year placed on investigators this year to reduce backlog.

Because it takes much longer to make a finding of merit, the system creates a powerful incentive for finding no cause, according to Rita Scott, an investigator and union official.

But EEOC staffers in Washington, D.C., said the rising no-cause findings and lower settlement rate reflect a much fairer system of resolving complaints.

Under Eleanor Holmes Norton, a former head of the New York City Human Rights Commission who became chairman of the EEOC in 1977, the agency adopted a rapid charge-processing system that stressed arbitration between employer and employee. Settlements rose and no-cause findings fell. But the system "shortchanged" discrimination victims who could have won much larger awards if they hadn't settled, EEOC staffers said.

In the mid-1980s the EEOC switched to a new system of investigating each complaint, de-emphasizing arbitration. Norton and other critics say that any gains made by workers under the new system are offset by the time it takes for cases to be resolved.

For instance, Pamela Fox, an Arkansas woman, has already had to wait for two years for the EEOC to start court action on her complaint.

Fox, who worked as jailer in the Lafayette County Sheriff's office in Lewisville, Arkansas, said she performed many of the duties normally assigned to a deputy sheriff and she applied for a deputy's position when it became vacant.

But the sheriff gave the job to a man she said was less qualified. She said she had frequently been told by male co-workers that "women are only good for jumping off the dresser onto." The sheriff won't comment.

Fox filed a complaint of sex discrimination with the Memphis EEOC in August, 1990. She was fired shortly after the sheriff was notified of the charge. She now works a 9 p.m. to 4 a.m. shift as a private security guard.

In September, 1991, the EEOC Memphis office found reasonable cause to believe that discrimination had occurred in Fox's case. It sent the case to the EEOC in Washington so it could decide whether to ask the U.S. Justice Department to take court action, the procedure when a government agency is a defendant.

A year later, the EEOC decided to forward the case.

Fox says she's received telephone death threats and her car has been vandalized. She blames the sheriff, who denies knowledge of the incidents. "Had I been told reality, I don't know that I would have filed a discrimination suit," Fox said. "The system itself helps people to discriminate. They know they're looking at years before anything will be done. What have they got to lose?"

Target of Complaints

The Equal Employment Opportunity Commission is an agency under fire. Even though its budget has increased by $ 64 million since 1986 to $ 222 million, its staff has decreased and complaints have risen. Critics question the quality of EEOC investigations and the time it takes to have charges probed. Figures are for fiscal years ending Sept. 30.

	Staff	Complaints received	Complaints awaiting investigation	Complaints said to have no merit
1986	3,017	65,666	50,767	58.3%
1987	2,941	62,074	61,686	55.3%
1988	3,168	58,853	53,780	49.7%
1989	2,970	55,952	46,071	54.2%
1990	2,853	59,426	41,987	57.2%
1991	2,796	62,806	45,717	59.6%
1992	2,790	70,771*	60,470*	60%**

*-Estimate-Total during first three quarters

SOURCE: Equal Employment Opportunity Commission

Case Count

Below are the major types of federal discrimination charges lodged with the Equal Employment Opportunity Commission, state and local agencies enforcing anti-discrimination laws. Figures are for fiscal years ending Sept. 30.

National

	Race	Sex	Origin	Age	Total
1987	49,508	33,722	9,930	25,695	112,515
1988	50,957	34,641	10,881	25,699	113,500
1989	46,384	34,882	10,457	24,109	106,587
1990	48,080	35,456	12,053	23,324	107,508
1991	47,657	36,917	12,398	27,748	113,752
1992*	36,743	31,788	10,188	22,853	92,259

*-As of June 30

SOURCE: Equal Employment Opportunity Commission

GRAPHIC: 1) Photo by Gary Bogdon-Gail Stein says she didn't get a fair hearing from the EEOC after being fired from Syosset Community Hospital. 2) AP Photo-Although Pamela Fox got an initial favorable ruling from the EEOC in her sex bias case, the agency hasn't pressed her case in court. Newsday Illustration by Anthony D'Adamo- EEOC seal burning with arrows shooting into it. Charts-1) Target of Complaints. The Equal Employment Opportunity Commission is an agency under fire. SOURCE: Equal Employment Opportunity Commission. 2) Case Count. Below are the major types of federal discrimination charges lodged with the Equal Employment Opportunity Commission, state and local agencies enforcing anti-discrimination laws. SOURCE: Equal Employment Opportunity Commission. (See end of text)

LANGUAGE: ENGLISH

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HEADLINE: CIVIL RIGHTS CONTROVERSIAL CANDIDATES BRING RACIAL ISSUES INTO SHARP FOCUS

BYLINE: William H. Freivogel Post-Dispatch Washington Bureau

BODY:

WASHINGTON AFTER DECADES OF national debate, the major planks of the civil rights agenda for legal equality have been enacted into law. For the first time in years, there is no major bill involving racial equality before Congress. Still, the sharp divisions over race cast a long shadow over this year's presidential election, just as they have over each presidential election since 1964. In fact, the shadow may be longer this year with the candidacies of conservative commentator Patrick J. Buchanan and David Duke, the former Ku Klux Klansman. Buchanan says he decided to challenge President George Bush for the Republican nomination because Bush reversed field and signed the Civil Rights Act of 1991, making it easier for minorities and women to win job discrimination suits. As the Southern primaries approach, Buchanan is putting into practice the same kind of racial politics that he urged when he was an aide to President Richard M. Nixon. Buchanan kicked off his Southern campaign by vowing to ''root out the whole rotten infrastructure of reverse discrimination root and branch.'' President Bush has spent a career straddling the treacherous divide between the imperatives of civil rights and the views of the white voters who elected him. Duke's civil rights record is straightforward. A one-time neo-Nazi and Ku Klux Klan leader, Duke has propelled his political career largely with the fuel of white resentment towards affirmative action and welfare. Political commentators say both Buchanan and Duke's records also are tainted by anti-Semitism - a charge the two candidates deny. By contrast, on the Democratic side of the presidential campaign are five major candidates who closely approximate the dream candidate of the civil rights movement. As governors, Jerry Brown, Bill Clinton and Bob Kerrey implemented affirmative action plans and appointed record numbers of wom en and minorities to office. As senators, Kerrey, Paul Tsongas and Tom Harkin nearly always compiled voting records that approached the 100 percent approval rating of the civil rights supporters. In fact, the views of the Democratic candidates are so close to those of civil rights leaders that some positions, such as their support of gay rights, could cost votes in a general election campaign. The candidate who has adopted the purest civil rights position is Brown. During one of the debates this year, after the other Democratic candidates had said how tough they would be on crime, Brown cautioned that some anti-crime measures threaten civil rights and civil liberties. Joseph Duff, the head of the NAACP in Los Angeles, said in an interview that Brown did not follow up his appointment of minorities and women with ''structural changes. When he was gone as governor, everything he did was gone.'' Duff also said that Brown had sidestepped a controversial school desegregation case from Los Angeles. Those who have watched Clinton say he always says the right thing, that his preacher-like speaking style connects with blacks and that he brought blacks into top government posts, including his inner circle. But Arkansas

still does not have a state human rights bill. The blacks whom Clinton boasts of having appointed to the state Supreme Court served short terms of about a year. And Clinton's advocacy of testing schoolteachers has depleted the ranks of black teachers. Republicans Without the civil rights issue, there might not be a Republican primary this year. Buchanan said that the president's decision to sign the Civil Rights Act of 1991 was the decisive factor in his decision to run for president. Buchanan maintains that the law is a ''quota bill'' and that Bush's decision to sign it was a betrayal of conservative principles. The law overturned a series of Supreme Court decisions that had made it harder for women and minorities to win job discrimination suits. The president's decision to sign the bill - after having vetoed it in 1990 in an earlier form - was typical of Bush's career-long effort to find a middle ground on civil rights. As a senior at Yale, Bush headed the drive for the United Negro College Fund, a cause he continues to support. His father, Sen. Prescott Bush, R-Conn., was an early supporter of civil rights legislation. But George Bush opposed the Civil Rights Act of 1964 when he ran for the U.S. Senate from Texas that year. He argued that the law was unconstitutional, adding, ''We don't need additional legislation of the public accommodations sort.'' In his campaign for the U.S. House in 1966, Bush courted black voters. After his election he fell in with Republican moderates and publicly supported the ''Philadelphia plan'' for bringing blacks into the construction trades. Bush voted to water down the proposed Fair Housing Act of 1968, but took a major political risk to vote for the bill on final passage. The vote ignited a storm of criticism from home, including threats on him and his staff members, he wrote in his 1987 autobiography. Bush was greeted by catcalls when introduced at a community forum after the vote. But the audience calmed down when he told them that black veterans of the Vietnam War deserved to live where they chose. Civil rights leaders say Bush was often helpful during Ronald Reagan's presidency, serving a constructive role in obtaining administration support of the Voting Rights Amendments of 1982 and the 1988 housing discrimination law. He also joined moderate Cabinet members in blocking the attempt of administration conservatives to end affirmative action within the federal government. For these reasons, civil rights groups had hoped that Bush's administration would be more favorable to civil rights than Reagan's. The racial subtext of the Willie Horton campaign ads dampened these hopes. But it was not until Bush's veto of the 1990 civil rights legislation that civil right leaders first criticized the president himself. Bush said he had vetoed the bill because it would cause ''quotas.'' The bill would have made it so difficult for companies to defend themselves against job discrimination suits, the president said, that firms would adopt quotas to avoid lawsuits. Last year, when Sen. John C. Danforth, R-Mo., worked out a compromise bill, the White House initially said it too would cause quotas. But after some changes were made and a group of Republicans told the White House that they were prepared to vote to override a veto, Bush decided to support the bill. ''The Bush administration did everything they could to defeat the civil rights act,'' says Ralph Neas, director of the Leadership Conference on Civil Rights. ''The Bush administration will only do the right thing on civil rights when they don't have the votes to do the wrong thing.'' Buchanan, from his different vantage point, also concluded that Bush's decision to sign the bill had been unprincipled. ''Bush was so solid on it,'' Buchanan said recently in explaining why he ran. ''But all of a sudden, you turn around and, 'Excuse me,' you are double-crossed again. And you just say, 'That's it, that's it.' '' Buchanan has a long history of opposing government efforts to bring about integration, dating back to his tenure as an aide in the Nixon White House. In 1970, when Nixon was preparing a message on desegregation, Buchanan wrote the president, ''The second era of Reconstruction is over; the ship of integration is going down; it is

not our ship; it belongs to national liberalism - we cannot salvage it; and we should not be aboard.'' A year later, as the 1972 election approached, Buchanan wrote a memo to White House Chief of Staff H.R. Haldeman entitled ''Dividing the Democrats.'' It urged using racial issues to divide the Democratic Party. ''This would really tear up the pea patch . . . this is a potential throw of the dice that could bring the media on our heads, and cut the Democratic Party and country in half; my view is that we would have far the larger half.'' Also, in 1971, Buchanan called Nixon's attention to an article in The Atlantic arguing that government aid to improve the education of poor children would not help because of genetic factors. Buchanan commented that if the article was correct, ''It seems to me that a lot of what we are doing in terms of integration of blacks and whites - but, even more so, poor and well-to-do - is less likely to result in accommodation than it is in perpetual friction - as the incapable are placed consciously by government side by side with the capable.'' In other controversial statements, Buchanan has said: Homosexuals were ''sodomites'' and that AIDS was ''nature's retribution'' on gays. It would be easier for the United States to assimilate a million Englishmen than a million Zulus. ''When it comes to hatred, to violence, to racism, the White Knights of the KKK can't hold a candle to the thuggish criminal elements of the black community in Washington D.C. Our problem is not the white trash sent up from the South; it is trash already here in River City.'' Fellow conservative William F. Buckley, after examining a number of Buchanan statements on Jews, concluded that they ''could not reasonably be interpreted as other than anti-Semitic in tone and in substance.'' Buchanan has denied that he is anti-Semitic or anti-black. He has also written that ''the civil rights movement was liberalism's finest hour'' and that ''segregation in the '50s was truly the biggest thing wrong with a country about which so very, very much was right.'' He says he favors treating blacks fairly, but adds, ''I am against the kind of racial quotas and reverse discrimination which treat white folks as badly in many cases as black folks were treated a long time ago.'' Democrats With Jesse Jackson out of the presidential race this year, the Democratic candidate who can attract the largest part of the black vote in the Southern states is likely to do well. Clinton appears to have made the greatest inroads so far, winning endorsements from black leaders such as Reps. John Lewis, D-Ga., and Mike Epsy, D-Miss., and, last weekend, from Mayor Kurt L. Schmoke of Baltimore. But some civil rights leaders who support Clinton publicly have reservations privately about his record as governor. ''Basically his has been a cosmetic approach,'' said one who asked not to be identified by name. ''I have always felt his heart was in the right place, but his actions stopped short of his genuine feelings.'' Clinton's campaign office submits a long list of laws enacted in Arkansas that have benefited minorities and an even longer list of more than 20 high-ranking blacks in state government. As governor, Clinton ''has ensured that the composition of his staff accurately reflects the diversity of Arkansas' population,'' a press release says. ''Bill Clinton has appointed at least one African-American to every state board and commission.'' Brown maintains that as governor of California he had the ''strongest commitment to affirmative action anywhere in the country'' having ''appointed 287 Asians, 435 African-Americans, 549 Hispanics, and 46 Native Americans to government positions.'' He also takes credit for backing the repeal of criminal penalties from private sexual acts between consenting adults and for signing an executive order banning discrimination based on sexual orientation. Duff, the NAACP leader in Los Angeles, criticized Brown for ''a tendency to be aloof from the civil rights movement. He takes these turns - 90-degree turns - where he gets bored and does something else. I don't think he is in it for the long haul.'' Tsongas, Kerrey and Harkin have compiled highly favorable voting records in the Senate,

according to an analysis by the Leadership Conference. Among the few votes that the civ il rights group did not agree with were: Several times Harkin was absent on votes on school desegregation issues. Both Harkin and Kerrey voted to confirm David H. Souter as a Supreme Court justice. Tsongas voted against two amendments that would have provided additional legal options for those hurt by immigration laws. In the early 1980s, Tsongas was one of the first two sponsors of a federal bill to bar discrimination against gays and lesbians. ''That is one thing about Tsongas,'' a spokesman said. ''Once he decides on an issue he sticks with it even if it is unpopular.'' Clinton, while opposing discrimination against homosexuals, does not support the proposed federal bill. He thinks the bill needs to be more specific and should have a broader exemption for religious organizations. The religious exception currently in the bill permits a church group to deny a religious job to a homosexual, but not a non-religious job, such as accountant. A few old hands among the civil rights leaders still harbor some resentment against Tsongas for having defeated the only black senator, former Sen. Edward W. Brooke, a Republican. But Tsongas was an early and strong advocate of sanctions against South Africa. Harkin's chief civil rights accomplishment was his sponsorship of the Americans With Disabilities Act, barring discrimination against those with disabilities. Kerrey, as governor, signed an affirmative action plan for state government. He takes credit for appointing more women and minorities to state offices and judicial posts than any Nebraska governor in history.

GRAPHIC: Photo; PHOTO...AP Photo...Patrick J. Buchanan campaigning Tuesday during a vist to Vanderbilt University in Nashville, Tenn. PHOTO...AP Photo...Democratic candidate Jerry Brown surrounded by supporters as he talked with the press at Denver's Stapleton International Airport on Monday.

LANGUAGE: English

LOAD-DATE-MDC: October 11, 1993

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SEND TO: WARNATH, STEVE
OPD - DOMESTIC POLICY COUNCIL
725 17TH ST. N.W.
WASHINGTON, DISTRICT OF COLUMBIA 20503

BY FRANK JOHNSTON—THE WASHINGTON POST

to a question from a reporter during 50-minute news conference, the first one of the year.

throughout my public career. I ing to help people develop their ully participate. . . .

view of all the federal governtive action programs because I we analyze, number one, what t of times people mean different ffirmative action.' For example, I no opposition to the affirmative are the most successful in our e ones adopted by the United ave not resulted in people of infetting preferential treatment, but ense effort to develop the capaciioins the military so they can fully ute as much as possible, and has tegrated institution in our society. hat these programs are exactly, I they are working, I want to know other way we can reach any oba preference by race or gender in ns. . . .

of people who aren't living up to ountry and it's hurting the rest of people want an end to discriminanination where it exists to be punnt people to have an unfair break Ve can work this out, and I'm de-

r the Presidency

y another Republican is jumping in. It also seems like every day we are tion campaign and who is in and who uld tell us a little bit about the kind u're putting together. And I also a comment that Senator [Robert J.] erday when he was asked about why ocrats' demand to take Social Secur the balanced budget amendment. ident who has abdicated his respona president down there, we might our response to that in the context ations?

t is that Senator Dole has been r 30 years, and he hasn't always And when I got here, policies supts and deficits run up under Rens—remember, they had this town s, they were making all these procountry a $4 trillion debt, quadrune 12 years of Republican ascenpeen president, we've got a lower

More on Affirmative Action

If I'm not mistaken, you have always been in favor of affirmative action and, in fact, you have practiced it. Why now the hesitation?

I have always practiced it, but let's look at how I practiced it. . . . Look at my appointments to the federal bench, ones for which, I might add, I've been regularly and roundly attacked for trying to achieve diversity here in this community. . . .

I have practiced affirmative action here the way that I perceive the United States military has practiced it. I have made an extra effort to look for qualified candidates who could serve with distinction and make a contribution to this country and make the federal bench reflective of the American population. I have not done it with any quota system in mind, and I have not guaranteed anybody a job. I have made an extra effort to do that. The military starts before that; they have made an extra effort to develop the capacities of people who come to them with great raw ability, but maybe a disadvantaged background.

Is that wrong? I don't think it is, and I'm not backing off of that. . . .

I think we need to look at the programs, look at the facts, and ask: . . . How does this work? Is it fair? Is it necessary? Is there an alternative way to achieve the objective? But in terms of taking aggressive initiatives to develop the capacities of people, should we keep doing that? You bet we should. How should we do it in the law? That's the question. . . .

Ethics Investigations

You have an independent counsel investigating yourself and your wife. You have another independent counsel investigating your former agriculture secretary. The Justice Department is soon to make decisions on whether independent counsel should investigate your secretaries of commerce, housing and transportation. . . . If any of those three are going to be subject to an independent counsel investigation, would you like to see them resign to take care of that? Combining the independent counsels with those others like Webster Hubbell and Roger Altman, who resigned after some ethical problems, how can you explain what's happened to your administration, after you came into office promising the most ethical administration in history?

Roger Altman resigned even though the finding was that he had violated no law and no rule of ethics, and he made a major contribution to this country. Let's just look at that. . . . In all the other examples, [former agriculture] secretary [Mike] Espy was the single person who resigned because the subject of his activity involved things he had done as secretary of agriculture—which, I might add, in the aggregate amounted to a few thousand dollars, all of which he has reimbursed, in return for which he got a special counsel with 33 lawyers and a historian.

[illegible] other things, including mine—I would remind [illegible] special

on the ground there [illegible]
which Europe ought to take the lead, and [illegible]
the system I think we should continue to obse[illegible]

Health Care Reform

You mentioned health care reform yesterday and again day as one way in which you could achieve deficit reductio and I wonder if we're going to see any concrete proposals fro you in this legislative session on health care reform.

Yes, I think you will see concrete proposals in this le islative session. . . . But I want to do it, insofar as I ca with the Congress. As I said in the State of the Union a dress, I think last time I bit off more than I could che They saw that and then they decided to back away fro their proposals and just take the political position th would kill anything we proposed. And I think I made mistake, but I think they did, too. . . . What I think ought to do now is to figure out a way to help America get more affordable health care and to solve this pro lem. And if we do it in the right way, we will continue substantially lower the cost of Medicare and Medicaid the out years.

Let me say something that almost nobody has noticed this budget I presented, and that is that this budget r flects $94 billion less in health care costs over the next fi years than last year's budget. Why? Because of the i creasing use of managed care in the Medicaid progra because more seniors are voluntarily going into manag care programs in Medicare, and because of the general forts both in the private and in the public sector to bri down health care costs. Now, the reason it hasn't reduc the deficit $94 billion is that interest rates increases ha added to the cost of carrying the debt. But we are loweri the cost of health care from what it was when I took offi and we can do that some more in a responsible, fair w But we've got to do that together. . . .

Isolationism and Espionage

When you attack the new isolationists, specifically do you have in mind, by name? And the second part of question: As you know, the French government has accu five CIA agents listed as diplomats in France of activi incompatible with their diplomatic status, which is a eu mism for espionage. Are they telling the truth? What this mean?

I believe that we have resolved this matter France, and as a practical matter, I have followed policy of every president not to publicly discuss in gence-related questions.

Secondly, I just got through saying I think we're ting into too much name-calling in Washington, a don't want to exacerbate that. . . . I do not want become either economically or politically isolated. T what I mean by isolationist. . . . Expanding trade us the upside, gives us a chance to win, to promot mocracy and stability abroad and to get more high jobs here. I think it would be a bad mistake for us strict the power of this president or any future pres in peacekeeping and in all those areas. . . .

Yeltsin and Chechnya

Returning to the issue of Russia, given the con fighting in Chechnya and the apparent stall in Russi forms, can you give us some measure of your conf level in [Russian President] Boris Yeltsin, or your confidence? And how do you read his failure to co this situation in Chechnya?

. . . I believe that he has made the major polic sions there. I think that he is in control of the there and I have dealt directly with him in u change and a moderation of policy there and I will

BusinessWeek

DATE: 5.29.95
PAGE: 33

PEOPLE

ON THE FIRING LINE AT DOW CORNING

CEO Hazleton battles creditors, litigants, lawyers, insurers...

For a guy whose company just filed for bankruptcy protection, Richard A. Hazleton sounds remarkably relaxed. No matter that product-liability lawyers want Dow Corning Corp. to fork over far more than the $2 billion it already has promised to settle class-action suits, including claims from 410,000 women with breast implants. Or that as many as 5,000 other women have filed individual lawsuits against the company. "I knew this was going to be a tough issue," says Hazleton. "I'm not discouraged."

The mounting legal onslaught prompted the Midland (Mich.) company, once the leading maker of silicone-gel breast implants, to seek reorganization on May 15 under Chapter 11 of the federal bankruptcy code. It also catapulted Hazleton, a little-known chemical engineer who took Dow Corning's helm nearly two years ago, into the limelight.

QUICK STUDY? Until now, the 52-year-old Chicago native has kept a low profile, letting the company's lawyers fight its battles in the courtroom. Now, Hazleton suddenly is playing front man, aggressively defending Dow's implants against charges that link them with auto-immune disease. More crucial than polishing Dow Corning's tarnished image, though, will be Hazleton's tricky balancing act as mediator. As Dow Corning wends its way through reorganization, Hazleton must try to placate a bankruptcy judge, disgruntled creditors, angry breast-implant litigants and their lawyers, anxious employees, and balky insurers.

Such maneuverings "were nothing I ever learned about in chemical engineering school," Hazleton admits. He had better be a quick study. A bevy of plaintiffs' lawyers, including Cincinnati attorney Stanley Chesley, packed the courtroom of U.S. Bankruptcy Judge Arthur J. Spector on May 17 as he heard the first round of motions on Dow Corning's filing. They want to use their inside perch on a creditors' committee to block any reorganization plan that doesn't provide adequate compensation for their clients. Wendell H. Gauthier, a New Orleans plaintiff lawyer involved in the settlement, says their huge legal claims will give implant litigants plenty of clout in bankruptcy court. "We think the victims may fare better from Dow Corning because we'll be involved," he says.

Hazleton also faces intense pressure for Dow Corning to cough up more cash for the so-called global settlement in the class action. U.S. District Court Judge Sam C. Pointer Jr. said May 1 that the $4.2 billion fund, established 14 months ago by Dow Corning, Baxter International, Bristol-Myers Squibb, and other implant manufacturers and distributors, is dramatically underfunded.

Despite the long odds, "we would like to see a global settlement hold together," Hazleton says. Certainly, it's the company's best hope for settling the bulk of the claims against it en masse. But, he insists, "we don't have any more money to contribute." Dow Corning has already pledged $2 billion over 30 years, with a $275 million installment due soon after the settlement is completed. Conceivably, the bankruptcy court could order Dow Corning to pay more, based on the company's recent healthy results: Profits were up 33% in the first quarter, to $49.5 million, on record sales of $612 million. But to keep making payments to plaintiffs, "we have to remain a healthy company," Hazleton says. "It's not in anyone's best interests to bleed this company dry."

HAZLETON: *It's in no one's "best interests to bleed this company dry"*

All of this is a far cry from what Hazleton expected in 1965, when he joined Dow Corning after graduating from Purdue University. He migrated from engineering into finance jobs, and in 1983 took charge of the company's big Midland factory. In 1991, he went to Europe to streamline the operation. Those were also "uncommonly difficult" economic times there, says Keith R. McKennon, the former Dow Corning chairman who chose Hazleton to be his successor. "Dick has the ability to make the hard decision."

So far, too, Hazleton has effectively negotiated what insiders call a tense relationship with Dow Corning's joint venture owners, Dow Chemical Co. and Corning Inc. Hazleton responded to his board's growing anxiety by quietly building a consensus for a bankruptcy filing. "He responded to us with calm and objectivity—always in short supply in something as contentious as this," says Dow Chemical Chairman Frank P. Popoff. Can Hazleton stay so calm through what is expected to be at least two years of bankruptcy proceedings? "It's not going to be fun or easy," he says. In that, certainly, he is not mistaken.

By Kathleen Kerwin in Detroit, with Linda Himelstein in New York

THE IMPLANT IMPASSE

Claims and lawsuits against Dow Corning:

THE PLAN Dow Corning, Baxter International, and others created a $4.2 billion fund to pay off claims from a class-action settlement. Dow agreed to kick in up to $2 billion over 30 years. Women with implants had the option of skipping the class-action settlement and suing on their own. Dow Corning set aside $241 million as a reserve against such lawsuits.

THE RESULT Of more than 1 million women with silicone breast implants, about 410,000 registered claims against the class action—far more than expected. A Federal judge overseeing the settlement in April declared the fund inadequate. Dow Corning says it also currently faces 3,000 to 5,000 individual lawsuits in the U.S. Its original reserve now looks inadequate as well.

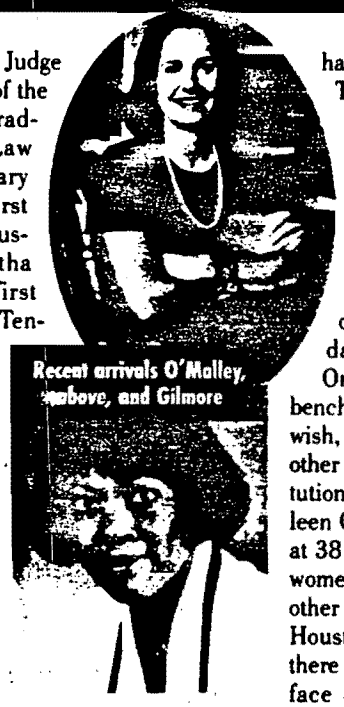
GLAMOUR

A NEW WAVE OF WOMEN JUDGES

When Nancy Gertner arrived at work on her first day as a U.S. district court judge last summer, she donned her robe and plunked herself down in a judge's chair designed for a man who was a foot taller than she. "I felt like Lily Tomlin playing Edith Ann," she recalls. "I said my first order would be for a couple of phone books."

Outsized chair notwithstanding, Judge Gertner, a former criminal defense lawyer in Massachusetts, feels her seat on the federal bench fits just right—and so do the 45 other women who were nominated to the 837-person federal judiciary during the first two years of the Clinton presidency. As of January 1995, women constitute a record 31 percent of all President Clinton's appointees—a gratifying increase from President Bush's 19 percent and President Reagan's 8 percent.

The most prominent Clinton pick, of course, is Supreme Court Justice Ruth Bader Ginsburg, but the 45 nominees also include five new women on the U.S. Courts of Appeals, the second-highest courts in the land. These women are pioneers in their field: Among them, Judge Judith Rogers was one of the first black women to graduate from Harvard Law School; Judge Rosemary Barkett was Florida's first female Supreme Court justice; and Judge Martha Craig Daughtrey, the first female U.S. attorney in Tennessee, was also the sole woman on her state's Supreme Court. Asked about her historic résumé, Judge Daughtrey shrugs, "Oh, somebody was bound to come along and get those firsts one day or another."



Recent arrivals O'Malley, above, and Gilmore

For the most part, Clinton's female picks have taken their new seats with little opposition—although a male newspaper columnist worried in print that the feminist Judge Gertner would do with a gavel what Lorena Bobbitt had done with a kitchen knife. The only real controversy surrounded Judge Barkett, a former nun, who drew brief flak from the religious right for having overturned several death-penalty convictions (amid the 100-plus she sustained) during her tenure on Florida's high court.

Once appointed to the federal bench, these women serve, if they wish, for life. That could mean another half century of tough constitutional decisions for Judge Kathleen O'Malley of Cleveland, who at 38 is one of the two youngest women on the federal courts (the other is Judge Vanessa Gilmore of Houston, also 38). "I don't think there could be a better job on the face of the earth," says Judge O'Malley. "We get the kinds of challenging cases you read about in law school but never believe you'll see in real life."

—*Cindi Leive*

Gray in the Debate on Color

Many See Both Sides of Affirmative Action

THE WASHINGTON POST
MONDAY, JUNE 5, 1995

By DeNeen L. Brown
Washington Post Staff Writer

As loud as they may shout about it, as much as they may debate it over dinner and at work, for many people affirmative action is not an issue as simple as black and white.

Les Butler is a 40-year-old black man who believes in affirmative action programs to their core. He understands that they were designed to remedy past discrimination against minorities and women. But when he started a business 10 years ago, he declined to apply for contracts through a federal affirmative action program.

"I never wanted somebody to say, 'He got that business because he is black.' I am good at what I do," said Butler, who lives in Brentwood and runs a public relations firm that specializes in urban health issues. "I hope you would do business with me based on the quality of my work, not based on my race. . . . I'm not saying I don't believe in affirmative action. I'm saying I don't believe in it for me."

Wendy, a 29-year-old white woman who didn't want her last name used, would prefer to say that she opposes any programs that give preference to minorities or women. Now a teacher in Prince George's County, Wendy said she was denied a teaching job in New Jersey because of affirmative action.

"I was told point-blank by the superintendent of schools that he couldn't hire me because I was a white woman," she said. "That's why I don't agree with preferences. I think they should go on credentials and background rather than color and sex."

But almost in the same breath, Wendy said: "I do sympathize. . . . But then I see a need for good role models. What is affirmative action, anyway?"

Affirmative action is defined as any measure that considers race, national origin, sex or disability to provide opportunities to people who either historically or actually have been denied opportunities, according to the U.S. Commission on Civil Rights. Affirmative action often is used in hiring, recruiting and promoting in the forms of timetables, goals and contracts.

As the national debate rages, some people find themselves unable to oppose or support affirmative action without reservations. Some say they really have no idea what the programs are or how they may have been affected by them.

Fifty-eight percent of those questioned in a recent survey in the Washington region said they opposed preference programs for black people and other minorities in hiring, promotions and college admissions. That included 69 percent of whites and 31 percent of blacks, according to the poll, which was conducted for The Washington Post by the Greater Washington Consumer Survey.

When the same people were asked whether they favored affirmative action programs without quotas or preferences, however, 51 percent said yes, and 30 percent said no. Researchers say the word "preference" often evokes strong reactions, with images of people being hired or promoted without regard to qualification.

The poll found that 61 percent of men and 57 percent of women questioned opposed preference programs.

It also found that the higher the income, the more likely the opposition to preference programs. Sixty-three percent of people with incomes of more than $100,000 a year said they opposed preference programs, while 40 percent of those with incomes of $15,000 to $24,000 opposed them. Among black respondents, 27 percent of those with incomes of less than $25,000 opposed preferences, while 33 percent of those with incomes of more than $100,000 a year opposed them.

The poll indicated a division along generational lines. The older the respondent, the more likely the opposition. According to the survey, 63 percent of people older than 65 opposed preference programs, while 45 percent of people younger than 25 opposed them.

The poll of 1,013 people in the Washington region was conducted March 30 to April 15. The margin of error for overall results is plus or minus 3 percentage points, which means any specific finding could vary by 3 points in either direction.

Promises to dismantle many of the federal government's affirmative action programs have become a theme of many Republican presidential candidates and many Republicans in Congress, and President Clinton has launched a review of all such programs. Campaigns are underway in at least a half-dozen states to put initiatives on the ballot that would ban all affirmative action in state hiring, contracting and admissions practices at state universities. In California, Gov. Pete Wilson, who is seeking the Republican presidential nomination, last week eliminated a range of affirmative action programs affecting hiring and contracting in state agencies.

Opponents of affirmative action look for votes from people such as Stuart Strickland, 47, a white man from Fairfax who works for the Defense Department. He thinks affirmative action has hurt his and his wife's advancement at their jobs.

"We can't make up for what our grandfathers did or did not do," Strickland said. "I think they help minorities and hurt white males. I think everyone should stand on their own merit and own ability.

"Just like with war, it's time to put it to rest. It's got to stop. The restitution for the past discrimination, how long is it going to go on? For the next 200 years?"

Despite popular perception, there is evidence that widespread discrimination persists. The Glass Ceiling Commission, a bipartisan panel that President George Bush appointed to examine barriers to women and minorities in the work force, reported in March that 97 percent of senior managers in the country's 1,000 most profitable corporations are white men. Sixty-six percent of the country's population and 57 percent of the nation's work force is female or a minority or both.

That report found that men of color and women have not moved into higher levels because of "very, very prejudicial beliefs by white males when it comes to women and men of color."

Robert H. Bork, a conservative legal scholar at the American Enterprise Institute, said he thinks people often confuse affirmative action programs with anti-discrimination programs.

"That is not what it is all about," said Bork, the former federal judge whom President Ronald Reagan nominated for the Supreme Court in 1987. "We have all kinds of laws against discrimination. Affirmative

Cont'd 1of 3

Affirmative Action A Complex Question

action comes into play when you can't prove discrimination."

Bork said he thinks affirmative action creates hostility between groups and should be abolished immediately for every group except blacks.

"I think blacks are the only ones who have a legitimate claim of being victimized," he said. "Women were never treated the way blacks were treated in this country. I would abolish affirmative action for everybody except blacks. For them, I think it should be phased out."

Some people say they oppose affirmative action because they oppose quotas, but the Supreme Court made quotas illegal in 1978. The court ruled in *Regents of the University of California v. Bakke* that rigid quotas were unlawful but that consideration of race as a factor in college admissions was constitutionally permissible.

Ellen Vargyas, legal counsel for the U.S. Equal Employment Opportunity Commission, said: "Quota is in the eye of the beholder. The Supreme Court has never said you have to fill numbers without regard to qualifications. . . . There has never been a legal justification for that."

Cheryl Taylor, program manager for the African American Studies Center at the Smithsonian Institution, credits affirmative action with getting her a start in the workplace. Taylor says that she supports affirmative action but that she doesn't want people to think her success at work comes from it.

"I have mixed emotions about affirmative action just because I don't want to be walking through an office and having people say [that] because I am black, I'm there because of affirmative action," Taylor said.

Some black people who support affirmative action criticize blacks who oppose it, saying they benefited from those programs but deny it.

Linda Williams, director of research for the Congressional Black Caucus, says affirmative action programs played a major role in developing a larger black middle class. "I think a lot of middle-class folks forget that," she said. "Without it, the situation would be more bleak. Almost nobody thinks of themselves, no matter what race or gender, as being there because of affirmative action. They don't acknowledge that affirmative action had anything to do with their jobs, simply because no one walks up and stamps a big 'AA' on their head."

Most people surveyed, black and white, say they don't believe anyone unqualified should get a job. The question, they say, is one not of ability but of opportunity.

Eleanor Montgomery, 63, who lives in Temple Hills, remembers segregated cafeterias in federal agencies and how white people with only high school educations would be promoted ahead of black people who had college degrees. She doesn't think things are so much better now that the federal government can eliminate affirmative action.

"The day has not arrived yet, nor do I ever expect to see it myself, when this country is no longer racist," Montgomery said.

Montgomery, a black woman who began working for the federal government in 1952 at the Navy Annex, said she is surprised when she hears young black people say they don't need affirmative action. "I turn on the television, and I hear these young black men talking about [how] there is no need for affirmative action because they think it has a stigma," she said. "I always say to myself, 'If it were not for affirmative action, I would not have been sitting here watching you on my TV anyway, because they would not have asked you to come on the program.'

"There are some young African Americans who have not lived the experience of discrimination to the degree I've experienced it or many other African Americans my age. I'm talking about those in their twenties. When they came along, the schools were desegregated."

Montgomery said the debate about affirmative action is a diversionary tactic from economic issues.

"They throw these buzzwords to get people fired up, and white men are talking about reverse discrimination," she said. "If there was reverse discrimination, why aren't we at the top of all these Fortune 500 companies? I wish they would all turn black one day and wake up one morning [when] all the black people are white and all the white people are black. I guess they would understand then."

It may take just that for William, a white man who lives in Temple Hills. He said he strongly opposes any affirmative action program, even though his son, who has epilepsy, was hired as an air-conditioning mechanic in a program designed for people with physical disabilities.

"If the plan is there and it's something you can use to your own benefit, it's hard . . . to advise my son on not taking it," said William, a retired salesman who did not want his last name used. "But in theory, I don't agree with it.

"I think about those things because sometimes you get yourself what you really believe and you get the practical thing, and you might have to bend. But as far as affirmative action overall, I think it's a bad thing. I don't think it is completely equal because it discriminates against sometimes the best candidate for the job."

William, who said he was passed over for promotions in his job as a salesman when his company started hiring black supervisors, said he understands race from a different perspective.

"Maybe deep down inside I might be a racist when you get to it. But I've gotten over that. I grew up in a totally segregated society as a kid. I went to school in the District of Columbia. It was all segregated. . . . I would prefer to be around all whites. That was so ingrained in me. When I was born, my mother was 40 years old. She actually knew slaves. It hadn't been that long."

cont'd 2 of 3

3 of 3

William said he didn't think a lot about blacks when he was growing up. "When I was a kid I don't see how [blacks] existed—they couldn't do anything other than in their own little area. They couldn't be a policeman or a fireman or work in a department store. It was really pretty bad."

William said that since then, all that has changed. "They have had civil rights laws for 30 or 40 years now. I'm a minority in my neighborhood. I don't see anything holding them back right now. You can do anything you want."

Polling director Richard Morin contributed to this report.

THE WASHINGTON POST
SATURDAY, JUNE 3, 1995

Police Harassment Suits Settled

■ Months of legal maneuvering have ended with the signing of an agreement that settles sexual harassment lawsuits that three troopers filed against the Maryland State Police.

The U.S. Justice Department is continuing to investigate whether the rights of state police employees were violated by harassment and discrimination at the 1,591-member agency.

Under Thursday's agreement, the agency admits no wrongdoing.

One of the three, former sergeant Sherry Bosley, 40, was a Trooper of Year and a specialist in gambling for the agency. Bosley said she was subjected to repeated harassment, rude jokes and rumors about her fidelity. The state will pay her $190,000 cash and grant her a job-related disability pension, giving her nearly $28,000 a year tax-free for the rest of her life.

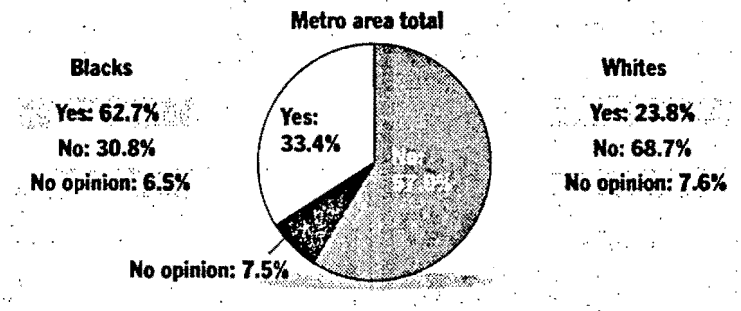
Last month, State Police Superintendent David B. Mitchell announced a policy to address sexual harassment. He said he would hire an outside consultant to review how the agency handles complaints and develop training programs.

A SURVEY OF AFFIRMATIVE ACTION OPINIONS

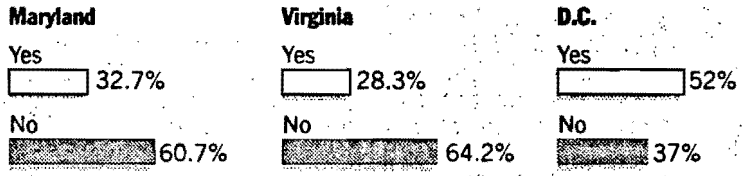
A look at some results of a Washington area survey about affirmative action. The information is from the Greater Washington Consumer Survey, and the results are for March and April.

Q: (Do you) favor preferences for blacks and other minorities to make up for past discrimination?

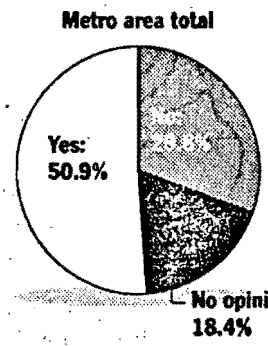
▶ TOTAL AND BY RACE



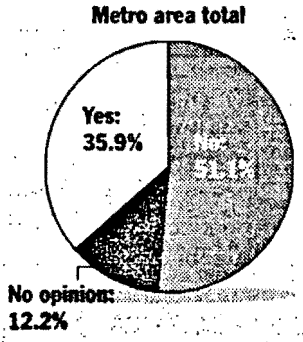
▶ BY AREA OF RESIDENCE



Q: (Do you) oppose preferences for blacks and other minorities but would favor affirmative action programs without quotas?



Q: Do affirmative action programs decrease opportunities for white men?



NOTE: The local survey polled 1,013 people who lived in the Washington region, 654 of whom were white, 297 were black, 23 were Asian and 46 were Hispanic, who could be of any race. The survey, which has a 3 percentage-point margin of error, was conducted from March 30 through April 15. Results may not add to 100% because of rounding.

SOURCE: Greater Washington Consumer Survey

THE WASHINGTON POST

NEW YORK TIMES **NATIONAL** SUNDAY, JUNE 4, 1995

Gains in Diversity Face Attack in California

By PETER APPLEBOME

BERKELEY, Calif. — The photograph in Sproul Hall of the 10 Cal "yell leaders" from the early 1960's, in their Bermuda shorts and letter sweaters, leaps out like an artifact from an ancient civilization. They are all fresh-faced, and in a way that is unimaginable now, they are all white.

But here at the epicenter of the affirmative action debate today on campus, where the cheerleading squad is appropriately diverse these days, the popular arguments that often frame the affirmative action debate seem as out of date as the ducktail and bouffant hairdos of those 60's cheerleaders.

The University of California Berkeley campus was among the first of the nation's leading universities to embrace elements of affirmative action in its admissions policies, and now boasts that it has one of the most diverse campuses in America,

Affirmative Action

The Issue on Campus

with whites accounting for only 32 percent of the student body. Asian-Americans are the largest single ethnic group on campus, accounting for 39 percent of all students.

But Berkeley may soon become one of the first campuses in the nation to abandon the cornerstone of affirmative action in higher education: admission preferences based on race. The university board of regents is already awaiting a proposal to prohibit the use of race and ethnicity as factors in admissions.

There are two unusual twists to the assault on affirmative action in the University of California system that defy stereotypes. First, the race-based preferences are being attacked by a black member of the board of regents and defended by Berkeley's Asian-American chancellor. Second, the racial makeup here on the system's flagship campus, has shifted the fault line in the debate from black-versus-white to minority-versus-minority.

Fairness, many Asian-Americans in California argue, demands that admissions be based strictly on merit as defined by grades and test scores. Many black and Hispanic residents argue that fairness requires sticking with programs intended to counter the effects of racial prejudice.

At the same time, the debate is being played out in a California political climate that is increasingly hostile to affirmative action. Some critics of affirmative action assert that the success that Asian-Americans have achieved without being given preferential treatment raises questions about the necessity of race-based preferences as a remedy for overcoming historic prejudice.

These same critics argue that affirmative action to aid historically disadvantaged black and Hispanic students has become a new form of discrimination against Asian-Americans, although black and Hispanic students are still underrepresented at Berkeley, as measured by their share of the state's population.

Attacks on affirmative action have sprung up in California as nowhere else in the nation. Last week Gov. Pete Wilson issued an executive order sharply curtailing affirmative action programs in state government wherever legally possible. He supports a proposed statewide ballot initiative that would prohibit all programs intended to promote race-based preferences in hiring, promotions, university admissions or the award of public contracts.

The University of California system will not be affected by the Governor's order, but at their July meeting, the regents, who are appointed by the governors on staggered terms, are expected to consider the proposal by a black regent, Ward Connerly, to end the affirmative-action admissions policy.

The regents have a good idea of what effect an admissions policy based strictly on grades and test scores would have on racial diversity throughout the university system. A report commissioned by the board and completed last month determined that dropping race-based preferences in admissions would result in a precipitous drop in black and Hispanic freshmen and an increase in admissions of Asian-American and, marginally, white students.

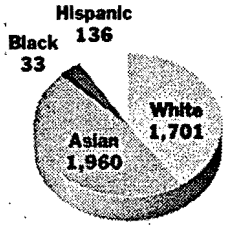
PROCESS

Getting In

At Berkeley, the freshman class is selected in a three-part process. Here is how high school seniors applying for the 1994-95 school year were selected:

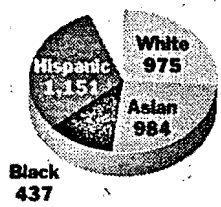
Grades and test scores alone

51 percent, or 4,179 students



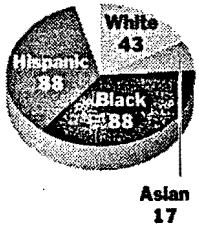
Grades, test scores, essays and background

46 percent, or 3,766 students



Special decision of admissions committee

3 percent, or 251 students



*Other races and students for which there are no data are omitted.

Source: University of California at Berkeley

N.Y. TIMES

Berkeley's Chancellor, Chang-Lin Tien, a Chinese-American and an enthusiastic supporter of affirmative action, said in an interview that the widespread discrimination that still existed against Asian-Americans in the United States should make them especially sensitive to the need for programs designed to compensate for past discrimination. But more important, affirmative action at Berkeley, he said, represents an essential and healthy adaptation to a changing California and a changing nation.

"People like to say that affirmative action is kind of a way to redress past wrongs; I don't see it that way," Mr. Chang said. "Especially in a university, it's about creating the best educational atmosphere for all students. Affirmative action isn't for underrepresented minorities. It's for the benefit of the larger society."

But, rather than a clear-cut means of insuring inclusion, affirmative action here has become a game of three-dimensional chess in which the gains of black and Hispanic students are increasingly seen as a loss for Asian-American students.

The result is a contentious debate over the knotty issue of how best to assess merit and how to balance a quest for diversity with a desire for fairness in admissions. The last time the regents discussed race-based admissions, on May 18, about 200 student demonstrators showed up to protest any change in the current policy, temporarily disrupting the meeting. While there have there have been no direct threats of campus disruptions if the system's affirmative action goals are rescinded, the issue has long been a trigger for volatile passions.

"I'd say that 70 percent of Asians look at affirmative action and see a system in which they get the shaft," said Andrew Wong, Berkeley's student body president in the 94-95 academic year. "I believe in a meritocracy, not in preferences, and if that produces a less diverse place, well, that's the social cost you pay."

The Experience

Who Is Admitted And Who Is Not

Few places have had more of a commitment to diversity than Berkeley campus, rated as perhaps the most prestigious public university in America. Beginning with the admission of women in the 1880's and with an early form of affirmative action called the Educational Opportunity Program in 1964, Berkeley has aggressively promoted inclusion.

But the University of California was also the target of the lawsuit in the late 1970's that created the current legal standard for affirmative action; Allen P. Bakke claimed that he was denied admission to the medical school at the University of California at Davis because a space had been reserved for a less qualified minority student. In a 5-to-4 ruling in 1978, the court ruled that it was permissible to take race into account in admissions so long as there are no quotas and race is not the sole or primary factor.

Affirmative action on a university campus can play out in different ways, from recruiting students to hiring faculty. The most contentious questions at Berkeley have had to do with admissions: who gets the sought-after acceptances? And what are the best criteria for judging applicants.

The university says it seeks to enroll a student body that "encompasses the broad diversity of cultural, racial, geographic and socio-economic backgrounds characteristic of California," but that there are no admissions quotas. Ninety-five percent of freshman admissions come from a pool of the top 12.5 percent of high school students. Half of each freshman class is admitted from that pool solely on the basis of grades and test scores. About 45 percent comes from that pool with diversity considerations included in the mix.

Berkeley can afford to be choosy; it attracts more applicants with perfect 4.0 high school grade point averages than it has slots in its freshman class. But as the university has become ever more selective the competition for admission has raised questions about the costs of diversity. Last year the campus received 22,500 freshman applications. It accepted 8,400 students to fill 3,500 freshman slots.

Administrators say affirmative action in admissions has been a success, maintaining educational excellence as Berkeley has become more diverse.

As late as 1984, whites made up 60 percent of the undergraduates at Berkeley. Now, students are 39 percent Asian, 32 percent white, 14 percent Hispanic, 6 percent black, 1 percent American Indian and 8 percent other groups or people who did not identify their race.

In 1984, when 60 percent of Berkeley undergraduates were white, the mean grade point average for freshmen was 3.62 out of a possible 4.0, and the mean Scholastic Assessment Test was 1,155 of a possible combined score of 1,600. In 1994, when whites constituted only a third of the undergraduates, the mean G.P.A. was 3.84 and the mean S.A.T. was 1,225. Those numbers have risen for every ethnic group, according to data released by campus officials. The percentage of students who graduate within six years is also at an all-time high — 79 percent compared with 55 percent in the mid-1950's.

"There's the myth that in the course of diversifying the campus we've lowered our standards," said Bob Laird, director of undergraduate admissions. "By any measure, the opposite is true. If you divide the freshman class in five parts and you compare any of the quintiles, the current freshman class is stronger than the one 10 years ago."

Moreover, the proportions of so-called underrepresented minorities — primarily black and Hispanic students — are not close to their numbers in the population. Black and Hispanic students now constitute about 37 percent of the high school graduates in California but only about 19 percent of the students at Berkeley.

Many black and Hispanic students complain that Berkeley is drawing back from the kind of outreach and openness needed to attract minorities. Enrollment of blacks, which peaked at at 1,647, or 7.7 percent of undergraduates, in 1989, currently stands at 1,127, or 5.5 percent. Enrollment of Hispanics, which peaked at 3,158, or 15.1 percent of undergraduates, in 1991, is now 2,800, or 13.8 percent.

"What they call affirmative action is mostly just an appeasement, and now they're taking away what's there," said Mireta Khalil, a black 21-year-old junior from Los Angeles.

Under Berkeley's complicated admissions system, about percent of the freshmen applicants are offered admission on the basis of a combination of academic merit, measured by grades and test scores, and more subjective factors including whether the student has overcome cultural or economic disadvantages or physical disabilities. This is the level at which race is most likely to be factored into admission decisions.

Up to 5 percent are admitted as "special action" admissions. They are not among the top 12.5 percent of high school graduates but are admitted because they are athletes, have special talents or fit the university's diversity needs and are deemed to have the ability to succeed at Berkeley. Of this group, 34 percent are black and 38 percent are Hispanic, 10 percent are Asians and 17 percent are white.

Mr. Laird said it made no sense to say that all the other preferences the university uses are acceptable but that increasing racial and ethnic diversity among undergraduates is not.

But critics of affirmative action point out that the policy means that black and Hispanic students with poorer credentials than whites and Asians are being admitted to Berkeley.

Whites admitted as freshmen in 1994 had a mean grade point average of 3.86. For Asians the figure was 3.95. Blacks averaged 3.43 and Hispanic students averaged 3.65.

The gap in S.A.T. scores was wider. Blacks averaged 994, Hispanic applicants 1,032, whites 1,256 and Asians 1,293.

Graduation rates differ sharply too. Six-year graduation rates for undergraduates are 59 percent for blacks, 64 percent for Chicanos, 84 percent for whites and 88 percent for Asians. But officials say the differences have narrowed over time, and it is not clear how much they reflect academic problems and how much they reflect differences in financial resources that could lead more minorities to fail to graduate.

The Attitudes

Resentments On All Sides

Troy Duster, a Berkeley sociologist who has studied affirmative action for years, said it is being made a scapegoat for rejection. "You've got 9,000 kids with 4.0 averages competing for 3,500 places," Professor Duster said. "Now, obviously, they can't all fit. But every one of them who gets turned away believes they got turned away because of affirmative action."

To Professor Duster, the furor over affirmative action is fueled by two illusions. The first is that opportunity today can be divorced from the historical conditions that created huge gaps in resources and achievements separating different ethnic groups. The second is that there is a simple, quantifiable way, like test scores, to assess merit.

2/4

N. Y. TIMES

"There's an arrogance in the idea that you can put people on an ordinal ranking system," he said. "I'm not opposed to people getting straight A's. But I don't want society to see that as the only thing worth talking about."

But if the goal of affirmative action is to move toward a more equal society, many students assert that the effect is to create a campus obsessed with racial and ethnic divisions.

"It's created a stigma," said Darren Cook, a white graduate student planning to go to medical school. "I'm tall. If they decided there were not enough tall people here, I'd walk around and people would think, 'Oh, there's one of those tall admissions.' It sounds cruel, but that that's how people think."

Many black and Hispanic students dispute that argument, saying that affirmative action debate has merely become a socially acceptable way of voicing already existing stereotypes.

"When I was an undergraduate at Yale, there were all these looks that said, 'Why are you here?' said Kristin Weber, a black first-year Berkeley law student. "When I made it through and graduated with honors, I had people come up and say they didn't know I was so smart. Well, I knew I was smart. There's a lot of hostility that's playing out in this whole debate over affirmative action."

Still, it seems everyone has a story of a friend who is one eighth Cherokee and was admitted as an American Indian or one parent who is Mexican-American and was admitted while others of similar socio-economic backgrounds and better grades were not.

There are questions whether underrepresented Asian-American groups, like Vietnamese and Cambodians, should be compared with Chinese-, Japanese- and Korean-Americans and whether there should be enrollment goals for each separate Asian-American category.

And some skeptics say affirmative action in admissions contributes to a Balkanized campus of racially divided dorms and friendships that make the benefits of diversity more theoretical than real.

"This place is so racially polarized it's like a Spike Lee movie," said Alex M. Weingarten, a junior from Los Angeles and the outgoing executive vice president of the student government organization. "I'm not deriving any benefit from other groups on campus. I'm a white Jew from Los Angeles living with three other white Jews from Los Angeles."

The Proposal

Black Challenges Diversity's Value

The biggest challenge to affirmative action in admissions is the one being mounted by Mr. Connerly, a black businessman from Sacramento, who says diversity is a worthwhile goal — but not at the cost of fairness in admissions.

Mr. Connerly has called for an end to race-based preferences in admissions, saying it has created unfair and discriminatory standards. He said he would be more comfortable with taking socio-economic class into account rather than race or ethnicity.

"If you start with diversity as the objective in admissions you can end up doing some rather undesirable things, which is where we are now," he said. "We have a system where we're turning away white and Asian kids with 4.0's on a wholesale basis and admitting blacks and Chicanos with 3.3's."

But critics of Mr. Connerly's proposal say that no university admits solely on test scores and grades, and that none should.

"Who has the more promise, a student where there's been a tremendous economic investment put in by affluent parents, or the poor kid whose G.P.A. may be a little bit lower, who hasn't had the kind of preparation for the S.A.T.'s, but who has struggled and been relatively successful?" asked Ralph Carmona, a regent of Mexican descent. "Which holds more promise for California and America? That's the kind of question the admissions process has to address."

And Mr. Duster and others say that race is such a fact of life in America that a youngster from a black middle class family still faces numerous barriers that a white youth from a similar background does not face.

The stakes were raised by a study prepared for the regents last month that indicated that implementing a plan like Mr. Connerly's would sharply decrease the number of black and Hispanic students at the most desirable schools throughout the state university system. The study found that across the University of California system, 40 to 50 percent fewer blacks would enroll, as would 5 to 15 percent fewer Hispanic applicants. The number of Asians could increase by 15 to 25 percent.

At Berkeley, if admissions were based on grades and test scores alone, Asian-Americans would account for between 51.6 and 54.7 percent of the freshman class, compared with 41.7 percent this year. The percentage of white freshmen would rise to between 34.8 percent and 37.3 percent, from a current 29.8 percent. Hispanic freshmen would drop to between 3 percent and 6 percent from a current 15.3 percent. Blacks would drop to less than 2 percent of entering freshmen from a current 6.4 percent.

Factoring in socio-economic background would change those figures only slightly. There are relatively small numbers of poor black and Hispanic applicants with academic records and test scores high enough for admission to Berkeley.

Mr. Connerly disputes the findings of the regents' study, saying that since essays are a major part of the admissions decision for half of those admitted to Berkeley, no one really knows how racial balance would be affected.

"I felt the timing was questionable and may have had some political motivation," he said. "They dug in their heels and want to keep the system as it is."

But he said that if the end of race-based preferences means fewer blacks and Hispanics, so be it.

"If the system is fair, my only response is, 'Let the chips fall where the may,' " he said. "I don't give much of a hoot about diversity for its own sake. I want to see us better educate more kids."

But many board members and most of the leading educators in the state say it would be terrible social policy to have an increasingly diverse state shutting out minorities from its elite schools, particularly from law and medical schools that could prepare them to help serve their communities.

"In a few years, there will be no majority in this state; we're nearing 40 percent underrepresented minorities — African-Americans, Hispanics and Native Americans," Chancellor Chang said. "If we don't educate some of the future leaders from that constituency, it's going to be very bad for all of us."

Mr. Connerly, who was appointed to the board by Mr. Wilson in 1993, said he believed that Governor Wilson's directive last week could influence the Regents when they take up his proposal in July. As Governor, Mr. Wilson is president of the board and one of 26 voting members.

"It's very close, but I have to believe that the Governor's leadership will help persuade some of my colleagues who may have been on the fence to join us in this journey," Mr. Connerly said.

Affirmative Action

Later articles will examine affirmative action in various areas of American life.

3/4

N.Y. TIMES 4/4

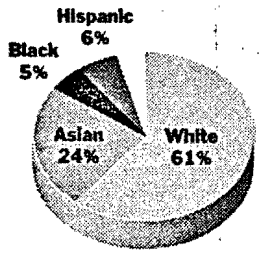
Attack on Campus Where It Worked

BY THE NUMBERS

Diversity at Berkeley Through the Years

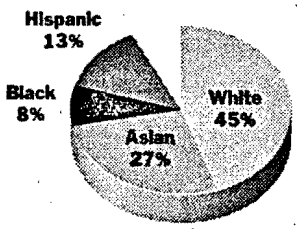
Racial and ethnic breakdown of undergraduates at U.C. Berkeley each year. High school grade-point averages and combined Scholastic Aptitude Test scores of entering freshmen those years are also shown.

1984: MOSTLY WHITE



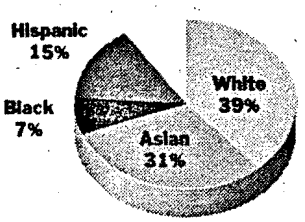
	S.A.T.	G.P.A.
White	1204	3.61
Asian	1189	3.78
Black	923	3.28
Hispanic	1003*	3.52
All freshmen	**1155**	**3.62**

1989: BLACK ENROLLMENT PEAKS



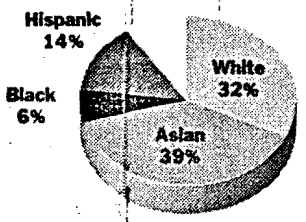
	S.A.T.	G.P.A.
White	1267	3.77
Asian	1289	3.93
Black	963	3.28
Hispanic	1001*	3.51
All freshmen	**1176**	**3.69**

1991: HISPANIC ENROLLMENT PEAKS



	S.A.T.	G.P.A.
White	1263	3.85
Asian	1282	3.95
Black	979	3.27
Hispanic	996*	3.55
All freshmen	**1201**	**3.77**

1994: THE CURRENT ENROLLMENT PICTURE



	S.A.T.	G.P.A.
White	1256	3.86
Asian	1293	3.95
Black	994	3.43
Hispanic	1032*	3.74
All freshmen	**1225**	**3.84**

*Students who classified themselves as "Chicano." S.A.T. scores for "Latino" and "Filipino" categories are not shown.

Source: University of California at Berkeley

Other races and students for which there are no data are omitted.

DLR 6/5/95

COURT DROPS CASE ON RIGHTS OF NONCITIZENS

Following a settlement between the parties, the U.S Supreme Court May 30 dropped from its docket a case in which it was slated to resolve whether Reconstruction-era civil rights legislation protects non-U.S. citizens from discrimination in private contracts (*GEICO v. Duane*, US SupCt, No. 94-1139, 5/30/95).

Settlement terms are confidential, according to attorneys for both sides.

The case arose in 1991, when Australian citizen Vincent P. Duane was denied homeowner's insurance from Government Employees Insurance Co. GEICO said it was following its policy of refusing to sell homeowner's insurance to persons who are not U.S. citizens. Duane sued GEICO, arguing that the denial of insurance violated the Civil Rights Act of 1866 (42 USC 1981).

The district court denied GEICO's motion to dismiss the case, finding that Section 1981 prohibits alienage discrimination in the making of contracts. GEICO had warned that the holding conflicts with the 1986 Immigration Reform and Control Act and grants broad new rights to noncitizens.

BROWN & ROOT DISPUTE RESOLUTION PLAN RESOLVES MOST DISPUTES INTERNALLY

Alternative dispute resolution systems are seen as means of resolving workplace complaints in a quicker and less costly manner than through government agencies or the courts.

An ADR system used by Brown & Root since mid-1993 has enabled the Texas-based construction engineering firm to resolve the vast majority of its

"we're not just putting out fires," in potentially volatile contract negotiations, Wells said June 2 at a plenary session of the International Industrial Relations Association's 10th World Congress in Washington, D.C. Rather, the agency increasingly is involved in assisting labor and management to develop more collaborative, participative relationships.

Wells said that in the last 10 years FMCS has experienced a 27 percent decline in the number of cases in which it has been called in to mediate traditional contract disputes. In the same period, there has been a 139 percent increase in the number of preventive mediation cases that the agency has handled, he said. One-quarter of FMCS' cases in 1994 (2,200) were in preventive mediation, while 6,000 cases involved traditional dispute mediation.

Wells attributed the drop in dispute mediation cases over the last 10 years to the declining number of bargaining units, the longer duration of contracts, fewer strikes, and the increased use of replacement workers in strike situations.

The increased interest in alternative approaches for management and labor to relate to one another is being seen today in such new models for negotiations as interest-based, or win-win bargaining, Wells said. Labor and management are experimenting with conflict resolution and joint problem-solving techniques. There also has been a greater sharing of information, he said.

Change In Labor-Management Relationships

This change in the relationship between labor and management has generated demand for FMCS to provide education and training in these new bargaining models and partnership skills.

Wells said that some companies and their unions recognize these cooperative approaches as necessary to improve the profitability of the company and, in turn, the employment opportunity and job security of workers. But Wells suggested that many of the high performance work processes in which companies and unions cooperate for their mutual benefit are "thinly rooted." Only about 5 to 10 percent of workplaces currently have such high performance strategies in place, although they are in highly visible places. Wells saw as a hopeful sign the fact that many of the companies and unions that have adopted these cooperative strategies are leading, high-visibility firms, such as Ford and the United Auto Workers and Xerox and the Amalgamated Clothing and Textile Workers Union.

The FMCS director said that an internal task force established to look at the future direction of the agency has recognized that "we need to be full

service mediators." FMCS staff must be able to assist in mediation in contract bargaining in which there is the traditional adversarial relationship between the parties. But the agency also needs to build on current efforts at assisting management and labor in designing new partnership relationships, he said.

By taking on this additional role, FMCS can be a value added to the collective bargaining process as well as to the larger economy, Wells said.

Mediation In Ireland, South Africa

The same global market forces that have caused U.S. companies and unions to see the value of new cooperative relationships are affecting industrial relations in other parts of the world and have had an impact on the mediation agencies in other countries.

Kieran Mulvey, head of the Labour Relations Commission of Ireland, said that the agency was created in 1991 with a mandate to provide preventive mediation and promote good labor-management practices. One commission project, called the Frequent User Campaign, and dubbed by staff as the Frequent Abuser Campaign, focuses on companies and unions that call more than normally on the resources on the agency. The objective, he said, is to proactively offer such unions and companies skills training and resources to improve their relations.

With a new democratically elected government in South Africa, a more systematic labor-management process is being built in that country, according to Charles Nupen, former director of mediation services.

With the lifting of sanctions against South Africa, the country now must deal with global competition and this is having a significant impact on industrial relations, Nupen said. Companies are restructuring and downsizing to meet new competitive demands. In addressing the demands placed on labor-management relations by these economic changes, the newly created Commission on Mediation and Conciliation is drawing on the best practices of other countries, but its approach to meditation still must hinge on the labor-management experience of South Africa, he said.

Table of Contents

■ **AFL-CIO**

Letter by Laborers' President Coia outlining changes needed at AFL-CIO causes flurry of letters to be exchanged among labor leaders . . . A - 2

United Mine Workers President Trumka says it is time for aggressive new leader at AFL-CIO but only chuckles when asked following speech to Texas AFL-CIO if he is that person . . A - 3

AFL-CIO establishes LaborWeb, federation's new "home page" on Internet's World Wide Web . . . . . A - 16

■ **BUDGET**

House Speaker Gingrich's plan to let government funding lapse Oct. 1 is "ultimate irresponsible action" because it puts politics ahead of country's fiscal well-being, Economic Council Chair Tyson says . . . . . A - 12

■ **CIVIL RIGHTS**

Following settlement, Supreme Court drops from docket case in which it was slated to resolve whether Reconstruction-era civil rights legislation protects non-U.S. citizens from discrimination in private contracts . . . . . A - 16

■ **CONSTRUCTION**

New construction spending advanced 0.4 percent in April, Commerce Department reports . . . . . D - 28

■ **DISABILITIES**

Second Circuit upholds lower court finding that New York City Department of Personnel did not violate Section 504 of Vocational Rehabilitation Act of 1973 in its testing of two visually impaired job applicants . . . . . A - 10

■ **DISPUTE RESOLUTION**

ADR system has allowed Brown & Root to resolve majority of its workplace disputes using in-house mechanisms . . . . . A - 8

FMCS sees role as enhancing efforts at cooperative partnerships between management and labor, Director Wells says . . . A - 9

■ **ECONOMIC OUTLOOK**

Policy-makers in many industrial countries are faced with difficult choices as they address issues important to increasingly frustrated workforces, say speakers at 10th World Congress of International Industrial Relations Association . . . . . A - 15

■ **EMPLOYMENT**

Taking next step in its overhaul of data series, Bureau of Labor Statistics announces second phase of its major redesign of monthly payroll employment survey . . . . . A - 1, E - 8

Although unemployment rate edged down to 5.7 percent, payroll employment fell by 101,000 in May, Labor Department reports, causing some analysts to worry economy may be headed for recession . . . . . D - 1, E - 1

■ **ERISA**

Health policy experts divided over whether other states will pursue provider taxes or indirect assessments on self-insured plans in wake of Supreme Court's decision giving New York green light to impose surcharges on hospital bills . . . . . C - 1

■ **HEALTH CARE**

General Mills Restaurants Inc. and Northwestern National Life Insurance Co. announce program to uncover questionable patterns of health care provider practice and examine differences in incidence of fraud among various provider specialties . . . . . A - 4

Health insurance premiums will begin to rise rapidly as reserves are burnt off, current wave of radical discounting plays out, and government accelerates cost shifting to private sector, says health insurance policy consultant . . . . . A - 13

■ **LABOR-MANAGEMENT COOPERATION**

Citing beneficial effects of employee involvement programs, Professor Estreicher tells New York University audience that NLRA's broad ban against company unions is anachronism that denies nonunion employees any say in workplace decisions . . . . . A - 7, E - 10

■ **LEADING INDICATORS**

Composite index of leading economic indicators fell 0.6 percent in April, third consecutive monthly decline, Commerce Department reports . . . . . D - 24

■ **NAFTA**

U.S. labor laws protecting workers rights to unionize were probably violated with firing in 1994 of Spanish-speaking employees of San Francisco subsidiary of Sprint Corp., Mexican NAO says . . . . . AA - 1

■ **NLRB**

NLRB schedules transfer of its El Paso resident office and three counties in west Texas into its Region 16 based in Fort Worth . A - 15

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■ **SAFETY AND HEALTH**

Fate of OSHA and NIOSH, which took heavy hits under budget resolutions approved by House and Senate last month, will rest in hands of House Appropriations subcommittee chairman Porter (R-Ill), who has been seen recently as defender of OSHA programs ..... A - 5

Republican legislation to reform OSHA may be ready for introduction week of June 5, with hearings scheduled later this month, congressional staffers say ..... A - 11

■ **SEXUAL HARASSMENT**

Plaintiff's lawyer suggests new conceptual theory of "responsibility damages" could prove effective in convincing juries to compensate victims of sexual harassment in hostile work environment cases even where there is no economic loss ..... A - 7

■ **STEEL**

Largely due to Rouge Steel Co.'s financial turnaround, officials for Dearborn, Mich., steelmaker and United Auto Workers are optimistic about peaceful settlement of new contract ..... A - 14

■ **WARN ACT**

Hiring hall employment practices for longshoremen were "consistent with industry custom" and did not violate WARN Act, federal court in Louisiana rules ..... A - 6

TEXT IN THIS REPORT

Statement on May employment report by Bureau of Labor Statistics Commissioner Katharine Abraham ..... E - 1

Description of March 1994 benchmark revisions to payroll employment estimates, as released by Bureau of Labor Statistics ..... E - 2

Plans for sample redesign for current employment statistics survey, released by Bureau of Labor Statistics ..... E - 8

Remarks of Professor Estreicher, New York University's Conference on Labor ..... E - 10

TABLE OF CASES

GEICO v. Duane (US SupCt) ..... A - 16

Marett v. New York City Department of Personnel (CA 2) ..... A - 10

New Orleans Clerks and Checkers Local 1497 v. Ryan-Walsh Inc. (DC ELa) ..... A - 6

(For full details, see pages indicated in Section A)

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CHANGE IN POLICY FOR IMMIGRATION IS URGED BY PANEL

FAMILY GROUPS FAVORED

Congress Will Have Proposals That Would Gradually Cut Legal Entry by a Third

By ROBERT PEAR

WASHINGTON, June 4 — A Federal advisory commission will soon recommend gradually reducing legal immigration by one-third and reshuffling visa priorities to speed up the admission of spouses and young children of legal aliens, members of the panel have said.

The proposals, to be presented to Congress later this month, would make the biggest changes in more than 40 years in policies governing the selection of legal immigrants.

The panel's plan would clear up a huge backlog of visa applications from the immediate relatives of permanent resident aliens. But it would also eliminate longstanding visa preferences for siblings and adult children of United States citizens, making immigration more difficult for them.

The nine-member advisory panel, the Commission on Immigration Reform, headed by former Representative Barbara Jordan of Texas, will emphasize the importance of the nuclear family as the basic unit of immigration, members said.

Under the panel's recommendations, the immediate relatives of United States citizens — spouses, children under the age of 21 and parents — would still be allowed to immigrate without a waiting period or limits on the number admitted each year.

But panel members said they would recommend eliminating immigration preferences that have been granted for decades to other close relatives, including the brothers, sisters and adult children of United States citizens. In general, those relatives could not obtain visas to immigrate unless they qualified because of their job skills.

The commission's proposals are likely to be influential on Capitol Hill because Congress created the commission, appointed eight of the nine members and is seeking new ways to overcome deep disagreements on immigration policy.

Since lawmakers have not yet seen the report, there is no way to know how its recommendations will fare in Congress. But it is built on a complex set of trade-offs intended to offer something to all sides in the immigration debate. And it will no doubt further appeal to many in Congress simply because the commission and its report offer some political cover on highly contentious issues.

Many Republican lawmakers favor new limits, but some, like Dick Armey of Texas, the House majority leader, see immigration as an engine of economic growth and oppose new restrictions.

In addition, the recommendations come at a time when many Americans are expressing concern about immigration, whether legal and illegal. In California last November, voters approved a ballot measure that would make illegal aliens ineligible for public education and most social services. Judges have delayed its enforcement while it faces legal challenges.

In addition, the House of Representatives in March approved a bill that would deny welfare, food stamps and Medicaid to legal aliens.

Some members of the immigration panel said they were reluctant to discuss its recommendations because they were still editing the report. But some suggested that public concern about illegal immigration was inevitably influencing public attitudes toward legal immigration.

Visa preferences for brothers, sisters and adult children would be ended.

One member of the panel, Bruce A. Morrison, a former Democratic member of Congress from Connecticut, said: "Current levels of legal immigration are not a problem. But in the context of substantial illegal immigration, there is a problem."

Lawrence H. Fuchs, a professor at Brandeis University who is vice chairman of the commission, said, "In the aggregate, on balance, immigrants have contributed to strengthening the United States." He deplored what he described as a public "fixation on numbers" but added, "We have to have limits because of the disproportionate impact of immigration in some places like Los Angeles."

At a closed meeting, from May 23 to 25, commission members said, they affirmed the value of legal immigration, but voted to recommend that Congress reduce it by one-third over the next few years from its average over the last three years of 830,000 a year. In the transition period, 700,000 immigrants would be admitted annually. After the transition, 550,000 would be admitted each year, and that would become the normal level of legal immigration.

As a corollary, panel members said, Congress should eliminate the large backlog of visa applications already filed on behalf of the spouses and minor children of permanent resident aliens. Congress could do that over three to eight years, they said.

An immigration expert who worked with the commission said: "Both sides of the equation are necessary. Reducing immigration without expediting the entry of immediate relatives flies in the face of human nature. It will only increase illegal migration. But expediting their entry requires the elimination of other categories in order to get the needed visa numbers."

Susan Martin, executive director of the commission, said there were 1.1 million would-be immigrants on the waiting list of spouses and minor children of legal permanent residents. About 850,000 are relatives of illegal aliens who gained legal status under an amnesty program created by Congress in 1986. Most others are overseas relatives of recent legal immigrants.

Ms. Martin said it would take at least a decade to work through the backlog under current law. Commission members said it was not in the national interest for families to be apart for so long.

The panel's major recommendations were approved by votes of 8 to 1. Commission members said they were surprised that they had achieved a bipartisan consensus. The dissenter was Warren R. Leiden, executive director of the American Immigration Lawyers Association, whose members represent legal and illegal aliens, their relatives and employers.

Cont'd 1 of 2

Immigration Panel Plans to Ask Congress To Cut Inflow and Help Family Groups

"This is a short-sighted proposal," Mr. Leiden said in an interview. "I would support revising the priorities for family immigration, but cannot support the commission's proposal to eliminate three of the four existing family preference categories. I also oppose the reduction of almost 30 percent in the ceiling for employment-based immigrants."

The commission recommends that the Government levy substantial fees on employers who want to bring in foreign workers like computer scientists, engineers and health professionals. The fees are meant to discourage employers from hiring foreign workers when Americans are available. Employers willing to pay the fees could import foreign workers faster than they do now.

Mr. Leiden criticized this proposal as a tax on American businesses that use foreign workers. He said it would hinder access to the skills needed to compete in a global economy.

Another panel member, Harold W. Ezell, a former Western regional commissioner of the Immigration and Naturalization Service, said: "I believe immigration is good for America. But too much of a good thing can be harmful. I love certain types of candy, but if you eat too much, you'll overdose on chocolate. We've got to have balance."

Senator Alan K. Simpson, the Wyoming Republican who is chairman of the Judiciary Committee's Subcommittee on Immigration, has proposed a 25 percent reduction in legal immigration over the next five years, to provide "a breathing space." The current flow of legal immigrants is more than can be "comfortably absorbed," he said.

In September, the commission recommended a crackdown on illegal immigration along the border and at work sites. It said the Government should establish a computerized register of the names and Social Security numbers of all citizens and legal aliens authorized to work in the United States, so employers could verify the immigration status of job applicants. In February, President Clinton said he wanted to test such a system, but many civil liberties advocate, Hispanic organizations, and Chinese and Jewish groups have opposed such proposals, saying they could increase job discrimination.

A gradual reduction in legal immigration is suggested.

The argument that illegal immigration would undermine support for legal immigration upsets many immigration lawyers. "In essence, legal immigrants are being made scapegoats for the inability of Congress and the Administration to control illegal immigration," said Stephen Yale-Loehr, who teaches immigration law at Cornell Law School.

The proposed changes come just five years after Congress authorized increases in immigration for certain groups, including highly skilled workers. The 1990 law more than doubled the number of immigrants who could be admitted because of job skills, to 140,000 a year from 54,000. The Jordan commission proposes reducing the number to 100,000, on the ground that no more are needed.

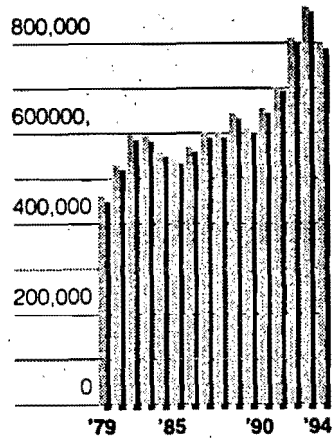
Commission members said they would also recommend eliminating the annual allotment of 10,000 visas for unskilled workers seeking jobs in the United States. The commission concluded that these immigrants compete directly with unskilled American workers and young people entering the labor force. In addition, panel members said that hundreds of thousands of welfare recipients would soon be looking for jobs if, as expected, Congress imposes tough work requirements as part of a bill to overhaul the welfare system.

Many unskilled immigrants work in restaurants and home-care jobs, helping people who are elderly or disabled. About 79,000 unskilled workers are on the waiting list in this category. The Government is now issuing visas to people who have been waiting five years.

Ms. Jordan, the chairwoman of the commission, is a professor at the University of Texas in Austin. The other members of the panel, besides Mr. Morrison, Mr. Fuchs, Mr. Leiden and Mr. Ezell, are Richard Estrada, an associate editor of the editorial page of The Dallas Morning News; Robert Charles Hill, a lawyer in Washington; Nelson Merced, a former state legislator in Massachusetts, and Michael S. Teitelbaum, a program officer at the Alfred P. Sloan Foundation in New York.

BY THE NUMBERS

Legal Immigration



In addition to these immigrants, 2.7 million illegal aliens have become legal permanent residents under a 1986 law.

Source: Immigration and Naturalization Service

The New York Times

2 of 2

Ready to Retaliate

By Mike Causey
Washington Post Staff Writer

If Congress rewrites the federal retirement contract, some angry workers say they will strike back by canceling payroll deductions for U.S. Savings Bonds, boycotting government-backed charity fund-raisers and refusing to work unpaid overtime.

Some of the federal workers are fed up with downsizing, reinventing government and the Clinton administration diet pay plan that will cost workers an estimated $85 billion—in raises they are due but won't get—during the next five years.

Meantime, congressional Republicans—apparently out to make the Clinton administration look good by comparison—are pushing a plan to force workers to pay more, and get less, in retirement benefits and pay a bigger chunk of their health insurance premiums.

Some frustrated federal workers say that if politicians want to save money by cutting pay and benefits, it may be that two can play that game.

Today's lead Monday Morning Quarterback notes that most of the money workers have in their federal 401(k) plans is invested in U.S. Treasury securities rather than in the higher-risk, higher-reward stock and bond funds. He writes:

■ "Possibly the following suggestion would encourage Congress to stop penalizing the federal employee. [What if] all federal employees and retirees with money in the G-fund (Treasury securities) of the thrift savings plan withdrew their contributions and invested them in one of the other two funds available? This would cause the Treasury to lose $19.6 billion, the amount they had invested in the G-fund as of May.

"It would cost the employee a loss in interest for a short run, but in the long run it might put us in the driver's seat on proposed changes in the retirement system and in cost-of-living adjustments for retirees.

"Federal employees must use every possible action at their disposal to make Congress honor its contract with federal employees and stop using us as pawns in the ongoing budget chess game. If they really want to cut the budget, why don't they start with their own pork barrel payoffs to special-interest groups for financial support so they can get and stay in office?"

John J. Vallorie, Arlington

■ "I recently got a letter (to my home address) from the Democratic National Committee. It was an appeal for funds. As you can see from the attached letter [too long to reprint here] I have illustrated how I am already supporting, as a federal civil servant, such bold ideas as reinvention of government, tax cuts for the middle class, affirmative action, etc.

"I have told the Democratic National Committee I won't give them a nickel, and why I won't. My next step is to cancel my payroll deductions for the Combined Federal Campaign. I plan to give just as much to charity next year, but I don't want any agency 'key person' or cabinet head, Congress or the administration, getting any credit for a record year of giving.

"If the Republican National Committee dares write asking me for contributions—one wonders if they and the Democrats trade lists?—I will tell them the same thing. Thanks but no thanks! With friends like you guys, who needs enemies?"

Frank R., Annandale

■ "My husband is a federal government worker. He's devoted to his job and routinely works 10-hour days, five days a week. His lunch hour is 30 minutes. He's never even thought about applying for overtime or compensatory time off.

"I recently put a pile of newspaper clippings, outlining anti-federal worker budget cuts, on his plate. I told him if he wants to continue to work unpaid overtime for bosses who are trying to ruin his retirement, he can do his own cooking. He got the point. Now he's a 40-hour-per-week bureaucrat!"

Devoted Wife, Lousy Cook

Monday, June 5, 1995

Wash Post 4/29

Military Short of Victory in War on Bias

Numbers Suggest Leadership Posts Elude Minority Servicemembers

By Bradley Graham
Washington Post Staff Writer

Several dozen newly promoted rear admirals, meeting in Washington this month for a training seminar on affirmative action, were asked to assess the "overall equal opportunity climate" in the armed forces. They rated it better than good.

By contrast, African American women in the military, asked the same question in survey after survey, have scored the climate below average.

What military personnel think the services have done in their 47-year effort at integration depends on a servicemember's rank, sex and skin color.

As a new national political debate takes shape over the future of affirmative action programs, President Clinton and others have pointed to the military as a superlative model for recruiting, training and promoting minorities. The percentage of African Americans in enlisted ranks has grown from 7 percent to 22 percent since President Harry S. Truman ended segregation, and the number of black generals or admirals has risen from zero to 45 (of a total 907).

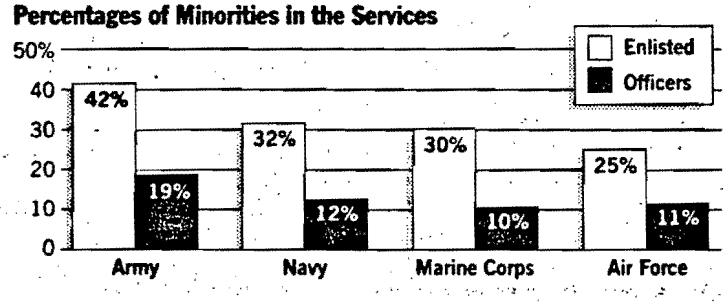
Military promotion boards go to special lengths to consider minority candidates; the armed forces offer scholarships, remedial education and other programs to help some minority servicemembers overcome disadvantaged backgrounds; and discriminatory behavior by a military officer easily can short-circuit a career.

But other aspects of the Pentagon's affirmative action record have provided little to cheer about for many in uniform who are not white or high-ranking, according to numerous surveys and reports. Minority servicemembers, for instance, tend

See DEFENSE, A10, Col. 1

MINORITIES IN THE ARMED FORCES

Percentages of Minorities in the Services



Number of Minority Generals and Admirals*

	African American	Hispanic	Other minority	Total (all races)
Army	28	2	3	323
Navy	8	3	2	227
Marine Corps	2	0	0	71
Air Force	7	5	4	286

* Includes several who have been recently selected for promotion.
SOURCE: Defense Department

THE WASHINGTON POST

1 of 3

282

Avoiding political weaknesses, but still unable to please many.

General's recommendation that the Defense Department drop all such pricing preference programs — unless it can be verified that they will be able to perform at least half of the required work. "The I.G. recommends that we eliminate it everywhere," Ms. Spector said. "His position is that we would save money and streamline the process. But if we do so we could not make our 5 percent small disadvantaged business goal."

In the end the Pentagon program, and its possible elimination, have left a bitter taste in the mouths both of officials of white companies that have been protesting the preference, and of officials affiliated with firms that have received it. Both sides say they favor policies to spur the development of minority companies. But both express disappointment over the way this particular program was handled.

"It was a great idea," David Smith said. But he said the Pentagon decided to "push it not thinking that somebody might have a problem with it."

"And that somebody happens to be other small business who have the same problems with raising capital and developing a market, but don't get the preference."

"Had more thought been put into the program before it got going," Mr. Smith said, "they could have minimized a lot of these problems."

The Washington Times ★ MONDAY, MAY 1, 1995

Wilson to ax affirmative-action panels

By Sandy Harrison
LOS ANGELES DAILY NEWS

SACRAMENTO, Calif. — California Gov. Pete Wilson soon will announce he's about to begin dismantling state affirmative-action programs by getting rid of dozens of advisory panels that help implement the programs, administration sources say.

Mr. Wilson, who rode an anti-illegal-immigrant initiative to reelection last year, has selected as one of the major platforms of his presidential bid the dismantling of the state's affirmative-action programs.

The programs, which state documents show have resulted in millions of dollars in contracts and thousands of state jobs for women and minorities, are under fire on several fronts from opponents who claim they discriminate unfairly against white men, creating resentment and division.

"Let us undo the corrosive unfairness of reverse discrimination," Mr. Wilson said recently at the state Republican convention in Sacramento, where he announced his anti-affirmative-action stand.

But, the programs and the results they've achieved are strongly supported by the state workers labor union, the California State Employees Association and others who say they'll resist the governor.

"We are not going to go back on our support for affirmative action," said CSEA spokesman Drew Mendelson. Assembly Speaker Willie Brown Jr., San Francisco Democrat, has promised to lead the fight against any dismantling of the programs.

"I am wary of those who demand that our laws should be colorblind, when so much of our society is clearly not," he said.

Administration sources say the governor now is reviewing dozens of advisory panels created within state departments to determine which exist primarily to implement affirmative action.

The panels, usually a mix of state employees and private-sector volunteers, encourage and help monitor the numbers of women and minorities hired, promoted and contracted by the state.

The governor wants those dealing solely with affirmative action disbanded, while those that deal with affirmative action as well as other duties will be ordered to quit spending time on efforts to promote the hiring of women or minorities, administration officia said.

"If it's there to give advice c how to better serve women or m nority communities, then it wi not be abolished," an administr tion source said. "But if it's just t give preferential treatment in hi ing, that will be stopped."

The largest agencies, such a the Youth and Adult Correction Agency and the Health and We fare Agency, have the most com mittees giving advice on ways hire and promote women and m norities, state officials said.

But Linda Morrison, affirm ative-action coordinator of th California State Employees Ass ciation, said it may be difficult fo Mr. Wilson to force state worke to quit advising affirmative-actio officers on hiring issues.

"Advisory panels were set up t help guide department heads an affirmative-action officers. The can be eliminated, but affirmativ action is still the law and thes people can still offer guidance she said.

Mr. Wilson is supporting a pro posed state constitutional amend ment that would ban race- and sex based government programs.

US Today 4/14/95

On affirmative action, Clinton on middle road

By Bill Nichols
USA TODAY

ANALYSIS

LITTLE ROCK — President Clinton's review of affirmative action policies has drawn fire from the political left and right, with the major charge being he is bending his true convictions to match the nation's conservative mood.

But a review of Clinton's record as Arkansas governor finds virtually the same middle course on diversity issues that he now is trying to chart as president.

When a White House review of affirmative action programs is completed in the next few weeks, aides say Clinton will likely end a few programs, make a major speech calling for a peaceful national discussion on the issue and call for a blue-ribbon commission to recommend future policies.

Clinton will not try to satisfy everyone on this polarizing issue, White House officials say, but wants a speech and an approach that will at least speak to the concerns of all.

"What we have done for women and minorities is a good thing," Clinton told California Democrats last Saturday. "But we must respond to those who feel discriminated against . . . This is a psychologically difficult time for the so-called angry white man."

That approach, longtime observers here say, is all but identical to what Clinton has done throughout his political career. In 11 years as governor and two as attorney general, he strongly supported diversity but opposed quotas and was always aware of the issue's downside among the conservative white males he needed to get elected.

"I always thought Bill embodied the very best way to do it," says Max Brantley, editor of the weekly *Arkansas Times*, who's both praised and criticized Clinton over the years.

"He created true diversity but the people that he hired, almost without exception, were quality people."

Ernest Dumas, former editorial page editor at the *Arkansas Gazette* and another non-partisan Clinton watcher, agrees. "This is the one consistent principle in all of his public life."

By J. Scott Applewhite, AP
CLINTON: Reviewing affirmative action

Clinton's longtime friends say he's always been obsessed with the issue of race, having been raised amid the turmoil of the small-town segregationist South. And being the son and grandson of working women made him sensitive to gender issues as well.

He has never, however, been a revolutionary or one to wage high-profile fights. And to some in Arkansas, his moderate approach was too slow.

Clinton was criticized particularly for his failure to pass a state civil rights law, offering protections for businesses with fewer than 15 employees, during his five terms as governor though he made a concerted effort just before embarking on his run for the presidency.

State Sen. Vic Snyder, one of the sponsors of the civil rights bill that failed in 1991, says, however, that Clinton could have passed a watered down bill but chose not to.

"He told us that if we wanted to keep fighting the good fight, he was perfectly willing to do that and accept the loss," Snyder says. The Legislature, embarrassed by national publicity on the issue, finally passed a civil rights law in 1993.

And though Clinton helped put into force a voluntary 10% set-aside goal for minority firms bidding for state contracts, critics say that goal was seldom met because larger stumbling blocks — such as a historic lack of investment capital for minorities — remained.

Little Rock NAACP President Dale Charles says blacks in Arkansas "were more or less satisfied" with the modest progress Clinton made on civil rights. "They didn't push for anything more," he says.

"I would say that we have to really hold him accountable and not let him back out of affirmative action because the middle class male feels like they're receiving a pinch."

Overall, however, Clinton is widely credited with historic advances in hiring minorities and placing minority members on state boards and commissions in a state that, when he was first elected governor, was just 20 years removed from the 1957 crisis at Little Rock's Central High School.

During five terms, Clinton was able to:

▶ Put blacks and women in the top tiers of government, including two black state Supreme Court judges and the first black head of the state Finance Authority.

▶ Appoint blacks to every major board and commission.

▶ Increase fivefold the amount of state highway contracts with minority firms.

Still, Clinton never lost sight of the possible political dangers of affirmative action, a sense he carried with him as president of the moderate Democratic Leadership Council and as a presidential candidate.

Says Dumas: "You can argue that he was better at (affirmative action) than any other southern politician of his generation. But he also never hurt himself politically."

Washington Post 4/14

Gay Rights Group Encouraged by Hill Survey

Most in Congress Say Their Personnel Anti-Bias Policies Cover Sexual Orientation

Associated Press

More than half the members of the Republican-led 104th Congress have established anti-discrimination policies in their offices to protect gay employees and job applicants, according to a gay rights lobby.

The Human Rights Campaign Fund polled all 535 members of the House and Senate and found 287 would confirm in writing that sexual orientation is not a consideration in the hiring, promotion or firing of employees in their congressional offices.

This represents a slight decline from the Democratic-led 103rd Congress, when the campaign fund found that 296 members had such policies. Yet the campaign fund, the nation's largest gay rights group, sought to portray today's announcement in a positive light.

"It is encouraging that the critical bloc of moderate swing votes in this Congress supports the concept of equal treatment for gay Americans," said Elizabeth Birch, executive director of the fund. "We often hear from a virulent minority of anti-gay extremists, but the majority of this Congress has taken a personal stand against discrimination."

The fund found that 223 representatives and 64 senators would confirm such anti-discrimination policies. Of those, 62 were House Republicans and 24 were Senate Republicans.

House Speaker Newt Gingrich (R-Ga.) and Majority Leader Richard K. Armey (R-Tex.) do not include sexual orientation under their nondiscrimination policies, but Senate Majority Leader Robert J. Dole (R-Kan.) does, according to the campaign fund.

Last year, the fund found 225 House members and 71 senators who had such anti-discrimination policies. Of those, 58 were House Republicans and 24 were Senate Republicans.

The fund began seeking anti-discrimination pledges from House members after a furor in 1993 when three Oklahoma congressmen—Republicans Ernest J. Istook Jr. and James M. Inhofe and Democrat Bill Brewster—told the Tulsa World newspaper that they would not hire gay people for their congressional staffs.

Inhofe, now a senator, said hiring an openly gay person for his staff would be "disruptive in terms of unit cohesion"—terminology reminiscent of the Pentagon's old argument against allowing openly homosexual people in the military. Istook said his decision was based on ideology, not prejudice.

Then, Gingrich—whose half-sister, Candace, is openly gay—told the Washington Times that requiring a lawmaker to hire homosexuals, or at least barring a member from discriminating based on sexual orientation, could be "against his religion."

Under House Rule 51, members cannot make job decisions based on a person's race, color, national origin, sex, disability or age. Sexual orientation is not mentioned.

Federal personnel law, however, prohibits discrimination and the Office of Personnel Management has taken the position that the prohibition covers discrimination on the basis of sexual orientation. Congress recently made itself subject to fair employment and civil rights laws that apply to the executive branch and the private sector.

PHOTOCOPY
PRESERVATION

Battleground Chicago

Report from the Front: How racial preferences really work—or don't

THE GERMANS AND the Irish came first. Then the Italians and the Poles. White ethnics *were* Chicago, really. They walked the beat, collected the trash, built the city. But Chicago's most controversial migration happened later, during and after World War II. Hundreds of thousands of Southern blacks, fleeing enforced segregation, moved in. And Chicago, after absorbing so many other newcomers, resisted. The stage, familiar in cities both North and South, was set: standoffish whites and shut-out blacks. Mayor Richard J. Daley, whose 21-year reign began in 1955, kept African-Americans out of his legendary machine, closing off contracts and patronage jobs.

MARK SEGAL—TONY STONE

Then came another era, one first of civil rights, later of quotas and set-asides. And blacks tried to regain lost ground—some-

The state of affirmative action in Chicago—long-frustrated blacks, newly frustrated whites—tells us much about the escalating national debate over racial and gender preferences in American life.

As always, it is a debate where both sides have a point, yet passionate polemics from the right and the left fail to explain how affirmative action really works. To cut through the tangle, NEWSWEEK examined four Chicago institutions (the city police, a university, a minority contractor and a major company). At times, affirmative action means rigid quotas, which are simultaneously effective and destructive. In some cases, the profit motive drives aggressive minority recruitment. In others, success results only through an unusual convergence of impossible-to-legislate human factors. Here are the real faces—the real winners and losers—be-

MARCIA CURTIS—AP

Maybe so, but Wilson's smooth conversion—and decision to move toward a formal presidential candidacy—underscores affirmative action's appeal to GOP politicians. They see it as a way to prove their conservative bona fides to the rank and file. They also see it as a classically divisive "wedge issue," the kind that forces your foe to choose which constituency he wants to offend—in this case, either suburban white swing voters or traditional liberals. "It's a winner for us any way you look at it," says Republican strategist Bill Kristol.

The NEWSWEEK Poll shows why. The chasm between blacks and whites is deep, though minorities are more dubious of preferences than the rhetoric of their most vocal leaders suggests. By a 79-14 margin, whites oppose racial preferences in employment or college admissions; minorities support them by a 50-46 margin.

Political bleeding: The affirmative-action issue is tearing at the Democratic Party, which lost the white male vote by a breathtaking 62-36 margin in the 1994 elections. The party's right wing is in open revolt. The Democratic Leadership Council, a group of self-described moderates, has become an anti-affirmative-action cell. When he assumed chairmanship of the DLC earlier this month, Sen. Joseph Lieberman of Connecticut declared that race and gender preferences were "patently unfair."

STEVE STARR—SABA

Surfing political waves: *Buchanan and Wilson moved into the GOP presidential fray last week, both making the case against affirmative action*

The Democratic left is answering back. Jesse Jackson led a rally in New Haven last week to protest Lieberman's remarks. "We submit to the senator of this state," Jackson said, "that we have marched too long, died too young, bled too profusely, been to too many funerals of young mothers, to go back now." The state's other senator, Democratic National Committee Chairman Christopher Dodd, backed Jackson's view.

Caught in the middle, the Clinton administration is doing the usual: emitting a cacophony of mixed signals. Some White House officials privately complain that GOP candidates are exploiting race. Elsewhere the administration is reviewing affirmative-action programs—and has already turned down at least one, for student interns at the Commerce Department. A major speech on the issue by President Clinton has been put off until next month. So last week the administration sent forth its leading civil-rights attorney to defend affirmative action—but only speaking for himself. Clinton, talking earnestly to college students, yearned out loud for a way to avoid divisiveness.

NEWSWEEK POLL

75% think that qualified blacks should not receive preference over equally qualified whites in getting into college or getting jobs

FOR THIS NEWSWEEK POLL, PRINCETON SURVEY RESEARCH ASSOCIATES TELEPHONED 752 ADULTS, MARCH 23-24. THE MARGIN OF ERROR IS +/- 4 PERCENTAGE POINTS. THE NEWSWEEK POLL © 1995 BY NEWSWEEK, INC.

Meanwhile, the Republicans are driving their "wedge." Charlie Black, top adviser to GOP contender Phil Gramm, linked the president to another California politician, the abrasively liberal Maxine Waters of Los Angeles. "In the end, Clinton will do whatever she tells him to do," Black said tartly. Jackson attacked from the other side, issuing a warning to the White House in a NEWSWEEK interview. "If they sacrifice justice on the altar of expediency, we will fight back," he said. "We will not stand idly by."

Among Republicans, there's no philosophical disagreement over affirmative action. But the GOP debate could get nasty just the same, if only over the question of who says "no" with the most conviction.

Claim to purity: Republicans are scrambling to up the antiante. A promise to abolish affirmative action was a centerpiece of Phil Gramm's announcement pageant last month. A day later—and the day before Gramm arrived in California for a state GOP convention—Wilson announced his support for the ballot initiative. Then, last week, columnist Pat Buchanan declared his presidential candidacy in New Hampshire and staked a justifiable claim to purity. He labeled his opponents "leap-year conservatives."

The Republicans have their own man in the middle, front runner Bob Dole. The majority leader has promised to introduce legislation banning racial and gender preferences in government programs. But Dole had long supported minority set-asides, and prides himself on his civil-rights record. This week he will host a three-hour meeting in his office to discuss a legislative course and try to do what he does best—broker a deal. Among those expected to attend: Democratic D.C. Delegate Eleanor Holmes Norton, former Bush White House counsel Boyden Gray and conservative black columnist Armstrong Williams.

That leaves Wilson, who seemed to be basking in the glow of his own possibilities. Though he hasn't yet officially announced, White House insiders consider him the greatest threat to Clinton's re-election. Jackson has a harsher view. "He's nothing more than a sophisticated George Wallace," he told NEWSWEEK. Hardly. Wilson is a social liberal in some respects, with a strong record of supporting abortion rights, gay rights and gun control. Lean and placid, carefully turned out last Saturday in a gray suit, the Yale-educated Wilson has always been adept at putting a bland face on middle-class anger. Voters seem to like the calm reflection of themselves he offers. It is a formula that Wilson has used to win in the past, and that he hopes to use in the affirmative-action wars ahead.

With ANDREW MURR *in Los Angeles*

Affirmative Action: Republicans hope it will drive a wedge between liberal Democrats and white swing voters

Race and Rage

BY HOWARD FINEMAN

ALL JANICE CAMARENA WANTED, SHE SAYS, WAS to attend English 101 at a convenient hour. For the commuting student at San Bernardino Valley College—a 25-year-old widow with three young kids—the only convenient hour was 11 a.m. But there was a problem. She was white—and the section was reserved for African-Americans. Bearing a neutral label, the class was actually part of a "Black Bridge" remedial program of writing instruction, career counseling

PAUL MORSE—L.A. TIMES

PRESERVATION PHOTOCOPY

LARRY DOWNING—NEWSWEEK

Another Clinton conundrum: *The president ponders his options*

and mentoring. She couldn't sign up.

So the other week Janice Camarena did what any red-blooded Californian would do: She sued. Now she's a test case for those who want to remove any trace of racial preference in the state's vast community-college system. The Black Bridge doesn't seem to be an egregious piece of race-based social engineering. Few would begrudge minority students special help early in college, and there were other sections of English 101. Yet Camarena's case briefly broke through the O.J. chatter on Los Angeles talk radio. "Everybody should have an equal chance," she says, "regardless of the color of their skin."

Surf's up: The color of their skin. Never far from the surface of politics, race is rising with raging force in the presidential campaign now beginning. A quarter century ago the issue was busing. In 1988 it was crime. Last week the floor of the House was the scene of vicious debate over welfare reform. Black Democrats hurled accusations of racism and Nazism, while victorious Republicans (the measure prevailed, 234-193) compared aid recipients to alligators and wolves.

But the most profound fight—the one tapping deepest into the emotions of everyday American life—is over affirmative action. It's setting the lights blinking on studio consoles, igniting angry rhetoric in state legislatures and focusing new attention on the word "fairness." When does fairness become "reverse discrimination"? When is it fair to discriminate on the basis of race or gender? Louder than before, Americans seem to be saying, "Never."

The issue is getting the most attention, naturally enough, in California. Colossal, diverse, the Golden State is where national trends are launched. The newest is a closely watched initiative with a PC-sounding name, the California Civil Rights Initiative. Likely to be on the state ballot next year, it would bar any form of affirmative-action preference—race, gender, ethnicity, national origin—in state hiring, contracting or education.

California Republicans have a knack for recognizing—and methodically speaking to—the resentments of white suburbanites. Richard Nixon summarized their angst in his 1968 campaign for "law and order." In 1980, Ronald Reagan won on the strength of antitax fervor created by California's Proposition 13 tax revolt.

Now Pete Wilson, a 61-year-old epitome of suburban solidity, thinks it's his turn. Last year the California governor capitalized on anti-immigration sentiment in his drive for re-election. Last month he announced that he would support the anti-affirmative-action initiative. Then last week he declared he had a "duty" to seek the White House in the name of "fairness" for people who "work hard, pay their taxes and obey the law." A key to Wilsonian "fairness": abolishing racial and gender preferences.

A master surfer of political waves, Wilson landed in Washington late last week for a round of political chores. In his first interview in the capital, he adroitly made the requisite concessions. He wouldn't "quibble," he told NEWSWEEK, with descriptions of him as a past supporter of affirmative action and minority "set-asides." He simply came to the conclusion recently that preferences were unfair and unworkable.

A Buzzword Defined

"Affirmative action" began when the Kennedy administration ordered companies doing business with the government to root out discrimination in their ranks. Now the phrase refers to a wide range of steps taken by colleges, corporations and government agencies to help minorities and women.

Recruiting: Aggressive outreach is the least controversial form of affirmative action. Many employers advertise job openings in African-American newspapers and interview at women's colleges.

Goals and Timetables: The Labor Department requires firms receiving federal contracts to establish hiring goals for women and minorities—and deadlines for getting there. Many universities set up similar targets for admissions and faculty hires.

Quotas: Goals sometimes lapse into rigid quotas in which employers or admissions directors must hit a specific number of minority hires or students.

PRESERVATION PHOTOCOPY

Christian Science Monitor
4/11/95

Clinton Calls for Improved Minority Hiring Strategy

It is within these two bookends that the administration is now trying to operate. "Affirmative action is not an end in itself; it is a means to a society that reflects those principles," said William Galston, deputy assistant to the president for domestic policy, at a conference Sunday. "It is one means among many; it must be seen in the full range of what we must and can do together to realize these principles."

Speaking to the California Democratic Party over the weekend, Clinton voiced empathy for the so-called angry white males who are feeling threatened by a changing economy. At the same time, he told the gathered supporters of affirmative action that "we don't have to retreat from these programs," while warning that Democrats must be willing to give up some programs that "don't work."

The complexity of the issue, a senior administration official says, means the president must exert "leadership" in sorting through it and in explaining to the public what he is doing. A government-wide review of affirmative-action programs, which started in February, is taking longer than expected and ultimately may result in the appointment of a presidential commission to study it further, the White House now says.

The president's last-minute decision to speak out on affirmative action during his California trip reflects the issue's saliency, particularly in that state. The national wave of anti-affirmative-action sentiment began in California, where a ballot initiative could effectively end set-asides and preference programs. California is also the state with the greatest number of electoral votes, making it crucial for Clinton's reelection chances and thus heightening the issue's importance in 1996.

AS Clinton spoke on the West Coast, his deputies were also speaking out on national television and at public forums. On the question of whether to form a commission on affirmative action, Vice President Al Gore stated that there were reasons for and against naming one.

At the second annual conference of the Communitarian Network here in Washington, Mr. Galston, the White House domestic policy adviser, began with a broad enumeration of how the administration has promoted "equality of opportunity." Examples included putting programs in place to immunize all children, fully funding child-nutrition programs, making the Head Start preschool program available "to all who need it," and making student loans more affordable and accessible.

But on the direct topic of affirmative action, Galston turned to the military as an example of successful diversification and integration. Half a century ago, he reminded listeners, blacks were excluded from most opportunities in the military. Even 20 years ago, after the Vietnam War, the military was "severely divided" along racial lines. The forces consisted of an enlisted corps that was largely black and Hispanic and a largely white officer corps.

How, then, have the armed forces come to be a successful model of diversification, integration, and inclusion, as Galston put it? He enumerated several strategies:

- Aggressive recruitment to make sure the applicant pool is representative of the public as a whole, "while maintaining not only high, but also rising standards of qualification."
- Institution of an enforceable and meaningful policy of nondiscrimination in promotions.
- Continuous training. "The military doesn't just assume that everyone who enters has the same level of training and makes an effort to determine on an ongoing basis who needs additional training."
- Promotion goals. "Not quotas, goals," Galston emphasized. The goal is to promote to the next rank a percentage of blacks and Hispanics not less than the percentage of the overall pool that is promoted. If the goal is not met, "questions are asked and if the answers are satisfactory, the results of the promotion decision stand."
- Attention to retention. Once someone is accepted, the military does what it can to make sure he or she succeeds, unlike many universities.
- Systematic attention to race relations through training courses. "To what extent can these military policies be extended to the rest of society, and to what extent should they? I don't know," Galston said. But "if it is possible to do it there, I think we ought to ask ourselves some hard practical questions as to whether it might not be possible to do it elsewhere."

Clinton Faces Wrath of Left And Right on Racial Hiring

By Linda Feldmann
Staff writer of The Christian Science Monitor

WASHINGTON

AFTER weeks of silence, President Clinton is emerging with a strategy on affirmative action – but one that is politically risky.

His still-nascent approach: Redefine the issue, broaden it, and defend those broader goals.

For much of the public, affirmative action has come to mean quotas, preferences, and unfair set-asides for minorities and women. For Mr. Clinton and his people, the bywords are becoming equality, opportunity, and antidiscrimination.

But therein lies the danger. From the right, Republicans are ready to pounce on any perceived defense of unpopular preference programs and use it as a wedge issue in the 1996 campaign.

From the left, the president could alienate a significant base of Democratic voters if he were to be seen as abandoning affirmative action, a central outcome of the 1960s civil rights movement. In addition, he could lose the respect of swing voters, if only because he could be seen as lacking the backbone to stick up for his beliefs.

undisputed," he said, "that [Pritchard's] condition precludes her from working as an engineer in the nuclear field. However by [her] own admissions, she is qualified and capable of working as an engineer in the non-nuclear field, as well as in numerous other jobs that exist at SCSI and elsewhere. Accordingly, [her] impairment does not substantially limit the major life activity of working."

The court further discounted Pritchard's claim that the employer and her supervisors perceived her to be disabled. It rejected the argument that the discharge stemmed from a "myth, fear, or stereotype" surrounding her depression.

Nelson remarked that depression, like many impairments, exists in degrees: "To hold otherwise would effectually render depression a disability per se, and would be inconsistent with the analytical framework articulated in the ADA and corresponding regulations."

The court also rejected a claim under Title VII relating to a male colleague with a similar problem who was kept on the job. Nelson said that the claim is based on nothing more than hearsay and fails to establish even a prima facie case of discrimination. A majority of engineering projects were nuclear-related, and Pritchard was well aware that job flexibility was a requirement, he said.

Teamsters

UPS CLERKS SUPPORT TEAMSTERS UNION IN VOTE HELD BY ARBITRATION ASSOCIATION

Operations clerks at United Parcel Service have voted overwhelmingly for representation by the International Brotherhood of Teamsters.

In a mail-ballot election conducted by the American Arbitration Association, the vote was 1,600 to 58 in favor of representation, according to the tally of ballots counted April 7. Approximately 2,300 workers were eligible to participate in the election.

The employees are part of a nationwide unit of clerks responsible for processing packages that have been misaddressed, damaged, or need special attention.

IBT President Ron Carey called the vote "a strong vote of confidence for the union."

The election grows out of several years of litigation over whether the clerks should be part of the broader unit of some 165,000 UPS drivers, package sorters, and other workers across the country already represented by the Teamsters.

In January, the U.S. Supreme Court rejected a joint plea by the union and UPS to review a federal appeals court decision upholding limits imposed by the National Labor Relations Board on the size of the Teamsters bargaining unit (6 DLR A-1, 1/10/95).

The Supreme Court let stand a March 1994 decision by the U.S. Court of Appeals for the District of Columbia Circuit affirming NLRB's refusal to permit the accretion of the unrepresented operations clerks to the existing larger unit. The board had barred the accretion because of doubts that the employees supported the union.

In 1987, the company agreed to the union's demand that all clerks be recognized as bargaining unit members. The new bargaining agreement contained a union security clause. One of the clerks challenged the deduction of union dues.

NLRB determined that the company and the union had violated the National Labor Relations Act by recognizing and accepting recognition for a bargaining unit where a majority of employees had not picked the union as their representative. The board ordered UPS to withdraw recognition from the union for the clerks until the union was certified as their exclusive representative.

An IBT spokesman said the operations clerks now will be covered by the nationwide contract agreement between the Teamsters and UPS.

Construction

OSHA EXPLORING WAYS TO IMPROVE SAFETY FOR FEDERAL CONTRACT WORKERS

Following up on one of its key goals for fiscal 1995, the Occupational Safety and Health Administration is exploring ways to improve safety and health conditions for federal contract employees, an agency spokeswoman confirmed April 10.

Under OSHA's goal to increase hazard abatement efforts, the agency proposed developing an executive order to be signed by President Clinton by the end of fiscal 1995 directing agencies to place safety and health performance criteria in their contracts of more than $1 million.

OSHA is attempting to circulate the draft, which outlines methods to implement the policy, to private industry groups to receive feedback on its proposals. Brolin added that the agency has no concrete time line for getting this policy up and running, noting that the policy has been a topic of discussion during past OSHA administrations.

BNA obtained a copy of the draft addressing incentives for improving safety and health on federally funded projects. This draft—dated February—represents OSHA's most recent discussion concerning this policy change, Brolin confirmed. The draft has been presented to OSHA Administrator Joseph

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A MINORITY WITHOUT MARCHING ORDERS

In the upside-down world of Capitol Hill, perhaps no one has endured a more crushing loss of power than have Democrats on the House Ways and Means Committee. Not only have they fallen from the pinnacle of the most influential committee in Congress; they have also experienced jarring change within the panel and in their party's leadership. Good-bye, Foley, Rostenkowski and health care reform. Hello, Gephardt, Gibbons and federal government downsizing.

And this at a time when the Republicans are forcing Ways and Means to move quickly on what may be the two toughest sets of policy changes in the House GOP's 10-part Contract With America: welfare reform and tax overhaul. Like punch-drunk fighters, Democrats have been slow to emerge from their corners and prepare to take on the newly muscular neighborhood toughs.

"We have taken our coats off and are starting to roll up our sleeves," Rep. Sander M. Levin, D-Mich., said recently after a day of work on both issues. "But I am worried that we need to accelerate our discussions. . . . There are only the beginnings of strong organization. And we have no marching orders."

Some Democratic Members and aides say that the Clinton Administration must share blame for the party's slow start. For example, Levin and Barbara B. Kennelly of Connecticut met on Jan. 12 with Mary Jo Bane and David T. Ellwood, the Administration's top strategists on welfare reform, to coordinate strategy on the eve of hearings in the Ways and Means Human Resources Subcommittee. The lawmakers, both of whom serve on the panel, said they were disappointed by the meeting.

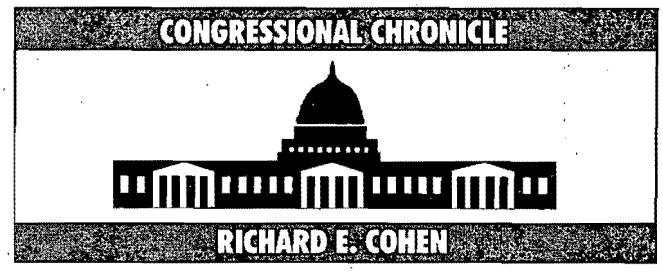
"They didn't give us any answers," Kennelly said. "We have to have answers soon. . . . I am amazed with how fast things are moving here." Some of the pending proposals, such as converting welfare to a block grant program for states and placing a two-year limit on welfare benefits, "are very big questions," she said. "We want to fix the current system. But to be simplistic is a cruel hoax on the public."

Two days earlier, in testimony to the committee, Minority Leader Richard A. Gephardt, D-Mo., grabbed headlines during an otherwise routine presentation of party views when he raised a longtime personal priority: simplifying the income tax code. A former Ways and Means member, Gephardt was co-author of the Democratic proposal that paved the way for the sweeping 1986 Tax Reform Act. But like other Democrats, he lately has advocated many steps for creative and more-complex use of the tax code to achieve social policy goals.

In response to a question from Ways and Means member Jim Ramstad, R-Minn., Gephardt said that he disagreed with the flat-tax plan offered recently by Majority Leader Richard K. Armey, R-Texas, which he called "unfair." But, Gephardt added, "the general concept of what he is doing is something I am interested in, and a number of Democrats will be working on an alternative so-called flatter-tax proposal" that would set a 10-11 per cent rate "without any complications" for most Americans. Gephardt plans to provide details in a Feb. 1 speech.

Although the Minority Leader emphasized that he was speaking only for himself, many committee Democrats were clearly surprised. "The idea has a lot of appeal on the merits," Robert T. Matsui, D-Calif., said. "But we are so enmeshed with other topics for the next six months. Then, we will face a fork in the road" on tax policy.

At a time when many Democrats are groping to explain what they stand for, Gephardt's freelancing pointed out how difficult a task they face. Despite his repeated denials, it's widely speculated that Gephardt may run for President again in 1996 or four years later; his comments only heightened the speculation. Meanwhile, he faces the rigors of leading a diverse and dispirited team on Capitol Hill.



Ways and Means Democrats must also grapple with major divisions in their ranks. On welfare reform, Harold E. Ford, D-Tenn., the top Democrat on the Human Resources Subcommittee, last year slammed the door on relatively modest changes proposed by President Clinton. Charles B. Rangel of New York, another subcommittee Democrat, might propose some tinkering with the status quo but appears likely to focus on attacking the GOP plan.

Levin, who survived a tough reelection challenge in an increasingly conservative suburban district, has said that he supports major changes, including the two-year limitation on benefits and added state flexibility. Committee Democrats face two options, he said. "I hope that we can find common ground with the Republicans," he said. "If not, we should come together decisively as a party." What would be "unacceptable," on both policy and political grounds, would be for Democrats to remain divided, he said.

But Gephardt, whose full platter includes the proposed balanced budget constitutional amendment and major organizational changes in the House, has only begun to focus on welfare. Sam Gibbons of Florida—who took the reins last summer as the top Ways and Means Democrat when chairman Dan Rostenkowski of Illinois was forced to step down because of a federal indictment—has little experience with the issue and is unlikely to take the lead on a welfare reform plan. He says that his top priority is assuring no increase in the federal deficit, a goal that most committee Democrats say they share. Gibbons must also contend with the long shadow of Rostenkowski, who was defeated on Nov. 8, and with internal jockeying for power.

Although the Democrats have been slow to get organized, they see some opportunities. Kennelly, who was elected last month as Democratic Caucus vice chairwoman, said that the GOP welfare bill could become "the mother of all unfunded mandates"—that is, a program imposed on state and local governments without the money to pay for it. "The role of the minority party is to raise the questions," she added, while acknowledging that the answers are not easy.

Democrats could also find salvation if Republicans overplay their hand or if Speaker Newt Gingrich's ethics problems or his aggressive style causes him to self-destruct. But for now, most Democrats have barely begun to understand the role of a legislative minority. None expect that it will take 40 years to regain House control. But the road ahead looks anything but inviting. ■

PRESERVATION PHOTOCOPY

CLINTON GETS READY FOR 1996 . . .

Slowly, President Clinton's 1996 campaign organization is beginning to take shape. The selection of Sen. Christopher J. Dodd, D-Conn., to be the general chairman of the Democratic National Committee (DNC) and the senior spokesman for Clinton's reelection campaign, and the choice of veteran DNC committeeman Donald L. Fowler of South Carolina to be its national chairman, overseeing day-to-day operations, took almost two months longer than was initially planned.

But at the White House, careful craftsmanship seems to be the order of the day, and for the moment at least, the chief contractor for the President's reelection effort is Harold M. Ickes, a deputy White House chief of staff.

The impending elevation of Doug Sosnik, a legislative affairs and political operative, to be the director of the White House's political affairs office, would help to cement the White House's ties to the DNC. Sosnik was Dodd's administrative assistant before he joined the Clinton team in 1994, and not coincidentally, an Ickes lieutenant.

Ickes and others in the White House believe that Clinton should be receiving more advice from Democratic political consultants who are not veterans of his 1992 campaign. Presidential pollster Stanley B. Greenberg, whose lucrative contract with the DNC has come under some criticism in the aftermath of the Democratic disaster on Nov. 8, is likely to remain the President's chief pulse taker. But Clinton has also met in the Oval Office with Mark S. Mellman, who runs a Democratic polling firm in Washington.

Mandy Grunwald, the chief media adviser at the White House for the past two years, will also have to share the limelight. A partner at Grunwald, Eskew & Donilon, she coordinated the creative team of about half a dozen political consultants and commercial advertising executives who produced spots for Clinton's 1992 general election campaign.

But after the advertisements crafted by Grunwald's firm failed to reverse the slide that Clinton's health care package took in the polls last year, Ickes sought the advice of David M. Doak and Robert M. Shrum, the two principal partners in Doak, Shrum, Harris, Carrier, Devine, the Washington-based Democratic media firm. Their firm produced the final series of ads in the Administration's campaign for health care reform—two-minute spots that featured Clinton speaking on the issue from the Oval Office. Although these ads were also unable to boost the public popularity of the Administration's plan, Clinton and Ickes were pleased with their content. Shrum, an accomplished wordsmith, has also built ties to the Clinton White House by contributing ideas for some of the President's speeches.

Given the competitive nature of media consultants, it's not likely that Grunwald and the Doak, Shrum firm will find it easy to share the responsibility for producing Clinton's reelection advertising. Their rivalry over Clinton's health care ads and the fact that in the 1994 Ohio Senate race, Democratic nominee Joel Hyatt dropped Grunwald's firm as his media consultant midway through the campaign in favor of Doak and Shrum have created some friction between the camps.

"Both are willing to be in charge, but I'm not sure either is willing to be involved in a secondary role," a Democratic political operative with ties to the White House said. And ultimately, the advertising in a presidential race needs to be directed by a single entity with clout in the campaign hierarchy. Then-Vice President George Bush was well served in 1988 when former GOP political adman Roger Ailes held tight reins on the production of the spots for his presidential campaign, but not so when he tried to set up a committee to make commercials for him in 1992.

Grunwald continues to be one of Hillary Rodham Clinton's trusted advisers, and she is well-thought-of for her unstinting loyalty to the First Family. But should the President bring in Doak and Shrum to handle his reelection advertising, it would be a important sign of his willingness to broaden his inner circle of political advisers. Doak and Shrum, after all, were the media strategists for Sen. Robert Kerrey, D-Neb., when he ran an aggressive campaign against Clinton for the 1992 Democratic presidential nomination.

Another key player in the President's reelection campaign is likely to be Commerce Secretary Ronald H. Brown. Although he has brushed aside suggestions that he will leave his Cabinet position to take a senior position in Clinton's 1996 campaign, he's a good bet to become the chairman of the President's reelection effort. Brown joined Ickes at the Jan. 11 meeting at the White House in which Dodd and Fowler ironed out the details of their joint operating arrangement at the DNC.

Cabinet Secretaries are often reluctant to return to the political trenches, but recent history shows that when the President calls, they obey. Former Secretary of

PRESERVATION PHOTOCOPY

. . . IN THE HOUSE THAT ICKES BUILT

State James A. Baker III was disinclined to step down from the world stage in the summer of 1992 to become Bush's White House chief of staff and de facto reelection czar, but he couldn't turn down the overture from the Oval Office.

The only potential hitch in Brown's ascension is the news media's interest in his past business deals. Recent reports have raised questions about one of Brown's former business partners, who paid off $190,000 of Brown's personal debts last year, and about how a wealthy Brazilian businessman arranged a loan for a friend of Brown's to buy a townhouse that Brown owned.

The White House doesn't believe that these reports are serious. The Justice Department had already looked into the loan, but a senior Clinton adviser said now that the investigating committees of Congress are no longer in the friendly hands of Democrats, "there is a general concern that Republicans will want to pull him up and make headaches of this stuff."

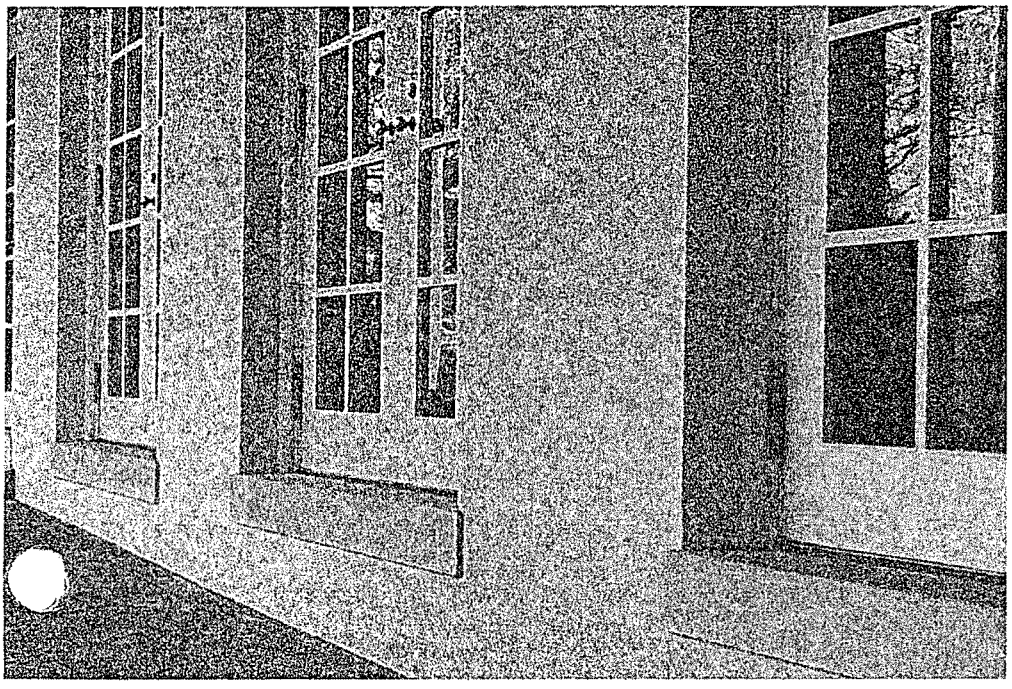
Nevertheless, Clinton's strategists say that the President values Brown's political counsel, and his chairmanship of the DNC during the Bush years is still well regarded by Democratic pols.

Another political asset that Brown brings to the table is his ability to raise campaign funds. With the DNC struggling to erase a $4 million debt and Republican fund-raising prospects looking bright in the wake of the party's success last November, Clinton's reelection effort will need such skills more than ever.

Although the DNC managed its resources poorly during the past two years, Terence R. McAuliffe, its outgoing finance chairman, was widely praised for raising a record amount of money for the committee during a midterm election cycle. Clinton has tapped McAuliffe to be the finance chairman of his reelection effort, and he'll have a very active hand in overseeing the DNC's finances as well.

Most of these Clinton advisers share ties of some sort to Ickes. Fowler and Ickes are both veteran DNC members who have worked together to craft many of the party's rules for selecting its presidential nominee. Fowler was also the first prominent southern politician to back Brown's pursuit of the DNC chairmanship after the 1988 elections; Ickes was one of Brown's key supporters.

Brown and Ickes are long-standing allies, from the time they worked on Massachusetts Sen. Edward M. Kennedy's unsuccessful challenge to President Carter's renomination in 1980. They also worked together on Jesse Jackson's bid for the 1988 Democratic presidential nomination.



Ickes got to know Doak and Shrum when their firm handled the advertising for former New York City Mayor David N. Dinkins in his 1989 and 1993 campaigns. Ickes, a New Yorker, was the legal counsel and a senior strategist for both of Dinkins's races.

Sosnik was Ickes's top staff aide in helping to coordinate the Administration's political strategy for the midterm elections and was his choice to head up the White House political affairs office. As the DNC's finance chairman, McAuliffe developed a good working relationship with Ickes, and each has a healthy respect for the other's political abilities.

When a President seeks a second term, his campaign has to be run out of the White House. Its staff has the ultimate control over the President's schedule and what he will say on the hustings.

Bush initially tried to split the authority for his reelection bid between the White House and his campaign organization, and as a result, key decisions weren't made in a timely manner and the two staffs sometimes operated at cross-purposes.

That's one reason why Ickes will be staying put at the White House to help direct Clinton's reelection campaign. The other is the government ethics rule that would bar Ickes from communicating directly with the President and his White House aides for one year if he left the White House to take a senior position in Clinton's campaign apparatus.

Ickes was handed responsibility for developing and executing the White House's strategy on three major challenges that confronted the Administration last year: damage control on the Whitewater affair; winning passage of health care reform, Clinton's top domestic policy initiative; and stemming Democratic losses in the midterm elections. Although many Democrats inside and outside of the Administration argue that Ickes shouldn't be held responsible for the White House's performance on these fronts—indeed, he's still at the plate after three strikes—the setbacks have cost the President plenty.

Whether Ickes can engineer Clinton's political comeback any better than he could push through health care reform is a reasonable enough question. At this point, Clinton may well need something that Ickes isn't: a miracle maker. ■

PRESERVATION PHOTOCOPY

A GENERATION THAT'S KILLING ITSELF

PHILADELPHIA—Violence by youth, violence against youth—concern about its ferocity, emblematic of our society's lost innocence, is ricocheting across communities from coast to coast.

Every day in the United States, on average, 14 children are killed by guns. From 1986-91, the homicide rate among youths age 14-17 soared 68 per cent.

The issue was dramatically crystallized in Philadelphia by the senseless horror of a baseball-bat murder that was perpetrated in November by a gang of teenage marauders from suburban Montgomery County. Their victim, 16-year-old Eddie Polec, was brutally slain in front of his church in a middle-class section of Northeast Philadelphia.

The Philadelphia Inquirer then did the unusual: The newspaper invited young people themselves, students from the city and across the region, to submit letters in which they described their experiences with, and reactions to, the epidemic of youth-on-youth violence.

The response from young people was overwhelming—in all, the newspaper received more than 1,500 letters. Some replies, reported the *Inquirer*'s Chris Satullo, were scrawled in angry black pencil, others in looping pen strokes. Yet others were composed on personal computers.

"It's time," a 14-year-old student writes, "for the young people to take the initiative, stop the madness, stop the violence."

It's not possible to read the three pages of letters from young people that *The Inquirer* printed without being moved by their heartrending pleas for peace and tranquillity, their condemnation of indifference on the part of adults and society at large, their pointed critiques of unfettered violence on television, in film and in comics.

"Just about an hour before Eddie Polec's death, I saw him talking and joking with his friends, so full of life, and only days later I saw him lying in a casket, lifeless and pale," wrote Rebecca Currie, one of the slain youth's classmates at Cardinal Dougherty High School.

"I am appalled by the hostility and hatred in our society," wrote Michele Knobbs. "There is no respect for human life anymore. Violence is everywhere."

From Camden, N.J., just across the Delaware River, 14-year-old Brian Percell wrote: "Violence in Camden is a bitch. You can't even walk to the store without someone getting killed or hurt. . . . I have known many innocent children who have been killed or hurt. Some as a result of cross fires or accidents or gang shootings. . . . It is probably difficult for any grown-up to understand the pain I feel inside. Nobody wants to talk or listen anymore."

One of the most graphic and dramatic responses came from an 11-year-old, Adelle Crump, a student at Holy Cross School in Philadelphia: "Drip! Drip! Drip! More tears fall from another parent's face after another child has been beaten, shot, stabbed or raped to death. I'M SICK OF IT! Yeah, you say cartoons are safe for us, but every day I turn on that television, why do I see blood?"

Christina Johnson, a 14-year-old student at Masterman High School in Philadelphia, wrote: "My generation is slowly killing itself. . . . It's time for the young people to take the initiative, stop the madness, stop the violence."

The young people and the adults who care about youth-on-youth violence should get a hefty boost as a four-part Bill Moyers special for PBS—*What Can We Do About Violence?*—debuted on public television stations across the nation this month.

The Moyers series is heavy on grass-roots examples of young people who are actively involved in efforts to stem violence on the streets, in schools and at home.

Five-to-7-year-olds living in shelters in Ann Arbor and Battle Creek, Mich., describe growing up in homes where they were physically, sexually and emotionally abused. At a "Kid's Club" support group developed by the University of Michigan's clinical psychology department, these young victims are encouraged to talk about the abuses that, untended, could cause them to engage in violent acts when they grow up.

From New York City, the Moyers series reports on conflict mediation in two new experimental high schools, showing how young people are involved in helping to settle disputes and curtail violence.

The series starts with the story of James Darby, who was murdered in New Orleans on Mother's Day 1994, shortly after he sent a letter to President Clinton in which he pleaded with him to stop the killing in his neighborhood. The segment includes interviews with Darby's friends and family, and those who know his alleged murderer.

A separate but related PBS broadcast—an installment of the *Frontline* series titled *Does TV Kill?*—aired the day after the debut of the Moyers series.

Television ratings-watchers may scoff at these efforts. PBS, they'll note, is likely to reach a very thin segment of national audiences with its story on violence's impact and potential remedies. Meanwhile, the commercial networks and cable television—not to mention local news broadcasts—will carry on with their usual menus of mayhem and murder.

But a broad alliance of public broadcasters, joined by private foundations and national and local civic organizations, has launched a nationwide "Act Against Violence" campaign. Starting with the Moyers series, the coalition is pledging at least two years of radio and television programming, along with national teleconferences, to exchange ideas and community and school-based activities to stem the surge of youth-on-youth violence.

It's only a start, and it seems to have missed an opportunity—at least initially—to link up with local newspapers whose editors and editorial boards are also alarmed by the tide of mean violence in our communities. Still, it's possible, finally, to report that the outlines of a concerted and caring national antiviolence effort are coming into focus. ■

PRESERVATION PHOTOCOPY

The Myth of Meritocracy

Opinion: Why do racial preferences get us so steamed?

BY ELLIS COSE

HAS AFFIRMATIVE ACTION BETRAYED THE DREAM OF A meritocracy? Will eliminating it finally put Americans on the path to a colorblind, gender-neutral Shangri-La where personal achievement is honored and favoritism defunct? Critics from across the political spectrum argue that it will, as they echo Sen. Jesse Helms's observation that affirmative action "flies in the face of the merit-based society [envisioned by] the Founding Fathers."

Putting aside the question of whether the Founding Fathers really believed a society that consigned most blacks to slavery was "merit-based," the argument that equates opposition to affirmative action with a quest for a meritocracy rings false. It assumes that Americans agree on a definition of a meritocracy, that we desire a meritocracy and that we have a tangible notion of how to bring one about.

None of those propositions is true. Determining real merit is so difficult that we generally find ourselves focusing on test scores. Much of the case against affirmative action ends up being a case for people who test well as opposed to people who don't. But good as tests might be at measuring certain types of intelligence, few people believe they assess overall merit well. No one, for instance, would propose choosing a chairman of a corporation—or even a department head—solely on the basis of a test.

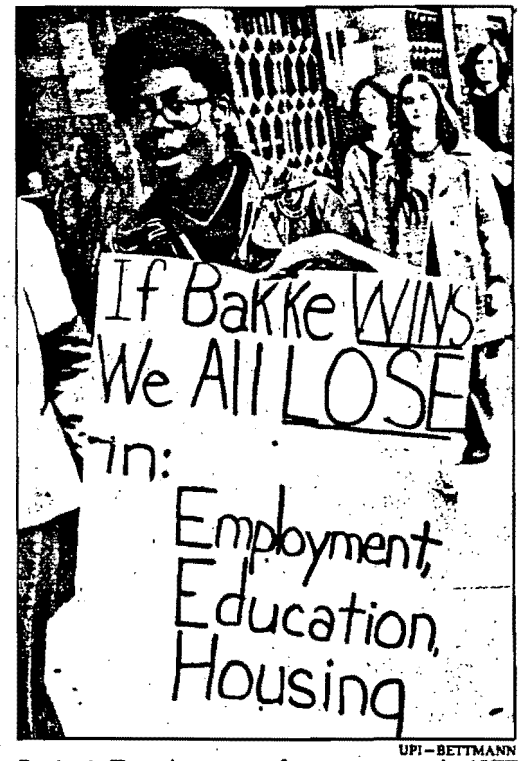
"There are a lot of factors, if we're honest, that we take into account in making any decision," observes UCLA chancellor Charles Young. "A meritocracy that was thoughtless, that looked at only one aspect, just the brain and nothing else . . . would be dullsville."

Most Americans intuitively agree. No angry movement has surfaced, for instance, to protest colleges' offering admission to star athletes or sons and daughters of alumni—even if the beneficiaries are not the most "qualified," and even though a majority of people say they oppose such programs in principle. We go along with them anyway, apparently because we understand that academic merit is not the only relevant consideration.

Much the same attitude prevails in the workplace. The Justice Department has sued Illinois State University for blatantly favoring minorities and women in a janitorial-training program; but virtually no one complains that the janitor's test gives extra points to veterans.

Though many of us claim to reject group preferences in general, we seem more annoyed at some than at others—and particularly at those that appear indefensible. To most Americans, veterans seem more deserving of a group privilege than people who were merely born a particular color or sex. Though no one assumes that veterans wield a meaner mop, people do feel that society owes them something. And they are therefore granted an advantage in employment, even if they are not, by some objective measure, the best candidates for the job.

Undistinguished students related to a university's alumni (so-called legacies) are granted group preference not on the basis of anything they have accomplished but simply because they (and their connections) are deemed to have value—more value, at any rate, some assume, than students whose only apparent contribution is that their group was once "oppressed." And unlike students who win admission on the basis of affirmative action, legacies seem untouched by the stigma of inferiority. As Bob Laird, director of undergraduate admission at the University of California, Berkeley, observed: "I never have the sense of the legacy students [at Harvard] feeling, 'Oh. I don't really belong here.' Or, 'I haven't earned it.' The whole thing is, 'Hell, I'm here. That's what counts'."



UPI—BETTMANN

Protest: *Emotion over a key court case in 1977*

Awful thing: Critics of affirmative action have not explained how abolishing it can lead to a meritocracy as long as other forms of favoritism continue to flourish. Nor have they shown any real enthusiasm for attacking preferential treatment in all its guises, as opposed to aiming their animus solely at affirmative action. Nor, for that matter, have they demonstrated much of an appetite for stepping up enforcement of antidiscrimination laws, or pouring resources into (and increasing demands on) inner-city schools. They are not, by and large, proposing anything that, by distributing society's benefits and opportunities more broadly, might eventually move the nation closer to the meritocracy they profess to desire. Instead of solutions, they are merely offering a scapegoat: this *awful thing* called affirmative action.

It's easy, and politically expedient, to pretend that everything would be just fine if affirmative action weren't screwing things up. The truth, of course, is much more complicated. Even if the movement to ban affirmative action succeeds, there is every reason to believe we will again find ourselves pondering how to deal with the same difficult questions of racial estrangement and inequity that spawned affirmative action in the first place.

NEWSWEEK POLL

23% think blacks losing out because of racial discrimination is a bigger problem in the workplace

46% think whites losing out because of affirmative action is a bigger problem

THE NEWSWEEK POLL, MARCH 23-24, 1995

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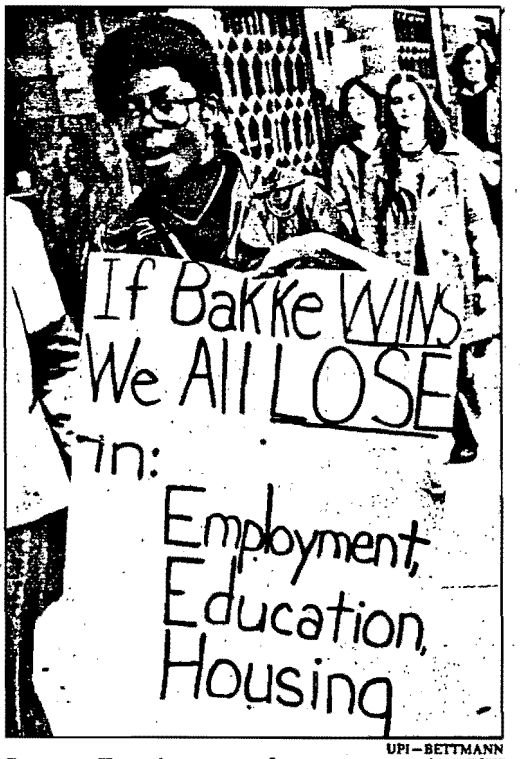

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THE NEWSWEEK POLL, MARCH 23-24, 1995

The Washington Post

DATE: 11/13/96

PAGE: C12

Suit Says Avis Franchise Refused to Rent to Blacks

By David Segal
Washington Post Staff Writer

Three African American women said yesterday that they have sued Avis Rent-a-Car System Inc. and one of its franchise owners, alleging that they were denied rental cars because of their race.

The case, filed last week in a federal district court in North Carolina, will seek class certification for all African Americans who could not rent vehicles from five Avis locations operated in North and South Carolina by New Hanover Rent-a-Car in Wilmington, N.C.

According to former New Hanover employees who have provided depositions in the suit, franchise owner John Dalton instructed agents to find reasons to turn away blacks. The employees said they were told to deny cars to blacks if the address on their driver's license was not current, if they expressed an interest in driving long distances or if they could not provide proof of employment. On other occasions, blacks were told that their reservations had been canceled or falsely informed that no cars were available, according to the former employees.

Terry Gordon, a spokesman for Avis in Garden City, N.Y., said in an interview that the company "has a solid record as an equal-opportunity employer that fully complies with all laws and sound business practices." While the company is not responsible for the discriminatory practices that may have been carried out by a franchisee, he said, "the corporation is extremely concerned about this report and wants the truth to be determined quickly."

Telephone calls to John Dalton's office in Wilmington were not returned.

The lawsuit is the latest to allege that corporations are willing to countenance, or even encourage, racism in their dealings with customers. In 1994, Denny's restaurants paid $45 million to settle class action suits—one in Maryland—brought by African American customers who said they were treated shabbily by the chain's waiters and managers.

Attorneys in the Avis case say executives must have known about the alleged discrimination because disgruntled customers who called an Avis 800 number were told by operators that such complaints were frequently lodged against the franchisee.

"It's mind boggling," said John Relman, an attorney for the Washington Lawyer's Committee for Civil Rights and Urban Affairs, the nonprofit organization spearheading the litigation. "You've got a guy who is running a blatantly racist franchise for years, and you've got a Fortune 500 company which has taken no steps to terminate this guy. The question is whether we're dealing with indifference or something much worse."

Relman said that at least 86 African Americans are eligible to join this litigation.

> *"It's mind boggling."*
>
> — John Relman, attorney

Kenneth Ross Jessup, a former New Hanover employee, said in an interview yesterday that any worker who rented a car to an African American was likely to be reprimanded.

"There were a ton of different ways to turn down blacks," said Jessup, who filed a deposition in the suit. "If a man and wife were traveling together and they had different last names, we'd ask to see their marriage license. If they didn't have it, we turned them down."

Blacks who could not show they worked for a corporation stood little chance of leaving with keys to an Avis car, he said.

In the complaint filed in the case, the three women said they had made reservations but were denied cars.

For example, Vietta Ratliff, said in an interview yesterday that in August of last year, she had a reservation with the Avis franchise at the airport in Florence, S.C.

When she arrived, she handed the rental agent a credit card, which, it turned out, lacked sufficient available credit, she said. When she offered a second card, the manager refused to rent to her because the first card had been denied, she said.

"I tried going to some other rental agencies in the airport, but it was Labor Day and everyone was booked up," said Ratliff, who eventually rented a smaller car from another company in a different city. After her daughter wrote letters and called the 800 number, Ratliff received an apology and a check for $84.

The money did little to diminish her desire to sue. "It was humiliating, it was embarrassing and I wouldn't like for anyone else to go through something like this," she said.

Staff researcher Heming Nelson contributed to this report.

USA TODAY

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Former Avis manager outlines bias

Says blacks were denied service, jobs

By Donna Rosato
USA TODAY

WILMINGTON, N.C. — A former manager of an Avis Rent-A-Car franchise here says the owner gave detailed instructions on ways to deny car rentals to black customers.

The franchise owner regularly docked the pay of employees who refused to comply, the former employee says.

The former manager made the allegations at a press conference Tuesday. The briefing was organized by a lawyer representing plaintiffs in a class-action lawsuit against Avis and franchise owner John Dalton. Dalton owns five Avis franchises in North and South Carolina, including Wilmington, where the lawsuit was filed.

So far, more than 80 people have joined the original three plaintiffs, says John Relman of the Washington Lawyers' Committee for Civil Rights. USA TODAY first reported on the case Tuesday.

The policies, dubbed "Dalton's Rules" by employees, were well-known to Avis, Relman says. "The question now is, how high does this go?"

Relman has asked Avis to turn over company records on consumer complaints. He says he believes Avis keeps a computerized database that would show if consumers lodged discrimination complaints at other Avis franchises and what management level was aware of the problem.

In its first comment on the accusations, Avis said in a written statement from corporate headquarters in Garden City, N.Y., that it "does not tolerate discriminatory practices."

The statement adds, "Avis is not responsible for any discriminatory practices that may have been carried out by a franchisee or his/her employees. However, the corporation is extremely concerned about this report and wants the truth to be determined quickly."

Dalton, who has denied the allegations, was not available to talk with a reporter at his Wilmington office.

At the red-brick First Baptist Church here, plaintiffs and the former manager joined Relman to discuss their experiences.

"We were trained to select customers based on their appearance and race," says Kenneth Jessup, who worked for Dalton for seven years.

At monthly managerial meetings, Dalton rebuked managers who approved rentals to blacks if cars were returned dirty or damaged, Jessup says. Managers also reviewed complaint reports Avis gave them, but Dalton refused to address racial complaints, he says.

Jessup says employees worried they would be fired if they didn't comply with the policies. Dalton paid a higher than average salary but denied employees bonuses or docked pay if they rented cars to blacks.

Dalton also had a strict policy against hiring blacks and instructed employees to mark applications with yellow Post-it notes indicating the applicant's race, age and sex, Jessup says.

Sometimes, however, the agency gets lucky. To gain pretrial release, Ramon Martinez, a 43-year-old Houstonian arrested on felony drug charges in April 1992 after being caught offering to sell 315 pounds of marijuana, had to undergo drug tests and surrender his resident-alien card, the title to his wife's vehicle and the deed to his home. In July 1992, Mr. Martinez tested positive for cocaine, and an arrest warrant was issued. This year, local authorities caught him hiding in the attic of his home after going there to arrest his wife on an unrelated charge.

In the case of Anthony Dixon, a worker for the Harris County agency encountered him in the county jail in November 1993, soon after the teenager was charged with burglarizing an apartment. On his release application, Mr. Dixon identified himself as a full-time student with a ninth-grade education. He didn't indicate any prior felonies, misdemeanors or missed court dates. For references, he gave his grandmother, mother and "father" — actually the father of his half-sister.

Judge Misinformed

In a report to state court Judge Brian Raines, the agency described the defendant as a medium-risk candidate for pretrial release. The judge was impressed by the agency's indication that Mr. Dixon had no prior criminal record. Before releasing Mr. Dixon without requiring him to pay any of his $10,000 bail, the judge says he also believed that, prior to trial, the teenager would be locked up and closely supervised at Lakewood House, a home for the mentally retarded in Nacogdoches, Texas, about 130 miles north of Houston.

However, the assessment of Mr. Dixon was an error-ridden disaster. Lakewood House wasn't the secure facility envisioned by the judge. And while Texas privacy laws then in place blocked access to juvenile criminal records, agency case workers might have learned more if they had contacted someone other than a single reference, the defendant's mother. In fact, he had a long history of trouble with the law, according to documents later filed in connection with the Peavy murder case.

Since taking a teacher's purse as a 12-year-old, he had been referred to juvenile authorities for a theft, two burglaries and a police chase in which he allegedly jumped out of a moving vehicle. After a 1991 shoplifting incident, he was sent to Lakewood House, where he attended local public schools and got weekend passes to ride the bus, by himself, to visit his mother in Houston.

His Lakewood stay included at least 18 documented reports of alleged attacks on other residents or students. He repeatedly threatened staff, had to be physically restrained three times, and admitted two sexual encounters with girls in bathrooms. During one spring break, he was arrested and again referred to juvenile authorities after allegedly pointing a pistol at a construction worker in Houston and, while visiting here over the 1993 Thanksgiving holiday, was charged, for the first time as an adult, in the burglary that landed him before Judge Raines.

More Trouble

But the Harris County agency's errors didn't end with the initial assessment that led to Mr. Dixon's release. A few months after Mr. Dixon was sent back to Lakewood House, where he was supposed to be carefully monitored by the agency, he was involved in the first of several more fights, including one that resulted in assault charges being filed by the local police.

After he wrecked his mother's car during one trip home, she told Lakewood House not to allow him to return to Houston, but he kept coming. It was during one of these visits that he and several friends drove to the convenience store where Dr. Peavy had just returned to her car.

After shooting the young dentist, Mr. Dixon went joy riding in her car and disposed of her purse in a Dumpster, before eventually catching a bus back to Nacogdoches, where he was arrested two days later. He was tried in February 1995, convicted and sentenced to death. His case is on appeal. His attorney, Wayne Hill, declined repeated requests for interviews.

The Harris County Pretrial Services Agency says that Mr. Dixon checked in by telephone or in person every two weeks after his release and that Lakewood House never told the agency of any problems. "I have no doubt that if we had received information about disruptive behavior, it would have been our charge to communicate that to the court and Mr. Dixon's bail would have been revoked," says Tom McCarty, an agency spokesman.

Texas Home Management, the operator of group homes for the retarded that runs Lakewood, declines to comment.

In the aftermath of the Peavy murder, some Houston-area judges have stopped releasing defendants previously charged with or convicted of felonies. In addition, Harris County commissioners are studying whether the agency's operating guidelines should be revised.

Meanwhile, Houston police Sgt. J.W. Belk, who helped investigate the murder, deplores the breakdown in communication between the agency and the court. "Had Tony Dixon been closely monitored by the pretrial-release service agency in the facility where he was, Beth Peavy would still be alive today," he says.

Kathy Peavy Bailey also wishes that Mr. Dixon had had to raise bail money and that a relative, bondsman or bounty hunter had kept track of him. "Maybe they would have held him if he couldn't come up with bond, or maybe they would have supervised him more closely if he did," the victim's sister says. "They're just letting lots of people out, and it's not working the way it was meant to work."

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On the Loose

Criminal Defendants Released Without Bail Spark a Heated Debate

Many Don't Appear for Trial And, While Freed, Get Involved in More Trouble

A Murder Case in Houston

By ANDREA GERLIN
Staff Reporter of THE WALL STREET JOURNAL

HOUSTON – Elizabeth Peavy pulled into a local Kwik Stop convenience store one Sunday afternoon to buy gas before joining her family for dinner. Instead, the 34-year-old dentist crossed paths with Anthony Dixon, a mildly retarded teenager toting a .38-caliber revolver. After forcing open the door of Dr. Peavy's red Thunderbird, he fired six rounds into her abdomen and head, dragged her onto the pavement and drove away in her car.

The Peavy family was devastated by the May 1994 murder – and outraged as they learned more about the 17-year-old gunman, who had been arrested on burglary charges six months earlier.

Despite a long trail of trouble, he had been freed without bail under "pretrial release," a program widely used in criminal courts around the country. The local pretrial-release agency was supposed to be closely monitoring Mr. Dixon at the time of the murder, but the Peavys were shocked by just how little it knew.

"He shouldn't have been out there," says Kathy Peavy Bailey, the victim's sister. "He was a bomb waiting to go off."

A Growing Debate

As public frustration over violent crime mounts, the Peavy murder and similar horrors nationwide are fueling debate over whether pretrial-release programs put too many potentially dangerous people back on the street without proper supervision.

The Eighth Amendment to the Constitution bars excessive bail, which even victims' advocates and prosecutors agree shouldn't be used to punish defendants while their guilt or innocence remains undecided. But critics contend that defendants who aren't required to raise their own bail have little incentive to appear for trial. They also argue that many locally run programs have outgrown their capacity to assess and monitor defendants released under their auspices. "It's a significant threat to public safety," says Stephen Twist, a former Arizona prosecutor on the board of the Washington-based National Organization for Victim Assistance.

A 1994 Justice Department study of pretrial-release programs in the 75 largest U.S. counties found that one-third of defendants accused of violent crimes were released without paying bail. It also found that, of felony defendants released on their own recognizance, 25% failed to turn up for scheduled court appearances, 8% remained fugitives a year later and 11% committed new felonies while they were out. On all counts, the figures exceeded those for defendants who had to raise and pay money to be released.

A Dismaying Record

Morgan Reynolds, a Texas A&M University economist, says his studies of federal data indicate that as many as half of all defendants let go under pretrial-release programs have previously jumped bail and that about the same percentage have one or more prior felony convictions. "If they can't get mama and papa to pledge [bail], then why should we take the risk as general citizens?" he asks.

Pretrial-release agencies began springing up in the civil-rights era of the 1960s. Originally designed to prevent accused people from being incarcerated before trial simply because they couldn't afford bail, they were supposed to advise defendants about their right to apply for pretrial release, investigate their personal history and, if the presiding judge decided to set them free, monitor them until trial.

Through the years, however, pretrial-release agencies' duties and caseloads have greatly expanded. Court rulings and state statutes have extended pretrial release to all defendants, regardless of their financial resources, citing the right to equal protection under the law. As crime rates rose and inmate populations exploded in the 1980s, judges increasingly used pretrial release to relieve prison overcrowding. In some states, such as Texas, they still do despite a huge prison-building program that has left local jails with such a surplus of beds that they have begun importing inmates from elsewhere.

Inadequate Official Resources

Meanwhile, overburdened, inefficient court systems are letting more and more time elapse before trial, increasing the chances that a defendant won't show up. And, unlike private bonding concerns that have a financial incentive to recapture defendants, police and prosecutors complain that their resources are stretched too thin to track down many of them.

"Judges think this alarm is going to go off and we're going to be able to grab them, but that's not how it works," says Marilyn Bobula, a federal prosecutor in Cleveland. Adds Gary Barrett of Strike Back, a reform group in Washington, D.C.: "They don't catch them until they commit another crime."

In recent years, such arguments have been fueled by a raft of high-profile convictions. In 1991, an accused car thief shot and killed a rookie policeman in Philadelphia after wrecking a stolen car during a chase. In 1993, a Dallas man awaiting trial on a weapons charge murdered an off-duty police officer. In 1994, a Nashville, Tenn., man on pretrial release for misdemeanor weapons charges allegedly committed six armed robberies before being arrested for murdering a grocer.

Alarmed by such incidents and influenced by bonding agencies that, in effect, lose business because of the local release agencies, more and more state and local governments are restricting their programs. Pensacola, Fla., has excluded defendants accused of first- and second-degree felonies from its program because, says Judge John P. Kuder, "they're either high risk of flight or a danger to the community." New Mexico has eliminated state funding for the pretrial-release agency in Bernalillo County (Albuquerque). Dallas County, Texas, has barred stalking and domestic-violence defendants from its programs. "The defendants in these situations normally go right back to their victims," explains Vicki Isaacks, chief of the family-violence section in the district attorney's office.

Constrained by enormous caseloads and sometimes-unreliable monitoring devices such as electronic bracelets and telephone contacts, pretrial-release agency officials nonetheless defend their programs as both necessary for poor defendants and more cost-effective, for taxpayers, than imprisonment. Moreover, "if you release 7,000 people a year, some of those defendants are going to go out and commit new offenses," says Charles Noble, director of Harris County Pretrial Services Agency, which serves Houston.

Heavy Caseloads

Created about 30 years ago, Mr. Noble's agency is headquartered in a drab office in Houston's aging Cotton Exchange building. Its 70 or so case workers, funded with a $3.5 million budget, interview about 60,000 defendants a year. Judges release roughly 12% of the defendants after its background checks. On any given day, its employees use telephone contact, drug testing and electronic bracelets to monitor as many as 1,800 released defendants, or virtually all of those involved in the pretrial-release program.

Last year, Harris County courts issued warrants for 701 defendants after they failed to appear for trial. Among them were 91 accused of felonies, including 23 charged with drug possession, 17 accused of auto theft and five facing assault or attempted-murder charges. With only two sheriff's deputies available to pursue the defendants, 153 of the 701 remained at large at year end.

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grated, blacks and whites seldom mix, and that that's just the way it is.

In this atmosphere, stereotypes and biases can flourish. "Unfortunately, blacks are considered more lower class," says Jennie Johnson, a 17-year-old senior at Greenville's J. L. Mann High School. "In the black community it's not really 'cool' to be smart, so the majority don't apply themselves academically." Gainesville, Ga., High School held a "Farmer/Redneck Day" as part of its prehomecoming festivities last fall. African-American students say they were called "nigger" all day by white classmates; school officials say the claims may have been exaggerated.

Redneck store. There is no lack of encouragement for this volatile mix of pride and prejudice. South Carolina's legislature passed a law to keep the Confederate flag flying over the state house. Blacks say the flag represents slavery; whites say it celebrates Southern heritage. In Laurens, S.C., John Howard has converted the old Echo Theatre into the Redneck Shop, which is also slated to house a Ku Klux Klan museum. The store, which opened in March, sells Confederate and "redneck" merchandise, including Ku Klux Klan pins and T-shirts with the slogan, "We're here to stay."

"The goal of the shop is just to cater to people that love Confederate flags," says Howard. "And the museum is just to maintain the relics of the Klan that are part of our heritage—not to uplift it, but the history of the Klan needs to be understood. I have no intention of causing racial tension. No one's been hurt but John Howard. I've been ridiculed, persecuted and threatened."

"The Klan came into existence to oppress and inflict pain, and that store is a basic insult to what America claims it stands for," replies the Rev. David Kennedy of New Beginning Missionary Baptist Church in Laurens, who has organized several protests against the Redneck Shop. "There's going to be a fight, and our task is to make sure it's a nonviolent fight, because this town has the possibility of becoming a Little Bosnia. But if they're here to stay, so are we."

With churches still burning throughout the South, it may be hard to ensure that the fight is nonviolent. ■

BY GORDON WITKIN IN SOUTH CAROLINA AND JEANNYE THORNTON WITH SUSANNAH FOX, JILL JORDAN SIEGER IN ATLANTA AND ALLISON WALCOTT IN GREENVILLE

some 4,000 hate crimes by Northeastern University Profs. Jack Levin and Jack McDevitt found the perpetrators were primarily white males in their teens or early 20s who seem to fall into three categories: Sixty percent are thrill seekers who don't belong to an organized group but who in an impromptu act will attack a black person or deface a church simply for the excitement, often after drinking with buddies. The second-largest category, about 35 percent, aren't members of an organized group either but see themselves as turf defenders. They might throw rocks at a new black family in the neighborhood, for instance.

Members of hate groups account for 5 percent of the perpetrators of hate crimes, but they are the most dangerous. "These folks are on a mission," says McDevitt. "They are more likely to be violent, and their violence is most likely to cause injury." A *USA Today* study of 14 white men investigated by the federal government for racially motivated church arsons in the 1990s found the majority to be poor, young and minimally educated. Most had been drinking on the night churches burned, but none had previous felony convictions.

Bad examples? Many hate-crime offenders also seem to be under the influence of an older leader. That might be the case for the best-known church fire suspects, Timothy Welch, 23, and Gary Cox, 22. Currently jailed in Kingstree, S.C., the pair are charged with the June 1995 torchings of the Macedonia Baptist Church in Bloomville, S.C., and the Mount Zion AME Church in nearby Greeleyville. They also are charged with beating and stabbing a retarded black man the same month. Cox and Welch had been attending local Ku Klux Klan recruiting rallies, and Welch was carrying a KKK membership card when he was arrested. Clarendon County Sheriff Hoyt Collins says Cox and Welch were "followers," not leaders. "I think they had encouragement," says Collins. "I'm not sure they had instructions."

A suit against the KKK filed on behalf of the Mount Zion Church by the Southern Poverty Law Center asserts that a speaker at one rally made "disparaging and inflammatory statements about black churches." And Cox had been living with Arthur Haley, 52, a former Klan member who also attended some rallies. Federal agents raided Haley's home in February and came away with guns and Klan paraphernalia but did not arrest him. Horace King, grand dragon of the South Carolina chapter of the Christian Knights of the Ku Klux Klan Invisible Empire, says he knew nothing of the church burnings and would have stopped them if he had. Haley declined to speak with *U.S. News*. Lawyers for Cox and Welch did not return phone calls.

The Klan and other white supremacist groups have long denounced affirmative action, welfare, immigration and race-based congressional districting, and now those issues have become mainstream political controversies. Grand Dragon King told *U.S. News* that African-Americans "hand down welfare from one generation to the next." Klan member Herbert Rowell told the *State* newspaper in Columbia, S.C., that black churches tell members how to get on the dole: "Have you ever noticed that when there's free cheese or milk and stuff? We don't know nothing about it, but they're the first in line."

Affirmative action is another target. "We've given blacks every opportunity in the form of affirmative action and quotas," said a posting on the World Wide Web from "Aryan True." "It's not opportunity they want, they want control of the country." Grand Dragon King was upset by a minority set-aside program at Columbia Metropolitan Airport. "White people have no security because of affirmative action," he said. "They can take away a job and give it to a black. The best qualified ought to get the job and that's it."

Losers? Nonwhite immigrants come in for criticism, too. "The doors should be wide open to our white brothers and sisters from everywhere in the world, and slammed shut to racial aliens," says another recent Internet posting.

More generally, some whites fear they are being shunted aside and are losing control. "Each race deserves its rights," says King, "but no race should infringe upon another race's rights and push them back, and that's what's happening today with the white race."

Civil rights experts think talk radio and the Internet provide new megaphones for bias and hate. The Center for Democratic Renewal says Darrell Flinn, the imperial wizard of the Knights of the White Kamellia in Alabama and Louisiana, has a bimonthly cable show, "The Klan in Akadiana," that reaches as many as 54,000 people. Michael Harrison, editor and publisher of *Talkers* magazine, thinks the incidence of racism and hatred on talk radio is exaggerated, but says 20 to 25 percent of radio talk shows occasionally air such themes. After Commerce Secretary Ron Brown's plane was reported missing, New York talk show host Bob Grant said he feared Brown might have survived "because at heart, I'm a pessimist." Grant was fired but was soon picked up by another station.

Meanwhile, the struggle for racial equality and tolerance appears to be losing out to resignation that de facto segregation is both normal and acceptable. Greenville, S.C., high school students say that even though their schools are inte-

PATTY WOOD

Cross to bear. *Rodney Stamps (left), associate pastor of a burned church in Enid, Okla., and Clifford Porter carry away a charred cross.*

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Clinton, Off and Running, Sees the Sun Rise on '93

By MICHAEL KELLY
Special to The New York Times

HILTON HEAD, S.C., Jan. 1 — Most Americans spend New Year's Day as coach potatoes, loafing before the ball games on the tube, resting from the rigors of the year and the night before.

For Bill Clinton, whose hyperactivity appears to start where George Bush's leaves off, the start of the new year is a chance to get out there and do things. Lots of things. Energetic, building-a-sound-mind-in-a-healthy-body sorts of things.

The President-elect spent New Year's Eve improving himself, or at least giving it a good, earnest effort. Principally, he attended a panel put together by the organizers of Renaissance Weekend, the four-day symposium of talk, recreation and big-name networking that the Clintons attend every New Year's holiday.

The discussion was titled "Something That's Been Bugging Me Lately." But the panelists did not, for the most part, bother with that kitchen-table topic. Instead, they dwelt on large thoughts, suitable for impressing any Presidents-elect who might be in attendance. Adm. Elmo Zumwalt, retired, the former Chief of Naval Operations, spoke of the military history of the 20th century. Senator Charles S. Robb of Virginia spoke of the renewal of the American spirit.

Energetic at Dawn

By the accounts of several attendees at the off-the-record event, the talk was so banal and so dull that many people, but not Mr. Clinton, left halfway through.

Mr. Clinton stayed at a subsequent party until 1:30 A.M. and joined others in the traditional Renaissance rite of welcoming in the new year by holding hands and singing "God Bless America."

Five hours later, as some of staff members were still snoring, Mr. Clinton was out facing the brave new dawn, running.

He jogged for a little more than three miles along the densely packed, fine sand of the beach in front of the luxury home where he is vacationing, against a backdrop of a particularly lovely sunrise.

Then it was into the house for coffee and a quick change of clothes, then off to the golf course for 18 holes. Such is the popularity of a President-elect that Mr. Clinton was obliged to play with two foursomes of friends rather than the customary one. He switched from one group to the other at the ninth hole.

Mr. Clinton's fellow players allowed him a little Presidential prerogative. At least twice, on the fifth and the sixth holes, Mr. Clinton took his last putt as played, even though, in both cases, the ball lay three or four feet from the hole, allowing for the possibility of a missed shot. No one raised any objections, though, as the President-elect pocketed his ball and moved on.

After golf, Mr. Clinton returned home for several hours, to emerge in the late afternoon for a bicycle ride on the beach with his wife, Hillary. The two rode on the hard sand by the surf, with Secret Service agents running alongside. They soon drew an entourage of 30 or 40 bicycles.

As dusk fell, Mr. Clinton was still hard at work playing, this time in a touch football game on the beach with 40 or so mostly teen-age participants in the Renaissance Weekend. Mr. Clinton's biggest play came when a businessman, Dennis Bakke, rifled a pass right to the Presidential-elect's breast basket, for a completion.

Agence France-Presse

For President-elect Bill Clinton, football meant a game on the beach at Hilton Head, S.C., not a rest on a couch before a blur of televised games. He went on to play golf and ride bicycles with his wife, Hillary.

The Washington Post

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GOP Won't Press Dole's Affirmative Action Bill

By Bill McAllister
Washington Post Staff Writer

Republican congressional leaders said yesterday that they will not press for an end to all of the federal government's affirmative action plans this year and instead will concentrate on repealing a program that requires federal contracts to go to "disadvantaged" businesses.

House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Trent Lott (R-Miss.) confirmed in separate television interviews that they will not push for a vote on a measure sponsored by the party's presumptive presidential nominee, Robert J. Dole, and Rep. Charles T. Canady (R-Fla.) to scrap affirmative action.

"We just don't have time," Lott declared on NBC's "Meet the Press." "Certainly not this summer," agreed Gingrich on ABC's "This Week With David Brinkley."

A leading civil rights lobbyist suggested the move reflects election-year jitters and the support moderate Republicans have voiced for affirmative action. Ralph G. Neas, counsel to the Leadership Conference on Civil Rights, expressed doubt that the GOP leadership had the votes to get the broader measure through the Senate.

Neas, whose organization has been in the forefront of efforts to save affirmative action programs, also said women and retired Gen. Colin L. Powell may have played major roles in the GOP decision.

Women, who have been the chief beneficiaries of many affirmative action programs, would be adversely affected by the proposed change, Neas said. Powell, a Republican who has rejected overtures to get involved in the party's presidential campaign, has been speaking out in favor of retaining the programs and that has influenced a number of GOP lawmakers, Neas said.

"I get the impression that there are a lot of Republicans who are fearful of a tremendous backlash if they play the race card—and even more so if they are perceived as harming women," Neas said in an interview.

The statements by Gingrich and Lott mean "we've come a long way in the defense of affirmative action programs since January 1995, when a lot of people were declaring them dead," said Penda Hair, director of the Washington office of the NAACP Legal Defense and Educational Fund. "People, including white men, realize that this is a remedy and it is fair."

Both Gingrich and Lott said they remain committed to eliminating race- or sex-based preferences. But instead of pushing the Dole-Canady measure, Gingrich said the GOP has decided "the best first step" is to press for passage of a bill sponsored by Rep. Jan Meyers (R-Kan.), chair of the House Small Business Committee. Her bill, also opposed by most of the civil rights lobby, would revise requirements that individuals be deemed "socially and economically disadvantaged" to qualify for $5.8 billion worth of federal procurement set-aside contracts.

The Small Business Administration has considered firms at least 51 percent owned by African Americans, Hispanics, Asian Americans and Native Americans to be disadvantaged and eligible.

The Dole-Canady bill, introduced before Dole left the Senate to campaign for president, would have much broader implications. It would prohibit the government from granting any preference based on race, color, national origin or sex in connection with any federal contract, federal employment or "any other federally conducted program."

Neas said he was concerned that the House Judiciary Committee might still seek to approve a modified version of the bill this week, despite the statements of Lott and Gingrich. Neas said the Leadership Conference was confident of enough votes to kill the measure on the Senate floor.

Supporters of affirmative action have noted that the Republicans have failed to win the support of their two black House members, J.C. Watts of Oklahoma and Gary A. Franks of Connecticut. Polls indicate that while most Americans favor making changes to affirmative action programs, only about one-quarter of those surveyed want to abolish programs outright.

"The leadership's approach toward this issue is mystifying," said Clint Bolick, litigation director for the Institute for Justice, a conservative group that has opposed affirmative action programs. He said an end to the SBA set-asides "is certainly a laudable objective," but not nearly as broad a goal as the one GOP leaders first promised.

"This is a very popular issue," said Bolick, adding that the leadership's latest action "makes sense neither from the political standpoint nor from the standpoint of principle."

Lott said the GOP is still committed to the issue. "It's something we should do," he said, noting President Clinton has suggested some affirmative action programs need to be changed.

Last year, Clinton ended months of debate within his administration by saying the solution to problems arising from affirmative action was: "Mend it, but don't end it."

Other lawsuits, based on the constitutional guarantee of one-person, one-vote, led to the 1983 abolition of the at-large election of New York City Council members, and last year, to the election of a new, 19-district Nassau County Legislature to replace a six-member Board of Supervisors.

The Supreme Court has accepted new voting-rights cases for its next term, indicating that the debate will continue.

Mr. Brewington's co-counsel, Randolph M. Scott-McLaughlin, a vice president of the Center of Constitutional Rights in Manhattan, said those decisions had only increased the importance of the Hempstead case.

"This kind of case is the only legal means to guarantee that minorities get a fair share of legislative offices at any level," he said. "We want to put an end to a discredited system which most people thought could only be found in the South."

The New York Times

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G.O.P. Lawmakers Back Out On a Bill To End Preferences

By STEVEN A. HOLMES

WASHINGTON, July 12 — Amid continued criticism that their party is insensitive toward minority groups and women, the House Republican leadership has withdrawn its support from a bill that would have ended all Federal affirmative action programs, effectively scuttling any chance that the measure will pass this year.

Instead, House Republican staff members and conservative civil rights advocates said, Republican lawmakers will concentrate on seeking to end programs that give preferences in the awarding of contracts to "disadvantaged" companies, which, in practice, has mainly meant those owned by members of minorities.

The House Judiciary Committee is scheduled to take up a measure next week that would effectively end Federal affirmative-action efforts in Government contracts. The new bill is a stripped-down version of a measure introduced last year by Representative Charles T. Canady, a Florida Republican, and by Bob Dole before he left the Senate, where he was the Republican leader, to campaign for President.

The original bill, still referred to as the Dole-Canady measure on Capital Hill, would have prohibited the Federal Government from granting any preferences on the basis of race, color, national origin or sex in Federal employment or contracts or any other Federal programs. It would also have forbidden the Government to require or encourage affirmative-action by Federal contractors.

The new version would ban only preferences in awarding contracts.

The quiet abandonment of the broad-gauge attack on all Federal affirmative-action efforts, first reported in The Washington Times today, was a marked contrast to the way the measure was introduced last July. Then, Mr. Canady and Mr. Dole announced their proposal at a crowded press conference where they decried Government "discrimination."

But in the year since then, the Dole-Canady bill, called the Equal Opportunity Act of 1996, has run into strong bipartisan opposition that has been surprising, given the Republicans' control of Congress. Mr. Dole's affirmative-action stand has come under fire from some Republican moderates, like Colin L. Powell, the former chairman of the Joint Chiefs of Staff.

"Republicans have been ambivalent from the beginning about Dole-Canady," said a Republican staff member involved in the issue, speaking on the condition of anonymity. "So this is not a surprise."

In addition, the Dole-Canady bill has failed to gain the support of Representative J. C. Watts of Oklahoma, one of the two black House Republicans. The other, Representative Gary A. Franks of Connecticut, opposes the bill.

"When you have both of your African-American members of Congress saying to the leadership that they should not proceed, I think that obviously puts them in a very difficult position," Mr. Franks said in an interview.

The change in strategy means that in this term, the Republicans will no longer oppose affirmative-action programs in employment, which have benefited white women to a much greater degree than members of minority groups. But Federal affirmative-action programs in awarding contracts, which have disproportionately aided minority groups, remain threatened.

Many Federal contracts that have been set aside for economically and socially disadvantaged companies are parceled out by the Small Business Administration under its 8(a) program. Of the 6,000 companies that participated in that S.B.A. program in the last fiscal year, only 32 were not owned by members of minority groups.

"Contracting is black," a Democratic staff member involved in the issue said. "They have made the political judgment that they can't take on women."

It is unclear how comprehensive the attack on affirmative action in Federal contract programs would be. While the truncated Dole-Canady bill that is being considered would end affirmative action in the awarding of all Federal contracts, a bill being offered by Representative Jan Meyers, a Kansas Republican, would end only the S.B.A. program.

The S.B.A. set-aside program, the largest such effort run by the Federal Government, awards contracts worth about $5.8 billion annually. But there are other large preference programs in contracting run by the Defense Department and by the Transportation Department, as well as smaller ones administered by other Federal agencies.

Ms. Meyers and her staff say they have been given the impression by the House leadership that her bill will be given top priority as a substitute for the Dole-Canady measure.

"Mrs. Meyers's approach is a priority with the leadership at this point," one of her aides said. "Dole-Canady is on the back burner for further consideration."

An aide to Speaker Newt Gingrich said today that while no decision had been made, the leadership was "leaning" toward throwing its full support behind Mrs. Meyers's bill.

The retreat of the House leadership has drawn a vitriolic response from Republican conservatives who say that opposition to affirmative action is both morally and politically right.

"On this issue, the Republican leadership has neither guts nor brains," said Clint Bolick, vice president of the Institute for Justice, a conservative organization that opposes affirmative action.

"This is the Lilliputian approach to civil rights policy. The Republican leadership has consistently been terrified of this issue for unknown reasons," he said.

Linda Chavez, head of the Center for Equal Opportunity, another conservative group that opposes affirmative action, said: "Lord knows why they are doing this. I think they are really stinging from the very successful ploy of painting the Congress as extremist. They want to be on the side of the angels."

But she added, "Capitulation rarely works."

11

USA TODAY

DATE: 7/15/96

PAGE: 8A

Five black churches lose insurance coverage

By Lori Sharn
USA TODAY

Five black churches have lost their insurance coverage after suspicious fires, but such problems are rare, the nation's largest insurers of religious buildings say.

Some black ministers have expressed concern about insurance cancellations and nonrenewals as authorities investigate at least 67 fires of questionable origin at black churches in the South in the past 18 months.

In the five cases, churches were not allowed to renew their policies. A sixth black church, in Richmond, Va., had its policy canceled, then reinstated with an apology.

But the top three insurers, which cover 30% of religious buildings, say their business practices haven't been altered by the rash of fires.

"This is not an epidemic. These are a few isolated instances," of churches losing coverage, says Peter van Aartrijk of the Independent Insurance Agents of America. "When you have an emotional situation like this it gets blown out of proportion."

In a meeting with Vice President Gore on Thursday, insurance industry representatives and regulators pledged to find coverage for any insured church that's hit by arson.

Rep. Bob Filner, D-Calif., will introduce a bill this week to bar insurers from canceling or refusing to renew church policies because of arson.

And the Congressional Black Caucus intends to hold hearings this month on churches and their insurance problems.

"It's not yet clear if there has been a pattern of cancellations, but even one cancellation would be extremely insensitive and disturbing," says Rep. John Conyers, D-Mich.

The U.S. Commission on Civil Rights discussed the fires-insurance issue Friday but decided not to write the Justice Department until it collects more information.

An insurance industry hot line for churches that started Thursday has received only four calls. Also:

▶ Church Mutual Insurance Company of Merrill, Wis., the nation's largest church insurer, has paid 82 claims for arson since January 1995; all those church clients have been retained, says spokesman Pat Moreland. Church Mutual insures 63,000 churches.

"Arson claims are expected," Moreland says. "From a business standpoint we're not unduly alarmed."

▶ The No. 2 insurer, Preferred Risk Mutual Insurance Co., of West Des Moines, Iowa, has paid at least 83 claims for arson or suspicious fires since January 1995. Policies of two African-American churches in Tennessee were not renewed "because of the number and frequency of their losses ..." said Senior Vice President Jack Kelley. "We have not canceled any church because of the arson loss alone."

Preferred Risk insures more than 40,000 churches.

▶ State Farm Fire and Casualty of Bloomington, Ill., which insures about 27,000 churches, didn't renew the policy of a Tennessee church that burned in January 1995. "They were so far from a fire department that any fire was going to make them a total loss. We just couldn't stand that risk," says spokeswoman Mary Boone.

▶ Suspicious fires have burned eight churches insured by Southern Mutual Church Insurance Company of Columbia, S.C., since January 1995. All of those policies were renewed. Southern Mutual insures 5,700 churches in Georgia and South Carolina.

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PAGE: 5A

Congregations pay attention to security, policy

By Lori Sharn
USA TODAY

Religious leaders who have been alarmed by an upsurge in church fires are reviewing insurance coverage and security measures to make sure buildings are financially and physically protected against arson.

Church members are paying more attention to strangers, making random security checks, and even forming watch groups. Some congregations are using arson-prevention seminars and inspections offered by the insurance industry and local fire departments. Arson is suspected in about 30% of all church fires.

J. Linzie Whitmill, pastor of Mount Zion Baptist in San Diego, says news reports of 67 arsons at black churches and 61 at white churches in the past 18 months prompted him to call his insurance agent.

"If I woke up in the morning and found the church burned, I'd feel a whole lot better if I knew we were adequately covered," says Whitmill, who was told the church's policy is up-to-date.

Underinsurance of churches is a national problem, says Steve Goldstein of the Insurance Information Institute. Many congregations in buildings 50 or more years old don't realize how much it costs to build a church today, or they just can't afford the premiums to boost coverage to full replacement value, he says.

In North Carolina, Church Mutual Insurance Co. has had about 180 calls in the past six weeks from churches wanting their coverage limits checked, says spokesman Pat Moreland.

Paul Steadman, an independent insurance agent in Walterboro, S.C., says he has had about six calls in the past 60 days from churches wanting to review policies. That's an unusually high number, he says.

A typical small rural church might have a policy covering $75,000 for the building and $25,000 for contents. It would cost about $1,000 a year with a $500 deductible, Steadman says.

The insurance industry says one way to lower premiums is to deter arsonists by clearing away dense shrubbery, installing outdoor lighting and adding burglar and fire alarm systems. Insurers launched a program last week in which church leaders can request inspections that will point out where safety could be improved.

The fire department in Dade County, Fla., intends to inspect every church in the county — about 600 buildings — says Fire Chief David Paulison. Congregations will be encouraged to install alarm systems and practice evacuations if a fire should occur during services, he says.

Whitmill was one of about 20 church representatives at a July 3 seminar on preventing church arson. Seminars have been held in East St. Louis and Houston, and at least three more are planned in Michigan and New York.

Pastor Reginald Gary of New Creation Church in San Diego says members pay more attention to strangers and are more careful about locking doors.

"You have people who are copycats and this is a large facility," Gary says. "We're at a state of alert, no question about it."

THE WALL STREET JOURNAL

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PAGE: A1

A Time to Build Up

In a Tennessee Town, Church Burning Brings Unexpected Results

Whites and Blacks Worship Together in Defiance Of Racist Firebombing

'We Will Not Tolerate This'

By DENNIS FARNEY
Staff Reporter of THE WALL STREET JOURNAL

COLUMBIA, Tenn. – It stands alone, utterly alone, the modest frame church on its little knoll – alone amid its sunken graves and the sticky heat that seems to entrap time itself.

And so it was, alone and vulnerable, on the night of Super Bowl Sunday, 1995, when three drunken white men hurled kerosene-filled beer bottles through a side window. Fire pooled on the carpet, spread to a pew, began to crawl toward the ceiling. The predominantly black Friendship Missionary Baptist Church was ablaze, an early victim of what would become known as the church-burning outbreak of 1995-96.

That outbreak has since spread to more than 60 African-American churches in the South alone. While the latest evidence suggests the torchings are more random than part of a nationwide conspiracy, they nevertheless raise fears that three decades of civil-rights progress is unraveling. But a closer look at the incidents here and their effects upon this community shows a reaction that is, ultimately, more hopeful.

Coming Together

Here in Columbia, in the heart of historic Ku Klux Klan territory, the attacks on Friendship Missionary Baptist and a second predominantly black church, Canaan African Methodist Episcopal, that same night have brought the white and black communities closer together.

In an immediate show of support, members of the Sons of Confederate Veterans chapter here quietly contributed, as individuals, to church rebuilding funds, says commander William Byrn. He says the chapter initially wanted to contribute as an organization but feared that, in the volatile atmosphere immediately following the firebombings, the gesture might be taken the wrong way.

Meanwhile, the very next Sunday, white churchgoers worshipped with blacks in a show of racial solidarity at Friendship Baptist, which was damaged but not destroyed. Last Saturday, white and black church choirs combined in a community ceremony at the predominantly white New Life Christian Church. In one emotional ceremony here, white ministers went so far as to publicly apologize for the racism of their forefathers and were in turn formally forgiven by black ministers.

"Who would have thought that something like this would bring out something so good," muses the Rev. Alvin Anderson, the black pastor of Friendship Baptist.

Three decades of civil-rights struggle have made a difference, a big one. This time, the white leadership of southern communities is standing up against the violence. That is in sharp contrast to the early 1960s, when the white leadership generally looked the other way – or, like such notorious examples as then-Gov. George Wallace of Alabama, actually led the resistance.

This time, "there was just an enormous amount of outrage from all quarters," says Delk Kennedy, a white Columbia native who is assistant U.S. attorney here. "There was an enormous amount of concern that things would escalate if the whole community didn't immediately come together and say, 'We're going to stop this, right here.'"

"The [white] people of this community said, 'We will not tolerate this. It's an embarrassment,'" concludes the Rev. Dennis Lawson, who is black and pastor of the Canaan African Methodist Episcopal Church.

Mindless Hatred

At the same time, there is something new in the air – a random, almost mindless racial hatred that is nearly as frightening to African-Americans as the orchestrated violence of the 1960s.

"There's a different kind of fear," Mr. Lawson continues. "Power in the hands of the ignorant is dangerous. If these three [convicted men] are examples of the kind of people who are doing this across the country, we are in serious trouble."

The story of Columbia and the Jan. 29, 1995, firebombings here illustrates the crosscurrents running in the South today: A new kind of terrorism, often countered by a new kind of community response.

Columbia, population nearly 29,000, is about 50 miles southwest of Nashville in middle Tennessee. Its motto is "Old South Charm, New South Progress," and there is evidence of both. Surrounding Maury County is dotted with majestic antebellum homes like Rattle & Snap Plantation, named for a gambling game through which the plantation land once changed hands. At the same time, General Motors Corp. builds Saturn automobiles at Spring Hill, Tenn., just 10 miles up the road.

But there is a more sinister side to area history, with its roots in slavery. Pulaski, Tenn., just 40 miles to the south, is generally acknowledged as the 1866 birthplace of the Ku Klux Klan. To the mortification of civic leaders there, Klan members wearing hoods and robes have held marches in downtown Pulaski for the past decade. (Pulaski counters with a Brotherhood March.)

Columbia itself still remembers a vicious race riot in 1946 involving mobs in the street, beatings and killings. Even today, it isn't hard to find evidence of unreconstructed racism here. Interviews in the countryside around Friendship Baptist church quickly encounter one white man, who won't give his name, who talks bitterly of sending blacks "back to Africa for the lions to chase." This man goes on to complain that blacks are getting preferential treatment in the employment marketplace and driving fancier autos than his own. He typifies the scarcely concealed racism, sometimes fueled by economic pressure, that remains among some lower-income whites here. So do the three arsonists, who pleaded guilty.

Cousins Michael Wilson Jett and Mark Anthony Jett, and their friend Robert Lee Johnson, lived on the margins of a society that, socially and economically, was passing them by.

Mr. Johnson, identified in federal court as the ringleader, was 33 years old, a self-employed house painter who lived in a trailer park. Among his few assets was a $900 car. A few years earlier he had been convicted and put on probation for burglarizing a black-owned tavern that he was also now about to firebomb. He apparently had lost money gambling there.

Michael Wilson Jett, then 41, was nursing a deeper anger that Sunday morning. One of his daughters had run away from home. Unsuccessfully searching for her in Knoxville, he had become incensed at the sight of black pimps managing white prostitutes. His cousin, Mark Anthony Jett, then 31, was almost as angry as he.

The three men began a beer-and-Valium binge that lasted 14 hours. Then, after nightfall, they headed into the countryside. They first burned a cross at the tavern, which they then firebombed. Then they burned a second cross in front of Friendship Missionary Baptist and firebombed it. They ended by throwing kerosene-filled beer bottles into the Canaan African Methodist Episcopal Church.

The Canaan church was spared when a plastic water pipe ruptured in the heat, dousing the fire. The tavern escaped damage when the firebombs failed to ignite. Friendship Baptist, although heavily dam-

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aged, was saved by the volunteer fire department.

The two Jetts were arrested five days later, and Mr. Johnson the day after that. From the beginning, leaders of both the white and black communities of Columbia made extraordinary efforts to contain the explosive situation.

The county sheriff secretly moved all three suspects to another Tennessee jail. Black ministers were cautioned by concerned citizens "to be careful about what we said to the media," as Mr. Lawson puts it. "I think it was a wise choice not to come out and say it was racism. I think it would have created more fear and a potentially deadly situation."

Assistant U.S. Attorney Kennedy says that while the situation never quite reached "powder keg" proportions, fear and tensions were running dangerously high among both races. "I could sense the fear in the black churches. They were dealing with the unknown."

White ministers quickly intervened as well. One of the first things they discovered was that they didn't know their black counterparts very well. "It was a real shock," says the Rev. Larry Clinkenbeard, the white pastor of the New Life Christian Church and a leader of the effort. "Some of them didn't know Alvin Anderson from Adam."

That has changed because of a series of formal and informal meetings between white and black pastors. The process seems, by now, to have taken on a momentum of its own. Next month, black and white churches will jointly participate in what is billed as a "gospel explosion," a ceremony of prayer and song.

It is one thing, of course, for ministers and devout parishioners to come together – and immensely more difficult to eradicate racist feelings that remain, barely below the surface, in some of the community's less devout. Still, something has changed since the bombings here, and changed for the better.

U.S. District Judge Thomas A. Higgins underscored the change in sentencing Mr. Johnson to 57 months. "A lesson needs to be taught . . . that people who engage in this conduct and violate the laws of their country suffer consequences," he declared. "This will be a day [Mr. Johnson] will remember a long time. When he leaves here in chains, he will remember this." For his part, Mr. Johnson apologized to the black community. "I hope God forgets what we've done," he told the court. "I dream bad dreams about that."

The two Jetts got 33 months each.

On a recent evening, as the sun set like a red ball in the haze, Mr. Anderson looked down on his church from the highest, oldest part of the cemetery, a place where the only signs of many graves were shallow depressions in the ground. Below, black children were playing volleyball while inside the choir was practicing:

I can see how far you've brought me
And I'm glad! Glad!
It feels so good to know you love me
And I'm glad! Glad!

It may be, Mr. Anderson speculated, that whites and blacks will always be as distinct as "country music and rhythm and blues. . . . But this opened some eyes up. Like brothers and sisters, it pulled us together."

The Washington Post

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Black and White and Getting By

Between Hatred and Racial Harmony Is Lineville, Ala., Where Few Have It Easy

Second of six articles

By Eugene Robinson
Washington Post Staff Writer

LINEVILLE, Ala.

The Rev. Charles Caldwell remembers when he was a boy and looked out the window of his family's farmhouse one night to see flames. Klansmen had dug a shallow trench in the shape of a cross, filled it with gasoline and set it ablaze. "We still don't know why they picked us," he said recently, passing a hot summer's afternoon on his front porch. "This just used to be a bad, bad place for the Ku Klux."

Now, more than 40 years later, the flames of racial hatred—*more* than three dozen arson attacks at black churches in the past 18 months—still disturb him. "You know I've got to be concerned, because we just don't know where this is coming from," Caldwell said.

When the Olympic Games begin this week in Atlanta, barely 100 miles east of here, the world will behold one vision of the South: a modern, gleaming city that symbolizes racial harmony, that proclaims itself "too busy to hate." The church burnings present a different, more disturbing vision to African Americans, one in which race hatred is very much alive.

Between those two extremes lies the complicated reality of the way white people and black people relate to one another in Lineville, pop. 2,394.

Lineville has changed enormously from the days when a black person who walked into a white church would be asked to leave—and a black person who tried to vote or go to school like white people would be dealt with rather more harshly. It is a place where blacks and whites can cheer an integrated football team, where they can shake hands at graduations and groundbreakings, where they can form lifelong friendships.

But it is still a town where a white-owned restaurant decides to close for the day it is hosting a sizable African American group, because so many whites would be reluctant to come in. It is still a place where blacks fear being caught alone in some areas, like the tiny settlement north of town called Shinbone, because of passed-down stories of harassment or even lynchings. It is still a place whose modest wealth is concentrated in white hands; a place where both blacks and whites agree there are still at least some white racists "out there" somewhere, unenlightened, unreformed, unforgetting.

"Some of the white people just can't turn it loose. They just hate blacks," Caldwell said. "But we're not going back to those old days. Those old roughnecks might as well get used to it."

Lineville, in fact, has been subject to powerful trends that have altered the fabric of life throughout the rural South over the past decade, changing the way people live, the way they work, the way they think about themselves and their neighbors.

"You know, the world is changing," said David Proctor, who succeeded his father as editor and publisher of the weekly Clay Times-Journal newspaper. "And we've got to be able to adapt to those changes—even here in Lineville, Alabama."

About 60 percent white and 40 percent black, Lineville used to be a farming community. But hardly anyone can make a decent living on a family farm these days. Most people work in the textile plants, or for manufacturers like Wellborn Cabinet, or in the big Tyson Foods poultry plant five miles away in Ashland, the county seat. Years ago, farmers in overalls and work boots used to clump through town; today, wage-earning women run midday errands in their Japanese cars, wearing the puffy plastic hairnets that Tyson requires on the line.

Crime and drugs have found their way to Lineville. Integrated groups of black and white youths have been seen wearing gang bandannas like their role models in Los Angeles or Chicago. Crack cocaine has become the drug of choice for blacks; marijuana and crystal meth for whites.

And a new group has entered the racial and ethnic mix: For the past year, relatively large numbers of Hispanics—mostly Mexicans, Cubans and Central Americans—have been arriving in Lineville and surrounding Clay County, primarily to work at the Tyson plant. Estimates of how many Hispanics now live in the area range from 400 to 1,000, and their presence has left local residents bewildered.

"Our schools just aren't set up for Spanish," said Mayor Perry Young. "We don't have room for them and we don't have money for them. They're good people, but we feel like they're going to have to adapt to us, not us adapt to them."

Lineville made it through the upheaval of the civil rights era better than many small southern towns. Like the rest of the region, it waited until long after the Supreme Court's *Brown vs. Board of Education* decision in 1954 and the Civil Rights Act 10 years later to desegregate its schools and public facilities. Whites in many southern communities set up all-white segregated academies to skirt the law, but those in Lineville did not; when the schools here integrated in 1969, they integrated fully. Political power is now shared—grudgingly, blacks say.

To older whites like Young, the mistakes and injustices of the past should be forgotten. "The way I feel, there shouldn't be any prejudice toward whites because of all that," Young said in his office at Lineville's tiny city hall. "That ought to be left behind us."

Young used to have a dry-goods store, but that was before Wal-Mart moved into the area about 10 years ago, opening five stores within a 35-mile radius of Lineville. "They took my bread-and-butter items and they sold 'em for what I had to pay to get 'em," Young said. "I held on for three or four years, but it was no use." Young now spends most days helping his son with his auto parts business down the road in Ashland.

The mayor sees blacks and whites as being on equal footing in Lineville, and believes they get along well. "You hear prejudice on both sides," he said, "but I believe deep down in everybody's hearts, we know we're all here for the same purpose."

Young went on, "Blacks and whites go to school together, and there's some that go to church together. And they're intermarrying. Not so much intermarrying, but dating, or going together. At least that is what I hear. I don't see it so much, myself. I hear about it as much from the blacks as from the whites."

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City officials were forced by federal officials to redistrict in 1988 to create black-majority districts and, as a result, two blacks were elected to the five-member city council. Now the council is trying to resurrect Lineville's moribund downtown—much of what could be a charming business district is empty and falling into disrepair—and figure an adequate response to the Hispanic influx.

Most of Lineville's blacks live in small houses or trailers in a couple of neighborhoods at the edge of town. Most whites also live in modest housing, although up past the high school lies an upper-crust white neighborhood of gracious homes and manicured lawns, with no blacks in evidence. In black neighborhoods, the poverty is obvious; public facilities, like a small recreation center near Caldwell's house, are spartan and run-down. White neighborhoods have more of a Middle America look and feel.

One recent noontime, a racially integrated group of 4-H girls piled into Susie Bell's Restaurant for lunch. They did not segregate themselves by race as they sat down; and while they ate, they giggled and gossiped and tittered like any group of adolescent girls anywhere in the world.

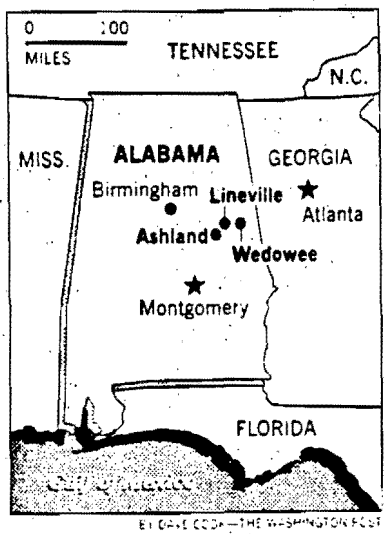
The Rev. Jerry K. Colquett, pastor of Lineville Baptist Church—a white church in the heart of town—shared the assessment of most whites interviewed that race relations in Lineville are generally good. The church burnings, he said, have brought southern blacks and whites closer together; white churches, including the Baptists, have donated money and labor to help black churches rebuild. "I think probably if the intent was to cause racial separation, just the opposite has occurred," he said.

Blacks and whites in Lineville spend time together in school and at all kinds of athletic and civic events, though not at church, Colquett said. "We are still two distinct, separate cultures," he said. "I'm not sure of all the reasons why."

The main problem his parishioners tell him about, Colquett said, is stress—something once alien to places as far from the beaten track as sleepy Lineville. "There's so little difference today between the small town and the large town," he said.

In an age of instant communication, not even the smallest backwater is truly remote: Lineville had its quarter-hour of modern fame, complete with invading television crews, during the Persian Gulf War after someone worked out that it had sent more soldiers, sailors and airmen per capita to Operation Desert Storm than any other community in America.

Colquett, like the mayor, took the view that there are good and bad people of both races—



that the thing to do was focus on the future rather than dwell on the injustices of the past.

It is an attitude that seems to come quite easily to whites in Lineville, but not at all easily to blacks.

Ora Caldwell, the Rev. Caldwell's wife, pointed out that right in the next county lies Wedowee, the town that made the national news two years ago when the principal of the local high school, Hulond Humphries, threatened to cancel the prom because he objected to interracial dating. Humphries also was said to have called a mixed-race student "a mistake." The school later burned down, in a fire that was ruled arson, and Humphries was dismissed as principal and banned from the school grounds. A young black man accused of starting the fire was acquitted after his lawyers suggested at his trial that Humphries himself had set the blaze—an accusation Humphries tearfully denied on the witness stand.

Last month, in a Democratic primary election, Humphries won nomination as superintendent of schools. Since there is no announced Republican candidate, he will almost certainly win the post.

"In a way things are better, and in a way not," Ora Caldwell said.

Tommy Lee Morris, a neighbor of the Caldwells', said it is hard for a young black man to find a good-paying job around Lineville, especially a man with little education. As far as whites were concerned, he said, "some of them speak to you and some of them don't."

Several African Americans interviewed for this article said there was still blatant racial discrimination at workplaces in and around Lineville. They complained of being passed over for promotions of plum assignments in favor of whites with less experience, of being saddled with hostile supervisors, of having their complaints ignored. But none were willing to be quoted on this subject by name—good jobs are too scarce, times too tough.

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Norman Gibbons is, by all accounts, one of Lineville's black success stories. Born and raised here, he was a star athlete in both football and basketball at the local high school. He went on to Tuskegee Institute and later Jacksonville State University, graduating in 1985 with a degree in business administration. He was hired almost immediately by the fast-food chain Hardee's and sent out to apprentice in restaurants all over the South. When Hardee's decided to open a restaurant in nearby Ashland, Gibbons was named manager; he now does a million dollars' worth of business a year. In 1992, he was elected a member of the city council.

"I really feel that if you work hard, if you're willing to go out and get your own, you can be anything you want to be," Gibbons said. "Any race has both the good and the bad. Some of my best friends are white. Prejudice is not inherited through your genes. I feel it's taught, in all races."

Yet Gibbons owes his prominence in local politics to an ugly racial incident. In June 1990, his brother Charles, also a star athlete, was pulled over by a Lineville policeman—an officer the then-mayor had hired, Norman Gibbons says, "to come down and straighten out the black folks." It should have been a routine traffic stop, but before it was over, the officer had beaten Charles Gibbons with a flashlight so severely that he almost died; he now has a metal plate in his head, collects disability and experiences flashbacks, his life effectively ruined.

"I got into politics so nothing like that would ever happen to anyone else," Gibbons said.

Gibbons directed much of his energy into cleaning up his neighborhood, an area called Kudzu Hill that had become the site of much of Lineville's drug trafficking and crime. He established a neighborhood watch program, got playgrounds built and speed bumps installed, instituted semiannual clean-up days, and helped turn Kudzu Hill around.

The officer who beat Charles Gibbons is long gone. The current police chief, Larry Whatley, said he believes relations between blacks and whites in Lineville are improved by the fact that "both white and black are working-class people and everybody's just struggling to survive. There's a common bond."

Whatley is a case in point: Born into rural poverty, he graduated from college and plans to go on to law school. He theoretically has a seven-member police force with two black officers, but with two slots vacant, he has to work double shifts.

"You get the occasional guy who says, 'If I was white, you'd let me go,' or that says, 'If I was black I could have got away with it,' but that's about all," Whatley said.

Several people, black and white, suggested that the growth in the Hispanic population over the past year has had the effect of bringing whites and blacks closer together. "There's really more tension about that than any race problem," Whatley said. "Ignorance breeds hate, and stereotypes breed ignorance. The only real problem we have with the Hispanics is their driving ability."

Gibbons, too, wonders how the area will handle the influx of Hispanic workers. Many are now living in crowded trailers; where will they be housed? How will they be educated? Will interpreters be needed in the court system? What about drivers' education? And who will bear the cost?

But he has a slightly different perspective. "I hear the way people talk about the Mexicans," he said, "and I say to myself, hmmm, that was probably the way they talked about us."

The Washington Times

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Education in black and white

If you always thought educational progress had to do with the kind of courses students take and the kind of teachers instructing them, then you always thought wrongly. Actually educational progress is about race. It may sound like something out of a Ku Klux Klan handbook, but today its adherents wear the black robes of the Connecticut Supreme Court.

"The public elementary and high school students in Hartford suffer daily from the devastating effects that racial and ethnic isolation, as well as poverty, have had on their education," wrote Chief Justice Ellen Ash Peters in her opinion for the 4-3 majority. In short, black Hartford students just can't learn without the requisite percentage of white faces dotting the classroom. What that percentage is, she didn't say. Nor did she say how it might be achieved. That's for state lawmakers and Gov. John G. Rowland to guess.

Their task is the more difficult because the Connecticut high court found no evidence of intentional discrimination in this case; no state official decided to send minority children to inner-city schools and white children to suburban schools. So any race-conscious remedy the lawmakers choose — busing, magnet schools or whatever — may run afoul of Supreme Court rulings barring quotas in the absence of intentional discrimination.

Already the social engineers have caused one "wreck." Students in the Hartford schools, black or white, are ranked dead last in the state with regard to Connecticut's standardized tests. Although the lack of white faces is often treated as a proxy for the lack of funding, state support was not a problem in this case. Indeed, thanks to state aid, Hartford was able to spend more money per pupil than nearly all of its suburbs, the New York Times reported. So the "poverty" Justice Peters cited in her opinion wasn't a problem except insofar as Hartford parents weren't financially capable of buying their way out of an educationally bankrupt system into parochial or other private schools. Somehow, one doubts that problem was the one Justice Peters had in mind.

Ahead loom other social engineering wrecks. Busing white students into inner-city schools won't save a failed system, but it is guaranteed to contribute to social strife and both black and white flight for those who can afford it. Magnet schools here in Prince George's County, which were supposed to contribute to voluntary desegregation of schools, actually led to government-sanctioned bias against minorities. Figuratively standing in the school house door, school officials blocked qualified black students from taking places reserved for whites. Some 500 slots went empty while minorities stood in line until this year, when the Prince George's school board finally abandoned racial bean-counting in favor of education.

Even then, the decision to open the doors to more black students passed by only a single vote. Said board member Alvin Thornton, who opposed the change, "I'm not willing to play around with [$13 million in state aid for magnet schools] in order to put a few black school children into a so-called better school."

Thus do anti-discrimination efforts come full circle to discriminate against the very people they were supposed to help. It seems awfully late in the day to have to state the obvious, but perhaps the first step to educating black children in Hartford, Prince George's County and elsewhere is to understand that their race does not inhibit their education any more than anyone else's race does. The next step is to keep courts and school officials from using race as an excuse for their own failures.

THE WALL STREET JOURNAL

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Minority Candidates Don't Need Quotas

By Ken Blackwell
And Matt Fong

The U.S. Supreme Court's recent ruling prohibiting racial gerrymandering has drawn much heat as an "antiminority" decision. Upon hearing of the 5-4 decision, the Congressional Black Caucus responded with outrage. Jesse Jackson fueled further bitterness, declaring: "At night the enemies of civil rights strike in white sheets, burning churches. By day, they strike in black robes, burning opportunities."

The court's decision, of course, had nothing to do with burning churches. But it didn't reduce opportunities for minorities seeking public office either. The fact is, the process of drawing political boundaries is a partisan battleground. Creating safe seats in bizarrely shaped districts has become an effective partisan tool that politicians have used not to limit the success of a particular racial group, but to create an advantage for particular candidates or parties.

These Democrats' attacks on the court's repudiation of racial gerrymandering is ironic. For the prime proponents of the creation of "minority districts" have, sadly, come from the Republican Party leadership. An important reason why the South has changed to Republican hands is that packing minority voters into specially drawn districts has the same effect of creating safe white districts.

Under the court's decision, three congressional districts in Texas and two in North Carolina now face serious legal challenges based on racial gerrymandering; districts in Georgia had already been redrawn under an earlier ruling. These minority districts were supposed to ensure that more minorities would get elected, making Congress and state legislatures more representative of the multiethnic face of America. But the result was to divide voters by race. Districts zigzagged here and there and became so distorted that they linked widely scattered groups of voters with nothing in common but their ethnicity.

The new court ruling should cause lawmakers to create districts that make sense geographically, not racially.

Defenders of racial gerrymandering say such districts are necessary to keep minorities from being shut out of opportunities for elective office. As Justice John Paul Stevens wrote in his dissent, "A majority's attempt to enable the minority to participate more effectively in the process of democratic government should not be viewed with the same hostility that is appropriate for oppressive and exclusionary abuses of political powers." Justice Stevens in effect advocates a quota system for politicians. Quotas are flat wrong, in or out of politics.

Besides, Americans locally and nationally have shown an increasing willingness to elect minorities without racially gerrymandered districts:

- In Casper, Wyo., citizens elected Nini McCognigley, a first-generation American from India, a state representative. Outside her immediate family, she has few constituents who trace their ancestry from India.
- In conservative, largely white Orange County, Calif., citizens elected Rep. Jay Kim, a first-generation Korean-American.
- In Ohio, African-American state Sen. Janet Howard of Cincinnati needed a majority of votes from both black and white constituents to win office.
- In Georgia just last week, two African-Americans defeated white opponents—in *Republican* state legislative primaries.
- In Ohio and California, neither of us—an African-American and an Asian-American—needed a quota or a court decision to win statewide office. Both our states have a wealth of diversity in cultures and ethnic groups. We won our offices because a majority of citizens from all walks of life saw fit to give us the opportunity.

The Supreme Court decision is not a setback for ethnic minorities. To the contrary, to insist that the only way minorities can win is if they represent minority districts is racist, condescending and wrong.

Let's embrace the ideal of a political system as that seeks out the best candidates with the best qualifications. Mr. Jackson, we don't need political quotas or color-conscious districts to win. We believe America will be far better off with color-blind political districts, not color-conscious ones. So, apparently, does the U.S. Supreme Court.

The Washington Times

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Affirmative action dogmas

THOMAS SOWELL

Since most people in California are against group preferences and quotas, the only way that supporters of "affirmative action" can hope to win at the polls is to distort the issues and spread panic about the California Civil Rights Initiative (CCRI) that would ban all such discrimination. The distortion has already started and the hysteria will undoubtedly get louder and the lies bigger as election day nears.

One of the early salvos has already been fired by the San Francisco Chronicle, with an editorial titled "Income Cap Belies Fairness of CCRI." In other words, the fact that different groups have different incomes proves discrimination.

After 15 years of research on group differences in countries around the world, I have yet to find any country where different racial groups — much less men and women — have the same incomes. The various groups usually differ on a whole range of things, from education to alcohol consumption and from average age to fertility rates.

Where we got the dogma that human beings are the same in their behavior, or in the consequences of their behavior, is beyond me. Nor is there any reason why they should be, except to make this dogma look good.

When we find that married men who are fathers work more and earn more than single men who have only themselves to support, should anybody be surprised? If becoming a father makes a man work more, while becoming a mother makes a woman work less, does it take breakthroughs on the frontiers of knowledge to figure out why?

We may talk about men and women as if they were interchangeable, but do not expect nature to go along with our fashionable fancies. The simple fact that men do not have babies is not a small difference.

What about men and women who remain single and work continuously and full time? There was virtual equality of income among people of this sort a quarter of a century ago — that is, before affirmative action. The only income difference was that women of this description earned slightly more than men of this description.

Why were woman-hating employers paying these particular women what they paid men? Or does this knock the props out from under that whole house of cards?

The Chronicle's editorial trots out the trump card of those who explain income differences by discrimination — that men and women, blacks and whites, with the "same" education earn different incomes. But educations are no more equal than anything else, even when these educations represent the same number of years in school or a diploma or degree with the same title.

Innumerable studies have shown great differences in academic performances among ethnic groups in schools and colleges, as well as large differences in what men and women specialize in at the college and university level. This is true not only in the United States but also in Europe, Asia and Africa.

Why then do we assume the opposite? Only because the dogma of the day requires it. But dogmas do not become facts just because they have been endlessly repeated in strident tones.

The June 28 issue of the Chronicle of Higher Education showed that women received more than three times as many bachelor's degrees and master's degrees in education as men, while men received more than four times as many bachelor's degrees in engineering and nearly six times as many master's degrees in engineering as women.

This is the "same" education that we hear so much about.

Finally, the San Francisco Chronicle's editorial sounds the familiar note that "redressing historical discrimination is not yet complete" so that "the need for affirmative action will be with us" until the statistics fit the dogmas.

Just a moment's reflection should be enough to see that the wrongs of history will never be redressed because the past is irrevocable. An opposite discrimination against another individual today does not equalize anything. It just adds to the already large total of human injustices.

To say affirmative action — or any other policy on any other subject — should be continued until some arbitrarily specified statistical results are achieved is usually the same as saying it should be eternal.

To call affirmative action "an essential ingredient" in the progress of women and minorities is to blindly ignore the actual history of that progress, which began long before affirmative action and will continue long after it is gone.

Thomas Sowell, an economist and a senior fellow at the Hoover Institution, is a nationally syndicated columnist.

The Washington Times

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GEORGIE ANNE GEYER

Standard gender mindset

SARAJEVO, Bosnia

Why, when I saw the news this week on the forced integration of the Virginia Military Institute, did I think of interviews that I have just had in Norway with several of their "gender activists"? And of this once-beautiful city?

First, because what I saw and heard among the women in Oslo seemed to exemplify the "bring everyone to one standard" mind-set that seems to be behind the Supreme Court decision that VMI must now take women cadets.

What struck me in talking with these dedicated, but oh-so-sober women was the degree to which feminism, once a joyful persuasion, had arrived at such a morbidly serious and obdurate defining-down. Ombudsmen and ministers in the Labor government speak of "forcing" the man to do equally all tasks at home — and, revealingly, of an age to come in perhaps 10 to 15 years when the sexes would be interchangeable. And government programs and policy are behind this.

Admittedly, I was an often silly, but surely impassioned, feminist at school, at the university and at work in the '50s and '60s. We early feminists wanted men and women to be treated fairly and equally, wherever they chose to exercise their talents. We wanted women to be free in order to do great things. We wanted a world where everybody had at least the chance to be happy.

But, ah, the new feminists. Whether in Oslo or in Washington or in Southern Virginia, they want women to be "free" in order to show men how miserable it's been over the centuries, to have children and scrub floors (and to force men to share it). They want not harmony but homogenization. They live, not for equality, but for getting even and they essentially want a world in which nobody is happy.

Then I thought of Sarajevo because, when the Serbs' terrible war against this quintessentially tolerant, liberal and multi-ethnic enclave started in 1991, Bosnia had *in power* exactly the types of non-aggressive men feminists seem to be striving toward.

Bosnian leaders — fine, intelligent but nonmartial men — could not believe there could be a war (against them?). They didn't even arm their population, saying that the Yugoslav army would protect them. Too bad they didn't realize that the Yugoslav army was already backing the Serbs, who then proceeded for four years to kill the Bosnians like rabbits.

One can be forgiven by most people — but surely never by radical feminists — for thinking that the Bosnians could have used some of the graduates from the Virginia Military Institute.

The forces for integration of women into the particularist VMI, which employs abnormally Spartan, privacy-depriving and "adversative" training on all levels, have argued that VMI cannot "discriminate" because it receives government funding. This remains, of course, a persuasive argument in a country in which, increasingly, non-discrimination is just about the only popular standard we harken back to.

But the new American activists do not, in truth, want only non-discrimination. They want to change places like VMI completely; they want essentially to abolish this type of training — and societal control and direction over this type of young man. They want to replace it — and him — with a non-aggressive "manhood" of an entirely different sort.

Yet these are the men we already have in many positions of power — and not only here in Bosnia. In only the last week, we have seen 190 young American servicemen die needlessly in Saudi Arabia because we have such a weak Defense Department leadership that, when the Saudis apparently refused a request to give these Americans greater security, no one even thought to say to them, "Then we don't play — we're here for your benefit."

Sociologist David Riesman, now professor emeritus of Harvard, has argued eloquently that we should at least keep different types of schools (like VMI) alive so we can know later what are possibilities and what works.

But the new feminists are not involved in any open exploration of life. No, in the sacred name of "diversity," they are bent upon destroying every vestige of diversity.

Perhaps it is time for those of us who still consider ourselves the real feminists — who can be as critical as anyone of real male depredations but who think that some men need to be trained among other men — to take back the feminist cloak.

Georgie Anne Geyer is a nationally syndicated columnist.

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Economic Trends

BY MIKE McNAMEE

THE PROOF IS IN PERFORMANCE

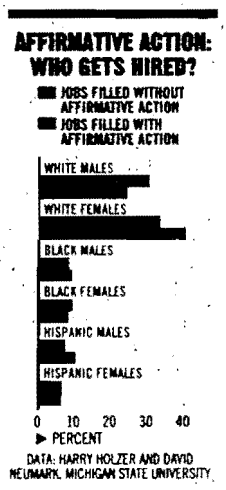
Affirmative action doesn't hurt

Critics of affirmative action charge that it means companies hire less qualified female and minority workers—and pay a price in poorer performance. New research says they're half-right.

Michigan State University economists Harry Holzer and David Neumark surveyed 800 employers in Atlanta, Boston, Detroit, and Los Angeles between June, 1992, and May, 1994. Each company was asked about its most recent hire. The economists asked about job requirements—especially the education needed—and how well the successful candidate met them.

Some 45% of respondents said affirmative action played a role in their latest hire. And it had a clear effect: White women and black and Hispanic males benefited when affirmative action was used in hiring (chart).

Holzer and Neumark also found that minority workers hired under affirmative action tended to be less well qualified: They had less education than whites hired at similar companies and less than the jobs' stated requirements. Black males hired at affirmative-action companies, for example, had 1.4 years less schooling than white males hired at such companies.



In the workplace, however, the disparities didn't matter much: After some job experience, female and minority workers hired under affirmative action had the same performance ratings as white males. Critics of affirmative action, the economists say, "focus too narrowly on one or two easily observable measures of qualification," and not on "the most important measure—job performance."

U.S. News & WORLD REPORT

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Pride and prejudice

Are old animosities, new political conflicts, talk radio and the Internet fueling a racist revival?

They called themselves the "Lords of Chaos." Five of them were superior students at Riverdale High School in Fort Myers, Fla., advanced in math, computers and art. The sixth—their leader, police say—was 19-year-old Kevin Foster, who was better known for his hatred of blacks than for his artistic abilities: He allegedly drew a crude car-

Suspects. *Timothy Welch (left) and Gary Cox are charged with burning a black church in Greeleyville, S.C.*

toon depicting hooded figures standing next to a burning cross holding a crucified black man, with the words "Black BBQ" scrawled below. The Lords "didn't fit the mold of bad boys," says Riverdale principal Robert Durham. "They did all the things parents expect them to do. These could be anyone's kids."

Earlier this year, police say, these Everyman's kids burned an abandoned bottling plant, pulled an armed robbery and stole a car. And authorities charge that after music teacher Mark Schwebes, 32, caught the Lords planning to burn a school auditorium, they went to his house, knocked on his door and killed him with a shotgun blast in the face. After that, police claim, the Lords were planning a "Terror Night" at Disney World in Orlando. The idea was to assault some Disney characters, steal their costumes and walk around the park shooting African-Americans. Five Lords were arrested the night before that was to occur; four of them have been charged with Schwebes's murder.

The existence of groups like the Lords of Chaos and the epidemic of church fires across the South are peeling the lid off an alarming phenomenon: Despite the gains of the civil rights struggle, in-your-face racism is bubbling to the surface again. "There is in our society today, more so than 20 or 30 years ago, a greater tolerance for intolerance," says Abraham Foxman, national director of the Anti-Defamation League of B'nai B'rith.

Mainstream racism. Statistics on hate crimes are soft, and federal data-gathering on the subject lags, so it's hard to draw broad conclusions. But the best estimates are that between 10,000 and 40,000 hate crimes are committed annually in America—about 60 percent by whites, and about 60 percent motivated by racial bias. Whites have no monopoly on hatred: Of the 5,842 hate crimes reported to the FBI for 1994, the most recent year available, 1,901 were racial incidents directed at whites—including 908 antisemitic religious incidents.

Stockton College criminal justice Prof. Brian Levin, formerly of the Southern Poverty Law Center, says 56 percent of bias-related homicides are committed by offenders under 21. Adds Prof. Jack Levin of Northeastern University: "The bad news is that this is coming from the center where most of us live. These are our children—the boy next door, the young man at the next desk—who can't handle diversity and whose rage translates into violence. Many are red-blooded, hot-dog-and-apple-pie Americans. We aren't talking about racism under a rock but in the mainstream of our culture."

There are reasons for the church fires—vandalism, insurance fraud and revenge among them. But "it's plain that racial hostility is behind many," says Assistant U.S. Attorney General Deval Patrick. Federal authorities have not uncovered any broad conspiracy, but now some almost wish they had. "The prospect of a conspiracy is a chilling thing," says Patrick. "But the prospect that these are separate acts of racism is even worse."

That may be the case. A 1993 study of

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