

OVERVIEW

What Women Say About Their Jobs

National survey of 1,200 working women by the Labor Department's Women's Bureau.



Salary	Enjoy co-workers	Have flexible hours	"Like what I do"	Get paid well	Has good benefits
Under \$10,000	54%	62%	39%	24%	11%
10-25,000	46	35	39	31	36
25-50,000	38	34	42	42	37
Over 50,000	18	41	31	68	39

The New York Times

Working Women Say Bias Persists

By TAMAR LEWIN

Many working women still feel that they are not getting the pay, benefits or recognition they deserve, according to a new survey conducted by the Federal Government.

The survey, based on more than 250,000 questionnaires received in the four-month survey by the Women's Bureau of the Department of Labor, also found that working women mentioned stress as a serious problem more than any other.

And many women, in very different fields, complained of discrimination. An Alabama coal miner, who said she was the first woman to be hired in the mine where she worked, reported that she earned about \$20,000 a year less than the men with comparable experience.

A Milwaukee woman with a bachelor's degree in electrical engineering said male co-workers with less education got the challenging work, and a Maryland woman in a three-person shipping and receiving department told how two male co-workers were paid more but had less accountability.

"The concern about discrimination and equal pay surprised me," said Karen Nussbaum, director of the Women's Bureau. "The popular wisdom had been that we don't talk about things that way anymore, but clearly it is the way women talk about it.

"I was also surprised by the consensus that emerged. We tend to think of training as a blue-collar issue, child care as a low-income issue, the glass ceiling as something professional women care about and discrimination as a concern for women of color, but each of these

issues cut across all the lines."

In 1993, Government figures show, women earned 71 cents for every dollar earned by a man, up from 61 cents in 1978.

Still, nearly four out of five women said that they liked or loved their jobs — and only 4 percent said they disliked their work or found it "totally miserable."

For the Women's Bureau survey, known as Working Women Count!, questionnaires were distributed through more than a thousand businesses, community organizations, labor unions, newspapers and maga-

of balancing work and family.

Many women mentioned a "time crunch" and exhaustion, using adjectives like "hectic" and "hard" to describe their lives.

Among the findings from the scientific sample were these:

¶Forty-three percent of the women who worked part time, and 34 percent of those over 55 years old, lacked health insurance, compared with 18 percent of the general population.

¶Nearly half of the women said they were not paid what they deserved.

¶Stress was identified as a serious problem by almost 60 percent of the women, but it was particularly acute for single mothers and women in their 40's who held professional or managerial jobs.

¶Fourteen percent of white women and 26 percent of minority women reported losing a job or promotion because of sex or race.

¶Three out of five women said they had little or no likelihood of advancement.

¶Nearly a quarter of the women said they had no pension plan.

¶More than half the women with children 5 years old and under said that affordable child care was a serious problem.

¶Fourteen percent of the women — including almost a third of those earning less than \$10,000 — said they had no sick leave.

The report acknowledged that while only women were surveyed, many of the problems described could also apply to men. The concerns, the report said, reflected "the trend toward a work force anxious about job insecurity, declining benefits and stagnant wages."

Discrimination cuts across class and racial lines, a survey finds.

zines, and more than 250,000 women returned them from May to August.

Because that was not a scientific sample, the Women's Bureau also conducted a telephone survey in June, asking a nationally representative random sample of 1,200 women the same questions, to provide a benchmark for evaluating the overall responses. The margin of sampling error was given as plus or minus five percentage points.

Women in both the scientific and popular samples said their priorities for changes in the workplace were improved pay and health insurance. And the No. 1 issue that women said they wanted to bring to President Clinton's attention was the difficulty

Black, Hispanic Women Assert Bias at Work

U.S. Study Indicates Level Of Job Discrimination Is Higher for Minorities

By ASRA Q. NOMANI

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — Twice as many black and Hispanic working women as white women say they face discrimination, says a Labor Department study that paints a bleak picture of opportunities in America.

Black and Hispanic women also say they have worse chances for advancement, and a greater percentage of them report knowing someone who lost a job or promotion because of their gender or race.

The study "sent out a real alarm," said Karen Nussbaum, director of the Labor Department's Women's Bureau, which surveyed 1,200 women for the report. "African-American women were crying out on this issue." The agency also collected information from 250,000 women in a non-scientific survey by passing out questionnaires in various places.

About 14% of white women said they lost a job or promotion because of their gender or race; 28% of black women and 23% of Hispanic women said the same thing. Overall, the survey found that women's top complaints involved stress, pay and benefits.

Older women who are black, Hispanic, Asian, Pacific Islander or Native American face the worst situation, according to results tallied but not included in the report. Some 30% of these women 45 years and older said they had been discriminated against, compared to 25% of these women 16 years to 44 years and 12% of white women in both age groups.

Ms. Nussbaum noted: "Discrimination was supposed to be outlawed years ago, and business has not taken care of this."

The Clinton administration issued the report with much fanfare: First Lady Hillary Rodham Clinton and Vice President Gore stood by as the results were released. But there are skeptics as to whether the administration will change anything. The Women's Center in Vienna, Va., in material explaining its own efforts in developing programs for professional

women, noted, "It seems every administration issues a report like this labor report on working women, which only confirm the rest of the reports."

Separately, a black woman last week won \$150,000 in compensatory damages in a discrimination lawsuit against the Federal Reserve. The woman, Joyce Bennett, 53, started at the Fed in 1973 as a statistical clerk and later was denied a promotion to research assistant because her bosses told her she needed a college degree. Studying at night, she graduated with an accounting degree from the University of District of Columbia in 1989, but was told she took the wrong courses to win a promotion from her \$33,000-a-year job. The jury ruled the Federal Reserve wrongly denied her a promotion, and awarded her a right to be promoted and back-pay of \$12,000.

"The black women at the Federal Reserve are afraid to even apply for promotions. They never get them. I saw this pattern over and over and over again," says Ms. Bennett. "I said, 'I'm not going to sit here, put in 30 years and leave at the same level I came in.'"

John Bates, chief of the civil division for U.S. attorney in Washington, said the course requirements for the job Ms. Bennett was denied were necessary and legitimate. "The Fed didn't discriminate or retaliate," he said. The government hasn't decided whether to appeal.

SCIENCE & SOCIETY

PETER MARLOW - MAGNUM



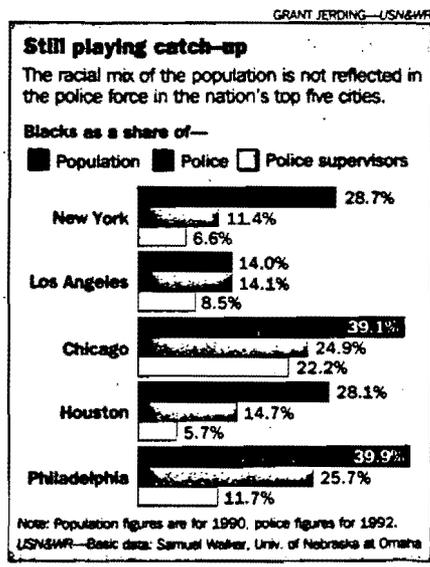
Making the grade. Graduates from the nation's academies often must pass an exam to advance, which leaves some blacks behind.

The thin white line

City agencies struggle to mix standardized testing and racial balance

When Democrats last week officially chose Chicago for their 1996 presidential convention, they were hoping to bury some painful images from the last Chicago convention in 1968, when Mayor Richard J. Daley's police force beat up antiwar demonstrators on national television. Yet even as the ink was drying on the convention agreement, new troubles were brewing in the Chicago police department that throw an embarrassing spotlight on a vexing social problem: the disparate scores blacks and whites achieve on standardized tests.

The trouble began late last month, when the department announced the scores on a recent exam taken by candidates vying to become police sergeants. Of 500 officers who scored high enough to win promotion, only 40 were black



and 22 Hispanic—this in a city that is 39 percent African-American and 19.6 percent Hispanic. Almost immediately, some African-American politicians denounced the test as racially biased, even though the actual test questions have not been publicly released. "Structurally the test was biased, structurally it was racist, structurally it wasn't meant to promote African-Americans," fumed U.S. Rep. Bobby Rush at a church rally in his South Side congressional district.

The furor in Chicago erupted because the police department dropped a past practice known as "race norming" test scores. Previously, when municipal hiring and promotion exams resulted in disproportionately low scores for minorities, city departments often reworked test scores using various statistical techniques. Chicago adjusted the

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results of its 1985 sergeants' exam, for instance, by giving minority test takers extra points. Other cities, such as Detroit, put black and white test takers into separate categories and compared them by rank order rather than score. Whatever the technique, the results of race norming were the same: More minorities were hired or promoted, often ahead of whites with higher scores. Those who defend affirmative-action hiring argue that having racially diverse police departments helps ameliorate racial tensions. And there are clearly some jobs that white officers can't do as well, such as infiltrating black street gangs.

Under fire. Yet Congress specifically banned race norming in the 1991 Civil Rights Restoration Act, and many cities dropped the practice, often under pressure from lawyers representing predominantly white police and fire fighters. Chicago is the first to feel the full political impact of administering tests without the race-norming safety net. But other cities are likely to follow.

To avoid charges of racial bias or favoritism, Chicago followed the recommendations of a blue-ribbon commission and paid \$5 million to consulting firms to devise a series of bias-free, multiple-choice tests. When the test results still showed significant racial disparity, a politically embarrassed Mayor Richard M. Daley—son of the late Richard J.—quickly announced that the city and the U.S. Justice Department would investigate.

While racial bias remains a possible culprit in the low scores—some white officers may have gotten hold of study materials that closely matched the test format—the likelihood is that Chicago and other cities are having to face an uncomfortable fact: On the vast majority of paper-and-pencil tests devised to measure knowledge or aptitude, African-Americans score lower on average than whites. While a few academics such as the American Enterprise Institute's Charles Murray suggest that test differences between races may have some genetic basis, a larger group maintains that cultural bias is the problem.

"Any test is grounded in the culture of those who make it," insists Robert Schaeffer of FairTest, a nonprofit advocacy group. Patricia Hill, president of Chicago's African-American Police League, complains that the test forces "everyone to meet European cultural standards in order to be sanctified."

White cultural bias, however, doesn't explain why Hispanics scored higher on the Chicago sergeants' exam than blacks, or why Asians had higher mean scores than whites. The more plausible explanation for the relatively low black

the skills police must have to do their jobs effectively. Firms like Barrett craft their test questions by interviewing a department's officers and reading its rule books. Yet concerns over the relevance of written tests have led more and more departments and consulting firms to turn to alternative types of tests in which candidates perform tasks they would actually do if promoted: handling memos, performing roll calls, responding to simulated citizen complaints. Minorities tend to score much closer to whites in such performance tests, which

suggests that many minorities have real abilities that traditional written tests don't capture.

But performance tests have their own problems. They are far more expensive—a serious issue for cash-strapped municipalities—and harder to administer, especially in large cities, where thousands of applicants take the test on the same day. And because they are scored by people rather than by machines, performance tests are often seen as less objective. Indeed, black police officers in Chicago fought the use of performance tests, even though they tend to do better on them, out of fear that white supervisors would doctor the results in order to promote their friends.

Most testing experts now recommend a Solomonic compromise: basing promotions on a mix of written and performance tests. Other ways for departments to boost minority supervisory ranks in the post-race-norming era include beefing up recruiting to attract high-

er-quality officers and rigorous training programs for those seeking promotions. Such training is expensive, but it has been key to the U.S. military's ability to promote large numbers of blacks to high rank without diluting standards.

Yet even with all these measures, it is probably too much to expect racial disparities in testing and hiring to disappear any time soon, notes Temple University criminologist James Fyfe, because "you're asking police departments to deal with the consequences of an inequitable society."

BY PAUL GLASTRIS IN CHICAGO



"The conspiracy is to put non-minorities into supervisory positions who will be in place years from now. That's institutional racism."

REP. BOBBY RUSH



"I flunked the bar exam twice.... I had to keep studying harder and harder and harder. I passed it the third time.... That's it. Study harder."

MAYOR RICHARD M. DALEY

scores, say most experts, is that blacks often attend poorer-quality schools and learn less rigorous study habits. "Pencil-and-paper tests tend to reward people who grew up in educationally oriented cultures," notes journalist Nicholas Lemann, who is writing a book on meritocracy in the United States. Winfred Arthur, an African-born psychologist who wrote many of the test questions in the Chicago police exam for Barrett & Associates, agrees: "Tests like these are just capturing the effects of other social issues."

A more fundamental question is whether such tests realistically measure

ADMINISTRATION ENDORSES BILL TO EASE BURDEN OF PROOF IN DISCRIMINATION SUITS

The Clinton administration has endorsed legislation introduced in the House and Senate to overturn the 1993 U.S. Supreme Court decision in *St. Mary's Honor Center v. Hicks* that increased plaintiffs' burden of proof in employment discrimination cases.

The court's 5-4 decision drew sharp criticism from civil rights lawyers and members of Congress who argued that it upset nearly 20 years of case law and made it more difficult for plaintiffs to prove intentional discrimination by their employer. Legislation to overturn the ruling was introduced in both the Senate and House in 1993 (235 DLR A-16, 12/9/93) by Sen. Howard M. Metzenbaum (D-Ohio) and Rep. Major Owens (D-NY).

The Clinton administration had argued against the position taken by the court, but had taken no position on the legislation until last month. In a letter to Sen. Edward M. Kennedy (D-Mass), chairman of the Senate Labor and Human Resources Committee, Assistant Attorney General Sheila F. Anthony said the administration "strongly supports the reinstatement" of the standard that existed prior to *Hicks*.

Anthony said the Metzenbaum bill "strikes the proper balance between the interests of employers and the need to ensure that victims of intentional discrimination secure redress."

Bill Would Restore Pre-*Hicks* Standard

The case involved Melvin Hicks, an African-American corrections officer at a halfway house in Missouri, who charged that he was fired because of his race. The district court rejected the company's claim that Hicks was terminated for work rule violations, but nonetheless found in favor of the employer. The court concluded animosity between Hicks and his supervisor was a factor in his termination and that Hicks had failed to show that the actions against him were "racially rather than personally motivated." The district court ruling was reversed by the U.S. Court of Appeals for the Eighth Circuit, which concluded that Hicks had met the burden of proof established by the Supreme Court in its 1973 holding in *McDonnell Douglas Corp. v. Green* (5 FEP Cases 965).

Arguing in defense of the then-existing standard of proof, the Justice Department in April 1993 urged the Supreme Court to affirm the decision by the Eighth Circuit that an employee who brings a job bias claim is entitled to judgment as a matter of law once he establishes a prima facie case and proves that all the nondiscriminatory grounds advanced by the employer are a pretext for discrimination (75 DLR AA-3, 4/21/93).

However, in the opinion written by Justice Antonin Scalia, the court reversed the Eighth Circuit's decision and upheld the district court's judgment for the employer. It held that plaintiffs may be required not just to prove that the reasons offered by the employer were a pretext for racial discrimination, but also to "disprove all other reasons suggested, no matter how vaguely, in the record" (122 DLR AA-1, D-1, 6/28/93).

In a dissent, joined by Justices Harry Blackman, Byron White, and John Paul Stevens, Justice David Souter predicted that the decision would make intentional discrimination substantially more difficult to prove and discourage discrimination victims from suing to enforce their rights.

No hearings have been conducted on the legislation in either the House or the Senate. The legislation will have to be reintroduced when the new Congress convenes next year.

(Text of Anthony's letter appears in Text Section E.)

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CANADIAN STATISTICS AGENCY REPORTS NO CHANGE IN SEPTEMBER HELP-WANTED INDEX

OTTAWA—Canada's help-wanted index remained unchanged at 97 in September (1991=100), Statistics Canada reported Oct. 6.

The caucus states that, contrary to the position taken by the international, union locals and joint councils do not violate federal law by participating in or authorizing the use of union funds for either the caucus or the defense fund.

IBT spokesman Craig Merrilees rejected the caucus' assertion that Carey or other top officials had threatened local officers for their participation in the Real Teamsters. He said that the opposition group has a political agenda, which is to defeat Carey in the next election.

"In the past, people who organized meetings or passed out flyers which represented a different point of view [from the union leadership] got beaten up," said Merrilees. "But Ron Carey has put a stop to that sort of thing. He's opened up the union so that people can speak freely."

Merrilees acknowledged that electronic messages have been sent to locals regarding participation in and financial support of the Real Teamsters and its defense fund. The locals were told that use of members' dues to support these organizations is a violation of LMRDA and the union constitution, he said.

"We advised them that what they are doing may be illegal and they're interpreting this advise as a threat," Merrilees said. "But it's good legal advice that the locals need to know in deciding what to do with their dues money."

At a meeting in New York City with members of 14 IBT locals late last month, Carey said he intended to take a tougher stance against those who opposed his administration. Carey said he had extended the olive branch to his opponents, but his gestures of reconciliation have been rejected. "Well, there is no more olive branch," Carey told the New York members (184 DLR A-13, 9/26/94).

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COMPUTERIZED REGISTRY TO STOP ILLEGAL WORKERS LIKELY TO BE TESTED, COMMISSION HEAD PREDICTS

AUSTIN, Texas—Despite press accounts to the contrary, the Clinton administration is likely to approve a five-state pilot program to test a computerized registry to prevent illegal immigrants from working in the United States, Barbara Jordan, head of the U.S. Commission on Immigration Reform, said Oct. 6.

Jordan, speaking at a conference on immigration sponsored by the University of Texas School of Law, also predicted, however, that nothing "rational" will happen on immigration reform until after the Nov. 8 elections.

The former member of Congress, whose commission recently made several recommendations for implementing immigration policy, further predicted that lawmakers will take a "holistic" approach to adopting the commission's recommendations. ✓

Jordan said that she believed that the pilot registries, which are called for in the work-site enforcement section of the commission's report, would be tested (189 DLR AA-1, D-1, 10/3/94). "I am told that what we have read was not the official position," she said in response to a question. "And all I can say is I believe that we're going to get back on target and that the pilots will be tested. I do believe that we're going to get favorable reactions from INS [Immigration and Naturalization Service] and the administration to at least give them a try."

Press accounts that the administration was cool to the proposal came from "a stray voice" at the Office of Management and Budget who made "some off-the-wall remark and now everybody is scrambling trying to fix it," Jordan said.

Jordan said she tried to prevent just such an occurrence by touching base in Washington with White House Chief of Staff Leon Panetta and House and Senate leaders before the commission's report was released. "I tried to keep the administration from stepping on its own foot

one more time, but I wasn't successful," she said. "I know that they are trying to rescramble the egg, or unscramble the one they scrambled, and come out and do something constructive about the pilots."

Recommendations Should Be Taken As Whole

Jordan said the commission's recommendations should be taken as a whole because the risks of picking it apart are great. "Believe it, this is the best shot you're every going to get to make sense out of our immigration laws," Jordan said. "The reason I say that is that the alternatives are so abhorrent and antithetical that if we don't maximize this particular opportunity, you are going to give the crazies a chance to get a shot in."

Certain members of Congress—Senate Labor and Human Resources Committee Chairman Edward M. Kennedy (D-Mass), Senate Minority Whip Alan K. Simpson (R-Wyo), and House Judiciary Committee Chairman Jack Brooks (D-Texas)—share that view, Jordan said. "Congress is going, I believe, to be trying to push for holistic treatment of this report rather than picking it apart and pulling it off piece by piece."

But upcoming elections are likely to interfere with reason, Jordan predicted. "Nothing is going to get rational until after Nov. 8," she said.

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HERE LOCAL 2 STRIKES MARK HOPKINS HOTEL; RATIFICATION UNDER WAY AT OTHER HOTELS

Members of Hotel Employees and Restaurant Employees Local 2 struck the Mark Hopkins Hotel on San Francisco's Nob Hill Oct. 6 even as other members of the local continued the ratification process on contracts negotiated with a dozen other major hotels.

The walkout at the Mark Hopkins, where Local 2 represents some 200 maids, telephone operators, bartenders, bar staff, and others, began about 3 a.m., the union reported.

Negotiations between the hotel and the union broke off Oct. 4, according to Local 2 spokeswoman Lisa Jaicks. Several management proposals that the union finds unacceptable remain on the table, including language that would eliminate certain jobs, a provision allowing management to increase employees' workload, and new language enabling the hotel to schedule employees for 10 consecutive days of work without overtime, Jaicks said.

The union is seeking a contract that would follow the pattern established in its recently concluded negotiations with 12 major city hotels, which bargained jointly as the San Francisco Hotels Multi-Employer Group. That five-year tentative agreement, reached Sept. 15, was subsequently accepted by two other hotels—the Hilton and the Stanford Court, bringing the total to 14 hotels.

The master agreement, now undergoing ratification votes by union members at the individual hotels, includes annual wage increases, increased employer contributions to the pension plan, extension of health care coverage to domestic partners, and new language establishing joint labor-management cooperative programs. It would apply to some 4,000 employees (178 DLR A-12, 9/16/94).

Attorney Kenneth Ballard, chief negotiator for the Mark Hopkins, said that the hotel has no objection to the wage and benefit terms of the master agreement and is even prepared to offer a higher wage package. But in exchange, it wants modifications in restrictive work rules, he said. He noted, for example, that the hotel has proposed language that would allow housekeeping staff to clean additional rooms on a voluntary basis for a premium. Housekeepers also could work a shorter schedule and clean a smaller number of rooms, under the hotel's proposal.

This would allow for greater flexibility in scheduling and also would better accommodate some employee's family responsibilities, he said, but the union has refused to consider any deviation from the terms negotiated with the 12 main hotels.

the compromise retains the original intent of the administration's bill and is "a solid package of reforms that will improve funding in a balanced, affordable way."

Stronger Action Said Needed

"Both PBGC and GAO recognize that problems exist in current regulations affecting pension plan funding. Both agree that action must be taken to solve these funding problems, but we in GAO believe action stronger than that proposed in the Retirement Protection Act (HR 3396) is necessary for these problems to be eliminated," Delfico said in the introductory letter.

GAO conclusions came after studying a random sample of 4,968 large (101 or more participants) plans that paid PBGC variable rate premiums in 1990. GAO examined how the 93 plans in the sample were affected by the 1987 introduction of the deficit reduction contribution (DRC), and looked at how they would be affected if either of the later funding bills were enacted. Fifty-seven of the 93 plans were underfunded in 1990 and subject to the DRC.

But GAO said despite the introduction of the DRC, sponsors of 60 percent of the underfunded plans in the sample did not make the additional contribution because they were able to completely offset it by allowable reductions in their required minimum contribution. Another 30 percent of the sampled plans were able to substantially reduce their DRC requirement, GAO said.

The administration's bill "moves in the right direction to strengthen funding in underfunded plans," GAO said, but added that only half of the sampled underfunded plans would have had to increase their contributions had the bill been in effect in 1990. "Neither the underfunding in the remaining plans nor the risk these plans pose to PBGC would have been reduced."

Private Pensions—Funding Rule Change Needed to Reduce PBGC's Multibillion Dollar Exposure, GAO/HEHS-95-5, is available by mail from the General Accounting Office, P.O. Box 6015, Gaithersburg, Md. 20884-6015, or by telephone, (202) 512-6000 or fax (301) 258-4066.

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EEOC WILL HAVE LITTLE CHOICE BUT TO EXPAND RULE OF ADR, SILBERMAN SAYS

ORLANDO, Fla.—A backlog of some 92,000 pending charges at the Equal Employment Opportunity Commission has created such a "desperate" situation that the agency's new leadership will have little choice but to expand the role of alternative dispute resolution, veteran EEOC Commissioner Ricky Silberman predicted Oct. 5.

In a dinner speech here, Silberman said that Congress would not mandate binding ADR. She urged the EEOC's new chairman, Gilbert Casellas, as well as employers, unions, and plaintiffs' attorneys to push for more reliance on the mediation process.

"The new leadership is going to need answers for many of the same questions that have plagued their predecessors. How do you process the now nearly 100,000 new charges that walk in the door every year fairly, effectively, and expeditiously?" Silberman asked.

"Hostility that is rampant in society is rampant in the workplace as well. The new chairman is going to find that business is good, too good."

Silberman made her comments at a meeting of the West Central Florida Industrial Relations Research Association. Her comments followed by less than a week the Senate confirmation of Casellas as EEOC chairman and Paul M. Igasaki and Paul Steven Miller as new commissioners (189 DLR A-1, 10/3/94).

Delay Due To 'Diversity Considerations'

In her speech, Silberman noted that the confirmations took nearly two years, attributing the delay to what she said were "diversity considerations" that were "so important as to be paralyzing" to the administration.

The Tragic Error of Affirmative Action

By IRVING KRISTOL

Just who or what is a black American, anyhow? Two recent events have posed this question to me, and in an unexpected way.

First there was (and is) the case of O.J. Simpson. I haven't followed this case closely, but it is clear that it seems to be, among other things, a significant incident in "race relations" in this country. A black sports hero has been indicted for killing two whites, one a former wife. And TV keeps showing us, in full color, pictures of O.J. Simpson at his trial.

Now, as a sports fan I have never really thought about the color of O.J. Simpson's skin. But watching him on television, I found myself observing the color of his skin, and deciding that he is not really black at all. Bronze, I should think would be more accurate—so why do we call him "black"? And, it further occurred to me: What if O.J. spoke Spanish instead of English? Would he then be transmuted into a "Hispanic" and no longer be "black"?

The World Cup

The second event was the recent World Cup series in soccer. No one mentioned the color of any player's skin, though the surprisingly good Saudi team seemed to be all "black," as were, of course, the Nigerians. Somehow race vanished from our perspective as we watched these games. The Saudis were all and only Saudi, just as the Nigerians were all and only Nigerian. And I realized: Throughout most of the world, national identity trumps racial identity. This is true, even in the U.S., for such groups as the Pakistanis and Indians, who are never defined racially, whatever their skin color.

It's not that, in other mixed-race countries, race and skin color count for nothing. It usually counts for something. And there is always the possibility of discrimination, which is sometimes a reality—occasionally even giving rise to political controversy. But in America, with its liberal traditions, race nevertheless remains a permanent, fixed and deadly problem. How did this come about?

Well, we know how it came about. It was the enduring curse of slavery that instilled a degree of race-consciousness of an extraordinary intensity. Just why this should have happened in the U.S., and not (at least to the same degree) in other countries, scholars are still trying to explain. But happen it did. It is because of slavery that if you are one-quarter black, or even one-eighth black, you are automatically

designated as black. In the Old South, if you were merely suspected of having a "touch of the tar brush," you were not properly "white."

This crazy race-consciousness is not replicated in any other country that I know of—except, perhaps, South Africa. And even in South Africa, those of mixed racial ancestry are classified as "coloured," not black. Had we such a classification in the U.S., at least one-quarter to one-third of American "blacks" would overnight become "coloured." Not that it would really matter, of course.

It is to the eternal credit of American liberalism that, after the Civil War, and most especially after World War II, it set out to dismantle all legislation, and the en-

the racism it wished to eradicate. Today, school busing for purposes of racial integration is wildly unpopular among both races, and the courts are in grudging retreat on the issue.

But it is government-initiated, government-sponsored, and government-enforced affirmative action that, above all, has placed a curse on race relations in the U.S. This idea was born of a liberalism drunk with success and intoxicated with power, and marked a transformation of liberalism itself—from a Hubert Humphrey-Lyndon Johnson liberalism to a more statist George McGovern-Edward Kennedy liberalism. It is this later liberalism that, with its radical goal of quick racial integration, has given us, among

Board of Contributors

Through administrative decision and judicial intervention, affirmative action has imported quotas into American life. The racist idea has acquired a new lease on life.

tire set of attitudes, that can properly be called "racist." And much progress has been made. There is no reason to doubt that, in time, more progress would have been steadily made, if it had not been for the Supreme Court's role in school "integration" in the 1950s and the subsequent rise of "affirmative action" in that disastrous decade, the 1960s.

That celebrated Supreme Court decision, *Brown v. Board of Education*, contrary to expectations, turned out to be the prelude to a major step backward in American race relations. The court had the option simply to overturn previous court decisions that legitimated discriminatory legislation by the states. But it ignored this option, which would have opened the way for continuing, gradual progress, and instead decided to rule in such a way as to suggest that the opposite of discrimination was, not non-discrimination, but "integration."

Having decided justly that government at all levels should be color-blind, the courts then went on to insist that schools had to be color-conscious when it came to the student population. This was our first whiff of what later mushroomed into affirmative action. The school busing controversies that followed sharply exacerbated

other things, racially gerrymandered congressional districts.

In its origins, affirmative action seemed almost to be a noble idea, elevating blacks even if at some expense to whites. The rectification of economic and societal inequities derived from past injustice was appealing. Moreover, the original idea of such rectification was merely a "reaching out" to those hitherto discriminated against, so that they could compete fairly in the job market. The specter of racial quotas was raised by a few commentators, but since many of them were deemed unfriendly to racial equality in the first place, they were ignored. Today, that specter is a haunting presence in American life and American politics, wreaking its havoc in all sorts of ways.

What happened is that, as a result of administrative decision and judicial intervention, affirmative action has imported racial quotas into American life, and the racist idea has acquired a new lease on life. In all sectors—private, governmental, and not-for-profit—most hiring decisions are shaped by quotas for women and various racial and "ethnic" groups. Government officials, corporate "human relations" executives and university presidents loudly protest that quo-

tas are anathema to them, and that they merely have nonspecific goals in mind. It is also true that these people are lying. Those goals inevitably become numerical—how else can you measure success or failure? And a numerical goal means a quota. Even when the existence of quotas is denied, government regulations stipulate that such-and-such a proportion of such-and-such a group must be hired (or admitted to a university), the proportion mirroring the group's presence in the relevant population source.

Incredibly, though inevitably, our governments at all levels, as well as our major private institutions, have to confront the problem of defining appropriate membership in each quota group. Women are still identifiable in our society, but who, exactly, qualifies as a black? As a Hispanic? As an Asian? The response of the affirmative action establishment has been to institute something akin to the Nuremberg laws in our American democracy.

Absurd Ingenuity

If you are one-eighth black, you are black. If your parents' native tongue is Spanish, then you are Hispanic—even if you are visibly black or, for the most part, English-speaking. If you look Asian to someone in charge of the counting, that's what you are. Since the rate of intermarriage between native-born Asians and those of European descent is close to 50%, and for Hispanics is about 30%, this whole business is getting very, very complicated. But affirmative action rolls on, showing a remarkable, if frequently absurd, ingenuity in racial and ethnic identification.

And the upshot? The upshot is the Balkanization of America. Racial tensions and ethnic tensions in American life have increased, instead of decreasing. Under the flags of "multiculturalism" and "diversity" we are moving deliberately and desperately away from being a color-blind or ethnic-blind society to becoming a society that willfully generates racial and ethnic tensions. There are jobs at stake, after all, and political careers to be made, and everyone now wants a piece of that affirmative-action pie.

It took us a century to recover from the curse of slavery. How long will it take us to recover from the tragic error of affirmative action?

*Mr. Kristol, an American Enterprise Institute fellow, co-edits *The Public Interest* and publishes *The National Interest*.*

THE NATION'S HOUSING

House Rejection of Tough Redlining Bill Will Hurt Inner-City Home Buyers

By Kenneth R. Harney

Here's the headline that many members of Congress up for reelection this November would like homeowners and buyers to read this week: House Passes Tough Anti-Redlining Home Insurance Legislation; Minority and Low-Income Consumers to Gain New Fair-Housing Protections.

But here's the real headline: House Passes Toothless Bill That Will Do Virtually Nothing to Curb Central-City Redlining in Home Insurance Policy Availability, Pricing or Coverage.

By a voice vote July 20, the House defeated a bill approved by its banking committee that had the strong support of consumer, civil rights and housing groups concerned about discriminatory home-insurance practices in urban markets around the country. The measure would have applied some of the same racial and locational data-gathering and public disclosure requirements on the insurance industry that the banking industry now complies with under the Home Mortgage Disclosure Act (HMDA) and the Community Reinvestment Act.

HMDA data have played a crucial role during the past several years in documenting what fair-housing advocates had complained about for more than a decade: Minority households and residents of central-city neighborhoods often don't get a fair shake on their mortgage applications. Confronted with statistical evidence from their own loan files of disparities in loan rejection and approval rates between minority and non-minority applicants, the mortgage and banking industries now concede that there has been discrimination and have pledged to eliminate it.

The situation is starkly different when it comes to property insurance on homes. Housing and consumer groups have documented in Capitol Hill hearings that insurance redlining is a reality in many central city neighborhoods. Redlining refers to the practice of refusing to write home insurance policies, charging sharply higher premiums, offering substandard coverage or discouraging applications.

The Chicago-based Association of Community Organizations for Reform Now (ACORN) testified that in some of that city's low-income minority neighborhoods, nearly half of occupied single-family homes go without hazard insurance altogether. Lenders, in turn, often refuse to finance or refinance properties in areas where insurers decline to do business.

The anti-redlining bill rejected by the House July 20 would have moved insurers toward an HMDA-like data collection system.

In the country's 75 largest metropolitan areas, property insurers would have had to disclose the number in each census tract of policies underwritten or rejected, premiums charged, applicants' race and gender, cancellations, nonrenewals and loss data. It would have given oversight of the anti-redlining effort for the next five years to the Department of Housing and Urban Development, which administers the Fair Housing Act.

In the words of ACORN's legislative director, Deepak Bhargava, the bill (HR 1250)

would have collected "the sort . . . of basic information you need to answer the question: Is there discrimination going on here or not?" As with discriminatory practices by mortgage lenders, Bhargava said, "once you can document the problem, then you can begin to work on solving it."

But the bill that passed the House (HR 1188) will cover only the 25 largest cities, and won't deal with the most elemental factor in identifying discrimination: It won't require insurance companies to collect or disclose any data on the race or gender of applicants accepted or rejected. Nor will it document geographic discrimination, since insurers will have to disclose application and policy data only by Zip code, not census tract.

ZIP codes typically are 10 to 60 times larger than census tracts. More importantly, consumer groups say, they are far more heterogeneous in socioeconomic terms. Some Zip codes here in Washington, for example, include extremely low-income, heavily minority neighborhoods and mainly white, high-income neighborhoods. Census tracts, by contrast, tend to be far more homogeneous in regards to race and income.

Insurance industry trade groups lobbied hard for use of Zip codes because insurers collect data for state regulators that way. Shifting to a finer-grain system for federal purposes, they complained, would cost them millions of dollars.

As a result, said Phillip Corwin, a lobbyist for the American Bankers Association, "we're ending up with a bill that really won't collect anything that's significant." Nothing about race or gender, nothing definitive about geographic discrimination.

How did this happen? Tough lobbying by the insurance industry, which denies that redlining exists. But the key reason why the tougher bill went down in flames, say lobbyists on both sides of the issue, was a jurisdictional turf war between two veteran Democratic committee chairmen.

Banking Committee Chairman Henry B. Gonzalez (D-Tex.) pushed for a piece of insurance industry oversight—an extension of his traditional turf, in the view of some Capitol Hill observers. He ran into one of the fiercest turf protectors in Congress, Energy and Commerce Committee Chairman John D. Dingell (D-Mich.). Gonzalez lost the battle. In the process, so did minority and central-city home buyers.

'Court Limits Whom Job Bias 'Testers' Can Sue

By Jay Mathews
Washington Post Staff Writer

People hired to pretend to seek employment in order to expose cases of job bias in the District in 1990 cannot sue the firm that allegedly discriminated against them, a federal appeals court has ruled.

The decision by the U.S. Court of Appeals for the District of Columbia last week overturned a lower court decision opening the way for the four "testers," two blacks and two whites, to proceed against a D.C.-based job referral agency, BMC Marketing Corp.

But at the same time, the court affirmed the right of the Fair Employment Council of Greater Washington to continue the suit without the testers. It also indicated the testers have the power to sue for incidents that may have occurred since 1991, under a federal law passed that year.

John Irving, a lawyer with Kirkland & Ellis who represented BMC, said the decision was a blow to the

use of testers, who have been effective in housing discrimination cases but largely untried against employers and employment agencies.

But Joseph Sellers, the attorney for the Washington Lawyers Committee for Civil Rights who represented the Fair Employment Council, called the decision at least a partial victory. The council can continue the case, he said, "and in the next cases, both the council and the testers will have standing."

In the 1990 case, testers went to BMC with fake credentials showing they had similar qualifications; only the white applicants were referred for jobs. BMC officials have said there were significant differences in the way the testers answered questions, but before that issue went to trial they sought to throw out the suit on the grounds that no harm had been done.

The appeals court agreed. "The testers here made conscious and material misrepresentations of fact by deceiving BMC about their intentions," said Judge Stephen F. Williams, writing for a three-judge panel.

The testers had promised the council they would not accept any jobs offered by the company, so "BMC did not deny the testers the opportunity to enter into a contract that they could have enforced."

But the council, as a group formed to improve employment opportunities, can allege harm if "BMC has a pattern or practice of discrimination" that "perceptibly" impairs the council's programs, the court said.

The testers could not seek monetary damages under Title VII of the 1964 Civil Rights Act because such damages were only allowed in an amendment passed in 1991.

The court said it was not enough for the council to argue its programs had been impaired because it had spent money on training and dispatching the testers rather than on other activities. It acknowledged that it was in conflict on this point with the 7th U.S. Circuit Court of Appeals in Chicago.

But Sellers said there was enough in the council's favor that it was possible he would not appeal.

Educator cites huge benefits of homework

Private schools
assign far more

By Carol Inners
THE WASHINGTON TIMES

Homework may be on the verge of extinction in public education because students refuse to do it and frustrated teachers give up on assigning it, but it is still a priority in the nation's private, independent schools.

"Our students begin homework in second grade," said Carmie Rodriguez, middle school director at Polytechnic School in Pasadena, Calif. "It becomes a part of their lives."

"We'll start them with 20 minutes to a half hour of homework at night," Mrs. Rodriguez said. "By fifth grade they'll be up to an hour and a half of homework a night. In middle school, sixth-graders will have two hours a night and seventh- and eighth-graders, depending on the night and time of year, will have an hour and a half to three hours a night."

"In the upper school, oh, wow!" she said. "Ninth grade is an ease in time, about like eighth grade, with two to three hours. But as they move on in upper school they're doing three to four hours a night. And they do an incredible job because they play on teams and perform in musicals. They make good use of their time. They'll sit in the stands and do homework."

Research shows that the average American teenager spends only 5.6 hours a week on homework and that student achievement goes up when parents influence their children to spend more time on homework and reading.

Polytechnic, an elite private institution that expects its 800 students to match their weekly 20 hours of classroom time with an equivalent amount of outside study and homework, is no anomaly among private independent schools.

The Department of Education's National Education Longitudinal Study of nearly 25,000 students in 1990, the last year for which figures were available, revealed that 42 percent of the students who attend National Association of Independent Schools (NAIS) spent seven or more hours a week on homework.

That compares with 21 percent of the students in public schools, 35 percent in Catholic schools and 36 percent in other private schools.

Collectively, students at private, nonreligious schools score about 100 points higher on the Scholastic Aptitude Test than public school students. They also draw from a higher socioeconomic group.

"A good homework assignment is more than filling in the blanks," Mrs. Rodriguez said.

"First and foremost, homework must be an active process that causes students to think and allows them to express their own ideas," she said. "Homework helps kids develop a pattern of responsibility and reinforces what they learned in the classroom."

Training abuses at NTSB linked to FAA courses

Contractors picked by veteran aide

By Ruth Larson
THE WASHINGTON TIMES

Employees at the National Transportation Safety Board say the abusive training they were forced to endure may have had its roots in senior management courses conducted at the Federal Aviation Administration.

The contractors who conducted the NTSB training were recruited by a longtime FAA employee who now heads the NTSB's Office of Aviation Safety. Some of the NTSB contractors also served as FAA management and leadership training instructors. The Department of Transportation's inspector general is investigating the FAA training programs.

Employees who attended the NTSB-sanctioned training in fiscal 1990-93 said students at some courses were singled out for humiliation until they broke into tears. At other courses, students were required to complete extensive questionnaires that probed their sexuality, religious beliefs and personal fears. Employees said their answers were used to harass them during the sessions.

Details of the training came to light late last week with the release of a General Accounting Office special report prepared for Rep. John Dingell, Michigan Democrat and chairman of the House Energy and Commerce Committee.

The NTSB-sponsored courses were run by two private consulting firms: Miller and Friends, run by John Miller, and Arola Enterprises, based in Grass Valley, Calif. and run by Richard Brungraber and Kathy Strange.

Both Mr. Miller and Mr. Brungraber conducted training for the FAA before being hired by the NTSB.

Mr. Miller taught at the FAA's Executive School and the FAA's Center for Management Development in Palm Coast, Fla.

Mr. Miller was a longtime associate of Gregory May, another private management consultant who also taught at CMD. The Transportation Department's inspector

general is investigating charges that Mr. May subjected FAA students and other instructors to sleep deprivation and abusive language.

The FAA discontinued Mr. Miller's program in March 1993, according to FAA spokeswoman Drucella Andersen. She said the FAA's training never included the type of personal questions that were part of the NTSB training.

It was while teaching in Florida that Mr. Miller met Athena Kaye, an employee of University Research Corp., the company hired by the FAA to run CMD. Mr. Miller later married Ms. Kaye, and together they formed Miller and Friends.

Mr. Brungraber was an associate of Mr. Miller's and NTSB employees say he sometimes helped Mr. Miller with training sessions. In a brochure for the "Men's Awareness Workshop," Mr. Brungraber listed the FAA as one of his clients.

Timothy P. Forte, NTSB's director of aviation safety, brought Mr. Miller to the NTSB to conduct training because he was familiar with his FAA training, the GAO report said. Mr. Forte worked at the FAA from 1978 to 1990. He was regional administrator of the FAA's eight-state Great Lakes region until he moved to the NTSB in March 1990, according to the Federal Staff Directory.

Mr. Forte's biography shows that in addition to his aviation background, he received a bachelor of arts degree in psychology from LaSalle College, Penn.

The GAO report noted that Mr. Forte taught a non-NTSB course for Arola Enterprises, one of NTSB's training contractors. While the action is not prohibited by ethics rules, Mr. Forte failed to note on his financial disclosure form that he had accepted about \$300 in travel reimbursements in conjunction with the course.

NTSB officials spent nearly \$167,000 on the training sessions without allowing any other firms to bid on the training, as required by law. Miller and Friends was selected solely on Mr. Forte's recommendation.

Eighth-grade math students now are surveying middle school students to develop a student profile. Besides determining how many responses are needed to make it valid, students will have to deal with the mathematical analysis of the statistics.

"In our cultural understanding class, where kids are dealing with racism and affirmative action, the kids had to get together outside of class and prepare a panel discus-

sion," Mrs. Rodriguez said. "Another homework assignment will be to put on a trial dealing with affirmative action."

A traditional English assignment would be to read a number of pages one night, answer questions on the chapters the next evening, write something personal about something in those chapters the next night and then study grammar the following night.

Supreme Court faces race issues

Affirmative action, desegregation top agenda after hiatus

By Nancy E. Roman
THE WASHINGTON TIMES

Forty years after *Brown vs. Board of Education* "race" again tops the Supreme Court docket. Justices will resolve disputes over affirmative action, racially gerrymandered districts and desegregation of schools in the court's 1994-95 term, which begins today.

After a long hiatus, the court is prepared to rule decisively on affirmative action and racial preference programs — the gerrymanders, the set-asides and the desegregation. "These rulings will certainly have great impact on race relations."

Quota plans that require companies to hire, promote, give business to, or in any other way favor minorities based solely on their race, are losing popularity.

Although affirmative action has been at the center of many political battles, the court has stayed away from the issue since 1990 when it upheld a government policy that favored minorities in awarding broadcast licenses.

That was a 5-4 ruling, however, and four of the justices in the majority have since retired.

"This case will give us a window into this court's thinking on affirmative action," said Robert Shapiro, the legal director of the American Civil Liberties Union, who said he is hopeful that Clinton-appointed Justices Ruth Bader Ginsburg and Stephen Breyer will support affirmative action.

At stake

The Colorado case at issue involves a federal program that requires government agencies to help small businesses. It also requires the agencies to give 10 percent of their business to "disadvantaged" companies.

Mountain Gravel and Construction Co. won a federal highway building contract and then subcontracted the guardrail work to Gonzales Construction Co., a "disadvantaged" business.

Adarand Constructors Inc., a white-owned business that had bid lower on the same job, sued in 1990. It said the federal agency's subcontracting policy constituted an unconstitutional, race-based set-aside.

A federal trial judge and the 10th U.S. Circuit Court of Appeals upheld the program.

In defending it, Justice Department lawyers said the Small Business Act does not promote any set-aside, but merely "employs race as a factor."

If the court strikes down the set-aside, it will have a sweeping impact on the way government does business.

"I'm hopeful the court took this case to place limits on the federal government's racial preferences for the first time," said Clint Bolick, vice president of the Institute for Justice. "Race relations are incendiary. Mechanisms like race preferences and forced busing fuel those fires. He said poor minorities see them as aiding the wealthy, and nonminorities resent them."

Michael Seidman, a Georgetown University law professor who worked for the late Justice Thurgood Marshall, predicted the court will strike the program down.

Racially gerrymandered districts

Another race case likely to reach the court this term surrounds racially gerrymandered districts.

So far, federal courts are split 3-1 over whether districts drawn to elect blacks and Hispanics to Congress are unconstitutional or essential to guarantee minority voting rights.

Federal courts in Texas, Louisiana and Georgia have struck down

districts drawn to guarantee blacks seats in Congress. A federal court in North Carolina upheld such a district.

The high court is almost certain to review one or all of these challenges.

Past rulings indicate that justices are wary of race-based districts and want to return to a narrower interpretation of the Voting Rights Act of 1965, which prohibits any practice that "results in a denial or abridgement of the right of a citizen of the United States to vote on account of race or color."

Mr. Fein said these cases are critical to race relations and our political system — whether we will push toward apartheid and give up on colorblindness.

Minority districts

In last year's ruling in *Shaw vs. Reno*, Supreme Court Justice Sandra Day O'Connor denounced "bizarrely drawn" districts designed to elect a minority to Congress.

The opinion created a standard that has been difficult to interpret in the legal community. But the opinion's tone and message about remedies for past racial discrimination is clear.

"Racial classifications of any sort pose the risk of lasting harm to our society," Justice O'Connor wrote. "They reinforce the belief, held by too many, for too much, of our history, that individuals should be judged by the color of their skin." Racial gerrymandering, even for remedial purposes, may balkanize us into competing racial factions, it threatens to carry us further from the goal of a political system in which race no longer matters.

Mr. Fein said he expects Justices Ginsburg and Breyer to join in the majority in moving away from racially gerrymandered districts.

Civil rights leaders have argued that eliminating racially drawn districts will exacerbate racial tensions and result in fewer minorities in Congress.

"If we were to lose, lawyer Laughlin McDonald said at a briefing by the American Civil Liberties Union, "we would turn out a substantial number of minorities. Say goodbye to Mel Watt [North Carolina Democrat] or Cynthia McKinney [Georgia Democrat] and one could go down the list."

He declined to predict what the court will do.

School desegregation

Race is again central in a Missouri case that asks whether minority students must reach a certain level of academic achievement before that state can be released from court supervision of its desegregation plan.

In 1954, the landmark *Brown vs. Board of Education* decision ordered desegregation of the school system. Federal courts were later charged with policing school desegregation.

Over the decades, St. Louis attempted to achieve desegregation by busing students to the suburbs, attracting suburban children to the cities with magnet schools and increasing spending in schools that remain segregated.

Missouri then asked to be released from federal court supervision of its school system.

The 8th U.S. Circuit Court of Appeals said no, because the test scores of minority students had not improved enough.

The state maintains that a desegregation remedy need not guarantee student achievement. Instead, it must provide equal access to quality education.

Judge G. Arlen Beam, who dissented from the 8th Circuit's ruling, said that the U.S. Constitution does not set a test score standard "to require achievement test

scores at or above the national norm is to require the school system to be responsible for circumstances beyond its control," he wrote.

Mr. Seidman predicted that each of these race cases will be decided narrowly because of an emerging consensus on the right and the left "that the court should not become involved in social issues." The court isn't having much effect on social change. It is responding to it," he said.

Mr. Bolick said the court should move away from broad social steps like requiring busing and quotas, "among the most divisive" court rulings.

The court is now realizing that it must embrace rules that are truly race-neutral," he said. "If the court makes it clear that there are limits to judicial social engineering in the name of civil rights, it will force the country to look at more constructive approaches to race relations."

The court will also settle some political disputes including:

- Term limits
- An executive branch ban on honorariums
- A state ban on anonymous campaign literature

Term limits

Voters in 15 states, fed up with entrenched incumbents, they say, are too easily tempted into corruption, have enacted laws that limit congressional terms — most often to three terms in the House and two in the Senate, or six and 12 years, respectively.

Arizona, Arkansas, California, Colorado, Florida, Maine, Michigan, Missouri, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Washington and Wyoming have passed term limits, and they are increasingly popular with the public.

The Arkansas law under review by the high court passed with 60 percent of the vote. The Arkansas Supreme Court struck it down, saying states cannot impose qualifications on congressional candidates besides those in the Constitution: minimum age, U.S. citizenship and state residency.

The ruling cited a 1969 Supreme Court decision that said that short of impeachment and conviction, the House cannot exclude any member who meets the constitutional qualifications.

Court observers are divided in their predictions on this case. Mr. Fein said the court will strike term limits down "nine to zip." Scott Bullock, a staff lawyer with the Institute for Justice, predicted the court will uphold them under the constitutional provision that allows states to determine the particulars of their own elections.

If term limits are struck down, both sides agree that the grass roots movement will redirect its energy toward a constitutional amendment to limit terms for members of Congress.

"The question is whether there would be enough momentum for a constitutional amendment," said Susan Low Bloch, a Georgetown University law professor. "And it appears that there would."

Honorariums

The court will also decide whether a ban on honorariums violates federal workers' free speech rights.

In 1989, members of Congress passed the ban as part of ethics reform law that prohibited federal employees from accepting payment for articles or speeches, even on subjects unrelated to their work.

Career executive branch employees of the Treasury Department sued, saying the ban violated their free speech rights. Before the ban, they were paid for articles and speeches on non-work-related topics. For example, Peter G.

Crane, a Nuclear Regulatory Commission lawyer, wrote articles on Russian history, and William H. Feyer, a Department of Labor lawyer, lectured on Judaism.

The government argues that a compelling reason to regulate this type of activity is "to prevent actual or apparent impropriety." In briefs to the court, the solicitor general argued that "The citizenry must have confidence that the personnel responsible for the public's business are not subject to undue influence by private special interests."

But the U.S. District Court for the District of Columbia and the U.S. Court of Appeals for the D.C. Circuit struck down the ban on executive branch employees.

They said the ban is "under-inclusive" because it exempted artists but not speakers or writers and "over-inclusive" because it disallows honorariums even for activities unrelated to the job.

The Circuit Court of Appeals in the District of Columbia agreed.

"Consensus is that the high court will agree the ban is too broad to pass constitutional muster."

Anonymous literature

Another political case asks whether a state ban on anonymous campaign literature violates the Constitution's protection of free speech.

In 1988, Margaret McIntyre, her son and his girlfriend distributed leaflets in front of Blendon Middle School in Westerville, Ohio. Under the heading "Vote NO Issue 19 School Tax Levy," the leaflet called for an end to wasteful spending.

The tax measure failed twice before passing.

Five months later, Mrs. McIntyre was charged with breaking a state law that bars distribution of campaign leaflets that do not bear the name and address of the person who prepares them. The Ohio Elections Commission fined her \$100.

The Court of Common Pleas reversed the decision and held that the state law was unconstitutional. The Court of Appeals reversed the decision and reinstated the law. The Ohio Supreme Court affirmed.

Ms. Jackson noted that even the Federalist Papers, which advocated adoption of the U.S. Constitution, were written under a pen name.

Maureen Mahoney, former deputy solicitor general, said the case may have significance beyond campaign literature — reaching into high technology issues such as Caller ID, a service that automatically identifies callers to the party receiving them.

A fourth political case is interesting on its face but will have little impact on the law. It asks whether Amtrak may prohibit display of artist Michael Lebrons' photo montage in Penn Station because its political message might offend some passengers.

The case is raised under the First Amendment's protection of free speech but ultimately turns on whether Amtrak is part of the government for purposes of litigation.

Child pornography

On Wednesday, justices will hear arguments in a case that questions the constitutionality of the government's most powerful weapon against child pornographers.

Los Angeles porn shop owner Rubin Gottesman was sentenced to a year in prison for distributing sexually explicit videotapes featuring a 15-year-old Traci Lords.

Miss Lords, now a mainstream actress, was a porn star when it was revealed in 1986 that she was only 15 when she appeared in many of her sex films.

Gottesman was arrested during

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U-Md. Ruling Threatens Traditional Affirmative Action

By Joan Biskupic
Washington Post Staff Writer

The federal appeals court that rejected a University of Maryland scholarship program exclusively for blacks was following a relatively new judicial trend of tougher scrutiny of affirmative action programs.

On Thursday, the Richmond-based panel also imposed a high standard for evidence of past discrimination to justify a blacks-only program. People on both sides of the volatile issue say the standard is exceedingly difficult for proponents of special minority scholarships to meet.

Overall, the decision will become part of a patchwork of rulings by federal courts on all levels that cast doubt on the validity of government programs that benefit racial minorities. The difficult issue has been addressed in earlier years by the Supreme Court, and a final determination on the fate of affirmative action would be in the justice's hands, too.

"These recent decisions are basically saying, 'Let's go back to [the Supreme Court's original endorsement of affirmative action] and take a fresh look,'" said

University of Virginia law professor John C. Jeffries Jr. "The basic posture of the courts is that it should be used sparingly and be completely justified."

The 4th U.S. Circuit Court of Appeals on Thursday said that the University of Maryland program violates the Constitution's guarantee of equal protection by instituting a program that relies exclusively on race as a qualification. It noted that "of all the criteria by which men and women can be judged, the most pernicious is that of race," and said the blacks-only scholar-

ship is not sufficiently tailored to compensate for past bias at the school.

The College Park campus was racially segregated by law until the Supreme Court's 1954 *Brown v. Board of Education* ruling and, according to a lower court judge, actively resisted integration for at least 20 years thereafter.

The appeals court acknowledged racial divisiveness at the school but said such evidence does "not necessarily implicate past discrimination on the part of the university, as opposed to present social discrimination," General societal discrimina-

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SCHOLARSHIPS, From A1

tion, it said, cannot be a basis for approving a "race-conscious remedy" such as blacks-only scholarships.

To support its view that the program was not narrowly tailored to remedy past discrimination on campus, the court noted that black students from out of state qualified for the scholarships. "It is at once apparent that the Banneker [scholarship] Program considers all African American students for merit scholarship at the expense of non-African American Maryland students," said the opinion by Judge H. Emory Widener Jr. He was joined by Judges Clyde H. Hamilton and William W. Wilkins Jr.

The Maryland case was brought by a Latino student, Daniel J. Podberes-

ky, who was turned down for a scholarship. It is one of several disputes working their way to the Supreme Court, or already there, that invoke the issue of government preferences for racial minorities, in education, in employment contracting and in voting rights.

"Few issues are more philosophical-ly divisive than the question of affirmative action," wrote J. Frederick Motz, district judge in Maryland who first heard the case. "It strikes at our very souls as individuals and as a nation. It lays bare the conflict between our ideals and our history."

Motz, who noted a "continuous stream of racial incidents" at the school, had upheld the program giving full scholarships to 30 high-achieving black students each year.

The seminal Supreme Court case on affirmative action, *Regents of the University of California v. Bakke* in 1978, said that universities had a compelling interest in educational diversity that would justify race preferences in admissions.

But the justices in *Bakke* put several caveats on the use of affirmative action: "Government may take race into account when it acts not to demean or insult any racial group, but to remedy disadvantages cast on minorities by past racial prejudice, at least when appropriate findings have been made by judicial, legislative, or administrative bodies with competence to act in this area."

Jeffries, who has extensively studied the *Bakke* ruling, noted that there appears to be a sentiment among judg-

es that schools and local governments have taken affirmative action too far. "Bakke set a 'yes, but ...' standard," Jeffries said. "Schools have emphasized the 'yes,' not the 'but.'"

In 1989 the Supreme Court struck down a Richmond program that set aside 30 percent of construction funds for minority-owned contractors. The court said the program was not sufficiently justified by findings of past discrimination.

Relying on that opinion strictly scrutinizing race preferences, a federal district judge in Texas in August ruled that the University of Texas unconstitutionally discriminated against whites by establishing separate admissions programs at the law school for white and minority applicants. The system, which has since been abandoned, enhanced the ability of minority applicants to be admitted.

Thursday's Maryland ruling is likely to have more impact than the Texas

case because it is the first ruling by an appeals court striking down a racially exclusive scholarship program. Although the 4th U.S. Circuit Court of Appeals covers only five states (Maryland, North Carolina, South Carolina, Virginia and West Virginia); judges elsewhere could take account of it at a time of heightened sensitivity to race preferences.

Janell Maria Byrd, a lawyer for the NAACP Legal Defense and Educational Fund, who intervened for students supporting the scholarships, said yesterday: "If this decision is not reversed, it will be devastating. It will disrupt minority scholarship programs throughout the country."

Byrd said that the state had an "incredible record" of discrimination at the College Park campus.

Richard Samp of the Washington Legal Foundation, who represented Podberesky, agreed that the court's criteria "would be tough to meet. But

my feeling is it should be. These programs should be used for disadvantaged students, and using race as a criteria is not the way to do it."

The appeals court found flaws in each of the university's stated reasons for singling out black students for aid: that the university has a poor reputation in the black community; that the atmosphere on campus is perceived as hostile; that blacks are underrepresented in the student population; and that they have a low retention and graduation rates.

But the court said the program was not narrowly tailored to remedy the effects of past discrimination: "High achievers, whether African American or not, are not the group against which the university discriminated in the past."

Staff writer Retha Hill contributed to this report.

ASSOCIATED PRESS

President Clinton talks with a tank crew at Camp Doha, Kuwait. He also took the opportunity to resolve a pay matter for troops.

GIs Home for Christmas, Clinton Hints

In Kuwait Near Journey's End, President Finds Time for Politicking

By Ann Devroy
Washington Post Staff Writer

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CAMP DOHA, Kuwait, Oct. 28—President Clinton today gave restless American soldiers in the Persian Gulf a broad hint that they would be home by Christmas as he ended a four-day Middle East tour with one foot in international politics and one in domestic politics.

On a platform resting on two battle tanks in a military theme park constructed as the set for a day, Clinton performed what has become a ritual for commanders in chief after a successful military action: He saluted the troops and touted the pressuring of Iraqi forces

to return northward and away from Kuwait.

The men and women of 24th Infantry Mechanized Division wanted not a salute but a message that they could soon be going home and redress for a pay grievance. They got both.

Clinton's brief stop here to highlight the gulf success was timed to be carried live on morning television shows at home, and it included a dollop of presidential self-promotion in the foreign policy arena—where the president had not been held in high regard.

The president cited the signing of a peace agreement between Jordan and Israel that he witnessed Wednesday and

said he was honored by the roles that the United States has played in "restoring President [Jean-Bertrand] Aristide and democracy in Haiti, in helping to make real progress toward an end to the violent conflict in Northern Ireland, in helping South Africa's democracy to succeed, in building a new partnership with Russia. . . ."

Aides to Clinton have long said that improving his standing with the public before the midterm elections would help him be less an issue for Republicans to run against. With the heavy diplomatic lifting of this visit behind him, domestic

See CLINTON, A16, Col. 1

Clinton Gives GIs Hint Of Christmas at Home

CLINTON, From A1

politics, the main thrust of the next 10 days, began to take center stage.

After less than two days' rest from this grueling six-country marathon, Clinton has ahead of him eight straight days of campaigning out of Washington, including stops in Pennsylvania, Michigan, New York, Rhode Island, Iowa, Minnesota, California and Washington state.

The made-for-TV event here was one sign of the renewed electioneering. A Patriot missile battery stood next to a Bradley Fighting Vehicle in desert sand raked clean. Artfully draped camouflage netting hid White House communications gear, all arrayed in a semicircle facing mountains of sand as the background. The president's helicopter swooped low over the desert as the soldiers assembled to hear their work in the gulf saluted as "the steel in the sword of American diplomacy."

Another sign of approaching elections was Clinton's summoning of reporters to the emir's palace in Kuwait City as he finished meetings there. A statement on U.S.-Kuwaiti relations was expected. Instead, Clinton touted new government figures showing 3.4 percent U.S. economic growth as a sign his economic policies are working.

State Department spokesman Michael McCurry said it would be wrong to suggest that this presidential stop was only about the domestic political audience. "In a very real sense, the audience is Saddam Hussein," the president of Iraq, he said.

In his speech, Clinton highlighted the success of repositioning military

equipment here after the 1991 gulf war, saying it made deployment for this confrontation with Iraq much faster. "One of the things that will go down in the history of this encounter," Clinton said, "is that you got here in a very big hurry. And because of that, Iraq got the message in a very big hurry."

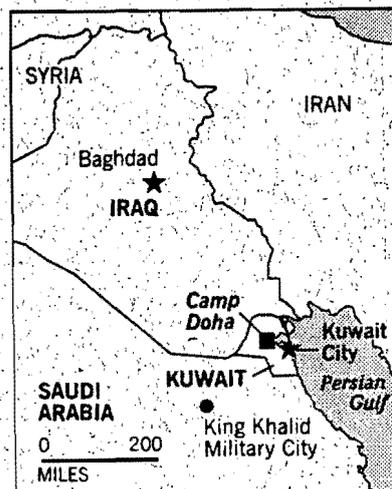
He also delivered a direct message to Iraq, whose border lies about 60 miles away. "We will not permit Iraq to enhance its capabilities below the 32nd parallel," Clinton said. "We won't permit Baghdad to intimidate the United Nations. That is not our threat. That is our promise."

Clinton got a polite reception, at best. As his helicopter arrived, all attention turned not to him but to CBS correspondent Connie Chung in the press bleachers. A near riot occurred as soldiers crowded to shout her name and get her autograph on their helmets.

And as Clinton spoke, shouts of "When are we going home? When are we going home?" erupted in the crowd. Joseph Stefens, an operations specialist from Easton, Md., said: "A lot of soldiers, most of us, want to know when we are going home. Not knowing hurts morale."

Clinton helped solve that. "Don't forget to go Christmas shopping," Clinton said as he ended his short address. The troops took this to mean they would be home for the holidays and erupted in cheers.

National security adviser Anthony Lake said later that if Iraq poses no further threat and conditions do not change, the president's hope is that most of the troops dispatched here this month in Operation Vigilant War-



THE WASHINGTON POST

rior can return home. While no final decision has been made, Lake said, Clinton "knows how important Christmas is."

Clinton announced to the troops that he had signed an executive order that changes the definition of military field duty to ensure that the deployed troops will not lose the basic food allowance that they receive back home—even though they are being fed free of charge here. The change means retention of \$100 to \$300 per month that might have been docked.

Before his departure, Clinton also held quick meetings with Kuwaiti officials and then flew to Saudi Arabia's King Khalid Military City for meetings with King Fahd and other leaders. Officials said the discussions focused on the U.S. commitment in the gulf and efforts to get other countries in the region to pay shares of the costs.

[As Clinton left Saudi Arabia for home, the White House issued a communique saying he and King Fahd "voiced their views that any attempt to lift or alleviate the sanctions on Iraq will continue to be premature as long as Iraq does not comply fully and comprehensively with all the Security Council resolutions that pertain to its aggression on the state of Kuwait."]

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The Prattling Presidency

By WALTER BERNS

Our presidents have become big talkers. President Clinton, for example, is going across the country this week to sing the praises of his administration and of the Democratic candidates for whom he is campaigning. Even when there isn't an election near, he is forever on the radio or running around the country making speeches, pounding the lectern, and asking the public to support his legislative program. He even employs his wife in this task.

Rather than object, the American people seem to think it altogether appropriate that the president should address them directly and on radio and TV. Everyone else does who has something to sell, so why shouldn't the president? Still, there was a time when presidents were supposed to confine their talking to written communications addressed to Congress. In 1868, Andrew Johnson was impeached and put on trial before the Senate, in part because of his practice of making public political speeches.

'Scandalous Harangues'

In that time, presidents (to say nothing of their wives) were not supposed to do that. Accordingly, the 10th of the impeachment articles against him read, in part:

"That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignity and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches



Martin Van Buren

of the Government of the United States [did] openly and publicly, and before divers assemblages of the citizens of the United States convened in divers parts thereof, make and deliver in a loud voice certain intemperate, inflammatory, and scandalous harangues, and did therein utter loud threats and bitter menaces as well against Congress as the laws of the United States duly enacted thereby, amid the cries, jeers, and laughter of the multitudes then assembled and within hearing."

Although Johnson was the first president to be formally charged with high crimes and misdemeanors, he was not the first president to be criticized for taking his

case directly to the people. That dubious distinction belongs to Martin Van Buren.

During the last year of his first term, Van Buren made a tour of his home state of New York and turned it into a campaign for re-election. Received by a huge crowd in New York City, he began his remarks by saying: "I am cheerfully and gratefully affected by this cordial reception by my Democratic fellow citizens of New York City and County of New York."

As Jeffrey Tulis reports in the best book on this subject, "The Rhetorical Presidency": "This was the extent of his partisanship, but it provoked a storm of

All this talking has diminished the dignity of the presidency and, arguably, the ability of the president to lead rather than follow.

protest." Whig politicians on the governing councils of three of the towns Van Buren later visited managed to pass resolutions declining to receive him—the president of the United States!—because of what was thought at the time to be the impropriety of that remark.

An outdated notion? Not entirely. Only this year Rep. Dick Armey (R., Texas) was severely criticized when he said, in response to the charge that Republicans were blocking legislation simply to deny Mr. Clinton a legislative victory: "Your president is just not that important to us." In one important respect at least, a president is supposed to be nonpartisan, the president of all the people and not merely of those who voted for him.

It was not so much partisanship, however, as the mere fact of appealing directly to the people that got Andrew Johnson and Martin Van Buren into trouble. Indeed, the Founders had warned against it. "Of those men who have overturned the liberties of republics," we read in the first of the Federalist Papers, "the greatest number have begun their career by paying obsequious court to the people, commencing demagogues and ending tyrants." In that pre-electronic age, popular appeals were thought to violate constitutional principles, particularly those prescribing the legislative process.

The argument went as follows: The legislative power, the first in the constitutional order, belongs to Congress. The president's legislative role is limited to providing "Information on the State of the Union"

and recommending "such Measures as he shall judge necessary and expedient."

But as the Constitution makes clear, this information and these recommendations were to be delivered to the Congress, not to the people, and the practice throughout most of the 19th century was to deliver them in the form of written communications. (Thomas Jefferson initiated this practice and Woodrow Wilson, who wrote a book arguing that the Constitution's legislative process was outmoded, began the modern practice of delivering State of the Union messages orally.) Presidents probably expected the public to read them, but

the fact that they were written, and formally addressed to Congress, guaranteed the absence of anything resembling a demagogic appeal.

Aside from issuing proclamations, or responding to addresses or "serenades," presidents spoke directly to the people mostly on special occasions: upon assuming office (and, in George Washington's case, upon leaving it); or when dedicating, say, the Erie Canal or (the most famous example) the cemetery at Gettysburg.

Before the coming of radio and TV, even presidential candidates kept aloof from the public, issuing no statements on their own behalf and making no speeches. When running for the Senate in 1858, Abraham Lincoln crossed the state of Illinois debating his opponent, Stephen Douglas, before huge crowds. But in 1860 he stayed at home and kept his mouth shut. The presidency was thought to be different.

Things began to change with Theodore Roosevelt, who spoke of the office as a "bully pulpit." The change was institutionalized by Woodrow Wilson. Generally speaking, Wilson sought to refashion the constitutional order along the lines of the British model: government by majority party, with the president as party (and popular) leader. Modern technology rendered this easier. The consequences, not all of them intended by Wilson, are familiar to us.

The Constitution, praised in Federalist 63 for excluding the people "in their collective capacity" from any share in the government, has been popularized. As Jimmy

Carter put it, we want "a government as good as the people" and not, as the Founders intended, a government ultimately dependent on but better than the people.

To an ever-increasing extent, the president takes his case directly to the people, as if his authority to act comes from them rather than from the Constitution. Thus to justify his Haitian policy, Mr. Clinton went on TV, not to Congress, and in his speech said nothing about the Constitution.

All this talking has changed the presidency in several ways. For one thing, it requires the president to employ a corps of speechwriters who, along with press secretaries, play an essential role in the governing process. For another, it has diminished the dignity of the office and, arguably, the ability of the president to lead rather than follow. Constant presidential speechmaking often looks like pandering more than leadership—giving rise to the charge, as in Mr. Clinton's case, that the president has continued his election campaign while in office.

Presidents as Populists

It is hardly surprising that political pollsters, beginning with Patrick Cadell under Jimmy Carter, now have White House passes, giving them ready access to the president who, in turn, is provided with continuous assessments of his popularity. We have come to expect our presidents to be popular leaders, populists in effect. Given our enhanced electronic "networking" capacities, there is little reason to think we have seen the end of the process.

Ross Perot, an expert in "playing obsequious court to the people," may be the herald of our future. Our biggest talker yet, he promised, if elected, to institute an "electronic town hall," or a government-by-call-in show. The people, under no obligation to think before they talk, would tell him what they wanted, and he promised to oblige them. He further promised to resign if he failed to oblige them.

If Mr. Perot were to succeed, we would have a popular government incapable of doing anything unpopular, and "unpopular" would inevitably come to mean unpopular with a majority determinable by plebiscite. The Founders called this—see Federalist 47—one of the forms of tyranny.

Discrimination and Scholarships for Minorities

By KIMBERLY J. McLARIN

Ten years ago Nicole West was exactly the kind of student for whom the Benjamin Banneker scholarship program at the University of Maryland was intended: black, bright, talented, and not even remotely interested in the university.

"I hadn't even thought about Maryland," said Ms. West, who grew up in Silver Springs, Md., and wanted to study education.

She was considering the University of Virginia, Pennsylvania State University and "a few others," but at the suggestion of her guidance counselor, Ms. West looked into the Banneker program at Maryland, and what she found persuaded her to apply. On Monday, four days after the program was struck down as discriminatory by a Federal appeals court in Richmond, Ms. West discussed some of its benefits.

The scholarship, she said, paid everything — tuition, room and board, fees and even books. Program officials also closely monitored her progress, providing her with a mentor, graduate school recommendations and assistance in navigating the waters of the large and sometimes impersonal university.

"They were very influential as far as my success was concerned," said Ms. West, who graduated in 1989 and is now pursuing a doctorate in education at Syracuse University. "The idea that the program would be eliminated is a travesty."

The unanimous ruling by a three-judge panel of the United States Court of Appeals for the Fourth Circuit only affects the states in its jurisdiction — Maryland, North Carolina, South Carolina, Virginia and West Virginia. The university says it will appeal to the United States Supreme Court, and a decision by the High Court may affect the two-thirds of American colleges that reserve at least some scholarships exclusively for minority students.

Each year, the university receives 200 to 300 applications for the 30 or so new Banneker scholarships, which are named for the 18th century black scientist and inventor, that Maryland awards as part of its regular admissions program. To qualify, students must have had a 3.0 grade point average in high school and a score of at least 900 on the Scholastic Assessment Tests.

Last year the program's \$1.26 million budget included full scholarships for 139 students; since its beginning in 1979, 482 scholarships have been awarded. The scholarships are overseen by a faculty selection committee, a vice president for academic affairs and an assistant director of admissions.

But the program's effects, officials said, extends far beyond the recipients.

"Having these students on campus serves as a kind of magnet to



Marty Katz for The New York Times

Officials at the University of Maryland warn that if a Federal court's decision rejecting a black scholarship program stands, there will be fewer black alumni like these, who gathered for homecoming last week.

A way to redress past wrongs that is itself declared to be wrong.

attract other African-American students," said a university spokesman, Roland King. "It also helps to dismantle the stereotypes a lot of society has about African-Americans. It's very positive and reinforcing."

Daryl Jackson, a 1983 graduate, was not a Banneker scholar. But his sister attended the university on another scholarship for minorities.

"The fact that they seemed to be trying to attract blacks to the school did have an impact on my decision," Mr. Jackson said. "It felt welcoming, despite the fact that at the time there was a lot of racial tension."

University officials say they have made some progress. The university ranked second among colleges that are not historically black in the number of bachelor degrees awarded to black students in 1991, according to a recent survey by the journal *Black Issues in Higher Education*. And its undergraduate enrollment of black students stands at 12 percent, compared to 8 percent nationwide.

In 1992, 48 percent of black stu-

dents who enrolled five years earlier had either graduated or were still enrolled. That compares to 64 percent of the student population.

Besides the scholarship, the university's other efforts to retain black students include a program to provide mentors for minority students, an annual jobs fair and a course for black male freshmen on college skills. On Tuesday, the university broke ground for a \$3.7 million cultural center for black students.

"This institution has made a very significant commitment in trying to address one of the most vexing and important problems in our society today — the inclusion of African-Americans in higher education," said the university president, Dr. William E. Kirwan. "Why take away a program that has been so useful?"

The case was filed in 1990 by Daniel J. Podberesky, a Hispanic student who was denied a scholarship. An earlier ruling by a Federal District Court found that the program was necessary because the university's history of racial segregation still resonated among the state's black population. Thurgood Marshall, the late Supreme Court Justice who had been barred from attending the law school there, successfully handled the suit that opened the law program in 1935. But the rest of the university remained closed to black students until 1954. The university remains under desegregation mandates.

"We've got the Justice Depart-

ment telling us we must have special programs and the court telling us we can't have them," Dr. Kirwan said.

In the most recent appeal, university officials argued that the effects of discrimination were still visible in the underrepresentation of black students on campus (although 12 percent of the 24,000 students are black, more than 20 percent of Maryland's residents are black).

But the appeals court disagreed, saying the disproportionately small number of black students at the college did not itself constitute discrimination. The court also questioned whether the Banneker program was properly planned.

"If the purpose of the program was to draw only high-achieving African-American students to the university, it could not be sustained," the appeals court said. "High-achievers, whether African-American or not, are not the group against which the university discriminated in the past."

Even if the the loss of black scholarships does not cause the number of black students to drop, the demographics will nonetheless almost certainly change, said Mr. King, the university spokesman. Top students like Nicole West may choose to go elsewhere, he said.

Ms. West agreed.

"That was definitely a huge plus for Maryland," she said. "I wouldn't say don't go to Maryland now. But I would say look around and consider what else is out there."

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Disparities in Medicare Access Found Among Poor, Black or Disabled Patients

By GEORGE ANDERS

Staff Reporter of THE WALL STREET JOURNAL
WASHINGTON — Medicare participants who are poor, black or disabled can encounter "serious disparities" in getting certain types of care, a senior government official reported.

New data show that these "vulnerable populations" are less likely to get preventive care such as mammograms or flu shots, said Bruce Vladeck, administrator of the Health Care Financing Administration. Black Medicare patients also are less likely to get kidney transplants or several common types of heart surgery, other HCFA officials said.

The latest government studies represent an increasingly detailed analysis of Medicare, which covers 37 million Americans, including all those aged 65 and over. The program, which cost \$120 billion in 1992, is meant to provide uniform coverage for all members. HCFA, part of the Department of Health and Human Services, runs Medicare.

Earlier analyses of Medicare benefits have looked at broad-gauge measures such as hospital admissions or doctor visits. Those studies have suggested that Medicare has helped standardize care for older Americans, regardless of race or income.

But Mr. Vladeck, speaking at a conference of the American Public Health Association, said the new reports imply that there is still a "gulf between coverage and access."

HCFA found, for example, that black participants in Medicare were only 70% as likely as average participants to get mammograms in 1991. For disabled participants, the rate fell to 81%. For those recipients with low enough incomes to qualify for the Medicaid program for the indigent, the rate dropped to 56%.

HCFA also found that while hospital admission rates lately have been higher for black Medicare participants, rates of surgery for black participants have been lower. The gap was especially pronounced on some relatively advanced operations.

For example, white participants in 1992 got heart bypass surgery at a rate 2.5 times as high as that for black participants.

White Medicare recipients also were twice as likely to get total hip replacements as their black counterparts. And while 23% of white patients got kidney transplants within a year of waiting, only 6% of black patients did so.

Marian Gornick, director of beneficiary studies at HCFA, said that mortality rates generally were higher for black Medicare participants getting heart or hip surgery. She noted that mortality rates often are associated with a hospital's overall quality. But she offered a different explanation for the variance, suggesting that black patients getting such operations are sicker by the time they are hospitalized.

Ms. Gornick also reported that her office found only four surgical procedures that were more commonly undertaken for black Medicare patients than for white ones. All four procedures are ones that arise chiefly when a chronic disease hasn't been well-managed; they include limb amputations for diabetics and removal of the testes for prostate-cancer patients.

Mr. Vladeck said there weren't any signs that patient access to care was being hurt by Medicare's current fee schedule, which was adopted in 1989. That fee schedule seeks to make primary care more attractive, while cutting back on some payments to specialists.

Senators Blast CIA Chief on Handling Of Scandal, and One Urges His Firing

By THOMAS E. RICKS

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — The Senate Intelligence Committee unanimously blasted as "seriously inadequate" the response of the head of the Central Intelligence Agency to the Aldrich Ames spy scandal, and one committee member even called for President Clinton to fire him.

In a bipartisan report released yesterday, the intelligence committee said it was dismayed to learn that the biggest scandal in the CIA's history hadn't resulted in a single agency manager being fired, demoted, suspended or even reassigned.

The espionage agency's own inspector general recommended that 23 current and former CIA officials be held accountable for failing to prevent or detect Mr. Ames's illicit dealings with the Soviets, the committee noted. But it said R. James Woolsey, the director of Central Intelligence — or "DCI" — issued letters of reprimand to just 11. And only four of those letters went to current employees.

"Ames caused more damage to the national security of the United States than any spy in the history of the CIA," the committee concluded. "If there isn't a higher standard of accountability established by DCIs, then a repeat of the Ames tragedy becomes all the more likely."

Sen. Howard Metzenbaum (D., Ohio), charged in an interview that Mr. Woolsey had "lied" to the committee. Several of the 11 letters of reprimand that were issued actually contained commendatory language, but Mr. Metzenbaum said Mr.

Woolsey did not tell the committee about that. In both the interview and in a statement amended to the committee report, he urged the president to fire Mr. Woolsey.

Reuters reported yesterday that Mr. Woolsey, who was in Pittsburgh, said, "I could've made the situation . . . politically far easier by firing four of the individuals who were still active in the CIA, but I chose not to do this for one and only reason: I didn't think it was fair, and I didn't think it was just, and I disagree with the committee on that point."

Responding to Sen. Metzenbaum's charge that Mr. Woolsey misled the intelligence committee, CIA spokesman Mark Mansfield said the CIA had given the committee copies of the letters of reprimand a few days after Mr. Woolsey testified about them.

The Senate panel's report portrays the CIA as a bureaucracy so mired in mediocrity that it failed to vigorously investigate "a virtual collapse" of its Soviet operations in the mid-1980s, after Mr. Ames began conveying bags of secrets to the KGB. The report says Mr. Ames caused the execution of 10 Soviet sources, compromised more than 100 intelligence operations, and conveyed thousands of classified documents.

The 116-page report describes Mr. Ames as virtually floating through his CIA career on a river of alcohol, becoming drunk at embassy receptions and passing out on a Rome street and in a 1992 meeting with foreign officials. Yet Mr. Ames told Sen. Dennis DeConcini (D., Ariz.) that he didn't stand out at the agency as a problem. "I wasn't a serious case," he says in a transcript of an interview that conducted by Sen. DeConcini in August and was attached to the intelligence-committee report. "There were some real problem drinkers."

Mr. Ames apparently was correct in that assessment. Despite his alcoholism and lavish lifestyle, he managed to work secretly for the Soviets for nearly one-third of his 31-year career at the CIA. The committee reports that one early attempt to plug the leak, a 1988 investigation, resulted in a frustrated investigator stating that "there are so many problem personalities . . . that no one stands out."

In the transcript, Mr. Ames tells Sen. DeConcini, "It is amazing to me" that it took the CIA and Federal Bureau of Investigation so long to catch him.

Mr. Ames also expresses contempt for U.S. authorities and their methods of catching "moles" such as himself. Referring to legendary CIA counterintelligence specialist James Angleton, he said, "Angleton wouldn't have known what to do with a mole if it bit him on the leg." As for the efficacy of polygraphs, or "lie detector" machines, he said, "They don't work. . . . I passed it twice."

The committee's report also makes 23 recommendations for changes that are largely technical or common-sensical in nature, such as dealing with "what appears to be a widespread problem of alcohol abuse."

Discrimination in the Name of Diversity

Several big cases now at various stages of litigation illustrate the practical and legal problems of awarding preferences based on race—a policy also known as affirmative action or, as the Clinton administration prefers to call it, “diversity.” Because the administration is party to, or a friend-of-the-court, in these cases, they also showcase its legal views of the issue. Suffice to say, this administration has yet to see a racial preference it doesn't like.

• *Adarand v. Peña*. On Election Day briefs are due to the Supreme Court in this case from Colorado. Adarand Constructors, owned by whites, put in the

Rule of Law

By Terry Eastland

lowest bid on a highway guardrail to be built in the San Juan National Forest. Mountain Gravel, the prime contractor, instead gave the job to the Hispanic-owned Gonzales Construction Co. For awarding the subcontract to a minority company, Mountain Gravel got a \$30,000 “bonus” from the U.S. Department of Transportation.

The idea behind such a payment is to increase the number of Transportation Department contracts with “Disadvantaged Business Enterprises” so that it can meet goals set forth in the Small Business Act. Under the SBA, the government is to award not less than 5% of all contracts to small businesses owned by “socially and economically disadvantaged individuals.” Adarand does not mince words in calling the bonus a bribe for the purpose of encouraging the racial discrimination it contends the SBA legislates.

At issue in the case is whether the SBA violates the Constitution's Equal Protec-

tion guarantee. The argument between Adarand and the Justice Department addresses the degree of scrutiny a court is to give a racial classification and even whether the SBA goals are “race-based”; the government valiantly but incredulously argues that they are not. Both Adarand and the Justice Department cite recent Supreme Court precedents in their favor, and in truth the law here is confused and unstable.

• *Podberesky v. Kirwan*. Last Thursday the federal court of appeals for the Fourth Circuit unanimously held unconstitutional a University of Maryland scholarship program open only to black students. Plaintiff Daniel J. Podberesky's case demonstrates the oft-neglected truth that affirmative action can discriminate against a minority. Mr. Podberesky wasn't of the correct race; he is Hispanic.

Under the University of Maryland's program, resident and out-of-state blacks are eligible for the scholarships; in 1992, 17 of the 31 scholarships awarded went to out-of-state blacks. This is also true at other state universities, which routinely recruit from a national pool of minorities.

And yet the usual justification offered for affirmative action of this kind is made in terms of the state's past discrimination. Bringing in students from out of state to correct this problem, at the literal expense of taxpayers and the obvious expense of those resident students not eligible for the program, is illogical.

The Justice Department under President Bush kept out of *Podberesky* but under President Clinton it participated as a friend of the court. The Clinton administration has an interest in supporting race-based scholarships since the Education Department has swung its weight in their favor through regulations that now appear to be in conflict with the Fourth Circuit's ruling. If *Podberesky* reaches

the Supreme Court this term or next, the Clinton Justice Department is likely to be in the case, defending what the Fourth Circuit calls “an overtly open racial yardstick.”

• *Aiken and Eason*. Early last month the Sixth Circuit rejected the position of the administration in a pair of cases involving challenges to affirmative action programs. Both had been adopted by the city of Memphis pursuant to consent decrees resolving charges of racial discrimination against blacks.

In *Aiken*, to meet promotion goals for blacks established in the consent decrees,

Suffice it to say, the Clinton administration has yet to see a racial preference it doesn't like.

the police department elevated to sergeant a large number of blacks who ranked below the top candidates for the positions. White officers—most of whom ranked higher than the promoted blacks—sued, charging a violation of the Equal Protection Clause. *Eason*, involving promotions made by the city's fire department, is factually similar.

Aiken and *Eason* are both notable for what they say about affirmative action as it is usually practiced today. Observing that “the City has made no effort to limit the duration of these remedies,” the Sixth Circuit expressed concern that unless promotion and hiring goals such as the ones in this case are not held to the “most searching [judicial] examination,” they “may come to resemble not remedies but entitlements.”

In defense of its decision this summer in *Tarman v. Piscataway* to switch sides

and support a New Jersey school board's decision to lay off a white teacher instead of a black teacher solely on grounds of racial diversity, the Justice Department says it does not support quotas. But its positions in *Eason* and *Aiken* contradict that. The consent decrees included numerical goals, and the city of Memphis met them through the expedient of counting by race.

With Assistant Attorney General Deval Patrick aggressively filling in the details of Bill Clinton's diversity policy, the administration is now engaged on a wide number of legal fronts. Where it thinks the law can be read or bent to allow Congress or the executive or a state or locality to make decisions about employment or other opportunities that further its idea of diversity, it is likely to do so. But its views are meeting resistance in the federal courts, which are still dominated by Reagan and Bush appointees, and where even some Carter appointees are rejecting the administration's positions. That is why, over the next two years, the issue of racial preferences is likely to ignite politically, forcing the president to speak to it more than he has so far.

Asked at his press conference last Friday whether he agreed with the Justice's Department's decision in *Piscataway*, Mr. Clinton said, “As long as it runs both ways, or all ways, I support that decision.” He meant that a black teacher or any teacher of any race or ethnicity could also be laid off for reasons of diversity. This, perhaps unthinking, answer raises an alarming prospect—that any citizen, regardless of race or ethnicity, might be discriminated against for the sake of diversity.

Mr. Eastland is editor of Forbes Media-Critic and a fellow at the Ethics and Public Policy Center.

Black Scholarships Disallowed

Appeals Court Rejects U-Md. Program Despite Campus Bias

By Robert E. Pierre
and Peter Baker
Washington Post Staff Writers

A1

A federal appeals court ruled yesterday that the University of Maryland may not maintain a separate scholarship program for black students, despite evidence of past discrimination presented by the university itself.

A unanimous three-judge panel of the 4th U.S. Circuit Court of Appeals acknowledged that racism still exists on college campuses, but said the university had failed to narrowly tailor the Benjamin Banneker Scholarship program to correct the past discrimination. The program offers

full scholarships to 30 black students each year.

The court told the university to reconsider giving a Banneker Scholarship to Daniel J. Podberesky, 22, a Latino student from Baltimore County who was rejected by the program in 1990 despite meeting the scholarship's academic requirements. Yesterday's decision overturned a ruling by a U.S. District Court judge in Baltimore, who said the university was justified in maintaining a race-based scholarship and in rejecting Podberesky's application.

"There is no doubt that racial tensions still exist in American society, including the campuses of our institutions of higher learning," the appeals court said. "However, these tensions and attitudes are not a sufficient ground for employing a race-conscious remedy at the University of Maryland."

The university has until Nov. 10 to ask for a rehearing by all 13 judges of the 4th Circuit in Richmond and 90 days to appeal to the U.S. Supreme Court. University President William E. Kirwan said the school intends to appeal.

Although yesterday's ruling affects only the five states covered by the 4th Circuit, attorneys on both sides agreed that it eventually could affect colleges and universities throughout the country that have similar programs.

SCHOLARSHIP, From A1

"The University of Maryland is a southern school that excluded blacks until 1954," said Podberesky's attorney, Richard A. Samp, chief counsel for Washington Legal Foundation, a conservative public-interest law firm. "If race-based scholarships are not justified there—and the courts say they are not—I don't see how such scholarships can be justified anywhere in the country."

In February, the Clinton administration adopted a policy that encouraged colleges to use such scholarships to promote diversity on campus and correct historic discrimination. Administration officials recognized at the time that such programs would be subjected to legal challenges and said the financial awards seeking to achieve diversity would need to be "narrowly tailored."

The University of Maryland excluded black students until the Su-

preme Court, in its 1954 *Brown v. Board of Education* decision, barred separate public school systems for black and white students. Attorneys for the university argued in court that black students continue to face a "hostile climate" at the state's flagship university and remain underrepresented on the campus.

University officials said the all-expense-paid Banneker Scholarship, begun in 1978, was a key component of the success Maryland has had recently attracting—and graduating—black students.

The University of Maryland ranked first in a national survey two years ago in the number of degrees awarded to black undergraduates attending predominantly white schools during the 1988-89 school year.

If this ruling stands, Kirwan said, the school's ability to attract black students will be hampered.

"We feel strongly that higher education has not in the past served African Americans well," Kirwan said. "This is a program that sends an important signal in the state that the university is proactively seeking the participation of African Americans."

Podberesky filed suit in 1990, while he was an undergraduate at Maryland. U.S. District Judge J. Frederick Motz in Baltimore ruled in favor of the university, allowing the scholarship to stand because a "chilly climate" greets black students at Maryland. An appeals panel sent the ruling back to him for reconsideration because of a lack of statistical evidence to support the ruling. Motz then ruled again in favor of the university.

Yesterday, the appellate court reversed his ruling again and ordered that Podberesky, now a first-year medical student at Maryland, be reviewed for the scholarship program without using race as a consideration. The appeals court then would decide how much compensation he was entitled to receive. The scholarship is valued at \$35,000 a student.

"It's really a very scary decision," said attorney Janell Byrd of the NAACP Legal Defense Fund, who represents recipients of the Banneker Scholarships. "What vision do we have for America if the states, like Maryland, that have practiced segregation in the past can't have a minimal program like this one to correct it?"

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Politics of race taking on more subtle shades

By Andrea Stone
USA TODAY

The issues are genuine — crime, welfare, immigration, taxes — but beneath the angriest political rhetoric in decades, some hear familiar code words in a nation split by race and ethnicity.

Whether it's Californians torn over a proposal to end benefits to illegal immigrants, New Yorkers divided over the death penalty, or Maryland liberals pushing to limit welfare, the politics of race look to be one of the hidden forces driving the 1994 campaign.

As during the Great Depression, when immigrants and Jews were blamed for the country's troubles, today's economic uncertainty has led to "social scapegoating," says Marcus Pohlmann, a professor of race relations at Rhodes College in Memphis.

"There are definitely racial undertones to the attack on liberalism and to what people mean when they talk about locking more people up and having more death penalties."

Not so simple, respond mainstream politicians of both parties, who say fixing welfare, stopping crime and controlling borders need not equate to a secret war on minorities.

But the trend is showing up in polls, where voters are turning from solving the problems of poverty and toward dealing with crime and economics.

"It's not 'spic' and 'nigger' anymore," Rep. Charles Rangel, D-N.Y., said at a rally last week. "They say, 'Let's cut taxes.' ... You don't have to be a social scientist to understand that if you're going to reduce taxes it's going to impact on the poor, and the poor happen to be blacks and other minorities."

Neither party is immune from such criticisms as politicians on all sides seize crime, welfare and immigration reform as winning issues.

Republicans, often labeled as least sensitive to minority issues, dismiss critics who say they appeal to race.

"Are there racists in the country? Yes. Are there some who would like to see pro-

grams destroyed? Yes. Is that driving the issues? Absolutely not," says GOP consultant Eddie Mahe. "You have people like (Massachusetts Sen.) Ted Kennedy, for heaven's sake, talking about welfare reform."

Indeed, economic insecurity, anti-incumbent anger and frustration with government's failure to solve social problems are key factors in the nation's conservative drift.

"Sheer racism (has) measurably declined," says William Schneider of the American Enterprise Institute. "Yet, politically, the gap between the races has widened. Blacks remain on the left, and everyone else has moved to the right on issues."

A recent Times Mirror poll found whites less sympathetic to black problems after 1992's Rodney King trial and ensuing riots. "Issues like affirmative action have become lightning rods" for whites, Pohlmann says.

The highly charged debate over the recently released book *The Bell Curve* shows how entwined race is with national politics.

The controversial book by Charles Murray and the late Richard Herrnstein argues that whites are genetically more intelligent than blacks and calls for abolishing welfare and social programs like Head Start.

"If I were a believer in conspiracy, I would say that book's timing is very interesting," says Harvard psychiatrist Alvin Poussaint. "... It fits into lots of right-wing agendas."

But there are liberal Democrats talking a new kind of talk as well:

► Edward Kennedy — a staunch advocate of prevention and rehabilitation — now stresses tough law enforcement when talking about crime.

► Sen. Paul Sarbanes of Maryland, a fellow Democrat, is using TV ads "demanding life in prison without parole for three-time violent offenders."

► And Rep. Dave McCurdy, D-Okla., has parted ways with President Clinton on welfare

reform, saying he'd cut support to non-citizens and those who refuse training or jobs.

The Democratic move to the right echoes the GOP's more seismic shift down the political spectrum, from Richard Nixon's "Southern strategy" to the "Reagan Democrats" who often joined the GOP in attacking social programs.

Despite a record 25 black Republican nominees for Congress, many of them conservative, the GOP is "the white people's party," says David Bositis of the Joint Center for Political and Economic Studies, a black Washington think tank.

Many Republican leaders acknowledge they need minority voters if the party is to achieve broad-based influence.

"Sure we've got some bad people in our party, and the Democrats have them in their party," says Jack Kemp, a GOP presidential hopeful who has consistently reached out to minorities, including a recent de-

nunciation of California's anti-immigration measure.

"But we are coming after the black and Hispanic vote like never before."

Still, says Jesse Jackson, "Republicans play up on a lot of fears." Though just 37% of parents on welfare are black, "They make welfare and blacks synonymous."

Conservatives say equating welfare reform with racism is little more than a game of political semantics.

"That is an interpretation that comes (mostly) from liberals," says political analyst Kevin Phillips. "It's an interpretation they've made before and it's a great way to not look at whether people are tired with your fundamental philosophy — the liberal approach to welfare."

Welfare isn't the only issue with a racial subtext:

► Immigration. Critics of California's Proposition 187, which would deny education and other government services to illegal immigrants and their children, say the measure is a thinly veiled attempt to discriminate against Hispanics.

Supporters, including GOP Gov. Pete Wilson and Senate candidate Michael Huffington, say the proposal is the strongest signal yet that the state must come to grips with the social and financial pressures of uncontrolled immigration.

► Big government/Taxes. The twin bogeymen of the 1994 campaign cuts across racial lines: Who isn't against government waste?

Polls show blacks are "the only constituency in this country who have no quarrel with big government. That makes them unique," Schneider says. "Big government saved them from slavery in the 1860s and rescued them from segregation in the 1960s."

A growing number of conservative blacks would disagree, arguing it was just such programs that have kept minorities from economic clout.

Whether rooted in genuine reform or hidden appeals to bias, the airwaves are full of political ads attacking what were once untouchable social programs. And the message, for whatever reason, is finding an audience.

Says Bositis: Voters "could be described as selfish or laden with compassion fatigue. They don't particularly care about anybody else. If things are going bad for you, too bad."

“
You don't have to be a social scientist to understand that if you're going to reduce taxes, it's going to impact on the poor and the poor happen to be blacks and other minorities.
”

— Rep. Charles Rangel,
D-N.Y.

Black Women Graduates Outpace Male Counterparts

Income Disparity Seen as Marriage Threat

By SAM ROBERTS

Among recent black college graduates, women now earn more than men, according to census figures, and some sociologists say that may be an economic disincentive to marriage.

In fact, black college-educated women have made such financial strides since 1980 that many now earn as much or more than white women with similar education and similar work experience.

The big wage gains for black professional women came in the 1980's as the salaries of white professional women rose slightly and those of black men eroded.

The wage figures, which account for inflation, are analyses of census data conducted for The New York Times by the Economic Policy Institute, a labor-supported research organization in Washington, and by Queens College of the City University of New York.

Among recent college graduates with one to five years on the job, black women earned an average wage of \$11.41 an hour in 1991 while white women earned \$11.38 an hour and black men \$11.26, according to an analysis by Lawrence Mishel and Jared Bernstein of the Economic Policy Institute. White men earned \$12.85 an hour.

The Queens College analysis found that the median income for college graduates 25 years old and younger was about \$18,000 for white men, \$17,000 for black women, \$16,800 for white women and \$16,400 for black men.

Proposed explanations for the disparity included racism, an unintended consequence of affirmative action programs — employing a woman who is black meets two minority hiring goals — and the fact that the pool of recent college graduates from which companies can recruit black employees includes more women than men.

The Economic Policy Institute's findings represented a reversal from 1979 when the average hourly wage among blacks who had recently graduated from college was \$11.93 for men, in 1993 dollars, and \$10.39 for women.

By 1989, the wage for men in that category had shrunk to \$11.06, while the wage for the women had swelled to \$11.70. Among blacks with only a high school education, the wages of men and women eroded in the 1980's; black men began the 1990's just barely ahead of white women.

While the gains by black women confirm the value of a college degree and the availability of jobs, some experts say that gain could discourage marriage within the black middle class because women often hesitate to marry men who earn less.

Compounding the problem for better-educated black women is that they significantly outnumber better-educated black men, and the gap in education and income is growing, said William Julius Wilson, the University of Chicago professor of sociology who produces the "black marriageable male index," a gauge of the deficit of employed black men available to marry black women.

The wage gap between college-educated black women and men was slight and it may close altogether as black men advance professionally. But while income differentials among blacks have traditionally

been narrower than among whites, the latest shift defies the wage advantage generally enjoyed by men — a shift that has persisted historically without regard to schooling or jobs, race or ethnicity.

Economists and sociologists say the disparity reflects setbacks by black men relative to both black women and whites. And in addition to discouraging marriage, they say, income disparity may encourage divorce in the black middle-class, although to a lesser degree than it does among lower economic groups in which a husband or prospective husband may have no income at all.

Dr. Lynn Burbridge, an economist at the Wellesley College Center for Research on Women, said: "The most successful black families, those that come anywhere close to parity with whites, are the two-earner, two-parent families. Will a woman feel less inclined to marry? There still are huge advantages to maximizing two incomes. But when you talk about individual people, will it create strains in a marriage? It probably will."

Daniela Ballard, a 26-year-old black New Yorker with two graduate degrees and a job in corporate finance, said that while income disparity might represent a disincentive for some women to marry, "in the black community there's less of

"We both came out of college with high hopes and dreams — we didn't know there'd be a discrepancy," Mrs. Bracey said. "But some of my friends who are not married have a fear of marrying someone who makes less than they do or doesn't have the same earnings potential. If they feel that way, they may never get married."

Mr. Bracey put the couple's situation this way: "My wife makes about twice what I make. I'm a commercial loan officer for Wells Fargo. She is director of finance for Fox. Eventually, I may catch up. But it's been easier for black women to go a lot farther than black men. Perhaps there's some unconscious racism — companies can see the female side and then, perhaps, the black. Or, maybe there's a glass ceiling for black men."

Samuel M. Hall, director of the Career Services Office at the predominantly black Howard University in Washington, said, "For whatever the reason, black women are more acceptable than black men."

"I think a lot of it is the stereotypes about black men," Mr. Hall said. "You have to remember who is doing the majority of the hiring, and if the hiring managers have that stereotype it's naïve to believe that people up the line don't have it as well."

Mark A. Bishop, a senior personnel representative for Federal Express, said that the earnings disparity had less to do with stereotypes than with the fact that "there are simply more black females in the marketplace."

DEMOGRAPHICS

Differing Wages: Male and Female

College-educated black women tend to make more than their male counterparts, while the reverse holds for white men and women.

BLACK Earnings ratio: 1.01

Women **\$11.41/hour**

Men **\$11.26/hour**

WHITE Earnings ratio: 0.89

Women **\$11.38/hour**

Men **\$12.85/hour**

Source: Lawrence Mishel and Jane Bernstein of the Economic Policy Institute

a stigma if a woman marries a man who makes less than she does." Part of the reason, she said, is because it has not been unusual for women to have earned as much or more than men among lower-income groups.

Still, said Dr. Francisco L. Rivera-Batiz, director of the Institute for Urban and Minority Education at Teachers College at Columbia University, "marriage involves to some extent an economic component, and if the attraction of black males diminishes because of their lower earning power that should reduce the rate that black women would marry black men."

When Victor and Susan Bracey of Culver City, Calif., a black couple, married five years ago, she was working and he was in graduate school. Even after he earned his master's degree, her income grew faster.

A Study Says New Technology Is Bypassing Poor Areas

Continued From Page A1

and minority neighborhoods are being systematically underrepresented in these plans," said Jeffrey Chester, executive director of the Center for Media Education, a policy group in Washington that was a sponsor of the study.

But some industry executives attacked the conclusions of the study as exaggerated and misleading, calling it a biased sampling that failed to demonstrate an intention to bypass anyone.

"To say that we're going to stay out of areas permanently is dishonest and ridiculous," said Jerry Brown, a spokesman for U.S. West Inc., a regional Bell telephone company based in Denver. "But we had to start building our network someplace. And it is being built in areas where there are customers we believe will use and buy the service. This is a business."

The study examined a dozen detailed plans by four regional phone companies — Ameritech, Bell Atlantic, Pacific Telesis and U.S. West — based on applications they filed during the last year or so to build advanced networks in selected areas. The districts included Washington and its suburbs, Toms River, N.J., Chicago, Denver and its suburbs, San Diego and Orange County, Calif., and Portland, Ore.

Corporate Response

Edward Young, vice president and assistant general counsel of the Bell Atlantic Corporation, termed the assertion that poor and minority neighborhoods were being left out as "unfounded and irresponsible."

"At Bell Atlantic," Mr. Young added, "we are sensitive to the need to deploy our network in all areas that we serve. We have repeatedly stated our intention to do so."

Like other phone company officials, Mr. Brown of U.S. West particularly took issue with the study's use of the term "redlining," a politically charged term. The word, more typically applied by critics of the insurance and banking industries, is derived from an image of business executives drawing red lines on maps to mark off neighborhoods where they do not wish to do business.

Still, telecommunications experts said the study raised serious issues about the information highway — especially in an era of deregulation and increased competition between phone companies and cable television companies. The traditional regulatory model, in which the Government allows a company to operate as a monopoly in exchange for fulfilling social obligations like universal access, may no longer fit the new competitive market, experts say.

companies would tend to test services in higher-income, higher-education districts, where the residents are attuned to new technology and the demand is likely to be the greatest.

"The real issue is: When these services move beyond the testing stage, will they still be targeted primarily at the affluent areas?" said Eli Noam, director of the Columbia University Business School's Institute for Tele-Information, which studies telecommunications policy. "We still don't have a clear policy to deal with how advanced electronic services are going to be supplied to places where the market does not on its own or how we as a society are going to

pay for it. Advanced information networks hold the promise not only of movies on-demand and video games brought to homes at the touch of a button but also of resources like digital versions of books from the Library of Congress or two-way video links to teachers or doctors.

Without clear-cut Government rules to assure equal access, the consumer and civil rights groups warn the benefits of the new technology will go first and foremost to the affluent, widening the education and income gaps in America.

The debate over access to new information services, said Wade Hen-

erson, director of the Washington bureau of the N.A.A.C.P., is "a frontline challenge to the civil rights community and must be addressed in the national telecommunications legislation now before Congress."

Possible Legislation

Proposed legislation in both the House and the Senate calls for equal access actions like mandating the wiring of schools, libraries and hospitals. Some bills call for added steps, as in a House measure that would prohibit a common carrier from denying service to an area because of the race or income levels of the residents.

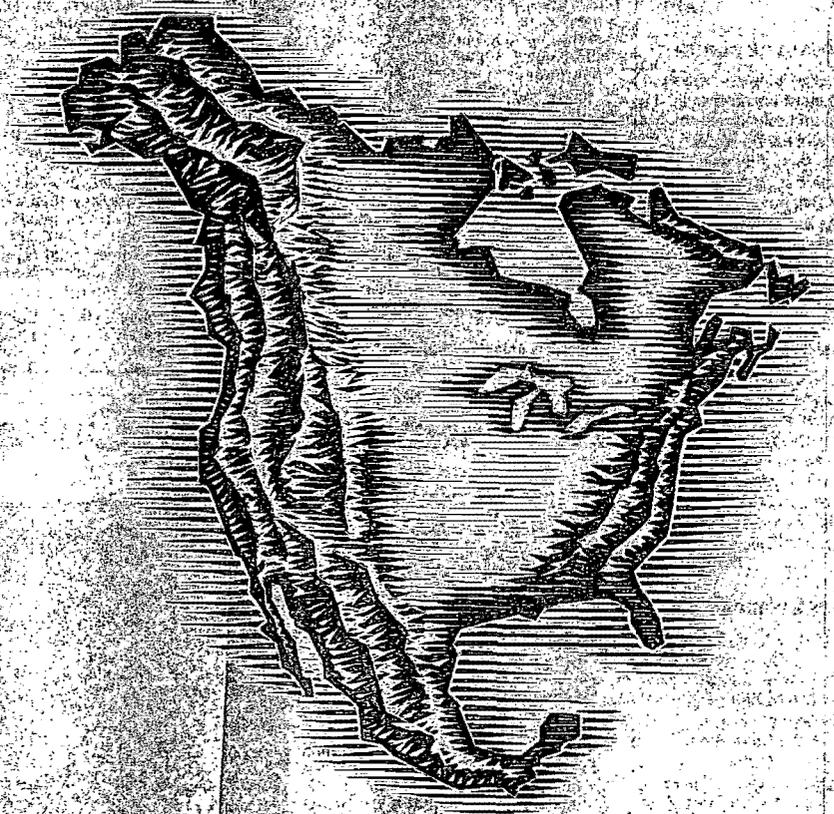
"We cannot allow the builders of the information superhighway to conveniently bypass lower-income neighborhoods," said Representative Edward J. Markey, Democrat of Massachusetts, who is chairman of the Telecommunications and Finance Subcommittee.

The study by the consumer and civil rights groups is clearly an effort to push for regulation at an early stage of the building of the information highway. The groups want additional disclosure by companies about their plans for building advanced networks. They also want public hearings in local communities and guarantees that low-income and rural areas will not be several years behind in receiving the new services.

There is a huge philosophical gap

between the people in these groups and executives at the companies that are building the new networks and are trying to make money doing so. On one side of that divide is Mr. Chester of the Center for Media Education, who once worked for Ralph Nader and whose financing comes mostly from large foundations. "There have to be some rules — you can't just let the market determine who gets service and who doesn't," he explained.

On the other side of the issue are executives like Richard D. McCormick, chairman of U.S. West, which serves 14 states. Appearing before the Senate Commerce Committee on May 4, Mr. McCormick took a clear stand. "The market is the public's interest," he said.



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PHOTOCOPY PRESERVATION

An Energetic Deputy Helps Remake the Pentagon

By ERIC SCHMITT

Special to The New York Times

WASHINGTON, July 21 — His boss is a quiet, avuncular mathematician who prefers to focus on one issue at a time. He is loud, brash and confrontational and loves to juggle any number of complicated issues at once.

But Defense Secretary William J. Perry and his deputy, John M. Deutch, are kindred souls. Between them, they are making the Pentagon over in their own technocratic image.

Along the way, they have developed a close working relationship not seen between a Defense Secretary and his deputy in many years. In the past six months, Mr. Deutch has expanded the traditional boundaries of the Deputy Secretary beyond the important but often tedious tasks of overseeing budgets, handling personnel matters and entertaining visiting defense ministers.

Mr. Deutch, at Mr. Perry's direction and his own insistence, is also playing a much greater role in foreign policy than previous deputies. He meets three times a week with a senior interagency team on Haiti. As a former Energy Department official, his expertise in nuclear energy has drawn him into the debate over the nuclear bomb-building program in North Korea. Mr. Deutch is also helping to oversee the Pentagon's airlift of supplies to Rwandan refugees.

Fortunes Rise Together

Mr. Deutch, a 55-year-old former chemistry professor at the Massachusetts Institute of Technology, was elevated to his current job in February, when Mr. Perry moved up a rung to replace Les Aspin as Defense Secretary. Mr. Deutch had been serving as Undersecretary of Defense for acquisition and technology.

Since then, Mr. Deutch has been central to nearly all major issues facing the Pentagon, from encouraging the production of high-resolution flat-panel displays for laptop computers to supervising the investigation of the symptoms plaguing thousands of Persian Gulf war veterans.

"He's not only the Deputy Secretary, but he's also the chief action officer on key issues that concern Perry," said Rudy F. de Leon, the Undersecretary of the Air Force and a former top aide to Mr. Aspin.

Mr. Perry and Mr. Deutch have brought a new energy and tight teamwork to the Pentagon's highest echelons. That kind of teamwork was lacking with Les Aspin and Mr. Perry, and their predecessors in the Bush Administration, Dick Cheney and Donald J. Atwood. Those pairs got along well personally but operated

independently. Mr. Perry and Mr. Deutch are practically inseparable, conferring five or six times a day.

The two men have known each other since they served in the Carter Administration, Mr. Perry at the Pentagon and Mr. Deutch at the Energy Department. Mr. Deutch was one of the original stockholders in Mr. Perry's Silicon Valley company, Technology Strategies & Alliances.

"I've dealt with many Secretaries, going back to Caspar Weinberger, but this is the closest relationship between a Defense Secretary and the Deputy I've seen," said Representative John P. Murtha, a Pennsylvania Democrat who heads the House Appropriations Defense Subcommittee.

More broadly, Mr. Perry and Mr. Deutch are engineering a makeover

of the New Age Pentagon bequeathed by Les Aspin, who sought to set up a "mini-State Department" in the Defense Department, including a new position for human rights and democracy. Gone are Morton H. Halperin, the nominee for the human rights job who ran into fierce Senate opposition, as well as two respected career Foreign Service officers, Frank G. Wisner and Charles W. Freeman Jr., who never quite fit in at the Pentagon.

With a newly streamlined division handling national security policy, communication with the White House has improved dramatically after some initial stumbles. Mr. Perry's organization and decisive style have impressed the senior officers who had been frustrated by Mr. Aspin's more casual approach.

Mr. Perry and Mr. Deutch are ushering in the Technocrat Pentagon, tapping longtime associates to fill top policy and weapons-purchasing jobs. Jan Lodal, a computer company executive and former Pentagon analyst, will manage the policy division under Walter Slocombe, who replaces Mr. Wisner. Paul Kaminski, a close associate of Mr. Perry, takes Mr. Deutch's old job in charge of acquisitions.

And Joseph Nye Jr., Mr. Deutch's longtime neighbor, moves over from the Central Intelligence Agency to replace Mr. Freeman as Assistant Secretary for International Security Affairs, a title Mr. Perry has revived from the Cheney era.

Mr. Perry and Mr. Deutch have adopted a businesslike approach to running the Pentagon. "He's the chief executive officer and I'm the chief operating officer of this organization, and I act for him when he is not here," Mr. Deutch said in an interview.

Mr. Deutch's expanded role is especially visible in the foreign policy Administration colleagues say. Before the United States opened the naval base at Guantánamo Bay, Cuba, as a processing center for Haitian refugees, Mr. Deutch quietly flew down in late June to review the plan.

His concern about North Korea's nuclear program is deeply influenced by regrets that the Carter Administration, which needed Pakistan's help after the Soviet Union invaded Afghanistan, failed to prevent Pakistan from building its nuclear program in the late 1970's.

Mr. Deutch discusses national security issues over lunch every Thursday with three other senior deputies: Deputy Secretary of State Strobe Talbott; the deputy national security adviser, Samuel R. Berger, and Vice President Al Gore's national security adviser, Leon Fuerth.

His mischievous sense of humor peeked through at a recent lunch when he spread a camouflaged groundcloth on his office floor and invited his guests to dine on the military rations called Meals-Ready-to-Eat.

Some Administration officials fault Mr. Deutch for stretching himself too thin. "There are some instances where he does things on the run, and it'd be nice if he had more background on the issue," said one Defense Department official.

After the accidental downing of two American helicopters by United States fighter jets in April, killing all 26 people aboard, Mr. Deutch represented the Pentagon at a memorial service in Incirlik, Turkey. He flew back from Washington just in time for a Senate hearing on the Air Force's troubled cargo plane, the C-17. Visibly exhausted, Mr. Deutch was forced to ask for a postponement after testifying for 15 minutes.

Mr. Deutch dismisses the notion that he has taken on too much, and he said the newly appointed officials would lighten his load. "I have no ambition to be my own Undersecretary for Policy," he said.

THE NEW YORK TIMES, SUNDAY, JULY 24, 1994

A Rights Leader Minimizes Racism as a Poverty Factor

Cites New Economy as 'the Bigger Culprit'

By STEVEN A. HOLMES

Special to The New York Times

WASHINGTON, July 22 — In a marked departure from the longtime stance of many other civil rights leaders, the new head of the National Urban League is minimizing the significance of white racism as a factor in the poverty of inner-city blacks.

In a speech that he is to deliver on Sunday, Hugh P. Price, the league's president and chief executive officer, says that although racism is "still a well-documented and undeniable reality," intensified economic competition and employers' resulting demand for better-educated, better-skilled workers are larger contributors to urban poverty.

"We must not let ourselves, and especially children, fall into the paranoid trap of thinking that racism accounts for all that plagues us," says the text of the speech, a copy of which was provided by the league. "The global realignment of work and wealth is, if anything, the bigger culprit."

The speech, the keynote address of the National Urban League's convention in Indianapolis, is the first policy statement by Mr. Price, a 52-year-old former vice president of the Rockefeller Foundation, since he assumed the leadership of the league on July 5. In tone and content, it reflects a sharp distinction from other civil rights leaders, most notably the Rev. Benjamin F. Chavis Jr., executive director of the National Association for the Advancement of Colored People.

'Racial Inclusion'

For instance, while in recent months Mr. Chavis has publicly embraced black figures like Louis Farrakhan who have long advocated keeping political distance from whites, Mr. Price's speech emphasizes "racial inclusion."

"For all our suffering," the speech says, "we cannot become so fixated on our problems that we ignore our commonality of interests with others. All the problems I've addressed this evening — inadequate schooling, idle and alienated youngsters, and chronic unemployment — cut across racial lines. If we're ever to deal with them on a scale remotely equal to their size, we must coalesce with people of other complexions who feel the same pain, even if it isn't as acute."

And in a clear rebuff to Mr. Farrakhan, Mr. Price singles out Jews for praise, calling them "longstanding allies" for civil rights.

"Many whites of good will have accompanied us on our long journey for racial, social and economic justice," Mr. Price says. "None has matched the Jewish community as long-distance runners in the civil rights movement."

Focus on Underclass

The speech is also noteworthy for its lack of references to goals that

have been of primary interest to the black middle class: the setting aside of some government contracts for black-owned businesses and some scholarships for black students, the placement of more blacks in corporate board rooms and executive suites, and other affirmative action efforts. Instead, Mr. Price focuses on the inner-city poor, at one point asking the black middle class for financial contributions to a program intended to help poor youths.

"It's a moral imperative," Mr. Price said by telephone from Indianapolis, referring to his emphasis on the urban underclass. "And as a pragmatic matter, their pain affects us. The cynicism of kids growing up in the inner cities contributes to behaviors that are reported on the evening news, which ensnare all of our kids in negative stereotypes."

In his speech, Mr. Price urges blacks who can afford to do so to donate \$500 or \$1,000 to pay for coun-

The new head of the Urban League charts a course all his own.

selors and other workers in the fledgling inner-city-youth program. The program, he says, would be run by community groups, other nonprofit bodies like the Y.M.C.A. and churches, and the Urban League would help raise the money and monitor how it was spent.

"There is that old saying that it takes a village to raise a child," Mr. Price said in the telephone interview. "Well, the black middle class has moved out of the village. That's the natural order of things. I don't ask the middle class to move back. But they have to move back spiritually, or at least financially."

In his address, Mr. Price also argues that business and government should be pressured to set aside jobs and training positions for poor people regardless of race, a stance that departs from civil rights groups' quarter-century-old advocacy of race-based preference programs.

Mr. Price contends that such a shift is needed both to respond to recent court rulings that have limited racial set-asides and to build political support.

"What if employers reserved training slots and real jobs for residents of neighborhoods or census tracts with high unemployment rates?" he said. "The way I see it, this wouldn't be a politically contentious race-based approach. Instead, it's a more palatable alternative which recognizes that poor people of all races need decent jobs."

THE NEW YORK TIMES, SUNDAY, JULY 24, 1994

LLEWELLYN ROCKWELL JR. ✓

Assault on process of arbitration

Hiring in America has become more dangerous than a picnic in Rwanda. Every day, every employer faces the prospect of disaster through bias complaints and lawsuits. Legal expenses can easily run \$60,000 each. And if liberal lawyers can turn the action into a class-action suit, bankruptcy threatens.

That's why, if you ask businessmen off the record, they'll tell you civil rights is a job killer. It's not the quotas these rights imply so much as the charge of "discrimination" itself. Nearly everyone can hurl this accusation, except straight, white, middle-aged, able, well-qualified men.

Employees are most likely to file discrimination complaints when the boss lets them go. Termination is humiliating, and thanks to our flawed natures, we want to blame anyone but ourselves. Employees rarely walk away from a job saying, "I've learnt a valuable lesson; I'll never goof off again."

In the old days, people picked themselves up, brushed themselves off, and started combing the want ads. These days, they call the Equal Employment Opportunity Commission. Women charge sexism, blacks charge racism, and anyone with a limp charges ableism.

Even mental illness is covered by the Americans With Disabilities Act. An employer cannot legally refuse to hire and cannot fire a person who is "otherwise qualified," according to the largest insane asylum in the world, Washington, D.C. More than 10 percent of ADA complaints filed with the EEOC charge discrimination on these grounds.

But what is mental illness? The EEOC suggests we consult the Diagnostic and Statistical Manual of Mental Disorders, which shows you cannot discriminate against someone whose "personality changes over time," who shows "confused thinking," or who exhibits "consistent tardiness or absences."

Also protected is someone who shows a "lack of cooperation or inability to work with co-workers," "reduced interest in one's work," or "problems concentrating, making decisions or remembering."

Before the ADA, these were reasons for sacking someone (unless he worked for the government). Today, they're "symptoms" that bestow rights that sane people don't have. Now we see why businessmen experience another round of DSM symptoms: "anxiety, fear, anger, suspicion."

The private sector has respond-

ed brilliantly to this assault with arbitration contracts. In many companies, new employees have to sign a promise to settle all job disputes by arbitration, i.e. private courts. If a person is demoted, not promoted, "harassed," or fired, and wants to protest, he must file and settle complaints in the magnificent legal system outside the government courts.

Ideally, all these laws would be repealed and a free market in labor restored. Until that day, arbitration can help keep labor markets from entirely gumming up.

Arbitration lowers costs and prevents the absurdities of class-action suits. The case of Denny's is illustrative. Thanks to government courts, Denny's had to pay a \$54 million settlement to people who claim racial discrimination on such actual grounds as ordering a hamburger rare and getting it well-done.

No wonder 100 large companies have already made the switch, and many more small ones too. They thereby avoiding arbitrary and capricious government legal institutions. By some estimates, in five years, half of all employees will be bound by such contracts.

Leave it to the feds to try to put a stop to a good thing. Liberals hate the privatization of civil rights enforcement precisely because it tends to balance, just slightly, the scales of justice. Liberals want a world where employers have no rights, and any plaintiff hollering "discrimination!" can retire in luxury, and his lawyer too.

Thus Sen. Russell D. Feingold, Wisconsin Democrat, has introduced anti-arbitration legislation in the Senate, and Rep. Patricia Schroeder, Colorado Democrat, has copied him in the House. They would forbid arbitration contracts altogether, coercing business back into the state system.

Just as business has found a way to restore some of the meritocracy of the firm, Mr. Feingold and Mrs. Schroeder want to reimpose quotas and intimidation. Instead of the work ethic, they favor the mugging ethic, where every employer can get juiced with the legal equivalent of a 15-inch knife.

Civil rights even make employers afraid to run job ads. Business has to hire all victimological comers, or risk a visit from Janet Reno. Instead, businessmen reveal the existence of new positions only to friends and close associates. Liberals say they don't like the old-boy network, but anti-discrimination law makes the network the only safe way to shop for workers.

Restoring employers' rights is the cause of liberty. And if the Republican Party is really pro-business, this is how to show it.

Llewellyn H. Rockwell Jr. is president of the Ludwig von Mises Institute, a free-market educational organization in Auburn, Ala.

PAUL CRAIG ROBERTS ✓

A baseline of voting quotas

Before long, it will be illegal for minorities to lose elections. This is the logical outcome of the Supreme Court's misinterpretation of the Voting Rights Act to require racially proportionate electoral results.

Passed in 1965, the Voting Rights Act was intended to eliminate literacy tests, which were seen as barriers to black voting. However, the courts have permitted civil rights activists to turn the law into an instrument that requires that blacks win their share of elections.

Consequently, Americans are finding that their right to elect their own leaders or to abide by majority rule may be challenged unless it produces racially proportionate results. Whenever majority rule fails to result in minority electoral successes, courts are stepping in and imposing remedies in the form of racially gerrymandered districts, cumulative voting schemes designed to guarantee the election of blacks and other circumventions of majority rule.

In two voting rights decisions handed down on June 30, the Supreme Court stuck to its proportional results baseline. Justice Clarence Thomas, in an opinion joined by Justice Antonin Scalia, set out in clear language what the proportionality standard means for our future.

"In construing the act to cover claims of vote dilution, we have converted the act into a device for regulating, rationing and apportioning political power among racial and ethnic groups." This, Justice Thomas says, requires the Supreme Court to become "a centralized politburo appointed for life to dictate to the provinces the 'correct' theories of democratic representation, the 'best' electoral systems for securing truly 'representative' government, the 'fairest' proportions of minority political influence."

Justices Thomas and Scalia don't think the court has claims to any such role in the political life of our country. Others, however, do, and as the court's dictatorial power grows, quotas in elections are as certain as they are in hiring, promotions and university admissions.

Indeed, as the result of court cases, many electoral jurisdictions already have quotas. For example, in Jackson, Tenn., and Crenshaw County, Ala., the chairmanships of the city and county commissions respectively are required to rotate racially regardless of election outcomes in order to guarantee that preferred minorities will share equally with other commissioners the position of chairing the commission.

Unless Justice Thomas succeeds in persuading a majority of his colleagues to stick to the statutory language of the Voting Rights Act and cease construing the act to require proportional results, it is only a matter of time before the court will rule that speaker of the House, Senate majority leader and chief justice must be racially rotating positions in order to avoid diluting black votes.

As the logic unfolds, acts of Congress will have to be racially proportional with quotas guaranteeing blacks their fair share of legislation.

Justice Thomas says the court's pernicious misinterpretation of the Voting Rights Act is "an enterprise of segregating the races into political homelands that amounts, in truth, to nothing short of a system of political apartheid."

Justice Thomas urges his colleagues that "our current practice should not continue. Not for another term, not until the next case, not for another day. The disastrous implications of the policies we have adopted under the act are too grave; the dissembling in our approach to the act too damaging to the credibility of the federal judiciary."

The court's sole black justice says that by misconstruing the act to require racially proportional results, the court is fostering racial balkanization and exacerbating racial tensions.

The approach taken to civil rights in the post-war period is problematic, because it assumes that ideas and interests are race-based. Since whites are believed incapable of representing any interest other than that of their own race, blacks must be allotted a proportional share of electoral outcomes or go underrepresented. Few have realized that this assumption that ideas and values are race-specific means that there is no common ground for resolving differences through the democratic process.

This logical impasse is why the court is taking on the politburo role that Justice Thomas decries.

Paul Craig Roberts, a distinguished fellow of the Cato Institute, is a columnist for The Washington Times and is nationally syndicated.

Gore tells NAACP 'our way is working'

But some black
leaders are skeptical

By AMY BAYER
Copley News Service

CHICAGO — Vice President Al Gore told the nation's largest black organization yesterday that he is painfully aware that economic progress is coming too slowly to minorities, but he said that Clinton administration policies are beginning to help.

"Our way is working," Gore said, condemning Republican trickle-down economics in favor of policies that will revive the economy from the "bottom up."

But some black leaders, gathered here for the 85th annual meeting of the National Association for the Advancement of Colored People (NAACP), expressed doubts about Democratic leadership in Washington and its commitment to civil rights and economic justice.

"We can't afford permanent friends in Washington," said William Gibson, chairman of the NAACP Board of Directors, in an election-year warning to Democrats that black support cannot be assumed.

Gibson urged his colleagues to pursue a radical and aggressive movement "disregarding any political expediencies or White House relationships."

Blacks must carefully monitor Democrats in Congress, Gibson added, to make sure their votes match their rhetoric on civil rights, economic opportunity and urban development.

"An anti-black vote from a Democrat don't hurt you no less than an anti-black vote from a Republican," Gibson said.

Gibson, underscoring a lingering bitterness toward the White House, urged a movement "that will be as critical of Bill Clinton for withdraw-

ing the name of Lani Guinier as we were of George Bush for submitting the name of 'Uncle Tom' Clarence Thomas for the Supreme Court."

Clinton pulled back his nomination of Guinier to be assistant attorney general for civil rights when her writings on enhancing minority political power were interpreted by critics as radical.

Democrats are actively wooing the black vote as the fall elections approach.

Gore came to the NAACP convention armed with a list of administration actions he said would benefit many blacks, including passage of gun control and family leave legislation, tax credits for low-income workers and the "motor voter" bill to simplify voter registration.

The vice president was received warmly by thousands of delegates and members who gathered for his speech. But several nonetheless questioned the administration's commitment to minority issues, and the Guinier case still rankles many.

Others noted that Clinton had done little in the way of urban investment, had sacrificed or shrunk his summer jobs and national service programs, and had backed down on his campaign promise to promote statehood for the District of Columbia.

The hottest political issue here was health care reform, with many members threatening to oppose any politician who voted against universal coverage, the heart of Clinton's proposal but now facing opposition on Capitol Hill as too expensive.

"I believe in results, and I want to see more from Democrats now that they're running the whole show there," said Mayna Baines, a government worker from Los Angeles. "The Democrats need to remember who put them there."

The NAACP is meeting at a time of some organizational strife. Most stems from last year's election of an aggressive executive director, the Rev. Benjamin Chavis, Jr., and the association's efforts to forge ties with radical groups like Louis Farrakhan's Nation of Islam.

As the convention began Sunday, association officials struggled to dispel rumors of a coup directed by Chavis by distributing placards organizing a demonstration in support.

Top officials, including Chavis and Gibson, blamed the rumors on "vicious and deceitful media," disgruntled members intent on "smearing" the organization.

Wilson vows to oppose anti-abortion plank of GOP

Says party should delete
language from platform

By MARK Z. BARABAK
Copley News Service

WASHINGTON — Briefly looking beyond his November re-election fight, Gov. Pete Wilson yesterday said he would work to remove anti-abortion language from the Republican Party's 1996 presidential platform.

"The conservative position is that government ought to stay out of people's lives to a very considerable extent," Wilson said. "And I think the absence of a plank (on abortion) from a platform is consistent with that attitude."

His statement to a group of political writers amounted to a reiteration of the stance he took at the ideologically contentious 1992 Republican National Convention. Then Wilson vowed at a meeting of California delegates, "This will be the last Republican platform that contains this (anti-abortion) plank."

The governor again addressed the issue during a daylong trip to Washington yesterday, which mixed official business with politicking for his re-election effort against Democratic state Treasurer Kathleen Brown.

Wilson has long advocated abortion rights, a position that has politically suited California's moderate social climate but placed the governor at odds with many conservative activists within the Republican Party.

By endorsing removal of the anti-abortion plank, Wilson positioned himself squarely on the side of moderates fighting to limit the influence of social-issue conservatives, reflected in the growing party ranks of the religious right.

During his luncheon with reporters, Wilson suggested the news media has hyped the split over abortion within the GOP. Even so, he replied "yeah" when asked if he personally would lobby to have the abortion language removed.

That, of course, assumes he will be in a position to do so, as governor and thus titular head of the largest delegation at the 1996 GOP convention.

Instead of arguing over the legality of abortion, Wilson said, those on both sides of the issue should unite to "encourage the kind of responsibility that makes abortion unnecessary." The comment echoed President Clinton's statements during the 1992 campaign that abortion should be legal, safe and rare.

"I'm pro-choice. I always will be for a variety of reasons," Wilson said. "But... whether people are pro-choice or pro-life, they should come together in support of programs that require personal responsibility and accountability. We have not done a very good job of that."

Wilson's comments came a day after another GOP governor, New Jersey's Christine Todd Whitman, said Republicans needed to abandon the party's formal anti-abortion stance to show it has not become

captive to extremists.

"It's not a partisan political issue and it doesn't belong in a party platform," Whitman told *The Los Angeles Times*.

Ultimately, the decision will rest with the platform committee that meets shortly before the 1996 GOP convention. Two years ago, that panel was heavily influenced by religious conservatives and efforts to change the anti-abortion language then were easily rebuffed.

Wilson skipped the convention and largely ceded the fight over the abortion plank to then-Sen. John Seymour in an effort to help garner his appointee publicity for his re-election bid. But after promising to wage a vigorous fight, Seymour largely abandoned his effort once he reached the Houston convention.

In addition to meeting with political reporters, Wilson conferred with Sen. Dianne Feinstein, D-Calif., and other state lawmakers on defense and health-care issues.

However, acknowledging that the principal purpose of his trip was political, Wilson told reporters the entire cost was being financed with campaign funds. The trip was Wilson's sixth visit to Washington in the last seven months.

The San Diego
Union-Tribune.

CLARENCE PAGE

Sparring within the NAACP

Forty years after winning the landmark *Brown vs. Board of Education* school desegregation case and 30 years after winning landmark civil and voting rights legislation, the NAACP looks like a victim of its own success.

In an era in which the worst problems facing black Americans often call for more than civil rights remedies, the National Association for the Advancement of Colored People seems to many to be outdated and out of touch, if not completely irrelevant.

Benjamin Chavis set out to change all that when he took over from Benjamin Hooks in April of last year. But now, as the organization holds its annual week-long convention in Chicago, he finds himself fending off critics who want him to step down, along with his most important ally, chairman William Gibson, a Greenville, S.C., dentist.

The reasons are partly financial but mostly philosophical. Financially, the organization is burdened by a \$2.7-million deficit. It has dismissed 10 employees and expects to cut its Baltimore headquarters staff by another 10 over the summer.

Philosophically, Mr. Chavis' critics blame his highly publicized outreach to Nation of Islam Minister Louis Farrakhan and other separatist firebrands, most notably at a recent black leadership summit Chavis held at the NAACP headquarters.

Leading the ouster movement is Michael Meyers, head of the New York Civil Rights Coalition, who accuses Mr. Chavis of letting the historically pro-integration organization become "hijacked by black extremists" like Mr. Farrakhan, whom Mr. Meyers calls "an apostle of hate and black racism."

Mr. Meyers was appalled that under Mr. Chavis the NAACP convened and sponsored all-black leadership meetings in Detroit and Baltimore "which not even [white] members of the NAACP board could attend because of their skin color."

In a breakfast interview before the convention, Mr. Chavis told me his controversial moves are intended to help the organization reposition itself for changing times — to pull it kicking and screaming, if necessary, into a new era in which jobs, education, housing, "environmental racism," economic develop-

ment and the restoration of pro-family, pro-community and anti-crime values have become "the new civil rights issues."

To deal with that new era, he says, the NAACP must talk with all national leaders who are showing themselves to have some positive influence, whether they agree with its philosophy or not.

As for the debt, Mr. Chavis says, most of it comes from the NAACP's nationally televised Image Awards program, which has lost \$1.5 million over the past four years. He hopes his reorganization efforts will make the venture as profitable as it should be.

Meanwhile, he says, he feels vindicated by recent increases in membership following his outreach



Benjamin Chavis

efforts, which have included such street-level stunts as moving for a few days into a South Central Los Angeles public housing development.

But Mr. Meyers, among other critics, questions Mr. Chavis' reluctance to open up the organization's books, its membership rolls or even the terms of Mr. Chavis' contract, which he says will block any current ouster effort.

"You can't have it both ways," says Mr. Meyers. "If the organization wants to say we are not interested in integration any more, that we are interested in doing it ourselves, without corporate support or other outside coalitions, then, fine. I'm out of here. I won't be part of a black separatist organization. But they can't say they're being true to the principles on which the NAACP was founded or the many policy papers it has published over the years and never repealed."

Can Mr. Chavis have it both ways? Talking to Mr. Chavis and Mr. Meyers is like trying to reconcile a couple whose marriage is on the rocks. Both sound quite right and, at the same time, terribly wrong.

Mr. Chavis is right to try to breathe new life into the organization's stodgy image and outreach, but he doesn't need to risk the organization's historic principles and moral authority by cozying up to Mr. Farrakhan in a way that fails to recognize the significance of the barbs he throws at other groups — offenses of a sort that the NAACP roundly condemns when whites aim them at blacks.

Mr. Meyers holds fast to that moral authority. I'm glad somebody does. But he, too, may be too rigidly married to the virtues of integration for its own sake without recognizing that there are some occasions in which blacks are better off on their own.

Mr. Meyers, for example, vigorously opposes Mr. Chavis' and other NAACP leaders' marches and campaigns to preserve historically black colleges, only 40 years after NAACP lawyers successfully argued that "separate-but-equal" is by its very nature unequal.

But I think it is also important to note that historically black colleges have a better track record than predominantly white colleges for graduating more of the black students they admit; they also send more of them to success in Ivy League graduate schools and predominantly white corporations. Historically black colleges may not be for everyone, but they're doing something right that I think should be studied, not casually dismissed for the sake of integration in its most abstract sense.

We black Americans are a very diverse people. Not all of our needs, educational and otherwise, are the same. Nor do we all serve the cause of black advancement best in the same ways.

The NAACP was born out of the W.E.B. DuBois call for civil rights and black political empowerment against Booker T. Washington's call for self-help, basic education and black economic nationalism.

Today, with most of Mr. DuBois' most important civil rights goals won, Mr. Chavis is right to take a second look at the self-help model. But he doesn't need separatists like Mr. Farrakhan to help him do that, not as long as the moral cost is so high.

Clarence Page is a nationally syndicated columnist.

Entering the Wage-Price Spiral ✓

Today the Labor Department is scheduled to announce the latest jobless figures. Is it possible that unemployment already could be too low?

Some economists think so. Their reasoning is that the demand for workers already exceeds, or is close to exceeding, the supply of people available to fill the jobs. When that happens, employers boost their pay offers, and a wage-price spiral may start. Since labor represents 70% of final product costs, inflation can result.

"Inflation definitely should be a concern," says Charles Lieberman, chief economist of New York's Chemical Bank. The latest official unemployment rate was 6%. Stuart Weiner, an economist at the Federal Reserve Bank of Kansas City, calculated late last year that the "natural" rate, the rate at which demand for and supply of workers would balance and lead to no inflation pressures, was 6.25%.

There is a great deal of controversy over where the natural rate is now and how soon it could lead to inflation pressures. The rate depends heavily on structural factors: Either the economy or the work force changes. Mr. Weiner thinks the danger is imminent; William Helman of Smith Barney Shearson thinks unemployment will reach the natural rate "by the fourth quarter of 1994 if not before."

Donald Ratajczak, director of the economic forecasting center at Georgia State University in Atlanta, says, "I don't believe the natural rate is putting any upward pressure on wages." He concedes that the labor market is tighter than it was a year ago, and he has seen spot worker shortages in construction and in some retailing. He also has noted some upward pressure on wages. But he believes the pressure results from companies paying more to valued workers, not from any shortage of labor overall.

Gordon Richards, chief economist for the National Association of Manufacturers, says any suggestion that we're near the natural rate is "absolutely ridiculous." He says that in his field, economic forecasting, "the degree of [labor] slack is such that you should expect inflation to remain flat for some years."

Most people in government don't see the natural rate as a worry, at least not yet. The Congressional Budget Office, in its latest estimate, said the natural rate was only 5.5%, substantially below the current official rate. The President's Council of Economic Advisers offers no number but says that "today's unemployment rate exceeds the natural rate by a significant amount." Even aside from Mr. Weiner's article, however, there are signs that the

Fed is paying attention to the subject.

"Chairman Greenspan has been ambivalent about the concept of the natural rate," DRI/McGraw-Hill notes in an analysis. "Nevertheless, the Fed actions and pronouncements suggest that it believes the unemployment rate cannot fall

Speaking of Business

By Lindley H. Clark Jr.

below 6.5% for a prolonged period without causing inflation to accelerate."

Figuring the natural rate isn't easy. Most analysts think the rate has been trending downward for the past decade as the share of young, inexperienced workers in the labor force has decreased, and as growing numbers of women workers have acquired skills and experience. But the number of young workers is expected to stabilize, and the work force is likely to become racially more diverse. Nonwhites tend to have higher unemployment rates than whites, so their increasing numbers are likely to push up the natural rate.

Mr. Weiner argues that other factors also have pushed up the natural rate. In the past decade, companies have been restructuring themselves. In 1990, Union Camp Corp. closed down a bag plant in New Hope, Pa., moving its operations to Hazelton, Pa., about 100 miles away. The company offered workers jobs in Scranton, but some of them, for family or other reasons, chose not to go and now are unemployed or partially employed.

This is a job mismatch—jobs are available but not where the workers are. Other mismatches occur when jobs are available but workers do not have the required skills. An example of the latter is trucking companies, which are having trouble finding drivers. Schneider National of Green Bay, Wis., is sending recruiters to U.S. military bases in Europe.

There is so much part-time work available that workers can often mark time until the jobs they really want become available; such people are "frictionally" unemployed. But the bulk of "natural" unemployment is structural. Company restructuring increased the demand for skilled workers, able to deal with automation, and cut the demand for low-skilled people. Defense industry cutbacks have shrunk the demand for machinists and other such workers.

The natural rate is not solely a U.S. problem. When U.S. and European offi-

cial met in Detroit in March to discuss jobs, one of the topics was what to do about the natural rate. Britain was cited favorably for curbing union power and giving employers more control over pay and work practices. France has been trying to set up a system of below-minimum wages to give younger workers jobs and training, but has run into strong resistance.

In the 1970s, both Europe and the U.S. were building or expanding their social "safety nets" for workers. The U.S. slowed the process in the 1980s, but Europe went a lot further. Since these programs tended to raise the cost of hiring workers, they increased the natural rate. In some European countries, jobless benefits are so high that workers are discouraged from seeking jobs. That helps to explain why European unemployment rates have risen to 10% and above.

Why Liberals Should Thank Clarence Thomas

President Clinton claims the press dislikes him, but he's as revered as Mother Teresa compared with the coverage that Supreme Court Justice Clarence Thomas gets. So it's not surprising that when Justice Thomas issued the most provocative opinion of this court year, the media barely noticed.

Having concluded that Justice Thomas was in the pocket of Antonin Scalia, maybe legal reporters couldn't admit that Justice Scalia had signed Justice Thomas's opinion. But last week's Thomas tour de force deserves a wide audience for many reasons, not least for the warning it offers about the politics of race in America. Liberals in particular could learn why liberal jurisprudence on matters of race is eroding Democratic control of Congress.

Justice Thomas dropped his intellectual bombshell in *Holder v. Hall*, an otherwise yawner of a voting-rights case. Instead of joining the bland majority, America's second black justice wrote a seismic 59-page concurring opinion that roils 25 years of voting-rights logic. What began in 1965 as an effort to remove barriers to black voting, writes Justice Thomas, has become "a disastrous misadventure in judicial policymaking" that invites more, not less, racial tension.

He notes that the Voting Rights Act was wildly successful at first: Black registration in Mississippi jumped to nearly 60% in 1967, for example, from just 6.7% before the law passed. But beginning in 1969 the Supreme Court, flush with its own moral ambition, redefined that act to require "direct proportionality" based on race. The court has since demanded not just that racial minorities be able to compete freely in politics but that they be elected in rough proportion to their population.

The result, writes Justice Thomas, is that "we have involved the federal courts, and indeed the Nation, in the enterprise of

Potomac Watch

By Paul A. Gigot

systematically dividing the country into electoral districts along racial lines—an enterprise of segregating the races into political homelands that amounts, in truth, to nothing short of a system of 'political apartheid.'" So even as South Africa abandons its experiment in racial segregation, American liberals embrace their own.

Supposedly a simple-minded conservative, Justice Thomas pulls a trick on liberals by reading them. He buttresses his argument in *Holder* with quotes from such liberal icons as former Justices Felix Frankfurter, John Harlan and even William O. Douglas.

My favorite is from a 1964 Douglas dissent: "The principle of equality is at war with the notion that District A must be represented by a Negro, as it is with the notion that District B must be represented by a Caucasian, District C by a Jew, District D by a Catholic, and so on." Of course this is the system we now have for race, if not religion.

Justice Thomas is especially sly in quoting his old Yale Law schoolmate, Lani Guinier, who was appointed and then dumped by Mr. Clinton last year. Justice Thomas and she share some of the same criticism of today's racial gerrymanders, though her solution is to pursue even more race-drenched remedies.

Justice Thomas would rather return to Martin Luther King's vision of a color-blind Constitution. The current system, he writes, "can only serve to deepen racial divisions by destroying any need for voters or candidates to build bridges between racial groups or to form voting coalitions."

Liberals more than most should heed Justice Thomas, because he is describing exactly what is happening to Democrats. Racial gerrymandering has produced a growing number of blacks in Congress, but nearly all of them are from "safe" seats that no Republican could ever win. Of 37 black House Democrats, none were elected with under 60% of the vote in 1992. This makes the Black Caucus more powerful on some issues but also less accountable to other Democrats, or to broader coalitions. Just as troubling, Republicans can ignore black voters altogether.

Democrats are thus finding it harder to govern and keep a majority. The crime bill, for example, is stymied by a Black Caucus demand that the death penalty be applied based on racial quotas. Black Democrats from safe seats don't have to worry if such a vote is controversial. But for moderate Democrats from swing seats, it's a windfall



Clarence Thomas

for their Republican opponents. Likewise on Haiti, the most vociferous lobby for invasion is the Black Caucus, complicating life for a Democratic president who represents all Americans.

Republicans understand all of this, which is why some have cynically gone along with racial gerrymanders. They figure it will help them take over Congress, even if their majority contains only one black. (Gary Franks of Connecticut was elected with 45% of the vote from his swing district.) But that's all the more reason to listen to Justice Thomas, who may be a Republican appointee but is willing to put judicial principle above partisanship.

Despite its passion and eloquence, Justice Thomas's *Holder* opinion probably won't sway a majority of his muddling, precedent-hidebound court colleagues any time soon. But if his warning about American political apartheid proves true, even liberals will one day wish it had.

Controlling the Confirmation Circus

By Ann Grimes
Washington Post Staff Writer

Supreme Court nominee Stephen G. Breyer's arrival on Capitol Hill today for confirmation hearings reopens what has become—especially during the early Clinton administration—an arena individuals enter at their own risk. They can emerge victorious, like Ruth Bader Ginsburg; or with a reputation irretrievably tattered, like Zoe E. Baird.

Either way, the confirmation process is a mess, according to a new book on the federal appointments process by Yale Law School professor Stephen L. Carter.

"We have built a system," he writes, "in which strategy (especially PR strategy) is far more important than issues or qualifications."

Talking from Philadelphia during a recent tour for his book, "The Confirmation Mess: Cleaning Up the Federal Appointments Process," Carter said that hundreds of federal appointees require Senate approval and often are confirmed without a hitch. But recent experiences of a few high-profile nominees have tainted the process.

Carter, a constitutional scholar who once clerked for Justice Thurgood Marshall and has written several books including "Reflections of an Affirmative Action Baby," uses as his point of departure the controversial 1987 confirmation hearings for Supreme Court nominee Robert H. Bork. Carter questions Bork's qualifications, but nevertheless argues that critics unfairly turned him into a man about whom people made phone calls "looking for dirt."

Carter said, "People in D.C. are not comfortable talking about . . . qualifications for a job. To focus on qualifications is some sort of insult. They'd rather say you're a horrible monster who should not show your face in town. People are more comfortable with that. It's very strange."

And it's relatively recent: The modern tradition of requiring Supreme Court nominees to testify before the Senate Judiciary Committee began after the 1954 *Brown v. Board of Education* decision.

Southern senators, furious with what they saw as unwarranted judicial interference with state authority, demanded that the next nomi-

nee, John Marshall Harlan, appear before them. That was 1955. A precedent was set.

Carter attributes the rancorous nature of confirmation hearings to the recent involvement of sophisticated attacks by interest groups, heightened media scrutiny and the "litmus test" screening of nominees that started with the Reagan and Bush administrations. Before the 1980s, Carter said, "there is no example of an administration systematically screening its nominees for their substantive legal positions."

Following controversial rulings such as *Roe v. Wade*, many in the public increasingly have turned to the court as the one institution that can right the perceived wrongs of other branches of government. Moreover, presidential candidates



STEPHEN L. CARTER

. . . put focus "where it ought to be"

use the court as campaign fodder. "Elect me," they say, "and I will push the court this way or that," Carter said.

The confirmation process could improve, Carter argues, if we ". . . put the focus on where it ought to be: What does the job in question require and does this person have what it takes?"

"Congress could help this along by specifying what is required [for certain jobs]," Carter said. "A tiny number of appointments specify what is required . . . but most do not. If we did have some specifics, we would take more seriously the business of staffing the government, which is important business."

In his book, Carter devises a five-tier ranking system that he said

would help the Senate balance the confirmation process. "Qualifications" tops his list, followed by the potential to cause "loss of public respect," and then "immoral conduct," "illegal conduct" and "unprofessional conduct." If a nominee is unqualified for a certain job, he or she should not be confirmed on that basis and the Senate shouldn't be afraid to say no. All involved in the confirmation process ought to be able to determine which flaws are disqualifying.

Carter also argues that Congress needs to rethink who needs Senate confirmation. When the Founding Fathers set down Article 2, Sec. 2 of the Constitution, giving the Senate the right of advice and consent, much policymaking was done by the Cabinet. Now, Carter argues, "The Cabinet is important but has less to do with the grand design of policy."

Carter also supports two-thirds majority for confirmation rather than the simple majority now required, in order to encourage more broadly acceptable nominees. Carter said, "The president couldn't nominate ideologues. That would transform the court in the American mind into a body of widely respected judges rather than predictable ideologues."

He also argues that rather than trying to get nominees to pass a litmus test or have senators engage in a futile probing for "judicial philosophy"—only to watch nominees evasively and politely dance away—members of the Judiciary Committee ought to probe whether a nominee is what he calls "morally reflective." In other words, Carter said, is this an individual who when faced with difficult questions sees it "as an opportunity for sustained reflection rather than an opportunity to rush out to write the opinion that will further the goals of some political movement?"

Assuming, however, that presidents continue to select judges who appear likely to vote particular political agenda into law, Carter suggests a potentially controversial change that would require a constitutional amendment: term limits for justices of the Supreme Court.

"That way, we do two things," he said. "We have only a passing majority, and we avoid the unseemly death watch."

White House Responds to Ethics Concerns On Breyer's Rulings in Toxic Waste Cases

By Joan Biskupic
and Albert B. Crenshaw
Washington Post Staff Writers

The White House yesterday sought to dispel concerns that Supreme Court nominee Stephen G. Breyer may have had a financial conflict of interest in several toxic waste cases he decided as a federal appellate judge in Boston.

Breyer's confirmation hearings, which begin today, are expected to be a low-key affair, but some senators have begun to raise questions about possible conflicts arising from Breyer's membership in a Lloyd's of London syndicate that underwrote insurance for corporations facing pollution cleanup costs.

The overriding question is whether his liability as a member of a Lloyd's syndicate insuring clients against asbestos and pollution claims created a conflict of interest—or an appearance of a conflict—in cases that came before him. Federal law says judges must disqualify themselves in any proceeding in which their impartiality might reasonably be questioned.

Breyer, in a February letter to lawyers in London, wrote that he was dismayed to find that his syndicate was much involved in U.S. liability coverage and that "as a result I have had to disqualify myself in all asbestos cases."

However, between 1989 and last year he sat on at least eight cases involving environmental pollution—another major area his syndicate covers.

"I think there may have been some lack of good judgment in hearing certain cases, which very well may have had an impact on his liabilities in Lloyds of London," Sen. Howard M. Metzenbaum, (D-Ohio), said yesterday. Yet Metzenbaum stressed that he expected to vote for the former Judiciary Committee chief counsel.

The issue does not appear to have hurt Breyer's confirmation chances.

"Judge Breyer participated in no cases in which Lloyd's was a party or had a named interest," White House Counsel Lloyd Cutler said yesterday in releasing hundreds of pages of doc-

uments about Breyer's investments. "In addition, none of the Superfund statute cases on which he sat posed a direct and predictable effect on the insurance industry, much less on Lloyds itself." (The Superfund law makes polluters responsible for clean-up costs.)

The White House also released a letter from New York University law professor Stephen Gillers supporting the administration's view. Gillers noted that when the interest is not direct (as when a party to a dispute is related to the judge), the judge's interest must be "substantial" to warrant recusal under federal law. "I see no evidence that the decisions in Judge Breyer's [Superfund] cases could have a direct and substantial effect on his interest in a syndicate that has insured against the risk of liability for environmental pollution," he said.

Not all legal ethics experts agree. Monroe Freedman, a law professor at Hofstra University who has been following the matter, contends Breyer should have disqualified himself from pollution cases beyond asbestos disputes. Other law professors stressed that ethical determinations are difficult to second-guess because much depends on whether the judge knew of a connection. It was unclear yesterday why Breyer recused himself in asbestos liability cases and not in others.

In Lloyd's structure, insurance is issued by syndicates, which are made up of individual investors, known as "names." These names pledge personal assets without limit to cover any claims made against the syndicate.

Typically, syndicates write policies for a year and then remain "open" for three more years while claims are toted up. Then the year is "closed" and cash is demanded from the names to cover remaining liabilities.

Breyer invested in dozens of syndicates, and his records indicate he did well. However, one syndicate in which Breyer invested, managed by Merrett Underwriting Agencies Management Ltd. and known as Merrett 418, had enormous losses for policies written in 1985 and still has not closed that year.

Members of Merrett 418 have

been hit with "cash calls," demands for cash to cover claims, mostly from asbestos and pollution, and further calls are expected. The syndicate has already lost some \$245 million, and losses may total \$800 million, according to industry analysts. (Breyer remains liable in that syndicate until the end of 1995, Cutler said, and he already has withdrawn from all others.)

The full extent of Merrett 418's liabilities—and thus Breyer's—is not known because the damage caused by pollution and asbestos is potentially vast, and is a "long-tail" claim, meaning that the extent of the injuries often does not become clear until much later. Breyer, in a December letter, indicated that he had a substantial deposit and an insurance policy to cover his losses. Breyer said he thought the chances of his losses exceeding the two were "zero."

In one case, *U.S. v. Ottati & Goss Inc.*, involving a hazardous waste site in New Hampshire, Breyer wrote an opinion upholding a lower court finding that Environmental Protection Agency cleanup requirements were too stringent. In another case, *Rear-don v. United States*, he joined in an opinion that the EPA acted unconstitutionally in putting a lien on a piece of Massachusetts property to ensure payment of cleanup costs.

"I think that he may have—I'm not saying he did—he may have used poor judgment," Metzenbaum said. "The Lloyd's of London obligations were not directly related to the cases he was hearing, but the law that he was rendering could very well impact on other cases that would affect his investments."

In separate scholarly writings, Breyer has argued that the government often goes too far in trying to clean up "the last 10 percent" of toxic wastes at the expense of using scarce resources to clean up more serious pollution problems.

Freedman said specifically of the Ottati case that "he made it more difficult for the EPA to assess financial liability against people in exactly the same position that he's in."

But Gillers said in his letter to Cutler that the law does not require judges to recuse themselves when the interest is only speculative.

The question of Breyer's ethics on pollution cases arose about two weeks ago when the Long Island-based newspaper, *Newsday*, reported that Breyer might have known that his rulings could help his financial situation.

Asked why the White House released the documents yesterday, deputy White House counsel Joel Klein said, the committee has been "preparing for the hearings and we're diligently responding to them."

Breyer and his wife, Joanna, a British heiress, have a net worth of \$6.5 million.

station passed in Congress by only one vote.

"The public has always been supportive of space," said former NASA deputy director Mark. "But people don't care about it on a deep level anymore. No politician gets elected on the issue."

Even critics, such as Park, believe there is a need for space exploration, but not with people. Robots could do the job just fine, he said, and the wonders they discover might galvanize the world, just as the Apollo astronauts once did.

"We would see through their eyes and touch with their hands in a sense we'd all be aboard," Park said.

GOP's future could include row over abortion

**By Steve Daley
Chicago Tribune**

WASHINGTON Suddenly, and by their own hand, Republicans have raised inside their party the troublesome issue of abortion rights, rekindling a debate that suggests the widening ideological rifts within the GOP.

Abortion scarcely has rated a mention in the 1994 election season now starting; there is not a single House or Senate race in the country where it is a dominant concern.

But, perhaps looking toward the 1996 presidential contest, a pair of prominent, big-state GOP governors New Jersey's Christine Todd Whitman and California's Pete Wilson last week called on the party to drop the strong anti-abortion language in its platform.

Since President George Bush's defeat in 1992, the Republican Party has labored in public and private to redefine itself to disaffected voters.

And, despite a skein of state-level electoral victories in recent months, the party has struggled with internal divisions over abortion and other social issues.

Whitman's foray into abortion politics comes as social conservatives and representatives of the religious Right have flexed their ideological muscles, winning a series of intraparty victories in Virginia, Texas, Minnesota and Iowa.

Whitman's remarks urging her party to strip away the rigid anti-abortion plank, and Wilson's endorsement of them, indicate that what might be called the GOP's secular wing is determined to make its case.

"I would hope there's going to be enough of a voice to get that plank knocked out of the platform entirely. It's not a partisan political issue and it doesn't belong in a party platform," said Whitman, who defeated incumbent Democrat James Florio last year.

At the same time, Whitman made it clear she is prepared to confront the GOP's religious and cultural conservatives on a range of social issues. She said her party eventually must confront the view, "perceived or real," that it has been captured by extreme social conservatives.

The following day, Wilson, a longtime abortion-rights supporter, echoed Whitman's dim view of the abortion language in the platform.

The names of Whitman and Wilson inevitably are bandied about when the 1996 Republican ticket is discussed, a fact that heightens interest in their willingness to engage the abortion debate.

"The so-called moderates in the party would like to pull away from the social issues generally and abortion specifically," said Gary Bauer, a onetime aide to President Reagan and now head of the conservative Family Research Council.

"I'm convinced that wing of the party can't carry the day. Their positions are a finger in the eye of the most

active, productive members of the Republican coalition."

GOP activist Ann Stone, who heads Republicans for Choice, a political action committee, notes that most of the Republican electoral victories since 1992 have been by candidates who back abortion rights.

"Of the nine big races we've won, the majority have been won by pro-choice candidates," she said. "In all the places we haven't won in a long time, like New York and New Jersey, pro-choice candidates are winning."

Stone points to Whitman's victory, to mayoral contests in New York and Los Angeles won by Republicans Rudolph Giuliani and Richard Riordan, and to Senate races in Texas and Georgia, won by Kay Bailey Hutchison and Paul Coverdell, respectively.

Despite the growing influence of social conservatives and fundamentalist Christians inside the party apparatus, moderate Republicans have sought to tamp down the ideological fervor.

Whitman and others suggest the party avoid a pattern Democrats developed in the late 1960s and '70s of nominating candidates who pass party litmus tests on controversial issues but cannot win general elections.

Moderating the party position on abortion was a stated aim of many Republicans from the time Bush lost the presidency. It was why, shortly after the 1992 election, a group of Republican senators led by Sen. Arlen Specter of Pennsylvania formed the Republican Majority Coalition.

The group called for an "inclusive" Republican Party, but its true aim was, and is, to excise abortion from the platform.

"It's easier for elected officials like Whitman, Wilson and Specter to speak up if there isn't a Republican in the White House," Stone said. "It doesn't look like disloyalty."

Despite last week's volleys from Whitman and Wilson, there is no evidence that social conservatives are going to concede or even negotiate the platform, which calls for a constitutional amendment to outlaw abortion in all cases except when the life of the mother is at risk.

"Our position is that any discussion of the abortion plank is entirely premature and jumping the gun," said Ralph Reed, executive director of the Christian Coalition. "There will be plenty of time to discuss this (abortion) at an appropriate moment, but we're just a few months out from a very important midterm elections."

(EDITORS: NEXT 8 GRAFS OPTIONAL)

Reed also suggested that Wilson, who faces Democrat Kathleen Brown in November, be careful "not to throw cold water on the base of his party."

At the precinct and county level in as many as two dozen states, social conservatives indeed do comprise the base of the Republican Party, raising money, attending to party business and running candidates for school boards and a host of grass-roots offices.

Last month, a gaggle of Republican presidential aspirants addressed a fundraising event in Des Moines, a gathering dominated by members of the Christian Coalition, which is the political arm of evangelist Pat Robertson's Virginia-based operation.

Almost without exception, the assembled would-be presidential candidates such as Texas Sen. Phil Gramm and former Defense Secretary Dick Cheney pledged their fealty to the anti-abortion position, and to the views of the Coalition.

Conservative pundit Patrick Buchanan, who challenged Bush in 1992, drew the line on abortion, to the delight of the audience.

"We are not going to walk away from those unborn children whose silent scream says only one thing: 'Stand by me,'" Buchanan said.

That absolutist view has dominated the Republican

landscape in places like Virginia, where Republicans last month chose Iran-contra figure Oliver North, who opposes abortion rights, as their Senate nominee.

In Minnesota, conservative Republicans denied re-nomination to incumbent GOP Gov. Arne Carlson, who supports abortion rights. Texas Republicans forced out their party chairman, Fred Meyer, in favor of Tom Pauken, a candidate approved by the Christian Coalition.

(END OPTIONAL TRIM)

Reed suggests the social conservatives will fight over abortion on their own terms and in their own time. And the strong pull of the religious Right in the GOP indicates that Whitman and Wilson are not likely to get their way without a memorable battle.

NAACP knows where it came from, now looks straight ahead

By J.I. Adkins Jr.
Chicago Tribune

CHICAGO The oldest civil rights organization in the United States, the National Association for the Advancement of Colored People, plotted a new course for African-Americans and made history in the process.

The men and women who conceived the idea for the NAACP in 1909 defined their organization and their mission in uncompromising terms.

Their organization was to be "a union of those who believe that earnest, active opposition is the only effective way of meeting the forces of evil." So wrote W.E.B. DuBois, one of its founders and the first editor of the NAACP's Crisis newspaper, in December 1910.

Last week in Chicago, during the organization's 85th annual convention, NAACP Executive Director Benjamin Chavis outlined some new strategies for taking the organization into the 21st Century.

In doing so, Chavis appears to be attempting to redefine not only the NAACP's direction but the philosophical and ideological direction of the entire civil rights movement.

Some of his plans call for forming coalitions with Latinos and other minorities; forging a working relationship with the Nation of Islam and its leader, Minister Louis Farrakhan; making the NAACP more relevant to

younger blacks by involving it in such issues as gang violence; and opening an NAACP branch in South Africa at a cost of as much as \$1 million.

Some critics accuse Chavis of trying to do too much, with too little, too soon. The NAACP's 1994 budget is \$18 million, with a \$2.7 million deficit.

Others call Chavis a militant and accuse him of leading a takeover of the organization.

"He represents the demise of the organization. In my judgment, the NAACP has been hijacked by black extremists," Michael Myers, an NAACP member and executive director of the New York Civil Rights Coalition, said last week.

In truth, the NAACP was conceived by men and women whose collective vision and tactics were indeed extremist or militant when viewed in a historical context. Decades after the group's founding, when Thurgood Marshall and other NAACP lawyers challenged in the U.S. Supreme Court the legality of Jim Crow legislation and discriminatory practices based solely on race, their tactics too seemed militant at the time. They pushed ahead with all deliberate speed and apologized to no one.

Chavis' recent overtures to Farrakhan sparked public outcry and turmoil within the NAACP. For most of this century, suggestions of a working alliance of traditional civil rights leaders and black nationalist leaders generally have been repudiated.

What would the political and economic status of African-Americans be in the 1990s if DuBois and other leaders of the NAACP had forged an alliance in the 1920s with Marcus Garvey, leader of the Universal Negro Improvement Association—the largest and arguably most significant self-help organization in the history of black America? Or, if Dr. Martin Luther King Jr. and the civil rights establishment of the 1950s and '60s had been able to work with the Nation of Islam under its then-spiritual leader, the Honorable Elijah Muhammad, and his aide Minister Malcolm X?

Any one of these alliances could have transformed black America and thereby changed the future of the nation.

Forging alliances with other groups is in the NAACP's short-term and long-term self-interest, Chavis has argued. The serious social, political, economic, environmental, scientific, technological and spiritual issues facing America cannot be effectively solved by alienated groups operating in isolation.

"The demographics of America have changed. It's not just a black-and-white situation. There's a browning of America," Chavis said last week in underscoring the necessity for African-Americans to form coalitions with Latinos and others with whom they share interests and problems.

(EDITORS: NEXT 7 GRAFS OPTIONAL)

Professor Manning Marable, of Columbia University's Institute for African-American Studies, cited studies projecting that people of color will be the dominant population group in the United States by 2060.

"We are the future of the United States," he said.

"The 1990s are different from the '50s and '60s. The new segregation of the '90s is between the educated haves and the uneducated have-nots," Marable said. "The '50s, '60s and '70s strategy of (putting) a black face in a high place is no longer enough today. The issue today, in 1994, has to be empowerment, and the empowerment of African-Americans realistically can only occur through the building of coalitions with other groups."

The late Bayard Rustin made the same point in 1976 as president of the A. Philip Randolph Institute.

"In the 1960s, black Americans fought for the right to receive free public instruction and the right to utilize public accommodations," Rustin said. "That was an exclusively black agenda. We can never go back to that, because those demands were by and large satisfied. We have to go forward."

According to Rustin, a new young black leadership would be needed to "forge coalitions based on mutual interests and discrimination by class."

In large measure, this is what the 46-year-old Chavis seems to be attempting to do.

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Not only is Chavis formulating an ambitious domestic strategy, but he appears to be laying the groundwork for its component international strategy. This may be costly in the short run, but in the long run it may prove both shrewd and brilliant.

Chavis' plan to establish a branch office in South Africa has drawn fire from critics who argue the financially strapped organization cannot afford it.

In response, Chavis has said, "We will raise additional resources."

(EDITORS: NEXT 3 GRAFS OPTIONAL)

The idea of African-Americans strengthening their links economic, political, financial and cultural with Africa in general and South Africa in particular is indeed

Republican Senators See an Acceptable Nominee in Breyer (Washn) By Timothy M. Phelps= (c) 1994, Newsday=

WASHINGTON When a bald, scholarly looking Stephen Breyer marched through the hearing room to begin his testimony last week, Republican conservative Orrin Hatch escorted him, the senator's hand on the judge's shoulder.

It was a remarkable spectacle well noted on both sides of the political aisle, one that marked a sea-change from the blood-on-the-wall nominations of Robert Bork and Clarence Thomas.

Breyer, only the second nominee of a Democratic president in 27 years, emerged from last week's Senate Judiciary Committee hearings as a jurist who might fit in comfortably with the pragmatic Republican conservatives who control the balance of power on the court.

He gave few clues to his views on controversial subjects such as abortion, using legal artifice to endorse court precedents in that and other tricky areas only as "settled law."

He did say that unlike his predecessor, retiring Justice Harry A. Blackmun, he has no strong views on the death penalty.

And he seemed to endorse the court's revolutionary decision last month favoring an Oregon property owner's rights over local government's attempts to claim part of the property in return for development approval, although he stopped short of advocating further movement in that direction.

Breyer also maintained that even if mom-and-pop businesses have often lost out in his courtroom to big-business monopolies, as anti-trust experts have alleged, the consumer ultimately benefited.

Breyer gave a passing nod to a judge's need to put his heart as well as his head into his interpretation of the law, for, he said "if you don't have a heart, it becomes a sterile set of rules removed from human problems."

(Begin optional trim)

But his response to an invitation from Sen. Paul Simon, D-Ill., to assert that he, like his predecessor, would be the court's spokesman for society's "least fortunate" was less than enthusiastic.

He recalled advice given him by federal appeals court Judge John Minor Wisdom that "if you want to write a purple passage because you feel so strongly, write it and don't use it, because people want your result and are not necessarily interested in your feelings."

Under three days of questioning, the 55-year-old San Francisco native, long ago transplanted to Boston society, showed great patience, charm and easy familiarity with the law. He became slightly annoyed only when questioned persistently by Sen. Howard Metzenbaum, D-Ohio, about an alleged conflict of interest, and displayed great enthusiasm only when talking about long-dead jurists or the arcane subject of risk assessment.

Breyer, whose net worth with his British aristocrat wife is \$6.5 million, fell a little flat, as Sen. Arlen Specter, R-Pa., pointed out Friday, when he tried to portray himself as a man of the people who had dug ditches as a teen-ager, or when pressed as to what made him tick as a person. Asked to name his 10 favorite books, he replied that his favorite authors were William Shakespeare, Joseph Conrad and Emily Bronte.

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"This nomination was a home-run for us," said one

Judiciary Committee staffer. But that committee veteran is a Republican who has been in the thick of the fight with Democrats in the past over the Thomas and Bork nominations. "But after all, Hatch picked him," the staffer said.

Clinton first said he wanted Sen. Majority Leader George Mitchell, D-Maine, a traditional liberal, for the job. Mitchell turned him down. He was then said to favor Interior Secretary Bruce Babbitt, a more moderate liberal, but turned at the last minute to Breyer after Hatch, a ranking Republican in a Senate still controlled by Democrats, indicated he would oppose Babbitt but could support Breyer.

Distributed by the Los Angeles Times-Washington Post News Service=

NAACP Leadership Celebrates New Agenda (Chicago)

By Monte R. Young= (c) 1994, Newsday=

CHICAGO The Rev. Benjamin F. Chavis Jr. walked into the lobby of the Sheraton Hotel last Wednesday and leaped into the air, casting his hands to the heavens.

"I'm so happy I could shout," said Chavis, the executive director of the National Association for the Advancement of Colored People. "This is a joyous occasion."

In a runoff election for a seat on the national board of directors, the delegates at the convention had just picked a 20-year-old University of Oklahoma student, Chelle M. Luper, and rejected C. Delores Tucker, a civil-rights veteran and Chavis critic.

"This was another test vote," said Chavis, who has tried since taking office 15 months ago to change the direction of the nation's oldest civilrights organization. "Are we moving forward or backwards? Tucker or the younger candidate? This is a referendum on our direction."

Earlier in the convention, Chavis had beaten back his detractors

they argued the organization was \$2.7 million in debt and couldn't afford it and voted to open its first office overseas, in South Africa.

Now a happy Chavis hugged Luper, claiming that with her election, he and board chairman William F. Gibson had passed yet another test of their leadership.

"I respect Dr. Tucker for all she has done because she paved a way," said Luper, a broadcast journalism major whose mother, Clare Luper, led lunch counter sit-ins in Oklahoma City during the civilrights movement of the '60s. "But it's time to pass the torch to a new generation."

For Chavis, reaching out to a younger generation of blacks and expanding the grass-roots base of the organization has meant taking criticism for walking the dusty courtyards of housing projects, meeting with gang members and inviting Nation of Islam leader Louis Farrakhan to a summit of African-American leaders.

"A year ago people said the NAACP was dead, that it needed to change," said Ben Andrews, vice president of the NAACP board. "Now we've expanded our agenda, brought in new people, and because we talk with Farrakhan, all of a sudden we're walking on the wild side. You can't have it both ways."

To succeed, Chavis said, the NAACP's strategy has to change from the days of fighting lynch mobs, Jim Crow laws, segregated schools and other overt forms of racism.

Chavis said the NAACP, viewed by some as only appealing to middle-class blacks, has to bridge the gap between them and poor blacks and keep the historic mission of promoting racial justice and equality.

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That's a daunting challenge, and while Chavis and his supporters celebrated victories inside the air-conditioned hotel, some outside the convention felt the NAACP has not reached those who need help the most.

"Not all the brothers out here are bad, but NAACP acts like we are," said Charles Holmes, 37, a brick mason standing with a group of men in a park near the projects on Chicago's South Side.

"I don't know much about their message because they haven't gotten out to the neighborhoods," Holmes said of the NAACP.

Harold Davis, 34, agreed. "They haven't done nothing for black people in this town. Here in Chicago, most preachers are only interested in getting their name on a street sign. Ben, I like him. He seems to be on a mission," he said.

Sitting on a bench, Andre Perkins, 33, said, "I just think things are hopeless. They can sit up there in that hotel all they want, but unless they can help a black man get a job and take care of his children, it don't mean. To me, the American dream is just that, a dream."

Port-Au-Prince Mayor Fears Assassination (Port-Au-Prince, Haiti) By Ron Howell= (c) 1994, Newsday=

PORT-AU-PRINCE, Haiti The United States continues to say an invasion of Haiti is not imminent, but Evans Paul says he feels he will soon be the first casualty.

Allies of the military "are planning to assassinate me, because they say that I am one of the people plotting against the government," said Paul, this capital city's mayor, who has been unable to enter his City Hall offices for fear he would be killed. His would-be assassins are using his close ties to the United States as justification for an attack, calling him a traitor, Paul said in an interview with Newsday at one of his safe houses.

As the confrontation between Haiti's de facto government and the rest of the world grows more intense, Paul is among those politicians facing what they believe is a growing threat of violence. Quietly over the past two years, the United States has provided hundreds of thousands of dollars and technical assistance in the hope of nurturing a breed of politician committed to democracy and the rule of law.

One of the most notable beneficiaries of this assistance has been Paul, a left-of-center activist considered by many to be the most popular politician after exiled President Jean-Bertrand Aristide. Paul's group, FONDEM, received \$100,000 in 1992 to organize seminars and create other projects that foster democracy.

Talk of a possible U.S. invasion and the envisioned United Nations peacekeeping force that would come behind it has the de facto authorities backed by the military nervous. And in varying decrees, they have said they will deal harshly with Haitians deemed to be assisting the Americans in their plans.

(Begin optional trim)

Paul a possible presidential candidate in the next

elections, when and if they are held has known danger. The week after the coup that toppled Aristide, Paul was kidnapped and severely beaten by soldiers as he tried to leave the country for a meeting in Venezuela. After his release, he went into deep hiding. Last September, as he was resuming his mayoral duties in a ceremony at City Hall, army-protected thugs went on a rampage outside, beating dozens and killing at least two bystanders.

The resumption was part of the U.N.-brokered Governors Island agreement that was to restore Aristide to power last October. Now, nine months later, Aristide remains in exile in Washington, and Paul is compelled to move from safe house to safe house, a dozen assistants and bodyguards constantly with him.

Paul began as an activist during the dictatorship of Jean-Claude Duvalier. Writing anti-Duvalierist plays that were read on the radio, he came to be known as Plume, French for pen, or the writer. He was arrested and beaten numerous times before the 1986 fall of Duvalier. Under the later regime of Col.

(End optional trim)

Winning more than 80 percent of the vote as mayoral candidate in December, 1990, Paul was a leader of the coalition that fashioned Aristide's impressive presidential victory.

Although he retains his earlier populist militant rhetoric, Paul has been criticized recently by leftist partisans of Aristide who consider him too close to the Americans, who, they claim, have a long U.S. history of refusing asylum to boat people, and ties to the Haitian military and business elite.

But Paul said Washington seems to be developing a new policy that no longer automatically backs conservative politicians. He also said that Washington has not tried to dictate any programs organized by his group, FONDEM, the French acronym for the Foundation for Democracy and Development.

A U.S. embassy official said U.S. AID is pouring \$74 million in the country this year, on food and medical programs as well as job development programs.

Justices Limit '91 Rights Law To New Cases

Retroactivity Rejected in Job Bias Lawsuits

By LINDA GREENHOUSE

Special to The New York Times

WASHINGTON, April 26 — In decisions ending a divisive chapter in Federal civil rights law, the Supreme Court voted 8 to 1 today against applying the Civil Rights Act of 1991 retroactively to thousands of cases pending when the law was passed.

The 1991 law, which restored and expanded remedies for job discrimination, was enacted after the Supreme Court, in a series of decisions in the spring of 1989, had restricted the reach of two of the main Federal civil rights laws.

Although President George Bush eventually signed the bill after a two-year stalemate between his Administration and the Democratic-controlled Congress, the two sides were never able to agree on the question that the Court resolved today: what effect the provisions would have on discrimination cases that were in the courts when the bill became law on Nov. 21, 1991.

As a practical matter, the decisions today, in two related cases, mean that the law will not apply to the thousands of discrimination cases that were then in the legal pipeline. The Civil Rights Act of 1991 added features to existing civil rights. One addition was the right to a jury trial; another was the right to sue for compensatory and, in some cases, punitive damages for job discrimination.

The majority opinions, both written by Justice John Paul Stevens, clarified the Court's confusing precedents on how to decide whether new laws should apply retroactively. Justice Stevens said new statutes should be presumed to apply only prospectively unless there is "clear evidence" of Congressional intent to the contrary. In neither of the 1991 law's two main provisions did Congress demonstrate such an intent, Justice Stevens said.

Justice Harry A. Blackmun was the lone dissenter. Justice Antonin Scalia wrote a separate concurring opinion that Justices Clarence Thomas and Anthony M. Kennedy joined.

Mr. Bush vetoed a 1990 version of the law that included a broad retroactivity provision; the final 1991 version included no language on retroactivity. Partisans on both sides, looking to an eventual High Court resolution, tried to create legislative history by offering dueling floor statements on the retroactivity question.

Justice Stevens today quoted Senator John C. Danforth of Missouri, who handled the bill for the Republicans, as saying at the time that "a court would be well advised to take with a large grain of salt" the efforts to create one interpretation or the other.

Agreeing to Disagree

"The legislative history discloses some frankly partisan statements about the meaning of the final effective date language, but those statements cannot plausibly be read as reflecting any general agreement," Justice Stevens said in summarizing the bill's tortuous course through the legislative process. He said it appeared that ultimately, "legislators agreed to disagree about whether and to what extent the act would apply to pre-enactment conduct."

Weeks after the law took effect, the Equal Employment Opportunity Commission, announcing the Bush Administration's official position, declared that the law would not apply to pending cases. Most Federal appeals courts agreed, including the two courts whose decisions the Justices affirmed today.

The Clinton Administration repudiated its predecessor's position. Solicitor General Drew S. Days 3d argued last fall that the law should apply retroactively because it simply changed some remedial and procedural aspects of existing civil rights law without making illegal any conduct that had not already been illegal for years.

Only Justice Blackmun was moved by that argument. "At no time within the last generation has an employer had a vested right to engage in or to permit sexual harassment," he said today in his dissenting opinion, referring to the type of discrimination at issue in one of the cases. "There is nothing unjust about holding an employer responsible for injuries caused by conduct that has been illegal for almost 30 years."

Potential for Unfairness

In the majority opinion, Justice Stevens said that while Congress did have the right in most instances to change the rules after the fact, such actions always held at least the potential for unfairness. "Requiring clear intent," he said, "assures that Congress itself has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits."

Under the Court's analysis today, the law will apply to cases in which discriminatory conduct is said to have occurred after Nov. 21, 1991.

One of the cases decided today, *Landgraf v. USI Film Products*, No. 92-757, was a suit filed in 1989 under Title VII of the Civil Rights Act of 1964, one of the principal job-discrimination laws in the Federal arsenal.

At that time, a Title VII plaintiff could sue only for back pay; the trial judge's finding that the plaintiff in this case, Barbara Landgraf, had left her factory job voluntarily and had not been forced out by sexual harassment meant that Ms. Landgraf had no claim for back pay and, essentially, no case.

The case was still on appeal when the Civil Rights Act of 1991 became law, and Ms. Landgraf argued unsuccessfully to the United States Court of Appeals for the Fifth Circuit, in New Orleans, that she should have the benefit of the provisions the new law

added to Title VII: a jury trial and the chance to sue not only for back pay, but also for compensatory and punitive damages.

Congressional Intent Seen

The second case, *Rivers v. Roadway Express*, No. 92-938, was filed in 1986 under another law, the Civil Rights Act of 1966, usually known as Section 1981, which guarantees to black people the same right to enter into contracts that whites have. The case was a racial discrimination suit brought by two black garage mechanics against an employer that had dismissed them.

In 1989, before the case went to trial, the Supreme Court announced an unexpectedly narrow interpretation of Section 1981, ruling in *Patterson v. McLean Credit Union* that the law offered no protection against discriminatory dismissals. The two men then lost their case at trial.

Congress overturned the *Patterson* decision in the 1991 law, making it clear that Section 1981 did apply to discriminatory discharge. The two men then argued unsuccessfully on appeal to the United States Court of Appeals for the Sixth Circuit, in Cincinnati, that they should receive the benefit of the new law.

In his concurring opinion today, Justice Scalia chided Justice Stevens for looking beyond the plain language of the 1991 act to see whether the legislative history might indicate a Congressional intent on retroactivity. Only the text of the statute should count, Justice Scalia said, and not "the soft science of legislative historicizing."

The Washington Post

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1991 Civil Rights Law Not Retroactive, Court Rules

By Joan Biskupic
Washington Post Staff Writer

The Supreme Court, in a long-awaited opinion, ruled yesterday that a major 1991 civil rights law did not apply to complaints pending at the time it was enacted.

In a broadly written, 8 to 1 decision, the court said that if Congress wants any new legislation—including benefits, taxes or other penalties—to apply retroactively, Congress must explicitly say so.

The ruling, arising from one of Congress's most fractious legislative debates in recent years, places a heavier burden on lawmakers who accept ambiguous language in the heat of political compromise.

The decision also puts an end to thousands of lawsuits by aggrieved workers whose claims depended on retroactive coverage under the 1991 act. That law made it easier for workers alleging job bias to sue their employers and boosted the money remedies available to those who win.

Its impetus was a series of Supreme Court rulings, and the law's passage after a two-year debate marked the largest single rejection of Rehnquist Court opinions.

But Congress could not agree on when the law should take effect and effectively punted to the courts.

In an effort to try to influence a court interpretation, Democrats made floor speeches saying the restorative law would cover all pending cases; Republicans countered that it should apply only to future complaints.

"Since the early days of this court, we have declined to give retroactive effect to statutes burdening private rights [here, private companies' practices] unless Congress had made clear its intent," Justice John Paul Stevens wrote for the majority.

Justice Harry A. Blackmun was the lone dissent, scoffing at one point that "at no time within the last generation has an employer had a vested right to engage in or permit sexual harassment," a form of job discrimination. Blackmun said the ruling "prolongs the life of" a narrow interpretation of civil rights law that Congress "repudiated." While the decision reminds Congress that the court is not going to read into law what it does not have

the will to write into it, the ruling also is a rebuff to the Clinton administration. The Justice Department had told the justices the law should apply to cases pending in 1991, departing from the stance of the Bush administration, which had fought the bill.

President George Bush vetoed a version of the legislation in 1990, in part, he said, because that version would have been retroactive.

The practical consequence of yesterday's decision is that people challenging discrimination before the date of the law's enactment, Nov. 21, 1991, do not have the benefit of the new law; conversely, employers will not be subject to the new liability and penalties for conduct that occurred before the law took effect.

The statute allows people suing for harassment and other intentional discrimination to have their case heard by a jury and, if they prove their case, to win money damages of as much as \$300,000. Juries are generally thought to be more sympathetic to workers than judges are. Before enactment of the legislation, only injunctive relief, back pay and attorneys' fees were allowed under the country's main job discrimination law, Title VII of the 1964 Civil Rights Act.

The part of the law that reversed the effects of eight Supreme Court rulings, most of them from 1989, reinstated broad court interpretations of both Title VII and a post-Civil War law called Section 1981 (named for its place in the statute books) that allows blacks and other racial minorities to redress job discrimination.

The court had ruled that Section 1981, which prohibits racial discrimination in "contracts," applied only to hiring decisions. The 1991 law said the section would bar racial harassment and other forms of bias throughout an individual's employment.

Two cases were before the court yesterday. In *Landgraf v. USI Film Products*, Barbara Landgraf, who worked for a USI plant in Tyler, Tex., in the mid-1980s, sued the company after a co-worker repeatedly sexually harassed her. A trial court said she had been the victim of "continuous and repeated inappropriate verbal com-

ments and physical contact," but said it was not severe enough to force her to quit. While her appeal was pending, the 1991 law took effect.

She said her case should be heard by a jury and that she should be eligible for money damages, based on the new law. The 5th U.S. Circuit Court of Appeals ruled, as have all but one federal appeals court, that the 1991 law did not apply to pending cases.

In the second case, *Rivers v. Roadway Express*, black mechanics Maurice Rivers and Robert C. Davison alleged that their 1986 firings from Roadway in Toledo were based on their race. They sued under Section 1981, but before their claim could be heard, the Supreme Court in June 1989 narrowed that law's coverage. The 6th U.S. Court of Appeals subsequently forbade them to invoke the statute enacted in 1991.

Advocates for the workers contended that because some sections of the 1991 law specifically limited the retroactive effect, others could be interpreted as allowing retroactivity. But Stevens said, "Given the high stakes of the retroactivity question . . . it would be surprising for Congress to have chosen to resolve that question through negative inferences. . . ."

"It seems likely that one of the compromises that made it possible to enact the 1991 version was an agreement not to include the kind of explicit retroactivity command found in the 1990 bill," Stevens said. Indeed, the legislation was stalled by White House complaints that it would encourage frivolous lawsuits. Only in the political fallout from the Clarence Thomas-Anita F. Hill sexual harassment hearings was a compromise reached.

Stevens said it is only fair that individuals know what the law is and can act accordingly. His broadly written ruling suggested that the 1991 law would not apply to any conduct that occurred before the law was enacted.

Lawyers for the mechanics had argued that they should have the benefit of the fully restored race-discrimination law because Congress clearly opposed the court's narrow interpreta-

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cont'd.

tion of the law. But Stevens said, "The choice to enact a statute that responds to a judicial decision is quite distinct from the choice to make the responding statute retroactive."

Chief Justice William H. Rehnquist may have strategically assigned the opinion to Stevens once the justices' votes were in. The rulings that spurred Congress to act were decided by 5 to 4 votes, with Stevens, Blackmun, now-retired Justice William J. Brennan Jr. and the late Thurgood Marshall dissenting.

Glen Nager, who represented the employers in the cases, said the ruling allows employers "fair warning" about their liabilities. Elaine Jones, director-counsel for NAACP Legal Defense and Educational Fund, countered that the court leaves a two-tier system.

Supreme Court Rules Job-Bias Law Shouldn't Be Applied Retroactively

By PAUL M. BARRETT

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON — In a big victory for employers, the Supreme Court said a 1991 job-discrimination law shouldn't be applied retroactively to bias that allegedly took place before the statute was enacted.

The decision, contained in a pair of 8-1 rulings, will block employees from proceeding with thousands of pending lawsuits seeking millions of dollars in damages from employers.

The controversial civil-rights law was designed to reverse or modify a series of 1989 decisions by the Supreme Court that made it more difficult for employees to file and win job-discrimination suits. The law also created new rights, such as allowing women to seek damages that previously hadn't been allowed in sex-bias cases.

The high court majority stressed that Congress failed to state clearly whether it intended the 1991 act to apply to earlier conduct. Without such a statement, it generally isn't fair to apply standards that weren't the law when the conduct occurred, the majority said.

In fact, Congress was only able to pass the 1991 act and get President Bush to sign it by leaving the issue of retroactive application ambiguous. The court said yesterday it shouldn't infer a mandate that Congress left out as the result of a political compromise.

Within broad limits set by the Constitution, lawmakers can always go back and add a retroactivity provision if they want to, the court observed. Some civil-rights activists said yesterday that they would lobby for just that.

Disappointment for Liberals

Given the long odds of passing such an amendment this year, though, the high court's action left liberals glum. Charles Steven Ralston of the NAACP Legal Defense and Educational Fund, which represented two black workers before the high court, acknowledged that while the ruling dealt specifically with only two provisions in the complicated 1991 act, the majority's reasoning appeared to cover most of the other significant parts of the law as well.

Agreeing with that assessment, attorney Glen Nager, who argued before the court on behalf of employers, estimated that as many as 8,000 cases could be affected.

The Supreme Court's action was a defeat for the Clinton administration, which took the side of employees in a "friend-of-the-court" brief. The new law took effect on Nov. 21, 1991.

In one of the cases before the high court, a Texas woman had sued her former employer in 1989, alleging that she had

been harassed verbally and sexually by another employee. A New Orleans federal appeals court said the woman, Barbara Landgraf, wasn't covered by a provision of the 1991 act that extended to victims of intentional sex-discrimination the right to collect compensatory and punitive damages. Previously, women plaintiffs in such suits were eligible for back pay only. The same provision of the 1991 act allowed either side in a case where damages are sought to request that the dispute be heard by a jury, rather than a judge.

'New Burdens'

The Supreme Court affirmed the New Orleans appeals court's pro-employer ruling. Justice John Paul Stevens based his opinion for the majority on a longstanding judicial "presumption" that it is unfair to impose "new burdens" on individuals or companies "after the fact." Requiring Congress to be clear if it intends a law to apply retroactively forces lawmakers to consider whether this potential unfairness is outweighed by their legislative goals, Justice Stevens reasoned.

Some of the Supreme Court's precedents on the retroactivity question have appeared to contradict each other, but Justice Stevens finessed this problem by emphasizing the varying factual contexts of past decisions. Justice Antonin Scalia, joined by Justices Anthony Kennedy and Clarence Thomas, filed a separate concurring opinion, objecting to this and other aspects of the reasoning in the Stevens opinion.

The lone dissenter, retiring Justice Harry Blackmun, said that apart from questions of damages and jury procedures, sex discrimination on the job was outlawed in 1964. "There is nothing unjust about holding an employer responsible for injuries caused by conduct that has been illegal for almost 30 years," he wrote. (*Landgraf vs. USI Film Products*)

The other case decided by the high court involved two black mechanics from Ohio. They had sued their former employer, Roadway Express Inc., claiming they had been fired in 1986 because of their race. The mechanics argued that they should be protected retroactively by a part of the 1991 act. The provision reversed a 1989 Supreme Court decision that said a Reconstruction-era antibias law applied only to hiring agreements, not on-the-job discrimination or firings.

A federal appeals court based in Cincinnati said the mechanics couldn't invoke the 1991 act, and the Supreme Court affirmed that ruling. Again writing for the majority, Justice Stevens rejected the plaintiffs' argument that it was appropriate to apply the 1991 act retroactively because it merely "restored" the law to what it had been before the Supreme Court's 1989 decision. He said the text of the act didn't establish restoration of rights as its purpose, and that such a purpose didn't necessarily lead to retroactive application in any case.

Justice Blackmun was the only dissenter. (*Rivers vs. Roadway Express Inc.*)

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✓ Trouble in Anti-Crime Paradise

As implementation of 'three strikes' law begins, the statute's defects are ever more obvious

The Legislature passed the "three strikes and you're out" law in March by a wide margin and with lightning speed. The abduction and murder of 12-year-old Polly Klaas, allegedly by a man with a string of felony convictions, gave the bill popular appeal and legislative momentum unprecedented even for a crime bill. But obscured in the rush to passage were serious concerns, now resurfacing.

The law mandates life imprisonment for individuals convicted of a third felony. Its backers were justifiably outraged that the criminal justice system had allowed repeat felons, including rapists and murderers, to go free. This law, they argued persuasively, would lock the revolving door.

During the bill's fast trip to Gov. Pete Wilson's desk, opponents—no less anxious to reduce crime—raised equally valid concerns. Was the law drawn too broadly, imposing unduly harsh punishment on nonviolent offenders and juveniles? Could it indeed be implemented? Were there enough

prosecutors, enough judges to hear the many jury trials likely to result? Could we finance construction of the prisons needed to house the repeat felons for life?

Those questions and others now loom large as the first felons charged with a "third strike" come to trial. Consider:

Perhaps half of the several hundred affected defendants across the state are charged with a so-called "wobbler" offense. These are crimes such as petty theft or second-degree burglary that can be prosecuted as either misdemeanors or felonies, depending in part on what the judge decides. Atty. Gen. Dan Lungren has moved to limit the judicial discretion in order to bring more "wobblers" as felonies.

A Santa Barbara judge who recently reduced to misdemeanors two felony charges against a man with two "strikes" on his record took the occasion to rail against law, calling it "a piece of junk." Prosecutors are now appealing her ruling, in part

because of those comments.

That judge's opposition—if not the vociferousness of her remarks—reflects the views of many trial judges and even prosecutors. Opposition extends to some crime victims as well. Because a conviction would have been the defendant's third "strike," a San Francisco woman refused to testify at a hearing in April for the man accused of stealing her car. Since the prior convictions were for residential and auto burglary, she opposed the law's application.

The Legislature can—and should—fix the defects now apparent in this law by, for example, narrowing its application to violent crimes. But Californians should take note: If voters pass the "three-strikes" initiative that is on the November ballot—a measure virtually identical to the statute—the law will become part of the state Constitution, defects and all. Correction then will be far more difficult, which is why that currently popular measure should be defeated.

✓ The Silent White House

It is time for President Clinton to take a stand for racial justice in administering the death penalty. That is the main issue stalling the crime bill, passed months ago by both the Senate and House but bogged down in conference over differing versions, and the President is silent about it.

Mr. Clinton and both parties in Congress are eager for this election-year crime bill, which has something for everyone: severe new penalties, including five dozen new Federal death penalties; billions for police, prisons and prevention programs; a ban on assault weapons, and a host of other measures. Despite the general enthusiasm, Senate Republicans are not content to share in this cornucopia with House Democrats; they threaten to filibuster any bill that includes the House-passed Racial Justice Act.

This provision has been superficially portrayed as allowing killers to use racial statistics to challenge their death sentences. That description lends itself to misleading charges of racial quotas in capital punishment. Equally misleading is the charge that the measure would halt all executions.

The racial justice bill would permit convicted murderers in some jurisdictions to show a pattern of racial bias in sentencing those eligible for the death penalty. It would not be enough to show that black defendants suffer more than their population's share of executions, which is generally true but not at issue.

What is at issue, and what valid studies can sometimes show, is that race is an important reason that more blacks are executed for similar homi-

cides or that the pattern of punishment places a higher value on the life of white victims than black victims. A defendant who offers such a study can force state or Federal prosecutors to explain to the court's satisfaction the apparent racial pattern.

That need not be difficult in an evenhanded system. The prosecutors may show, for example, that a black defendant who murdered a policeman is being treated like all cop killers in their jurisdiction. Or that failure to seek death for white cop killers had sound justification in the quality of the evidence or the wishes of the victim's family.

The measure is being further refined during Senate-House negotiations to make clear that only strong, unexplained evidence will suffice to set aside a death sentence. Even then, a court system could later reimpose the death penalty on proof that the system had reformed its jury selection or cured the cause of its race-based capital sentencing.

The Congressional Black Caucus, which must accept all the bill's new death penalties in order to vote for it, thought it had a deal worked out with the Clinton Administration. The President, who has signed death warrants in Arkansas, would say publicly that the racial justice act was a desirable part of a balanced crime bill, and he would lobby for it. Caucus members and civil rights forces would join the lobbying.

So far, however, not a sound has come from the White House or the Justice Department to advance or defend this provision. It deserves better from a President who is as committed to racial justice as to sterner criminal justice.

Crime Bill Likely to Omit 'Racial Justice' Measure

By RONALD BROWNSTEIN
TIMES POLITICAL WRITER

WASHINGTON — President Clinton, in a high-risk move that could clear the way for final passage of the crime bill, has decided to seek removal of the controversial "racial justice" provision from the legislation, which is stalled in a House-Senate conference committee.

Rep. Kweisi Mfume (D-Md.), chairman of the Congressional Black Caucus, announced at a news conference that incoming White House Chief of Staff Leon E. Panetta had told him late Wednesday night that the President believed no compromise could be reached on the divisive issue.

Administration sources confirmed Mfume's account and said the President will seek to pass the bill without the provision, which narrowly passed the House this spring but was decisively rejected in the Senate. The measure would allow defendants to challenge their death sentences with statistics showing that the jurisdiction in which they were sentenced had applied the death penalty more frequently to one race than to another.

Though some proponents vowed to fight on, the President's decision virtually guarantees that the racial justice measure will be removed from the final conference report. Although that should help the Administration push the bill through the Senate, the decision will complicate the legislation's prospects in the House—where liberal Democrats who favor the provision might join forces against it with conservative Republicans who oppose the \$30-billion bill on other grounds.

"I hope the White House understands the new math," Mfume said.

But Administration officials said they believe that they have a better chance to round up enough votes to squeeze the bill through the House than to break what is certain to be a Republican filibuster over the racial justice provision in the Senate.

One sign that the Administration may have gambled correctly came late Thursday, when a group of 10 black big-city mayors—including Detroit's Dennis Archer, Cleveland's Mike

White, Atlanta's Bill Campbell and Denver's Wellington Webb—wrote to Mfume, urging the Black Caucus to support the crime bill even without the racial justice provision.

In a copy of the letter provided to The Times, the mayors indicated support for the measure. But they wrote that they did not believe that it "should bring down the entire bill. . . . We cannot afford to lose the opportunities this bill provides to the people of our cities."

Staunchly supported by the Black Caucus and civil rights organizations, the measure is opposed with equal intensity by the National Assn. of District Attorneys and other law enforcement groups, which maintain that it could undermine the death penalty.

For months, the Administration sought to duck that cross-fire by avoiding a public position on the issue. Even Thursday, while privately confirming Mfume's account, the Administration declined to issue a formal state-

ment—effectively leaving an Administration critic in the extraordinary position of publicly announcing the President's long-awaited position on the most controversial issue left in the crime bill.

The extended dispute over the racial justice provision has virtually paralyzed the Administration between two contradictory goals: preventing an open conflict with the Black Caucus and other liberals while avoiding support for

'I don't think the caucus will walk en masse. I think they are split up now.'

LAW ENFORCEMENT LOBBYIST

any provision that would appear to undercut Clinton's support of the death penalty.

The central question now for Democratic vote counters is how many black representatives will abandon the legislation because the racial justice provision has been removed. Although some African American representatives are likely to oppose the bill because of the Administration's decision, legislative sources said others still are likely to support the huge bill—which will offer nearly \$20 billion to cities to hire 100,000 new police officers and fund crime prevention efforts ranging from job training to education programs.

The black mayors cited those provisions, as well as the bill's ban on assault weapons, in their letter to Mfume. The crime bill also contains funds for new prisons, a three-strikes provision requiring life imprisonment for repeat offenders and an expansion of the federal death penalty.

One congressional source said it was noteworthy that Rep. John Conyers Jr. (D-Mich.), a principal sponsor of the racial justice measure and the only member of the Black Caucus on the

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conference committee, did not attend Mfume's sharply worded press conference. And Mfume himself said only that "a majority of" the 38 Democratic members of the Black Caucus would oppose the legislation if the racial justice provision is not included.

One law enforcement lobbyist closely monitoring the bill also said it is unlikely that the entire Black Caucus will oppose the legislation without the racial justice provision. "I don't think the caucus will walk *en masse*," the lobbyist said. "I think they are split up now."

Still, liberals' disappointment over the racial justice provision is almost certain to narrow the bill's majority in the House. In the three-corner politics of the crime bill, that, ironically, may endanger one component of the bill that they ardently support: the ban on assault weapons.

One senior House aide said the shrinking margin for error strengthens the hand of conservative Democrats threatening to oppose the bill unless the assault weapon ban is watered down. House Judiciary Committee Chairman Jack Brooks (D-Tex.), who has led the opposition to the ban, Thursday privately circulated proposals to soften the measure, the source said.

"It gives Brooks more leverage," the aide said, "though I still think we're stronger."

To discourage liberal defections, the Administration and House Democratic leaders are continuing discussions with supporters of the racial justice measure, offering carrots and sticks. At a private meeting this week, sources said, Atty. Gen. Janet Reno offered to Conyers a carrot: the formation of a commission to study the claims of racial bias in the application of the death penalty.

At the same time, the Administration has been arguing to liberals that, if their opposition kills the final bill in the House, it is likely that the conference then would tilt the measure further to the right in the hope of attracting more Republican support.

IN THE WHITE HOUSE AND AROUND TOWN:

White House may announce position on racial justice provisions; Congressional Black Caucus meets on the issue. The Clinton Administration may announce today its position on racial justice provisions in the crime bill. The anticipation is that the White House and Democratic congressional leadership will agree to move forward with a crime bill that does not include the provisions of the controversial Racial Justice Act (see yesterday's Bulletin). Instead, a commission of sorts is expected to be established which would study the issue to make sure the death penalty is not being enforced in a biased manner.

Meanwhile, Congressional Black Caucus Chairman Kwesi Mfume (D-MD) has scheduled a press conference for 1:00 today, following a Caucus meeting on the racial justice provision that White House officials claim is endangering the crime bill. A Democratic source says Mfume and the Caucus have been negotiating for the last couple of weeks with Attorney General Janet Reno, George Stephanopoulos, former Chief of Staff Mack McLarty and, most recently, current Chief of Staff Leon Panetta on the Racial Justice Act, which permits defendants to challenge the death penalty as racially discriminatory.

According to the source, today's Caucus meeting concerns the White House's position on the matter. Incoming White House Chief of Staff Leon Panetta and Mfume talked last night, and it is believed Mfume is not pleased by what he heard.

In addition, Rep. Bobby Scott (D-VA), Rep. Ronald Payne (D-NY) and Rep. Don Edwards (D-CA) joined with the NAACP, the Rainbow Coalition, the ACLU, Amnesty International and other civil rights groups in announcing today their opposition to removing the Racial Justice Act from the crime bill. An aide to Congressman Scott said, "It's not just a criminal justice issue, it's a fundamental civil rights issue. If the Racial Justice Act is taken out of the crime bill...among the [Congressional Black] Caucus and other members who support it, they have the power to stop the crime bill on the House side. For instance, the last rule would have lost without the Caucus' support, until the Administration stepped in and promised they would support the Racial Justice Act -- which they haven't done."

Clinton Administration announces its economic forecast. In its mid-session review of the budget, the Administration predicted today that the GDP will grow at an inflation-adjusted rate of 3 percent this year and 2.7 percent next year. The Administration also reduced by a tenth of a point its growth estimate for 1996, 1997, 1998 and 1999, projecting 2.6 percent growth in 1996 and 2.5 percent for each of the next three years. As for unemployment, the forecast sees: 6.2 percent this year; 6.2 percent next year; and 6.1 percent through 1999. Previously, the Administration had predicted the rate would be down to 5.5 percent by the end of the decade. The Administration projects a three-month Treasury bill rate at 4 percent this year and 4.7 percent next year, up from a prediction of 3.4 percent and 3.8 percent respectively. The forecast for 10-year Treasury notes is 6.8 percent this year and 7

percent next year, up from 5.8 percent for both years in the February projection. As for inflation, the projection calls for 2.9 percent this year, 3.2 percent next year, and 3.4 percent by 1997. "We have more than twice the economic growth of the Bush years. New jobs are being created all over the country, more in 18 months than during the entire Bush administration," said House Majority Leader Dick Gephardt of Missouri.

o Nunn wants Aristide to agree to conditions for invasion. Senate Armed Services Chairman Sam Nunn (D-GA) said today exiled Haitian President Jean-Bertrand Aristide should meet US conditions for any invasion the US might undertake to restore him to power. The US must have "not only an exit strategy, but most importantly an entrance strategy," Nunn said on NBC television this morning. "We need to, I think, lay down some conditions to President Aristide as to what he would do if he is restored, including human rights, including guaranteed elections, including professionalization of the police force and security forces and including pledges not to take retribution except within legal means," Nunn said. Aristide has said he is barred by the Haitian constitution from calling for a US invasion, however.

Nunn drew a distinction between an invasion for the purpose of protecting American lives and one to restore Haiti's former government. Of the estimated 3,500 Americans still in Haiti, Nunn said: "Right now, they're not under threat. If they come under threat, we have to be prepared to move very rapidly. but if the mission is to restore democracy, that's a different mission. It is not primarily a military mission; it is nationbuilding mission. And we need to think through that one very carefully."

Nunn criticized current sanctions, saying: "I think our sanctions are not carefully targeted. We need to keep those sanctions that really penalize the military and police leadership and the elite that support those leaders. But we need to, I think, begin removing those sanctions that are counter-productive and are causing tremendous suffering of the Haitian people and causing the very exodus of those people that destabilize the area and also cause us problems."

White House spokeswoman Dee Dee Myers reiterated today that "no decision" has been made on a military option.

o Healthcare Reform Notes: Leadership Working To Moderate Senate Bill. Reportedly, Senate Majority Leader George Mitchell is considering a number of changes to the legislation passed by the Labor and Human Resources Committee designed to make it more acceptable to moderates. Among the ideas being discussed is one reportedly from Senator Ted Kennedy which would reduce, at least temporarily, the employer share of the mandate from 80 percent to 50 percent. Today, Mitchell is scheduled to meet with the Senate Finance Committee's rump group of moderates to discuss his plans for writing a bill. According to one source with this group, it appears Mitchell is following a strategy of attempting to lower the employers' share of a mandate to a point where he will be able to garner 60 votes needed for a favorable Senate vote on the mandate. Then, said the source, with the fear of being "BTUed" gone, the

House will go ahead with a vote of its own on employer mandates, and when the two bills meet in conference, Mitchell will then try to bump the employers' share of the mandate back up to the House approved level. ### Perot-RNC Tag-team Still Working On Televised Health Care Special. According to a knowledgeable GOP source, a report that friction is building between Ross Perot and the Republican National Committee over their plans for a joint television program pointing out the flaws in the Clinton health plan is "flat out wrong." The source said the RNC and Perot are going back and forth on concepts, and the hope is the two-piece special -- to be run in half-hour segments and different nights -- will be broadcast on a major network sometime later this month or in early August. And while Perot is willing to spend around \$1 million for the programs, the networks are said to be balking at the idea, so the tag-team is already considering other options should the time not be available. ### DNC Starts New Ad Campaign. The Democratic National Committee's new radio and television campaign argues that anything short of universal coverage will hurt middle class Americans and do little or nothing to control health care costs. The ads blame Republicans for supporting such plans. The DNC is spending roughly \$400,000 of its \$4 million health care ad fund to air the spots in Washington and several states over the next week. ### Democratic Bus Tour To Be Mocked. Word has it that a new advertisement is being prepared by the Project for the Republican Future which will make fun of the health reform bus tour being organized by the Democrats and their health reform allies. Reportedly, the ad will be run in Washington and other cities on the route of the "Health Security Express."

o Bentsen And Gibbons To Meet On GATT Rules For Trade In Financial Services. Treasury Secretary Lloyd Bentsen and House Ways and Means Acting Chairman Sam Gibbons (D-FL) are scheduled to meet at 1:30 today regarding financial services practices under GATT, according to a Congressional aide. Bentsen is expected to express the Administration's support for legislation that would allow the Treasury Department to deny certain applications made by foreign banks or security firms from countries that refuse to grant reciprocal national treatment to US banks or securities firms. The Administration wants a fair trade deal that gives Treasury additional authority and strengthens its hand in negotiating the financial services section of GATT, while Ways and Means Committee staff have so far insisted the committee's members do not want or need such fair trade legislation. The legislation containing the financial services provision is currently in conference between the two chambers and a formal members' session to wrap it up is planned for next Tuesday. If the remaining issues are not resolved before Whitewater hearings begin on July 26, committee staff say the bills could be put off until September. There are also reports that White House Chief of Staff Leon Panetta has instructed the House Democratic leadership to orchestrate the completion of the bills before the Whitewater hearings, while other sources say the fair trade in financial services provision may be left out in order to push the legislation through.

Bankers Competing to Lend In New York's Poorer Areas

By EMILY BERNSTEIN

When Robert Cohen wanted to buy two Tudor-style buildings at the corner of Cruger Avenue and Pelham Parkway in the Bronx in 1991, he had trouble finding a bank that would lend him the money. Taking the one loan he could find at the time, he purchased the buildings and renovated everything from the boilers to the elevators to the mortar holding the rust-red bricks together.

Now, as Mr. Cohen tries to refinance the buildings, he has four or five banks competing for his business. His next-door neighbor has also been able to borrow enough money to renovate his building. They are among many landlords benefiting from new sources of money streaming into working-class neighborhoods like theirs in the Bronx and the city as a whole.

Over the last two years, borrowers in such neighborhoods who used to go begging for mortgages are finding that more and more banks are willing to lend them money. The increased lending in these areas is having a ripple effect, improving the housing stock and generally helping stabilize neighborhoods that had been teetering on the edge of decline.

With the economic downturn and the banking crisis of the late 1980's and early 90's behind them, banks and thrift institutions are better equipped to lend. But the real-estate market for commercial and larger residential properties still has not rebounded, so lenders are looking beyond their traditional investments to smaller loans — under \$1 million — in what they used to consider risky neighborhoods.

"There is too much competition for the markets in the better areas of Manhattan, and even in places like Riverdale," said Jeffrey Denler, vice-president for multifamily lending at First Federal Savings and Loan of Rochester. "A lot of lenders are looking to other areas and finding that loans in neighborhoods they never looked at are just as safe."

The new wave of loans has not yet reached the city's most troubled areas but instead solid working-class neighborhoods where landlords can count on receiving their rent. Landlords in Mott Haven and Morrisania in the Bronx and East New York in Brooklyn still have to jump through an extraordinary series of hoops to get loans. But their counterparts in Pelham Parkway and Fordham, Crown Heights and Fort Greene now have more access to money to renovate their buildings and revitalize their immediate areas.

The turnaround is most striking in the Bronx, where whole neighborhoods in the late 1960's and 70's succumbed to abandonment or arson. In that atmosphere of decline, private lending all but stopped and never reached more than a trickle thereafter, primarily in the northwest of the borough.

Now some buildings in these neighborhoods, typically four- or five-story buildings with 50 to 100 apartments, lacking elevators but solidly built in the years before World War II, are being refurbished.

Although most of the loans in the Bronx are in the neighborhoods bordering Fordham Road and Pelham Parkway, the borough's version of the proverbial tracks, some lenders are now financing buildings in the South Bronx, near Yankee Stadium and the courthouse.

Loans Draw Investment

The lending is already having a visible effect on these neighborhoods, helping to draw in even more money.

"As a lender you're surprised, but you do see some transformation in the way the buildings have been maintained," Sam Giarrusso, vice-president of East New York Savings Bank, said of a trip he recently took to see some buildings along the Grand Concourse and Jerome Avenue in the South Bronx. "I think there's a bit of a stigma there, but we will look at buildings selectively for owners that have a proven track record."

A strong demand from families searching for affordable apartments has encouraged both bankers and building owners to consider investing in neighborhoods they used to consider somewhat risky, such as those in the mid-Bronx, mid-Brooklyn and upper Manhattan. Low interest rates over the last two years have also made it more feasible for owners to borrow money.

A few banks lent money in the Bronx through the 1980's, and their programs are expanding. Since January, First Federal has financed 15 mortgages, worth \$12.5 million, in the Bronx as compared to eight loans worth \$5.5 million in all of 1993. Fourth Federal Savings Bank, which lent about \$2 million a year in the Bronx in 1990 and 1991, closed on \$11 million worth of loans in 1993. Lenders also say there is more competition to lend money in the Bronx.

Freddie Mac Is Back

In addition, the Federal Home Loan Mortgage Corporation, or Freddie Mac, has begun lending money for multifamily buildings again after a three-year hiatus. Freddie Mac was the city's largest mortgage lender for apartment buildings in the 1980's, but canceled its lending program in 1991 because of a high default rate. The agency resumed lending to landlords in December, and wants to commit \$600 million in the northeast region by the end of 1994, said H. L. Van Varick, director of production and product development for multifamily lending in this region.

But Freddie Mac has had trouble meeting that goal, and has only committed \$50 million so far. Mr. Van Varick said the agency needed time to let borrowers know it was back in the market, but also is up against many more competitors than before.

There are two explanations for the growing interest in lending, and most bankers and building owners offer a combination of them. The first is internal: banks are stronger.

"The city's economy hasn't changed," said Robert Chambrey, a mortgage broker who is active in the Bronx. "The banking industry is healthier. Of the six banks I work with in the Bronx, three weren't in the market three years ago."

But others say bankers are responding to changes in the city itself,

particularly in the Bronx, where city and neighborhood development groups have helped rejuvenate many neighborhoods over the last decade. When lenders visit potential borrowers' buildings in the South Bronx now, they are as likely to see a block filled with viable, working buildings as a set of burned-out shells.

"The economy is stronger and the city's programs have given the Bronx a shot in the arm," said Richard Pergolis, another mortgage broker who grew up in the Bronx and has worked with building owners there for 14 years. "They weren't just putting fancy pictures in the windows of burned out buildings. There are real people in those buildings now. That's massive progress."

Public progress has led to private gains, as bankers are more willing to gamble on new neighborhoods. For example, Mr. Pergolis's firm, Pergolis Swartz, has helped finance 115 properties in the Bronx in the last two years, worth \$100 million, about 10 times greater than their volume of business in the previous two years.

While banks are increasingly willing to lend, they are nonetheless careful about whom they lend to. They say they are most comfortable with professional owner-managers, who have a history with the bank and in the borough, and who have the resources to screen tenants and press for rent payments, two keys to success in lower-income neighborhoods.

Professional Landlords

More lending, then, has given rise to more large-scale ownership, with landlords holding 30, 40 or even 100 buildings in the Bronx. Many of these owners have expanded their holdings by buying buildings that earlier Freddie Mac borrowers defaulted on.

These professional owners, in turn, are able to convince their banks to support ventures in other Bronx neighborhoods, ever farther south.

"The lenders kind of follow major building owners into those areas," said Mr. Denler of First Federal. "There had been a period of deterioration in those neighborhoods but now we have gotten to the point where lenders and managers are no longer afraid to invest there."

Jeffrey Levine has seen a new spurt of interest in the work buildings he renovates in the Bronx, in Harlem and in Flatbush, just south of Prospect Park. He said that until two years ago, he had difficulty finding private lenders outside of the Community Preservation Corporation, which pools public and private money for real-estate deals in poor neighborhoods, and Chemical Bank's community investment group.

Interest and Credit

"All of a sudden there is a flurry of banks that were not familiar with these areas before that are now looking to lend in them," Mr. Levine said. "Banks are anxious to lend money where the economics are good, and even more in communities where they can get credit for their loans."

Banks must meet Community Reinvestment Act requirements, investing a certain percentage in neighborhoods where they have branches. These loans can help meet those requirements and also helps them boost their community relations credit. Whether the lending trend will continue depends on the economy, and extending it to poorer neighborhoods may require government subsidies to bring banks into the market.

Still, owners are optimistic. David Ribler held onto four buildings in the Bronx through the 1970's, but sold three others in the South Bronx when they were the only thing standing in the rubble of their neighborhoods.

"I think it's beneficial for the borough," Mr. Ribler, who grew up in Kingsbridge Heights, said of the new money for owners. "I'm not the only one who stayed. Hopefully the people who did will reap the rewards now."

COMMUNICATIONS LEGISLATION WOULD ENSURE OPPORTUNITIES FOR
MINORITIES, AUTHORS SAY

Reps. Bill Richardson (D-NM), Cardiss Collins (D-Ill), and Patricia Schroeder (D-Colo) announced June 24 that they would introduce legislation soon to ensure opportunities for women, minorities, and rural telephone companies to compete in the new personal communications services market.

The announcement comes shortly before the Federal Communications Commission is expected to establish rules for an auction of broadband spectrum for personal communications services. The administration already has urged the FCC to set aside so-called "entrepreneur's blocks" of spectrum for designated entities, or small businesses and businesses owned by women and minorities (119 DER A-20, 6/23/94).

Richardson said the proposed "Communications Opportunity Act of 1994" would be introduced as soon as possible, perhaps through the FCC reauthorization bill.

In announcing the proposed legislation, Richardson said just 2.7 percent of commercial broadcast stations in the United States are owned by minorities, and that Hispanic participation is less than 1 percent. The legislation would codify the use of set asides, tax certificates, installment payments, and bidding credits to ensure participation by designated entities, he said.

"The best way to guarantee designated entity participation is to restrict bidding on certain blocks to designated entities only," Richardson said. The legislation would set aside one 30 megahertz and one 10 megahertz block of spectrum for bidding by designated entities only.

Richardson also rejected the administration's definition of designated entities, which includes small businesses, or those businesses with annual revenues of \$100 million to \$125 million. "That's not acceptable, we want minority set asides," he stressed.

FCC Mandate

Cardiss noted that the 1993 Budget Reconciliation Act gave the FCC a congressional mandate to provide licenses for telecommunications services to broad segments of the population which historically have faced barriers to market entry. "While the FCC seems to be making good faith efforts to formulate workable licensing preferences for designated entities, we intend to keep the pressure on the commission to carry out the responsibilities with which it has been charged," she said.

Schroeder emphasized that the FCC is auctioning public broadcast bands, and that the winners of the auction should look like the public. She added that they would be "eagerly awaiting the FCC vote on Wednesday."

Richardson said that they had been working with the FCC for the last two months in developing the legislation. He was hopeful that the major components of the legislation, including minority set asides, tax certificates, bidding credits, and installment payments, would be in the FCC auction rules.

Even if the FCC adopts rules similar to the legislation for its upcoming auction, the legislation would still go forward to ensure that future auctions would include such measures, the representatives said.

Middle Man

**Solicitor General
Drew S. Days III has
one of the toughest
jobs in town:
representing the
Administration's legal
policies without
looking political.**

BY W. JOHN MOORE

For David Ronald Chandler, George Bush's defeat in 1992 could mean the difference between life and death.

Now on death row in Alabama, where he was convicted in a murder-for-hire scheme, Chandler could have the dubious distinction of becoming the first person executed by the federal government since 1963. One of a handful of people convicted under a 1988 anti-crime law, he has fought his death sentence all the way to the U.S. Supreme Court.

So far, the federal courts have ruled against him. And the Bush Administration made the case a litmus test of its commitment to a federal death penalty.

Now it's the Clinton Administration's turn—and a tough call for Solicitor General Drew S. Days III. President Clinton supports the death penalty and has refused to be outflanked on the issue by conservatives. But Chandler has raised some intriguing arguments. His lawyers have noted that the 1988 law didn't explain how executions were to be carried out. He also contends that the trial judge violated federal law by failing to tell the jury that a life sentence without the possibility of parole was an alternative to the death penalty.

Days has twice delayed responding to Chandler's request that the Supreme Court hear his case; most recently, the Court gave the Solicitor General until April 8 to respond. In February, he met with Chandler's lawyers and with New York University Law School professor Anthony G. Amsterdam, a longtime death penalty foe.

Chandler's case isn't likely to produce a landmark ruling. But it highlights the crosswinds that regularly buffet the Solicitor General. Key Democratic constituents expect Clinton's Justice Department to give them a friendlier hearing than they got during the past two Administrations. Yet Days must balance his role as an Administration advocate with the special relationship that the Solicitor General enjoys with the Court. A flip-flop in the Chandler case would revive a long-standing debate over the influence of pol-

itics and ideology on the Solicitor General's office.

In Days, the Administration hardly has a liberal firebrand bent on obliterating 12 years of Republican legal policies or persuading the Court to veer leftward. "I don't think it is possible or even advisable for a Solicitor General to urge upon the Court abrupt shifts in direction with respect to the law," Days said in a recent interview. "I think it is an incremental process." (*For more on Days's views, see box, p. 826.*)

And there are practical reasons for the Administration to avoid staking out dramatic positions at the Court. The Court's conservative-to-moderate majority may not be receptive to major changes in the law, and the Justices this term have seemed wary of addressing controversial issues. (*For more on the Court's avoidance of controversy, see NJ, 10/30/93, p. 2587.*)

Clinton's election, coupled with Democratic control of Congress, lessens the importance of the Court as a forum for Democrats to push their political objectives. Moreover, the vast majority of cases that the Court hears don't strike a political nerve.

But it's clear that Days's arrival has brought some changes. Last October, he donned the traditional gray morning coat and, in his first oral argument as the government's chief legal advocate, argued for the retroactivity of the 1991 Civil Rights Act—a reversal of the Bush Administration's stance. He also endorsed a new position in a voting rights case and rejected a definition of child pornography endorsed by the previous Administration.

Critics have accused Days of yielding to raw political pressure in reversing the government's long-standing position that a California tax on international corporate profits is unconstitutional. "This one seemed a payoff of a campaign promise to the state of California," said Stephen A. Bokor, executive vice president of the National Chamber of Commerce Litigation Center Inc., which filed a brief opposing the tax. (*See NJ, 8/7/93, p. 1972.*)

But if politics is at work in the Justice Department, many Republicans say

There's no more copper wires, there's no more voices on those copper wires. What we have is a fiber optic digital system where the ones and zeros of digital bits are traveling along with thousands of others, and the switches from the originating call to the receiving call are being made not on the lug nuts but in the software built into the switches.

The phone companies are not now designing the necessary software into those switches, which will give us the access. So beginning in the next two, three, certainly four years, in a very rapid phase, the companies will be going to a fully digital local loop, a communications line between the originator of the call and the central office. They will not be able to give me pursuant to the court order the digital bits for me to reconstruct because there's no feature in the software that will access that information.

So although the law hasn't changed, the technology has changed to the point where I can't conduct a wiretapping. And that's all that we're asking for.

What the legislation requests is that the telecommunications companies, the equipment manufacturers, and the service providers take our requirements and build those and upload them into their switches as they deploy them in the next couple of years so we won't lose the access that we have. We get nothing more out of the conversations than we get now, the legal requirements don't change.

From an intelligence point of view and a criminal law-enforcement point of view, it is an absolutely vital technique, and we are desperate to preserve it. The absence of that technique will mean that in many, many cases—take the Ames case, the World Trade bombing case, the kidnaping cases that we do on a daily basis around the country—we will not have the benefit of that technique. If lives are important and public safety is important it is probably the most important tool to take out of my tool box. □

there's nothing wrong with that. "The client changed. And the position changed with the client," said former Acting Attorney General Stuart M. Gerson, now a Washington lawyer with the New York City-based law firm of Epstein Becker & Green.

The Republicans aren't just being magnanimous. If Days can be portrayed as a loyal Democrat pushing Clinton's legal agenda, it vindicates their position that the Solicitor General's office is supposed to reflect the political, ideological and social views of the Administration. Many Republicans still seethe over charges that the office became far more political during the Reagan Administration than at any other time in its history.

WHERE CREDIBILITY COUNTS

In 1962, then-Solicitor General Francis Biddle wrote, "The Solicitor General has no master to serve except his country." Nobody adheres to that view today. But legal journalist Lincoln Caplan's influential *The Tenth Justice: The Solicitor General and the Rule of Law* (Alfred A. Knopf Inc., 1987) concluded that the Solicitor General should retain some autonomy. "What is the proper balance between the Solicitor General's independence on the one hand and on the other hand the Solicitor General's fidelity to Administration interests?" Caplan asked.

Many scholars scoff at the notion of a politically neutral Solicitor General. "The Solicitor General's office is one of those in which the law can be shaped in accordance with the role of the people as expressed in the election," said Michael McConnell of the University of Chicago Law School, who worked in the office in the mid-1980s.

The Solicitor General has three functions, legal scholars say: representing the Administration, defending executive power and working as an informal adviser to the Court. It would be folly for the Solicitor General to ignore this relationship with the Court.

"The Solicitor has a very, very difficult job. He is an important member of the Justice Department and of the Administration, and he must take their policies into account. But the most valuable thing he has is credibility with the Court," said Kenneth Geller, a former lawyer in the Solicitor General's office and now a Washington lawyer with the Chicago-based firm of Mayer, Brown & Platt.

The Justice Department's 75-80 per cent win rate at the Court—and the Court's willingness to consider cases that the agency wants heard—are due in part to the Solicitor General's reputation. If the Justices feel that he is presenting a political agenda, they can freeze him out.

"The Solicitor General can affect the relationship with the Court in such a way that it can cause the government to lose cases that it might otherwise win," said Andrew L. Frey, another veteran of the office who's also a Washington lawyer with Mayer, Brown & Platt. That happened during the Reagan Administration in a case involving public and parochial schools, Frey said. The Court had become so antagonized by the Administration's positions on other cases involving religion that it punished the Justice Department with a defeat, he said.

The late Justice Thurgood Marshall blasted the politicization of the Solicitor General's office. "They wrote political pamphlets and wrote the word 'Brief' on them," Marshall said in 1988.

Days is an unlikely candidate to irk the Court. "When I think of Drew, I think of strength of purpose without vitriol, firmness but decency. He is not a flame-thrower," said Geoffrey C. Hazard, a former colleague of Days on the Yale Law School faculty. Born in Atlanta and raised in Florida and New York, the 52-year-old Days has enough credentials to put him on the short list for nomination to the Court.

After graduating from Hamilton College in Clinton, N.Y., he attended Yale Law School, graduating in 1966, seven years before Clinton. At Yale, he indulged a passion for singing as a tenor in one of the university's top vocal groups. He can still croon like a young Sam Cooke, friends say.



A Solicitor General shouldn't urge the Court to make "abrupt shifts in direction."

LOOKING FOR CHANGES . . . WITHIN LIMITS

Solicitor General Drew S. Days III talked about his legal philosophy in a March 16 interview at the Justice Department. Following are excerpts.

Q: How's the job going so far?

A: Pretty well. There are some rough days but never any dull days.

Q: What do you hope to accomplish in your job?

A: Certainly, I'd like to look back and think that I had developed a reputation for high-quality lawyering and excellence in advocacy before the Court—not just personally but as an office. And that I was viewed as helpful to the Court in sorting out the difficult legal issues that the Court has to resolve.

I don't have a particular hit list of legal or constitutional issues that I came in determined to have resolved. But there are issues that have been left hanging that I think should be sorted out.

Q: Are there areas, such as abortion or civil rights or criminal law, where you look forward to filing briefs and having an impact?



"I don't have a particular hit list."



Richard A. Hober

"Obviously there is going to be some correlation" with Administration policies.

A: My starting point would be to see to what extent those issues arise and in what context they affect the interests of the United States. I don't see this office as a place where you have been given a license to hold forth on a broad range of constitutional issues. I think that for the most part I am interested in addressing what might be called the volatile issues, if there's a legitimate federal government-interest hook, if you will. But I don't want to go into any specific examples.

Q: Some critics have suggested that officials in the past two Administrations went overboard in their efforts to change the law through friend-of-the-Court briefs and Court petitions. It seems that is not what you intend to do.

A: That is correct.

Q: What do you think of your predecessors' approach?

A: I can say it is a different conception from mine of the office. I think if one looks back through history, there are probably precedents for what they did. I have read enough history of the office to know that political scientists have found a very high correlation between what party was in power and the positions that the Solicitor General of that particular party took to the Court. So obvi-

ously there is going to be some correlation between what this Administration thinks about certain important issues and what we are doing here in the Solicitor General's office. We will do things that no one would have expected Solicitor Generals in the prior two Administrations to have done.

Q: Certainly changes are expected on some hot-button issues.

A: Let me say this: There is a strong likelihood that will be the case. But there are some cases that come up where, depending on the Solicitor General, even though the Administration may want to take a position in the Court, it simply isn't possible, given the nature of the case or the way the issues are framed. [Former Solicitor General] Rex Lee liked to say that he did not want to be recognized as the pamphleteer general. And I think that is important.

Q: But some people argue that every Solicitor General simply imposes the policy choices of his Administration on the Court, despite talk of the Solicitor General as a sort of 10th Justice.

A: It is a question of degree. To say that positions have been changed doesn't tell you what the change was. I think there are limits. And I view my job as being very careful to identify those limits. And we need to be respectful of them.

Like other stellar black lawyers, Days made a name for himself at the NAACP Legal Defense and Educational Fund Inc. in New York City. But before that, he took a short detour, joining the Peace Corps and becoming fluent in Spanish while working at an agricultural cooperative in Honduras.

He joined the NAACP legal defense fund in 1969, starting by litigating school desegregation cases and then administering an internship program for black lawyers trying to set up private practices. For two years in the mid-1970s, he taught at Temple University Law School in Philadelphia. He then became the assistant attorney general for civil rights in the Carter Administration.

During his first stint at Justice, Days was a key player at a time when civil rights was an especially contentious issue, splitting Democrats and Republicans and then dividing moderates and liberals within the Administration. In 1977, he wrote the government's friend-of-the-court brief in *Regents of California v. Bakke*, a case in which Allan Bakke, a white student, successfully challenged racial quotas at the University of California (Davis) Medical School.

Yet Days is not a knee-jerk defender of civil rights experiments. In a 1987 law review article, for example, he questioned the value of some minority set-aside programs. In recent years, he has suggested that legal activism, although useful, can't resolve all complex social and economic problems.

After the Carter Administration, Days headed back to Yale Law School as its first black faculty member. It was not always an easy road, and when he came up for tenure in the 1980s, he was not a shoo-in. At Yale, theoretical expertise trumps experience—even years at the Justice Department. "Some people indicated that he was too practice-oriented and that he did not have adequate theoretical interests," Hazard recalled. Ultimately, though, the faculty overwhelmingly supported Days's tenure bid.

Although Days kept a relatively low profile at Yale, in 1991 he testified against the Supreme Court nomination of Clarence Thomas. He also became involved in a variety of legal causes, including support for Haitian-refugees. Before Days came on board, the Clinton Administration, despite campaign promises to the contrary, supported a Bush Administration position limiting Haitian immigration. Days has recused himself from the matter.

NOT BUTTONS

The Clinton Administration's legal policy has generated relatively few head-

lines, despite conservative predictions that the Justice Department would become a haven for liberals.

In fact, some of the early criticism came from liberals, who blasted the Administration's reversal on Haitian immigration and its decision to file a Court brief backing the ban on gays serving in the military.

But showdowns with conservatives may lie ahead. Civil rights groups expect Justice to mount a major battle against *Shaw v. Reno*, a 1993 voting rights ruling by a lower court invalidating some redistricting plans that enhanced the electoral strength of minority groups. Days has already reversed the Bush Administration's position in a Georgia voting rights case involving proportional representation on county boards.

Death penalty opponents expect that the Solicitor General will no longer rush to the Court to support state death penalty laws. During the past two Administrations, the Solicitor General "participated

Democrats have maintained that the law was supposed to apply to earlier cases. And Days points out that the Bush Administration pushed for retroactive application of some other laws.

But some conservatives contend that the Court will rule against Days because Congress didn't explicitly call for retroactivity when it passed the law. "I don't think I can recall an instance when the Court read retroactivity into the statute" under such circumstances, law professor McConnell said.

Days's critics accuse him of using *Barclays Bank PLC v. Franchise Tax Board*, a tax case pending before the Court, to help the Administration repay California for giving its 52 electoral votes to Clinton.

At issue is a complicated law that California enacted in 1977 to tax foreign companies doing business in the state. Although the law was changed last year, corporations are pursuing a lawsuit seeking refunds of an estimated \$40 billion in taxes paid from 1977-93.



Deputy solicitor general Paul Bender. Although respected for his intellect, he has clashed with some lawyers in the office.

in gutting that historic remedy" of appealing to the federal courts in death penalty cases, said George Kendall, assistant counsel of the NAACP's legal defense fund. "We certainly believe that Drew Days will reassess those positions because he understands the importance of federal review of federal constitutional issues."

"If there is an important issue to the government, whether the government won below or lost below, and we think the Supreme Court ought to resolve the issue, we will go forward," Days said in the interview.

Days's decision to support retroactivity of the 1991 Civil Rights Act was not difficult, lawyers said, because congressional

The Bush and Reagan Administrations contended that the law amounted to an improper intrusion into foreign affairs. But during his 1992 campaign, Clinton pledged to help California defend the law. Last fall, a day after the Solicitor General's office filed a brief supporting the state's position, Clinton sent a letter to Sen. Barbara Boxer, D-Calif., telling her "how pleased" he was at the action.

Days's brief contends that although current federal policies bar states from enacting such taxes, there were no such prohibitions in 1977. Clinton's position on the case is consistent with his belief that the federal government generally should not dictate how states construct

their tax codes, a Justice Department lawyer added. Other lawyers say that the Solicitor General's action dovetails with Administration efforts to crack down on multinational tax cheats.

BENDER BASHERS

If there was any question about Days's political independence, his defenders argue, it was settled by a brief that he filed last September in a child pornography case, *Knox v. United States*.

In a reversal of the Bush Administration's position, Days told the Court that the 1984 Child Protection Act, as interpreted by the U.S. Attorney in Philadelphia, was impermissibly broad because it covered a variety of poses and activities

group of more than 100 lawmakers signed a friend-of-the-court brief opposing the Solicitor General's interpretation of the child pornography law.

Most of the heavy artillery in the case has been aimed at Days's deputy, Paul Bender. Bender, a former Arizona State University Law School dean who once clerked for Supreme Court Justice Felix Frankfurter, was the chief counsel on the 1970 Presidential Commission on Pornography, which recommended liberalized pornography laws.

Outside critics—as well as some lawyers in the Solicitor General's office—say that Bender was largely responsible for the *Knox v. United States* brief. But Bender has denied that in interviews, and Days said that he made the call himself.

Bender has become a lightning rod in part because of the position he holds. He is the so-called political deputy, a slot that didn't exist until early in the Reagan Administration. Critics of the Reagan and Bush Administrations had seized on the existence of the slot as proof of the Solicitor General's political mission; many legal experts expected that Days would abolish it to signal that his office would operate differently. Days admits that he considered such a move but rejected it.

Bender was not a popular pick. Although respected for his intellect, he has clashed with a number of lawyers in the office. Days "made a bad choice with Bender," a former high-level Justice Department official said. "He does not complement Days particularly well."

"It's definitely good cop, bad cop," a lawyer in the Solicitor General's office added.

Bender is considered an unabashed liberal. But politics is not the problem, according to current and former lawyers in the office. "This office has a strong tradition of collegiality.

You don't go around and impugn people's work and their motives and their integrity and get away with it," another lawyer in the office said.

Such charges "are inaccurate," Bender said. "Some people are upset because the office is not as solidly conservative as it has been for the last 12 years."

And not everyone in the office is a Bender-basher. Despite press accounts saying that veteran deputy William C. Bryson had clashed with Bender, Bryson said in a telephone interview, "I have had no problems with him."

There's been considerable turnover at the Solicitor General's office in recent months. Bryson, a 16-year veteran, was named acting associate attorney general when Webster L. Hubbell stepped down, and top lawyers Paul J. Larkin and Maureen Mahoney moved to private law firms. Amy L. Wax, an assistant solicitor general, is headed to the University of Virginia Law School in June.

Lawyers familiar with the Solicitor General's office caution that the departures don't reflect poorly on Days. Many lawyers in the office were ready for new jobs; some had such conservative leanings that working for the new Solicitor General would not have been much fun. Days was also praised for filling a deputy solicitor general's slot with Edwin S. Kneidler, a veteran of the office, instead of hiring an outsider.

But some of Days's new hires have caused uneasiness. The latest batch of recruits includes lawyers from the NAACP Legal Defense and Educational Fund, the Ralph Nader group Public Citizen Inc. and the public defender's office in Washington. That worries conservatives who fear a liberal takeover. But a bigger concern, some lawyers say, is that the newcomers may not be a good fit in the office. "The lawyer jobs in the SG's office are not cause-oriented or single-issue-oriented jobs," said Glenn D. Nager, who worked for the Solicitor General in the Reagan Administration and now practices in the Washington office of the Cleveland-based firm of Jones, Day, Reavis & Pogue.

Some legal experts maintain that the office under Days will be as political as it was under his GOP predecessors. Democratic criticism of the Reagan and Bush Administrations "can't withstand scrutiny on the basis of what has happened in this Administration already," said Carter G. Phillips, who worked in the office during the Reagan Administration and now is a Washington lawyer with the Chicago-based law firm of Sidley & Austin.

But Elliot Mincberg, legal director of the liberal group People for the American Way, disagrees. According to Mincberg, the Clinton Administration is less likely than were the past two Administrations to seek cases "where there is not a federal interest to advance an agenda, either liberal or conservative."

Moreover, he said, Days has indicated a willingness to take some positions that are unpopular with Democratic constituencies. For example, the Solicitor General has defended a statute banning honoraria for federal workers even after an appeals court struck it down. "Over all," Mincberg said, "the office has improved in its professionalism and in the positions it has taken since Drew Days took over."



People for the American Way's Elliot Mincberg Days's positions don't always please Democrats.

that were not obscene. The Court then returned the case to the lower courts.

Many lawyers agree that Days's argument is legally correct—albeit politically dynamite. The Senate unanimously adopted a resolution blasting his action, and Clinton rebuked Attorney General Janet Reno for the decision. Conservative critics said that Days's brief demonstrated a liberal tilt among new lawyers at the Justice Department.

The issue is not going away. The case is now at the U.S. Court of Appeals for the 3rd Circuit; in early March, a bipartisan

A scandal that reads just like a soap opera

By Carol J. Castaneda
USA TODAY

Mary Stansel's legal tussle with the NAACP over sex discrimination claims against Executive Director Benjamin Chavis isn't her first effort to redress a grievance in the courts.

Litigious is what Chavis and his allies call her as they try to discredit the 40-year-old lawyer.

The scandal resulting from Chavis' secret \$332,400 settlement with Stansel is filled with tawdry elements that are embarrassing for a civil rights group, where religion is an integral part of its heritage.

There are public allegations that Stansel and Chavis had a sexual relationship — charges that Chavis has denied.

Stansel has declined to discuss the case.

"It almost reads like *Peyton Place*," says board member Joseph Madison.

Stansel worked for Chavis during his bid for the NAACP executive director's job. After his selection, she went on the organization's payroll — but only for five weeks. She was fired.

The agreement, reached last November, called for the NAACP to pay Stansel \$82,400 within six months and \$250,000 if she couldn't find a job paying \$80,000 a year. Chavis has said he settled to avoid an expensive lawsuit since the NAACP had to pay nearly \$700,000 in damages to a man who was injured in an NAACP-owned building.

She received about \$64,000 in NAACP funds and another \$18,400 from unnamed NAACP supporters. But apparently the payments stopped, prompting Stansel to file suit against Chavis and the NAACP for breach of contract.

Chavis has countersued. The suit became public July 29.

Stansel was born in Bessemer, Ala., once worked as a Spanish instructor and was trained as a lawyer.

In 1979, Stansel went to work as a legislative assistant for Sen. Howell Heflin, D-Ala. She worked on energy and foreign relations issues before leaving in 1991 on worker's compensation.

Her disability reportedly involved a knee injury she said she suffered when a serving cart hit her during a 1983 Eastern Airlines flight. She sued Eastern, but a jury ruled for the airline in 1989.

She also filed suit against The National Bar Association, in 1989, charging defamation. She settled for \$5,000.

► Ruby Gerald, 81, from whom Stansel purchased a Washington home in 1991. Stansel sought \$150,000 in damages, saying Gerald failed to reveal heating and air conditioning problems. Stansel reportedly settled for less than \$10,000.

Important dates in group's history

1909: NAACP founded by black activists, including W.E.B. Du Bois, and white liberals after Springfield, Ill., white mob rampage results in lynching of two black men.



Smithsonian

DU BOIS

1915: In an NAACP case, Supreme Court holds that the "grandfather clause," an old Reconstruction device for disenfranchising blacks, is unconstitutional. But NAACP also unsuccessfully seeks to suppress *Birth of a Nation*, a landmark film that portrayed blacks in a vicious light and contributed to mob violence against blacks in the North.

1917: First NAACP civil rights march in New York, with 15,000 participating in a "silent protest" of violence against blacks during riots in East St. Louis.

1919: NAACP publishes *Thirty Years of Lynching in the United States 1889-1913*, documenting more than 3,200 lynchings of blacks.

1939: A federal court rules in an NAACP case that the Maryland law allowing lower minimum salaries for black teachers violated the 14th Amendment.

1941: NAACP presses President Roosevelt to ban discrimination by defense contractors.



AP

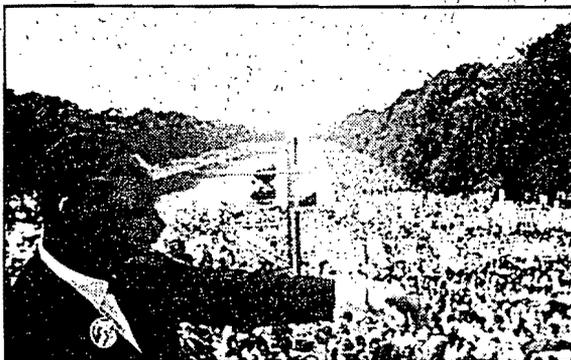
MARSHALL

1954: Thurgood Marshall, representing the NAACP, argues the *Brown vs. Board of Education* case before the Supreme Court, resulting in ruling that segregated schools are unconstitutional.

1955: Rosa Parks, an NAACP staffer in Montgomery, Ala., arrested for refusing to give up her seat to white man on city bus, sparking Montgomery bus boycotts.

1956: Because of desegregation efforts, NAACP is denounced in the South as subversive. Several states take steps to shut down its operations.

1957: NAACP helps nine black students integrate Little Rock (Ark.) High School.



UPI

MARCH: Martin Luther King Jr. in Washington in 1963

1963: NAACP participates in March on Washington for civil rights, drawing 200,000 blacks and whites. In Mississippi, state NAACP leader Medgar Evers is assassinated.

1964: Passage of NAACP-backed Civil Rights Act affirming equal job opportunity for blacks, desegregating public places and schools, and banning bias in federal programs.

1965: Passage of Voting Rights Act forbidding states to deny voting rights based on race.

1970s and '80s: NAACP pushes for affirmative action in hiring and college admissions, pursues lawsuits to desegregate schools, and helps win expansions of voting rights and fair housing laws.



FARRAKHAN

1986: NAACP successfully campaigns to get U.S. to impose economic sanctions against South Africa for apartheid.

1991: Black leaders split on appointment of conservative Clarence Thomas to the Supreme Court, after long delay NAACP finally decides to oppose him.

1994: NAACP leadership forges controversial alliances with gangsta rappers, gang members and Nation of Islam leader Louis Farrakhan, accused of racism and anti-Semitism.

Rights Leader Chavis: Life in the storm's eye

Thomas's Unwelcome Opinion

Justice Stokes Fires of Foes With Arguments in Voting Rights Case

By Kenneth J. Cooper and Joan Biskupic

Washington Post Staff Writers

As a Louisiana state senator, Cleo Fields (D) did not join other black elected officials who opposed the nomination of Clarence Thomas to the Supreme Court, figuring a black conservative from the segregated South was preferable to other choices then President George Bush might have made.

As a freshman member of the U.S. House of Representatives, Fields went out of his way to greet Thomas in January when the nine justices came to the Capitol to hear President Clinton's State of the Union Address, reaching across other lawmakers to pump Thomas's judicial hand.

Fields was still friendly even though Thomas had joined a 5 to 4 decision that revived a lawsuit against Fields's black-majority district, which a Louisiana court promptly erased from the political map. That decision, *Shaw v. Reno*, said whites could challenge black-majority districts as unconstitutional segregation.

But it was too much for Fields when last month Thomas wrote in a Georgia case that the Voting Rights Act should not be used to justify creating such districts in the first place. In a frontal attack on the whole judicial approach to voting rights, Thomas argued that the court's interpretations of voting rights have backfired for minorities and produced "a disastrous misadventure in judicial policymaking."

"I had hope in Clarence Thomas," said Fields, whose redrawn black-majority district faces yet another legal challenge. "After this opinion, there is no hope. Clarence Thomas has proven he is going to go beyond the call of duty to be disassociated with the civil rights community."

Fields is not alone. Rep. Corrine Brown (D-Fla.), who was also elected in 1990 from a new district drawn under the Voting Rights Act, had a similar reaction last week to Thomas's interpretation. "I know some black people supported him. I'm not one of them. They need to talk to him now. There's no hope for him," she said.

Other words of criticism came from Benjamin F. Chavis Jr., head of the NAACP, but praises flowed from conservatives, who believe that the courts have gone too far in trying to assure that individual voting rights produce political gains for blacks as a group.

Thomas's 59-page concurring opinion in *Holder v. Hall*, which Justice Antonin Scalia joined, came as the court, by a 5 to 4 decision, said a Georgia county's single-commissioner form of government did not violate black residents' voting rights. They had sought to enlarge the commission to five members, arguing that the single-commissioner system made it impossible to elect a black commissioner, given racial bloc voting in Bleckley County.

The narrow view of the Voting Rights Act taken by Thomas and Scalia drew more attention than the case's outcome. Much of the criticism has come from civil rights advocates, who have been watching five legal challenges in the South to black-majority districts.

Ted Shaw, who directs litigation for the NAACP Legal Defense and Educational Fund, said of Thomas and Scalia: "They're just hostile to the Voting Rights Act as it has been construed. We're not going to get them."

Almost from its enactment in 1965, the voting rights law has been interpreted to cover changes in political districts that would have the effect of diluting the power of African American voters. A 1982 congressional renewal of the law and a 1986 Supreme Court case clarified the preconditions for requiring states and localities to create black or Hispanic-majority districts. The election of record numbers of African American and Hispanic members of Congress resulted from the 1990 reapportionment.

"In my view," Thomas wrote late last month, "our current practice should not continue. Not for another term, not until the next case, not for another day. The disastrous implications of the policies we have adopted under the act are too grave."

Echoing the language from the *Shaw* decision of a year ago, Thomas said that the Supreme Court has mistakenly created a system that segregates voters into "racially designated" districts, and "in doing so, we have collaborated in what may aptly be termed the racial Balkanization of the nation."

Under his reading of the voting rights law, Thomas argued that it does not cover reapportionment plans or compel the creation of "racially safe boroughs" but instead is "directed at eliminating literacy tests and similar devices that had been used to prevent black voter registration in the segregated South."

"That's the silliest thing I ever heard of," said Rep. John Lewis (D-Ga.), who as a civil rights activist pushed for the voting rights law. "[Redistricting] was part of the process that kept blacks from participating. I don't know where he's been all these years."

What Thomas quarreled with most was the "assumption that the group asserting dilution is not merely a racial or ethnic group, but a group having distinct political interests as well."

He contended that judges have presumed that all blacks have the same political interests, all Hispanics have the same interests and all whites have the same interests. He said that only produces more division rather than unity among the races.

"The assumptions upon which our vote dilution decisions have been based should be repugnant to any nation that strives for the ideal of a color-blind Constitution," he said in keeping with his past writings seeking a "color-blind" society in hiring and education.

Thomas brushed aside as "insubstantial" the Supreme Court's holding in the 1986 case, *Thornburg v. Gingles*, that evidence of a racial minority being "politically cohesive" was needed to justify creation of a voting rights district.

Civil rights lawyers have placed a priority on protecting a dozen new districts for Congress and larger numbers of legislative, county commission, city council, school board and judicial districts created under the Voting Rights Act, primarily in the South. The latest Thomas decision appeared to settle one question that has figured in their legal strategizing.

"We opposed Clarence Thomas because we knew this was where he would be. It doesn't surprise me to see it in print. It brings back the same feelings with some force," Shaw of the NAACP-LDF said. "Unless he changes his judicial philosophy, we're going to have to look past him."

FREEDOM SUMMER

It's been three decades since that watershed season known as Freedom Summer changed forever the lives of blacks in the South. Volunteers worked together to open up opportunities and shut down oppression, forging the new South that stands today. But how much has the quality of life really improved for blacks in the 30 years gone by?



Barber and former civil rights activist Eddie Thomas pauses in his shop in Vicksburg, Miss., to recall a story from Freedom Summer. Extremely active in voter registration drives and sit-ins in 1964, Thomas is frustrated by the apathy of the young blacks who seem to have very little interest in the activism of his generation.

Associated Press Poll

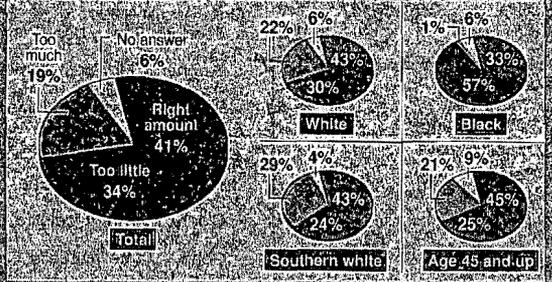
How some groups view racial equality

Q Overall, do you think blacks and other minorities have the same opportunities as whites in the U.S.?

No	Total	Yes
41%		59%
37%	White	60%
60%	Hispanics	39%
71%	Blacks	27%
30%	Republicans	68%
53%	Democrats	45%
37%	Men	60%
45%	Women	52%
38%	Under \$40,000	60%
47%	Over \$40,000	51%
23%	Southern white	76%
67%	Southern black	31%
53%	College grads	44%
34%	No college	65%

Racial progress over last 30 years

Q Do you think the nation has done too much, too little or about the right amount to help blacks?



Source: AP national telephone poll of 1,133 adults taken June 22-28 by ICR Survey Research Group of Media Research, Inc. Margin of sampling error is plus or minus 3.5 percentage points, overall 1.7 percentage for smaller subgroups. Some figures may not total 100 percent due to rounding. Don't know omitted.

BLACK IN DIXIE:

From freedom summer to the summer of '94

By **SONYA ROSS**
Associated Press Writer

VICKSBURG, Miss. — Very quietly, as tourists click off snapshots of Confederate monuments in the Vicksburg National Military Park, black people arrive in pairs or whole families and fill up area hotels.

They come from near — Alabama, Texas, Louisiana — and far — Michigan, California, Nevada, Illinois.

Hugs go around, as do exclamations of joy when family and friends collide.

It's Fourth of July weekend in Vicksburg, a city of 25,000 that lolls among sun-seared pines on the banks of the Mississippi River. It's also reunion time and, if you're black and you're from Vicksburg, you drop what you're doing and go home.

The South still means home to so many black Americans, despite its brutal history.

Their ancestors were slaves whose labor drove the antebellum South's agrarian economy who were freed to endure lynchings and rigid segregation and then jailed, bombed or killed by

See **FREEDOM**, page 12A

[Times-News, Erie, PA, 8/14/94]

PHOTOCOPY
PRESERVATION

FREEDOM: How far have we come since that watershed season?

Continued from page 1A

ing to break racism's grip on their futures.
So why do blacks like those in Vicksburg hold the region in such high esteem that they eagerly return?
"There's a scoring. The greater the oppression, the better the product," says Marshall Sanders, 43, an attorney who has practiced in Vicksburg for 16 years. "The South is where you will see the leadership that will bring our people out of the dirt."

Blacks in the South now earn college degrees, run businesses, own land; they hold elected office in far greater numbers than in any other region. Parents send their children to spend summers with grandparents here, because the racial danger the South once represented is nowhere near the perils black children ever where now face.

Many credit the region's facelift to the Freedom Summer Project of 1964, through which 1,000 college students registered voters, educated children and ran community centers to chisel away at formal segregation.

According to the Joint Center for Political and Economic Studies, Freedom Summer's greatest impact was felt in the political arena. The students put 80,000 black voters on the rolls and pushed black participation in elections from 6.7 percent to 80 percent. Within two years, Mississippi now has 750 black elected officials, the most of any state.

It set in motion a series of political and social changes that were slow to come but that nonetheless were profound. Frank Parker, a Washington law professor who tracked civil rights suits throughout the South, wrote of Freedom Summer: "One must say that Mississippi has generally caught up with the rest of the country, only to find that it shares the rest of America's lingering social and racial problems."

In Vicksburg, the impact of Freedom Summer these 30 years later is embodied in the contrast of the easy coexistence of blacks and whites and the still keen sense that racial attitudes never will vanish.

In the South, where there seems to be a lot of prejudice, I didn't learn to dislike or hate," says Doris Tatum Cabelle, 40, a Vicksburg native who returned home 20 years ago after living in Chicago and New Orleans. "There is still that inner peace. Life that's just a little bit easier, a little bit more comfortable. You get back in Mississippi, and the difference just slap you in the



Megan Smith, 5, colors while waiting for her mother, who is participating in a meeting of Bible study leaders at a Baptist Church in Vicksburg. Lulu Jones, director of the Warren County Department of Human Services, believes the church has been a driving force of good in her community.

Blacks face new political watershed 30 years since voting push

BY DAN SEWELL
Associated Press Writer

ATLANTA — His head was split open during the worst in a series of beatings. He was arrested 40 times. After shots were fired into the home where he slept, each night fell with a shroud of fear.
All because he demonstrated peacefully for the right of black Americans to vote.

Today, in dramatic testimony to the hard-earned victories of the Freedom Summer of 1964, John Lewis sits in Congress, a fourth-term representative from Georgia.

"It's hard to believe all that's changed," said Lewis, fresh from a tearful reunion in Mississippi of Freedom Summer volunteers. "There's a greater sense of hope, of optimism. We brought about a nonviolent revolution."

Yet 30 years later, many black leaders feel they are at a new watershed, forced to fight a two-front war in which they struggle to move blacks forward economically while defending their political gains against fresh attacks.

The precarious nature of their political progress is depicted in the personal experiences of a Lewis colleague who was a child during the 1960s civil rights turmoil.

Rep. Cynthia McKinney, also a black Democrat who represents Georgia, recounts a 1982 campaign in which she heard racial epithets, was warned by concerned supporters to leave one town before midnight and one found that all the pamphlets passed out by her volunteers had been collected and stacked on her car.

As a congresswoman, she has found herself accused repeatedly by Capitol employees suspicious of the combination of her skin color, youth and braided cornrows.

And instead of what was expected to be an easy reelection in November, her political future is clouded by a legal challenge that contends her district's boundaries are unconstitutional.

"The challenge of today is to not be lulled into a sense of complacent achievement, because the battles are still to be waged," said McKinney, the daughter of a civil rights activist who is a Georgia legislator.

In the 1990s, the battle lines were clear. The youths, black and white, who flooded Mississippi in 1964 encouraged and helped black

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for bottom
stories

Being black in the South means accepting to a love-hate existence. It means loving the sidewalk, nearly God-like free life, but hating the history of oppression that underlies, and too often undermines, this hard earned ease.

It means frustration when black people shrink from public fights for their place in history, and the community, but comfort that when someone needs a meal or a ride or a flat tire changed, someone else in the community always steps forward.

There is the woman who spent much of her life starting down racism in the civil rights movement, only to fear today's rebellions gun-toting black children more than she ever dreaded the Ku Klux Klan.

The man who became the city's first black mayor only to feel the anger of black voters who felt he abandoned their concerns for the interests of the city's wealthy whites.

The woman who stepped across invisible boundaries to become Vicksburg's first black female police officer, only to encourage her own sons to seek law enforcement careers elsewhere, knowing they could only go so far at home.

And the children growing up in this new South, struggling to find their place in a world of subtle and some times conflicting messages.

As so many of these Southerners say, they can be so many things, achieve so many things, but still to many people they are only one thing: they are black.

And so they remain here. The South is their home. It happened in 1928, but Lee Willie Miller remembers it as if it were yesterday.

She was 11, and her father had died. Within days a white man came to collect a \$300 debt. Her mother had no money, so he seized the family's 200-acre farm. He took two mules, a wagon and a couple of horses, too.

"I always felt like I had nothing to lose," Mrs. Miller says. "And I was ready to fight. I've stepped on a lot of white people's toes, happily."

Lee Willie Miller is 77 years old now, sitting with her left hand gently propped on the metal cane resting beside her in her painfully neat white frame house.

Her knees are sore and scuffed from recent surgery, but she is cheerfully defiant. Like a general, grandmotherly entertaining members of the garden club.

Her presence and her words don't match. There's still a lot of unspoken anger in Mrs. Miller, who joined the NAACP in 1950 as a wife and mother and promptly began registering black voters in the Mississippi back lands.

This is a woman who worked shoulder-to-shoulder with such seminal black figures as Medgar Evers, Fannie Lou Hamer, James Meredith. She quit her catering job whenever boss called her in to work as she fearfully watched the Rev. Martin Luther King die's funeral on television.

Mrs. Miller is a sage of sorts on politics, civil rights history, black voting habits. Politicians court her endorsement and seek her advice. Those who win say they wouldn't be in office without her.

In a recent election Mrs. Miller worked to help state Rep. Ken Harper in a runoff for a U.S. Senate seat. Harper won, but Mrs. Miller was disappointed. Black voter turnout was only 70 percent, not much more than it was before 1964.

Someone along the line, some of us got too comfortable and relaxed in going to vote," Mrs. Miller says. "I stay on my telephone, I sit up in my bed, and I call

With 1928 burned in her memory, Lee Willie Miller marched and organized during the civil rights movement, encouraging black folks to get an education and attack racist systems from within, like cancer.

Places she ventured were so dangerous she often didn't tell her husband for fear he would try to stop her.

Mrs. Miller doesn't see racism scraping against black people in the South as easily as it scraped her back in 1928. She sees a more insidious form that torments black self-destruction through unemployment, drug, crime or the breakdown of the family.

Some where along the line, we've made progress, but somewhere along the line, we've gone back," she says. "You've got some black folks who live well. But it's not enough. The white man has still got his foot on us here. White people are white people, and don't ever forget they're white. They're not going to ever want you to come up to their level."

Mrs. Miller's own deprived childhood — she never finished high school — made her determined to educate her five children, all of whom are college graduates. Naturally she pushed other black children to go to school.

There was a time when she would report truant children, scold them and send them back to class. But not anymore.

Today's children fill Mrs. Miller with more fear than any number of the shotgun-toting mobs, hooded KKK, Ku Klux Klan or lynchings she witnessed in the 1930s.

"You don't do that now, you know, because they will shoot in your houses," she says. "Crack's got me more fearful now than back then. There used to be a time when black folks didn't kill black folks, white folks killed black folks."

"Looks like the white folks now are sitting back to say, 'I don't have to kill those niggers, because they gonna kill one another.' And doesn't it look like we're doing it?"

Despite its majority black population, Vicksburg didn't elect its first black mayor, Robert Walker, until 1983. Black residents poured a lot of energy into Walker's campaign, they were proud when he took office — and are still feeling over his defeat last year.

Mary Ann Walker lost because some blacks felt she easily stayed home on Election Day, feeling he was too eager to please while consultants and didn't do enough for the people who helped elect him.

Now, though, black residents are unhappy with the current mayor, and there is an effort to get Walker to run again. He's not sure he will.

"Maybe I've had my time," she says. "You have to do your best, and I did my best while I was there."

Walker, 48, is a former state NAACP official who teaches political science at two black colleges. He is a product of the civil rights movement. All his summers have been Freedom Summers, who wants to put his energy into grooming young blacks for political careers.

People of my generation have, in many ways, had their best shot with history and destiny," Walker says. "And for the last 20 years of their holding onto positions, they have done more harm than they have done good. It's somebody else's turn now."

Despite the number of Mississippi's black elected officials, there is a sense in Vicksburg that blacks are slowly losing grip on public office. Gertrude Young is the only black member of the city council, even though Vicksburg is 55 percent to 59 percent black.

Where did we go wrong? Young says. "I don't care how high you climb, you are still black."

That's one reason that Charles and Dove Smith, 47, and their wife, Mary, are leaving Vicksburg as they quit temporary work.

That's not unusual. Many black folks were born here and moved away, then returned to raise children who they actively encourage to leave.

"I don't care about moving nowhere, but an't nothing here for them," Charles Smith, a 48-year-old welder, says for his five children.

The couple's two oldest sons will graduate soon from historically black Alcorn State University with degrees in criminal justice. Mrs. Smith, a 17-year veteran who works in hospitals in investigations, says she doesn't expect her sons to join her on Vicksburg's force.

"If they want to make more money, they have to move," she says. "It would be best."

Blacks don't make any money," Charles Smith says. "Whites have all the money."

Blacks don't take care of the quality of life in Vicksburg for leave. He owns 12 acres of land and his bequeathed parcel to his children, with the condition that they sell their shares only to another sibling.

There's no place like home," he says simply.

Vicksburg has no juvenile detention center, so children who commit crimes often are back on the streets quickly after a first offense and later crimes can land them in jail with adults.

So the Rev. James Warren decided to try to save them himself. He cleaned up an abandoned community center and turned it into a program for young first offenders, nearly 95 percent of whom are black males who have filled with gang activity.

Warren takes them in for up to 90 days, after an informal hearing and before they stand trial. If they pass Warren's program, they are recommended for probation, training on conventional school and stay out of court. So far, only one of 24 youths had to be returned to jail.

The male needs a male figure, I am Coach, Reverend, Doctor or Dad to all of them," Warren says. "Of course, I have to pray and understand that I can't save everybody."

Warren simply gives the children praise and encouragement and requires them to read three books. They draw inspiration from his 17th-century book, "All with photos of people ranging from President Clinton to local judges and politicians to let them see the futures they could have."

Two of Warren's charges, Atlanta, 16, and 17, and Quincy, 15, say they sense that racist attitudes hold young people down in Mississippi. But they aren't inclined to blame white people for it.

"You get treated differently," Watson says. "Some people are racist. Some ain't. You can't say they're racist just because of their skin color. It's how they see their mom and dad. If they feel like their mom and dad, so about black folk."

Blair, an Army Draft who has lived in most parts of this country, has concluded that the South offers a good life, despite its stereotype as an oppressive place.

Although he found a chance here to get into trouble with gangs, he also found the program that got him off the track to jail and back to his school and football.

"They've got more jobs here than in any D.C., Blair says. "They give you more education here than any where else. When I was in New York, they didn't care if didn't ever go to school. Here, the coach would come looking for me."

Still, there's a lot of stereotypes around here. I thought we had come a long way from the past. Black history grew up around real harsh stereotypes. It comes me, me, a lot."

Blair that dramatic transformation for a state in which merely registering to vote once meant risking lives hasn't been matched by economic milestones.

State Sen. Aaron Henry, a 1960s civil rights leader in Clarabelle, Miss., said that today's challenges are headed by black needs in economic development and education.

"We still have a lot of work left to do," Henry said. Robert Moses, a prominent Freedom Summer organizer, has devoted himself in recent years to promoting the nationwide Algebra Project, a curriculum he designed to stimulate poor minority children's interest in mathematics, key to improving their economic status.

Georgia state Rep. Byron Brooks coined a term to summarize the new agenda.

"We've basically won the battle for civil rights. Now we have to begin to work toward silver rights," said Brooks, the president of the 700-member Georgia Association of Black Elected Officials.

We've won the battle for the right to vote, we've won the battle against segregation, we've won the battle to go to the schools of our choice. We have not won the battle in terms of money, the economic challenge.

There has been a tremendous leap forward in the whole black enterprise to secure the vote, when you look at 30 years," said Richard Schiefel, a University of Florida political scientist who has written books on Southern politics and minority voting rights. "Where it's less positive is in the results of that vote. What has the black community gotten for its measure?"

Not much, by virtually any economic measure.

Nationally, the black median family income in 1994 was \$15,978, compared to \$23,551 for white families. In 1992, the white median family income had grown to \$38,949 while the black median lagged at \$21,161.

Business ownership and management remains largely concentrated in white hands, and some of the nation's worst infrastructure, crime and other social problems are predominantly black communities.

on the breakdown of the family

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Maybe I've had my time, he says. You have to do your best and if it didn't work while I was there, Walker, 48, is a former state NAACP official who teaches political science at two black colleges. He is a product of the civil rights movement.

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Still, there's a lot of stereotypes around here, I thought we had come a long way from the past. I ask why we don't have our black history in our books. Since I never grew up around real harsh stereotypes, it confuses me a lot.

said McKinney, then 9 years old. The reason I can even sit in the House of Representatives today is because of the sacrifices made during that season of discontent.

McKinney was elected in 1982, a landmark year for American blacks after redistricting addressed black complaints that the voting rights earned in the 1960s were being diluted.

She was among 13 new black representatives, five other Southern states elected blacks to Congress for the first time since Reconstruction.

Overall, there are at least 801 black elected officials in the United States, according to the Washington-based Joint Center for Political and Economic Studies, which made its first tally in 1970 that's compared to an estimated 300 black elected officials in 1964.

In Mississippi alone — where 500,000 blacks are registered to vote, compared to fewer than 10,000 in 1964 — 71 of the state's elected officials, or 15.2 percent, are black.

But that dramatic transformation, for a state in which merely registering to vote once meant risking lives hasn't been matched by economic milestones. State Sen. Aaron Henry, a 1990s civil rights leader in Clarksdale, Miss., said that today's challenges are headed by black needs in economic development and education.

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Minorities Get More Mortgages

By KEITH BRADSHER

Special to The New York Times

WASHINGTON, July 28 — A group of financial regulatory agencies announced today that the number of mortgages issued to black and Hispanic borrowers rose sharply last year, although they remained substantially more likely than whites to be denied home loans.

The group, the Federal Financial Institutions Examination Council, which is made up of five agencies, announced that the number of home loans issued to blacks rose 36.1 percent last year while the number issued to Hispanic borrowers climbed 23.6 percent. For whites, the increase was 17.1 percent, the council announced.

Loan applications were denied less often last year than in 1993 for all ethnic groups, the financial institutions council said. Blacks remained twice as likely as whites to be denied home loans, and Hispanic people remained one and a half times as likely. But the gap narrowed slightly in each case.

Even when income differences were taken into account, blacks and Hispanic people remained substantially more likely than whites to be denied loans, the council announced. Financial institutions attributed most of the denials to applicants' lack of adequate credit histories, the council said, but added, "The extent to which racial discrimination may account for these differences is not known."

Two Trends Seen

Deepak Bhargava, the legislative director of the Association of Community Organizations for Reform Now, a New Orleans-based group that advocates affordable housing, said that the slight improvement announced today appeared to reflect two trends. Regulators are putting a little more pressure on banks to avoid racial discrimination, he said. And low interest rates have helped make it possible for more people in low-income neighborhoods, including some blacks and Hispanic people, to buy homes.

"In a low interest rate climate, those who have historically been excluded would be more able to get mortgages," he said.

Loans jumped the most last year for families earning less than 80 percent of the median family income in their metropolitan area, the council announced.

The volume of mortgages soared last year as many people refinanced their homes by taking out new mortgages at low interest rates and using the money to pay off older mortgages that carried higher interest rates. The increases in volumes of loans are for financial institutions that reported figures in both 1992 and 1993.

A12

As Minority Journalists Meet, An Example of White Power

By WILLIAM GLABERSON

Special to The New York Times

ATLANTA, July 28 — More than 6,000 minority journalists are meeting here to advance what their leaders say is a goal of making newsrooms and reporting more inclusive of all Americans.

But the executives sent here to speak from many of the nation's most influential news organizations are almost all white.

In a convention marked by expressions of both hope and frustration, some of the minority journalists noted that contrast. And some of them said it showed both how far American journalism had come in efforts to reflect the country it reported on and how far it still had to go.

"We've all got religion," said Ray Suarez, host of the National Public Radio program "Talk of the Nation," who moderated one of the plenary sessions today. "We're all on board. And the news is still going to look the same next week."

Participants' Mixed Feelings

The sense of conflicting emotions has marked this gathering that is being closely watched by news organ-

Discussing the need for diversity in the newsroom.

izations of all sizes around the country.

Paul DeMain, president both of this convention, Unity '94, and of the Native American Journalists Association, summarized the optimism mixed with concern in two separate talks.

In his opening remarks, Mr. DeMain called this meeting "a grand entry into a new history" for the four associations of minority journalists that have come together for the first time to hold this session.

But a few minutes later, Mr. DeMain asked a group of hundreds of minority journalists from newspapers, magazines, television and radio stations around the country, "How long will we allow somebody else to shape the picture we see in the mirror each day?"

The four associations are the Native American Journalists Association, the Asian American Journalists Association, the National Association of Hispanic Journalists and the National Association of Black Journalists. The joint convention, planned for six years, is aimed at making a unified statement that all the groups want to push news organizations to present a more diverse portrait of their populations.

Their focus has been as much on the nature of the news reports as on the skin color of the people who prepare them.

Some of the news industry's leaders have told the journalists that their companies see a commitment to diversity in newsroom staffs as a business necessity. Minority journalists, some of them said, bring different perspectives to their work that help attract new readers and viewers who have often felt overlooked by news organizations in the past.

"We have to bring the news to people from a newsroom that looks like and has the same background as the community," said Richard T. Schiosberg 3d, the publisher of The Los Angeles Times.

Arthur Sulzberger Jr., the publisher of The New York Times, told the journalists that programs intended to increase newsroom diversity were not simply aimed at increasing the numbers of minority professionals in newsrooms. The programs, he said, involve an effort to change the culture of the way newsrooms tell the story of the world around them.

"It's about changing the way we view each other and the way we view the news," Mr. Sulzberger said.

But many of the minority journalists and speakers here say mainstream news organizations still present a distorted, stereotypical and, sometimes, demeaning view of minorities.

"No one's writing in any newspaper that 99 percent of black youths are not involved in crime," Charles J. Ogeltree Jr., a Harvard law professor who was moderator of a discussion about political correctness on Wednesday night.

American Indian journalists complained about what some of them say is the racism of news organizations, like the offensive use of Indian names of sports teams, like Redskins and Braves.

Hispanic and Asian American journalists have said they sometimes think their populations are forgotten by a news media that views the world in only black and white. Blacks, meanwhile, have complained of too much of the wrong kind of attention.

Chief Willie Williams of the Los Angeles police cited the cover of Time magazine, on which O. J. Simpson's skin was artificially darkened, and said it showed a tendency by news organizations to portray members of minorities as menacing. The magazine later apologized for the June 27 cover treatment of Mr. Simpson's police mug shot.

Mr. Williams also said news organizations often paid more attention to crimes when the criminal was black and victims were white. "Bells go off if the victims are white, women or foreigners," Mr. Williams said during a panel discussion.

13

Black Agents' Suit Could Grow

August 8, 1994 FEDERAL TIMES

By Christy Harris
Federal Times Staff Writer

It is now up to a judge to decide whether there is a pattern of discrimination against black special agents at the Bureau of Alcohol, Tobacco and Firearms.

Lawyers representing 15 black ATF agents in a lawsuit against the Treasury Department asked a court to certify a class of all current or former black criminal investigators.

The class also would include blacks who have taken and failed the Treasury Enforcement Agent's Examination for an ATF investigator job since Dec. 26, 1983, according to court documents filed in District of Columbia District Court.

The lawsuit was initially filed in November 1990, but a group of black agents began trying to resolve issues informally a decade ago. In an effort to prove bias against black agents is prevalent, and not limited to a few isolated cases, the plaintiffs' attorney, David Shafler, included in the request for class status statements from 49 black agents — about a quarter of the proposed class.

ATF employs about 200 black agents. The class would increase to about 250 by including former agents.

Together they allege ATF discriminated in hiring, promotions, pay, performance evaluations, discipline, job assignments, awards, training and transfers.

Black agents are hurt by subjective decision-making criteria, according to their claims. Where objective criteria do exist, officials often do not follow them, documents say.

In addition, black agents have been "forced to endure a racially hostile environment," according to the documents.

For example, a black agent was told by an instructor he had the fingerprints of a criminal. Two other agents told of a finding on an office copy machine a picture of Jesse Jackson with the words "jungle bunny in _____" written on it.

A former agent was subjected to daily quizzes on Malcolm X by his resident agent in charge after release of a movie by that name, documents say.

The plaintiffs presented many anecdotal examples and

some statistics to back up their allegations, but it was "extremely difficult and frustrating" to gather information because ATF has not cooperated, according to the motion. ATF told plaintiffs certain data does not exist, has been destroyed, was lost, or would be too time-consuming or expensive to produce.

"They are withholding information because it's bad for them," Shafler told *Federal Times*.

Among the allegations:

• Typically, white agents begin their careers at ATF as GS-7s. But many black agents begin as GS-6s, and they are up to 10 times more likely to be hired under "Schedule A," which does not provide civil service job protections.

As a result, black agents perform the same work as white agents, but for lower pay and with no job guarantees, Shafler said.

ATF was given Schedule A hiring authority to appoint people with special talents or characteristics not measured by the competitive process, such as the ability to infiltrate organized crime groups.

Schedule A hires must be converted to career positions before they can advance beyond GS-12. Several black agents hired under Schedule A were fired without appeal rights, and others did not challenge adverse personnel actions because they feared losing their jobs.

• Virtually no progress has been made in the last 10 years on promises to appoint more blacks to special agent in charge, assistant special agent in charge and first-line supervisory positions. As of July 8, ATF had only one black special agent in charge, one assistant special agent in charge and 17 black first-line supervisors.

• Black agents perform a disproportionate amount of undercover work, preventing them from developing their own cases that could gain them recognition and help advance their careers. The work sometimes is more dangerous than the work white agents perform.

• Many black agents were subjected to improper questions during interviews. For example, one man was asked whether he would join an association of black agents if hired.

• Black agents are paid less on average than whites. In 1985, blacks averaged \$1,243 less than whites. In 1992, the pay discrepancy for blacks at the GS-14 level was \$2,941.

• Blacks are at a disadvantage when it comes to earning points for management positions. They receive fewer awards, and are sometimes left out of group awards. The system of distributing awards is used to "advance the careers of non-African American agents at the expense of African American agents."

In some cases, blacks received harsher discipline than whites for the same infraction.

Whites have more opportunities to serve as acting relief supervisors and work at headquarters.

If supervisors have pre-selected candidates for positions, it may affect the way they write the narrative portion of blacks' evaluations, hurting their chances of promotion.

• Blacks were assigned for training to intolerant or inexperienced co-workers, or to those who were close to retirement and did not aggressively teach them. Inadequate training hurt their ability to compete.

• Some blacks have been retaliated against after trying to address discrimination claims.

ATF has acknowledged that some employees don't feel comfortable addressing complaints through the usual channels, and has encouraged people to come forward through peer diversity groups or an ombudsman if they prefer.

ATF officials said they could not talk about the black agents' lawsuit because it is pending.

But agency spokesman Jack Killorin said ATF Director John Magero has called discrimination "evil" in a broadcast to all employees. The director said it is everyone's responsibility to "kill" discrimination. Killorin said "We would obviously like to resolve all of the issues satisfactorily for everyone and move on," Killorin said.

Harassment History

Forty-nine current and former black agents of the Bureau of Alcohol, Tobacco and Firearms have filed statements in court, alleging the agency discriminated against them.

The statements were filed in July to win class action status for a 4-year-old lawsuit against the Treasury Department. Here are some excerpts.

• Deborah Burgess, a former agent in the Houston office, said a special agent in charge told her during a discussion about swimming and physical training at the Federal Law Enforcement Training Center in Glynn, Ga., that "the real reason blacks do not swim is that any time they have been in the water they have had chains on them."

• John Chambers, a GS-13 in the Falls Church, Va., office, said on his first night at training school three white agents barged into his room shouting racial epithets and threatening him.

"They picked up a refrigerator and threw it into the housing area that I was sleeping in. When the agents realized that I was not the person they were seeking, they finally departed," he said.

• Gay Thomas, a GS-13 in Troy, Mich., said while attending criminal investigator school, role players frequently called him and other black agents "niggers" and once referred to "nigger town."

• Former agent Andre Square said during a meeting two or three white agents suggested KKK symbols should be used on ATF lapel pins.

Christy Harris

Affirmative Action

tas are anathema to them, and that they merely have nonspecific goals in mind. It is also true that these people are lying. Those goals inevitably become numerical—how else can you measure success or failure? And a numerical goal means a quota. Even when the existence of quotas is denied, government regulations stipulate that such-and-such a proportion of such-and-such a group must be hired (or admitted to a university), the proportion mirroring the group's presence in the relevant population source.

Incredibly, though inevitably, our governments at all levels, as well as our major private institutions, have to confront the problem of defining appropriate membership in each quota group. Women are still identifiable in our society, but who, exactly, qualifies as a black? As a Hispanic? As an Asian? The response of the affirmative action establishment has been to institute something akin to the Nuremberg laws in our American democracy.

Absurd Ingenuity

If you are one-eighth black, you are black. If your parents' native tongue is Spanish, then you are Hispanic—even if you are visibly black or, for the most part, English-speaking. If you look Asian to someone in charge of the counting, that's what you are. Since the rate of intermarriage between native-born Asians and those of European descent is close to 50%, and for Hispanics is about 30%, this whole business is getting very, very complicated. But affirmative action rolls on, showing a remarkable, if frequently absurd, ingenuity in racial and ethnic identification.

And the upshot? The upshot is the Balkanization of America. Racial tensions and ethnic tensions in American life have increased, instead of decreasing. Under the flags of "multiculturalism" and "diversity" we are moving deliberately and desperately away from being a color-blind or ethnic-blind society to becoming a society that willfully generates racial and ethnic tensions. There are jobs at stake, after all, and political careers to be made, and everyone now wants a piece of that affirmative-action pie.

It took us a century to recover from the curse of slavery. How long will it take us to recover from the tragic error of affirmative action?

Mr. Kristol, an American Enterprise Institute fellow, co-edits The Public Interest and publishes The National Interest.

2092

The Poorest Place In America

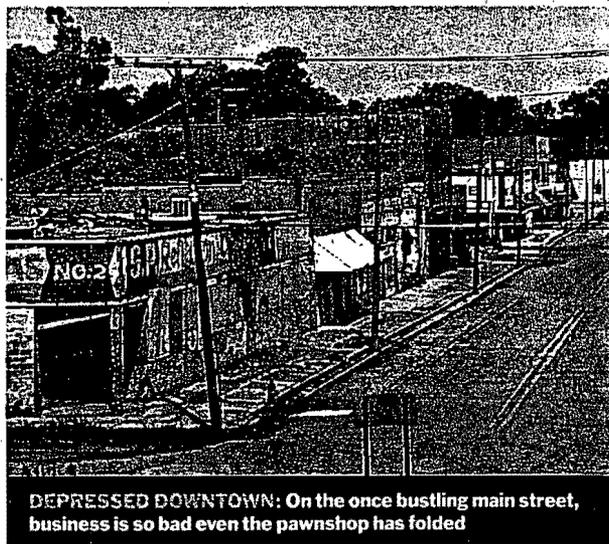
By **JACKE WHITE**
LAKE PROVIDENCE

THE TOWN HAS NO PUBLIC PARKS OR swimming pools, no movie theaters, no shopping malls, not even a McDonald's or a Wal-Mart. In fact, business in Lake Providence, Louisiana, is so bad that even the pawnshop has shut down. "The only recreation we have," says a resident, "is poor people's fun: drinking, drugs, fighting and sex." Restless teenagers mill around narrow streets lined with burned-out houses and dilapidated trailer parks. "We've got all the problems they have in New York and Chicago, but nothing to fight them with," says Mayor James W. Brown Jr. If there is a poorer place in America, the Census Bureau cannot find it.

No community in the country needs help more—and Lake Providence has turned to God and Washington for assistance. One Sunday evening not long ago, 400 of the town's 5,500 people gathered for a gospel concert. "Weeping may endure for the night! But if you hold on, joy—joy!—is coming in the morning!" shouted one singer, paraphrasing the 30th Psalm. The crowd broke down in tears and fervent amens. This summer the town, joined by two almost equally destitute communities in neighboring Mississippi and Arkansas, submitted its application to have the area declared a federal "empowerment zone." If they succeed, tax breaks and grants worth \$100 million will shower down on this neglected corner of the rural South. "We ought to qualify if anyone does, since there's no place that's worse off than we are here," says James Schneider, president of a local bank.

Lake Providence is an extreme but not atypical example of the ambivalent legacy of the Freedom Summer of 30 years ago, when hundreds of volunteers, both black and white, went south to promote the

Lake Providence's poverty is extreme and, despite civil rights progress, too familiar in the South



DEPRESSED DOWNTOWN: On the once bustling main street, business is so bad even the pawnshop has folded

cause of racial justice. That effort helped trigger the passage of civil rights laws that overthrew long-standing patterns of racial oppression in little towns like Lake Providence all across the South. Yet today for every sign of progress there is a sign of stagnation, or even regression. Blacks can elect their own to political office, but economic power remains largely in the hands of the white minority. Restaurants serve everyone, but many blacks cannot afford them. Schools are officially desegregated, but few classes are racially mixed. Thirty years ago, Lake Providence blacks could hope their lot would improve. Today, despite the passage of laws and the passage of time, they seem even worse off than they were.

The 1990 census found that the median annual household income in Block Numbering Area 9903, which covers the southern two-thirds of Lake Providence and three-quarters of its population, was only \$6,536—less than half the official poverty level of \$14,764 for a family of four and the

lowest in the U.S. Two years later, a Children's Defense Fund study found that in East Carroll Parish, where Lake Providence is located, 70.1% of children younger than 18, or 2,409, were living in poverty, the highest rate in the nation—and this amid staggeringly high rates of infant mortality, teenage pregnancy and drug use.

Meanwhile, jobs are scarce, low paying and seasonal. For most of the year, hundreds of families subsist on welfare: a single mother with one child gets \$123 a month, a family of five, \$370. For many the only available work is backbreaking minimum-wage jobs in the nearby cotton fields. Some older men, like John Henry Jackson, don't seem to do much but stand around drinking and swapping stories about the old days, when they worked on the farm and "followed some funky-ass mules all day long, smelled just like 'em and didn't get

no money."

Inevitably, almost everyone who can escape from Lake Providence does so. "I'd rather shoot myself than stay here. It would be a wasted life," says Karva Henderson, who graduated from Lake Providence's high school in June. She plans to go to college and wants never to return.

The urge to flee is more urgent because staying behind often leads to tragedy. Such was the fate of Calvin Jones, who until last spring was one of Lake Providence's most promising young men. At 18, he was not only an honor student and a track and football star, but also a serious churchgoer who taught Sunday school and composed rap songs urging younger children to stay out of trouble. For Martin Luther King Day last year, his classmates and teachers chose him for keynote speaker. "I just talked about accomplishing your goals and not falling prey to society," Jones remembers. "I talked about the importance of having God in your life and the importance of get-



TRAGIC TEAMWORK: Soon after Calvin Jones, left, gave his inspiring King Day speech, he got together with Charles Reed, right, a drug user, and burned down the high school. Why did they do it? "There was no reason," said Calvin, now in prison for arson. "I'm just sorry I didn't do more to stop it."



ting your education. I told them to strive 110% for the goals that they want to accomplish, and don't become another victim."

Less than 48 hours later, Jones became another sad twist in the sorry history of Lake Providence. On the evening after his speech, Jones got together with Charles Reed, 19, a young man who was everything that Jones was not: a heavy boozier and drug user filled with sullen rage. Reed had never liked his do-gooder schoolmate Jones. "I wanted to hurt that dude the first time I seen him," Reed recalls. "It's just something about people I have when I first see them. I just don't like them." Yet on that night enmity dissolved in a haze of malt liquor, and somebody got an idea. Along with another young man, Jones and Reed wound up at the high school, and the school ended up in flames.

Calvin Jones stood among the crowd of onlookers as the blaze demolished the school. "When I saw the school burning, tears just came rolling down my face," he says. "My father went to that school, and three of my brothers had graduated from there, and I was getting ready to graduate."

Three months later, Jones, Reed and another teenager were arrested for arson. All three were tried and convicted; Jones and Reed were sentenced to prison; the other youth was released because he is a juvenile. Why did they do it? "There was no reason," says Calvin. "I'm just sorry I didn't do more to stop it." Perhaps it was just another attempt to change the bitter reality of Lake Providence.

THE QUESTION FOR LAKE PROVIDENCE is how much \$100 million in tax breaks, job-training subsidies and other federal grants could change the desperate life of its people. The complex economic and social factors that have sunk the town in misery have been in place since the days of slavery. After the Civil War, freed slaves stayed on as sharecroppers and independent farmers, but after World War II the

widespread use of farm machinery destroyed thousands of agricultural jobs. At the same time, plantation owners resisted industrial development that could have brought new jobs and higher wages.

As a result, East Carroll Parish lost nearly half its population after 1940, shrinking from more than 19,000 to 9,800 and depriving Lake Providence of potential black leaders—people like William Jefferson, who left to become a Harvard Law School graduate and a Congressman from New Orleans, and Charles Jones, who is now a member of the state senate.

Meanwhile, the absence of jobs and talent has only served to reinforce the age-old Southern pattern of white authority and black subservience. "We've still got a lot of people working in white folks' kitchens or driving tractors," says Mayor Brown. "They're afraid to speak up for themselves because they're afraid of losing their jobs. They still have to say, 'Yassir, whatever you say.'"

Though black voters outnumber whites 2 to 1 and constitute majorities in most local government districts as the result of a long-running voting-rights case, their political power is limited. They control the poorly funded town government, but whites outnumber them 6 to 3 on the parish Police Jury (comparable to a county board of supervisors), which controls the bulk of local government spending. Blacks have not capitalized on their political opportunities, says the Rev. C.H. Murray, a Baptist minister, because "there's still a lot of slave mentality here, people thinking they should wait on the Lord to solve our problems." According to local leaders, easily intimidated black voters sometimes sell their votes.

Many whites believe their hold on power is the bulwark that keeps Lake Providence from descending into barbarity. "We don't have any colored leadership," says Captan Jack Wyly, a lawyer and prominent power broker who says he understands the blacks because long ago his ancestors

owned theirs. "When I came home from the Army in 1945, 20% to 25% of our land was owned by blacks. But the welfare system has just undermined the incentive to work. When Daddy died, they'd sell their property, buy a Buick and go out West to Las Vegas or somewhere. They lost their work ethic; they lost their discipline with all this gimme stuff. Who would have thought that Negro girls would get pregnant to get on food stamps? Now they do it all the time." Wyly's biggest fear is that whites will be infected by what he considers black amorality. "Goddam, if we have two races exploding, that's the end of America!"

And if Washington makes Lake Providence part of an empowerment zone, what would it do for the town? Drawn from ideas submitted by average citizens, the plan is an ambitious mixture of the grandiose and the mundane. It envisages using federal tax breaks to attract a factory that could employ hundreds of unskilled workers. It proposes making Lake Providence the economic hub of the entire region by creating a "one-stop capital shop," a lending office where small businesses from across the country could apply for federal loans. It also foresees using the area's proximity to the Mississippi and many beautiful lakes as the basis for tourism.

These ideas strike local skeptics as overly ambitious and doomed to fail. "Just wait until the mosquitoes start bitin', and see how many tourists you get," scoffs Wyly. Emmanuel Osagie, the Southern University economist who drew up the proposal, believes that such objections are beside the point. "I don't think that in an area like this you can raise people's expectations too high," he says. "We know that the empowerment zone won't solve all our problems, but it can be a start. The problem here is to get people to believe that things can really get better. People here have been looking down at the ground for so long that all they can see is their feet." ■

INEQUALITY

HOW THE GAP BETWEEN RICH AND POOR HURTS THE ECONOMY

When Armando G. de los Santos graduated from Fort Collins (Colo.) High School in 1985, he landed a minimum-wage job bagging groceries in a local market. He has since moved to another store, where he makes \$9.50 an hour in the meat section. But years of searching for something better have taught him a harsh reality: The well-paying blue-collar jobs that gave U.S. workers rising living standards for most of this century are vanishing. Today, you can all but forget about joining the middle class unless you go to college.

That's an economic hurdle de los Santos can't clear. One of eight children,

he couldn't turn for assistance to his parents, a custodian and a homemaker. In 1992, he won a \$1,500 scholarship to Colorado State University, attending class days and working nights. But when his grant and savings ran out after a year, he couldn't afford the \$4,000 annual tuition. So he went back to supermarket work full-time and, at 26, began moonlighting as a bartender to save for more schooling. "I want a better job," he says, "but I need a BA."

De los Santos is wrestling with a challenge that confronts millions of Americans—and holds dire consequences for the entire economy. Since the late 1970s, an explosion of income inequality has

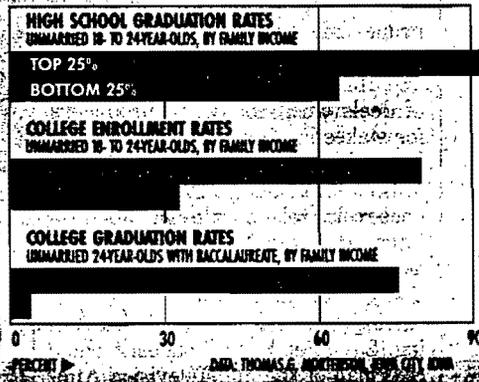
occurred along educational lines. Families in the mostly college-educated top quarter—those with annual incomes today of more than \$64,000—have prospered thanks to rising demand for highly skilled workers and tax cuts for the rich (charts). Meanwhile, import competition and the decline of unions have left families in the bottom quarter—whose breadwinners often dropped out or stopped after high school and earn less than \$22,000—stranded in low-wage limbo. This has led to the widest rich-poor gap since the Census Bureau began keeping track in 1947: Top-fifth families now rake in 44.6% of U.S. income, vs. 4.4% for the bottom fifth. As recently as

A GROWING GAP BETWEEN RI

INCOME LEVEL	AVERAGE FAMILY INCOME AS SHARE OF NATIONAL INCOME		
	1980	1992	
TOP 25%	46.2%	51.3%	\$7
SECOND 25%	26.3%	26.3%	4
THIRD 25%	17.0%	17.0%	2
BOTTOM 25%	9.5%	4.4%	1

DATA: CENSUS BUREAU

...IS DAMAGING EDUCATIONAL LEVELS...



PERCENT DATA: THOMAS E. HORTON/GENERAL BOND CITY NEWS

1980, the top got 41.6%, the bottom 5.1%.

Even as a good education has become the litmus test in the job market, moreover, the widening wage chasm has made it harder for lower-income people to get to college. Kids from the top quarter have had no problem: 76% earn bachelor's degrees today, vs. 31% in 1980. But less than 4% of those in bottom-quarter families now finish college, vs. 6% then. Their troubles start early: Lower-income children, a growing share of the total, do worse in school and drop out more than three times as often as top-half kids.

As distressing as those trends are, a small but expanding cadre of economists argues that they may herald something much worse: lower U.S. growth fueled by inequality. It's already clear that income disparities hurt skills. The share of new workers with college degrees, which soared in the 1970s as baby boomers and women entered the workforce, has leveled off. The national high school dropout rate remains in the double digits. And test scores are flat for junior high and high school students: America ranks No. 13 in math and science skills among 15 industrialized nations. All these averages are pulled down by lower-income students.

This lack of progress comes at a critical moment. In nearly every industry, the spread of new technologies is creat-

ing a need for employees who know how to do more. As companies reorganize, moreover, they're pushing decision-making down the ladder. If U.S. workers can't handle these changes, companies will be less productive than they should be. And that's a prescription for a stunted economy. "A great skill shortage is going to occur that will eat away at our competitiveness," worries John L. Clendenin, chief executive of BellSouth Corp., which interviews up to 50 applicants for each technician job. "And economics has a lot to do with it."

"BIG SHOCKER." Most of the new theory linking inequality and the overall economy is based on mathematical models of growth created by economist Paul Romer at the University of California at Berkeley. Recently, a half-dozen economic theorists have used his methods to show how income gaps hurt gross domestic product by lowering efficiency. At the same time, urban economists have provided some empirical verification by showing that growth in jobs and income is slower in cities with wide wage inequities and faster where incomes are more on a par. "Maybe even the rich can be worse off from inequality," says Romer. "We now must think seriously about something we didn't believe could happen."

Such ideas turn traditional economic thought on its head. The conventional

wisdom holds that the overall economy is largely unaffected by how income is shared. It's total income that matters, the thinking normally goes, since consumers fuel demand—be it for yachts or bread. It's O.K., too, if the rich just save their surplus, since that will finance new investment. Until recently, in fact, most economists thought inequality was a result, not a cause, of slow growth. That view lost its luster in the 1980s, however, when "the big shocker was that the country got richer and those on the bottom didn't," says Northwestern University sociologist Christopher Jencks.

If this trend persists, it could tarnish America's image as a land of opportunity. True, there's still more economic mobility in the U.S. than in most countries. But "a society divided between the haves and the have-nots or between the well-educated and the poorly educated... cannot be prosperous or stable," warned Labor Secretary Robert B. Reich upon the release of a May report documenting rising inequality. Adds Republican strategist Kevin Phillips: "This stratifying starts to make us into a different country. It goes to the American notion of fairness."

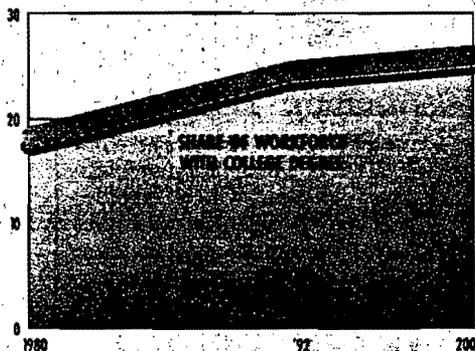
Just ask Michelle M. Mouzon, whose lack of education has left her nearly destitute since she lost her \$12-an-hour factory job last year. A high school gradu-

...RICH AND POOR FAMILIES...

AVERAGE FAMILY INCOME
IN THOUSANDS OF 1992 DOLLARS

	1980	1992	PERCENT CHANGE
2			
3%	\$78,844	\$91,368	UP 15.9%
3	44,041	46,477	UP 5.5%
0	28,249	28,434	UP 0.7%
5	12,359	11,530	DOWN 6.8%

...SLOWING THE GROWTH OF THE SKILLED WORKFORCE



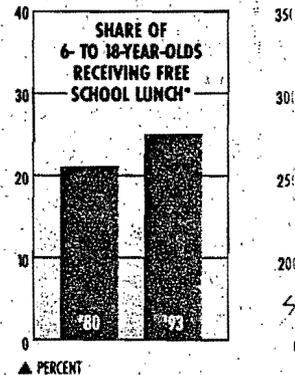
DATA: BUREAU OF LABOR STATISTICS; JOHN BISHOP, CORNELL UNIVERSITY, 1992



INEQUALITY IN THE CLASSROOM

Studies show that poor students face many more disadvantages than more affluent kids; both at home and in school. That's part of the reason why they score so much lower on standardized tests.

WITH MORE LOW-INCOME STUDENTS...



*CHILDREN ELIGIBLE IN FAMILY OF FOUR EARNING \$18,665 A YEAR OR LESS IN 1993
DATA: AGRICULTURE DEPT., CENSUS BUREAU

RICH KIDS

Students at the Valley School in Flint, Mich., all go on to college...

ated who lives in Waukesha, Wis., Mouzon enrolled in a technical college to learn accounting. But she says tensions over her job loss contributed to a separation from her husband in January. Unable to afford their apartment by herself, Mouzon lived in a hotel with friends while Amber, her 11-year-old, stayed with grandparents—and paid a price. “Amber has been in three different schools this year,” says Mouzon. “It has set her back.” Mouzon finally found an inexpensive one-bedroom apartment and landed a \$6.50-an-hour, three-month accounting internship through the college. Now, she works days and goes to school nights to finish her degree.

CORRECTION TIME? There's a theory that inequality may not stay high for long. University of Chicago economist Steven J. Davis says that when wage gaps get too skewed, college enrollments tend to surge, creating a surplus of graduates whose pay then goes up more slowly. For now, though, the baby bust—and inequality itself—are limiting the numbers of BAs, so pay for the educated keeps rising. The result, predicts Anthony P. Carnevale, chief economist at the American Society for Training & Development: “Inequality will get worse as

the economy accelerates, because companies need more skills.”

Nor will Washington provide solutions. The Clinton Administration has responded with measures to bolster training and education—promoting apprenticeships and granting more generous college loans. But budget constraints have hampered these efforts. And in any case, they are minuscule compared with strategies Europe uses to fight inequality, such as high minimum wages and mandated corporate-training expenditures (page 82). Unable to win over Congress, Clinton has dropped such ideas, which he embraced in his campaign.

Actually, the rich-poor debate has narrowed considerably since flaring during the Reagan years. “The facts about higher inequality are no longer in dispute,” says Davis. One secondary argument centers on which of several factors are paramount: rising imports, the decline of organized labor, an influx of unskilled immigrants, demand for higher-skilled

workers prompted by new technology, or Reagan-era tax cuts, which many studies show to be at least part of the problem. There is also a theory, offered by Northwestern's Jencks and others, that the poor may have held their own to some degree. The evidence is their consumer spending, which some studies find hasn't fallen. Other research, however, such as that by Harvard University economists David M. Cutler and Lawrence F. Katz, has found the opposite. And in any case, note Jencks and others, statistics on consumption aren't as reliable as the income figures the Census Bureau reports.

DOMINO EFFECT. Those show better-off Americans rapidly outpacing the field. Pretax hourly pay climbed 2% after inflation for the top quarter of earners between 1980 and 1992, says Rand Corp. economist Lynn A. Karoly, while the real hourly pay of the bottom quarter skidded 4%. The gap is starker by education level. Pay of dropouts had plunged 20% by 1991, the latest comparable year available, while that of college grads bumped up 4%, according to an analysis of Census figures by the Economic Policy Institute, a Washington research group. The story is similar for family income, which includes two-salary couples plus earnings such as interest and rent. Top-quarter families have beaten inflation by 16% since 1980 and earned \$91,000 on average in 1992, ac-

HOW INCOME GAPS AFFECT JOB GROWTH

A study of the 85 largest metropolitan areas found a strong link between the rate of job growth and the gap between incomes of city residents vs. suburbanites. Here are the cities with the largest city/suburb income gaps and those with the smallest.

JOB GROWTH IS SLOWEST WHERE THE GAP IS WIDEST...

CITY AND SUBURBS	CITY DWELLERS' INCOME (1990)*	JOB GROWTH** 1980-90
NEWARK	47%	8%
DETROIT	48	8
CLEVELAND	50	-0.6
BUFFALO	55	5
ST. LOUIS	56	12

*MEDIAN ANNUAL HOUSEHOLD INCOME AS A PERCENT OF SUBURBANITES' INCOME

...AND STRONG WHERE THE GAP IS NARROWEST

CITY AND SUBURBS	CITY DWELLERS' INCOME (1990)*	JOB GROWTH** 1980-90
LAS VEGAS	99%	39%
W. PALM BEACH	99	38
CHARLOTTE	99	22
NORFOLK	97	25
SAN DIEGO	94	34

** TOTAL FOR CITY AND ITS SUBURBS
DATA: WAYNE STATE UNIVERSITY

...DOING POORLY ON TESTS...

...OVERALL PERFORMANCE LEVELS STALL

AVERAGE 12TH-GRADE TEST SCORES (1992)**



AVERAGE TEST SCORES FOR ALL 12TH GRADERS**



OF A POSSIBLE 500 POINTS DATA: NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS

According to Census. But the bottom quarter slipped by 7%, to \$11,500.

It has taken economists 60 years to show that such gaps can hinder growth. During the Depression, British economist John Maynard Keynes worried that inequality sapped aggregate demand. But in the 1950s, American Simon Kuznets redirected the debate by arguing that inequality waxed as countries develop and waned after they industrialized. Since this squared with the falling rich-poor gap in Western countries after World War II, experts subsequently focused on how growth affected income distribution, not vice versa.

The new theory finds that the effect can go both ways. It employs concepts pioneered by Berkeley's Romer to show that a company's productivity improvements depend not just on capital investments and the skill of workers but also on the efficiency gains of its competitors, whose better methods spread through an industry. The new theory uses similar equations to show that individual skills depend on more than innate ability: They're also affected by fami-

FRUSTRATED
"I need a BA," says grocery worker Armando de los Santos



ly and neighborhood income. Such ideas are usually presented in highly theoretical papers, which argue that because large income gaps undercut worker skills, employers will face shortages of qualified employees that undermine corporate efficiency.

Some samplings of this work: Brown University economist Oded Galor concludes that productivity suffers when poor families can't borrow enough to educate their kids. In another study, University of Wisconsin economist Steven N. Durlauf concludes that widening inequality hurts education in poor communities deprived of school tax dollars and the role models of professional parents. Beyond that, theorizes Columbia University economist Roberto Perotti, as the rich race ahead, they balk at the high taxes needed to educate poor children better.

That's short-sighted, because inequality may brake growth so much that even the rich lose out over 5 to 10 years, calculates Massachusetts

POOR KIDS

...While low-income students upstairs are lucky to finish high school

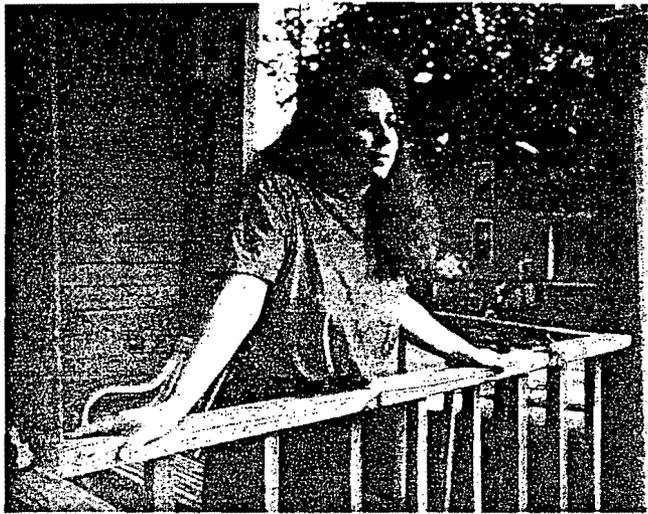
Institute of Technology economist Roland Benabou in another paper. "If you move to a rich suburb, it will improve your children's education," he says. "But if their co-workers still in the city are left sufficiently deficient in their education, it will more than offset the advantages your children gained," because productivity and growth suffer.

DOWNTOWN SLOWDOWN. There's a mounting, though still largely circumstantial, body of evidence to back up the theory. So far, most of it comes from urban economists, who look at regional rather than macroeconomic trends. Still, they offer some compelling evidence. For instance, central cities' per capita incomes were nearly equal to those of their suburbs in 1973, according to a study of the 85 largest metropolitan areas by Larry C. Ledebur, an urban studies professor at Wayne State University. But by 1989, city dwellers earned 16% less.

And where inequality rose the most, everyone suffered. Employment climbed an average 41% in the 1980s in 13 metropolitan areas where the suburbs' average household income was only 12% more than the city's, according to Ledebur. But job growth was only 14% in the 13 areas where suburban incomes were 40% higher. Ledebur thinks that lagging city incomes generate poverty and fiscal crises, which stunt invest-

TOP TO BOTTOM PHOTOGRAPHS: PETER VALES/SAUR; JAY LICKMAN

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STRUGGLING
Michelle Mouzon has been nearly destitute since losing her factory job

lunch, which means their parents make less than \$18,655 a year. Two have been killed in street violence. To Haffner, success is getting her charges back into 9th grade so some might finish school.

Haffner's kids are hurt not so much by poverty itself as by despair bred by economic disparities. Indeed, Korean and Taiwanese students outperform Americans in math and science even though their incomes are much lower. But experts say children whose families are losing ground—while the affluent gain—often don't see the point of school. "You feel left out when you're low-income and inequality is rising," says University of Illinois sociologist Jonathan Crane. "Lower-class kids lose a sense of self-worth, which leads many to rebel or lose their initiative." Haffner sees this every day. "Our stu-

dents are really discouraged kids," she says. "They move constantly, change schools, lose friends, and lose hope."

That describes more and more kids. The ranks of low-income students—those who get a free lunch—have risen to 25% of all children from 21% in 1980. And that helps explain why U.S. students aren't gaining on their foreign counterparts. Poor kids score 30 points lower than affluent ones on standardized math tests, for instance. That weighs down the average score of U.S. 12th-graders, which remained at about 300 out of a possible 500 points in the 1980s. The same goes for dropout rates: They're 50% higher for white 12th-graders in single-parent families—which earn 40% less than two-parent ones—according to a 1993 study led by University of Wisconsin sociologist Robert M. Hauser. By contrast, University of Illinois' Crane found in a 1991 study, poor teens drop out a third less often if they live where enough adults—about 13%—are professionals. He says good neighbors make good role models.

RISKY BUSINESS. The diverging fortunes of the rich and poor have wreaked the most havoc at the college level. Tuition at public colleges, where 80% of students go, jumped an inflation-adjusted 49% in the 1980s, to \$1,900 a year, according to a study by Harvard University economist Thomas J. Kane. With

ment and productivity in downtown companies that employ suburbanites.

Hank V. Savitch, an urban policy professor at the University of Louisville, has even quantified how much the well-off lose. Suburbanites forgo \$690 in annual income for every \$1,000 gap between their earnings and the city's, he and three colleagues found in a study of income growth between 1979 and 1987 in 59 metropolitan areas. Like Ledebur, he thinks cities and suburbs prosper or decline together. "As the disparities increased in the 1980s, it dragged down everyone's income," Savitch says.

No one yet has proven similar links between inequality and the entire economy. Most economists agree, however, that education and skills are key to economic growth. And there's lots of evidence that skills suffer when the wealthy go it alone. For example, school districts that mix rich and poor kids have higher reading and math scores than those where each group attends different schools, according to a 1989 study of 475 California districts. Rich kids do score higher when they're all in one school. But with mixing, "low-achieving kids are pulled up more than the high end is dragged down, so the average is higher," says study co-author Mark Dynarski, an economist at Mathematica Policy Research Inc. in Princeton, N. J.

DESPAIR AND REBELLION. Janet Haffner's alternative school in Flint, Mich., embodies this tale of two cities in one building. The Valley School, a prep school that charges \$6,000 a year, occupies two floors of a former junior high. All of its students go on to college. On the third floor, Haffner runs a public program for kids who have failed two grades—and who illustrate how the poor get left behind. More than 85% of her 110 remedial students get a federally funded free

WHY THE GAP ISN'T SO GIANT IN EUROPE AND JAPAN

The same economic forces that are driving a wedge between America's rich and poor have swept across every industrialized country. But according to dozens of recent studies, inequality has remained in check everywhere except in the U.S. and Britain. Here's why: European policies such as high minimum wages and countrywide (rather than company-level) collective bargaining offset market trends that would otherwise push high-skilled workers' wages up and keep those of the lower-skilled down.

"You can overcome the market forces that have driven up inequality, but you need government intervention to do it," says Harvard University economist Richard B. Freeman. He has edited a new book, *Working Under Different Rules*, which summarizes 54 studies that came to this conclusion by comparing U.S. and European labor markets. The catch is

that government meddling may have priced some low-wage jobs out of the market and hurt Europe's employment growth. Still, the new studies find that the damage isn't as severe as many Europeans—and U.S. economists—fear.

There is little question that inequality has remained subdued in most industrialized countries. A study of U.S. men by Rand Corp. economist Lynn A. Karoly found that those in the top 10% pay bracket earned 5.6 times as much per hour in 1992 as did men in the bottom 10%—a 17% increase in this ratio since 1980 (chart). The gap widened by 36% for men in Britain, which has removed many government-intervention policies. Even so, top earners there still make only 3.4 times more than those on the bottom. By contrast, highly paid French and German men earn only three times as much as the lowest-paid, a ratio that didn't change in the 1980s. And inequality only edged up in Australia, Canada, Japan, and Sweden, according to Freeman's book.

These countries offset market forces in various ways. France's higher minimum wages cover 12% of workers, vs. less than 5% in the U.S. And unlike in

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room and board, the tab will run to \$5,400—an amount families should be expected to pay only if they earn \$52,000 a year, according to federal guidelines. Meanwhile, Pell grants—the federal program that gives an average of \$1,500 a year to more than a quarter of the country's 14 million college students—trailed inflation by 13% in the 1980s, Kane found. True, there are more loans, which now account for two-thirds of college subsidies, vs. one-third in the 1970s. But loans are dicey. "College is an experiment for most low-income families," says Thomas

G. Mortenson, HARD CLIMB
 who publishes an education newsletter in Iowa City, Iowa. "Shelling out borrowed money on something so risky doesn't make sense to them."

Even many middle-class kids feel this way. Raymond D. Cristelli just finished high school in North Clarendon, Vt., and is aiming for college. But his parents have been unable to help since the recession hit his father's auto-repair shop. And anything the family can spare will go first to his older brother, who left college when the money ran out and wants to return. During school, Cristelli worked nights and weekends at Taco Bell and a record store. Now, he is working both jobs to save for college.



"I'm not comfortable taking loans, though I'm starting to face the idea that I'll have to if I really want to go," he says. Cristelli's story is typical. "The rich go to college more, which causes states to cut grants and raise tuition, keeping out poor students," says Kane.

Will anything reverse the problems inequality is causing? Clinton's attempts to make training and college more available will have some impact. But even in his dreams, he didn't envision the massive effort—such as a G. I. bill—that many experts believe is needed to give

workforce skills a real boost. Nor is the U. S. likely to adopt European-style social programs or labor laws.

Market pressures may still make a difference, some economists argue—pushing more people through college until they glut the labor market, their pay raises slow, and inequality eases. Indeed, the share of high school grads going to college has jumped to 62% from 49% in 1980. Still, the shortage of grads may continue. With bottom-half students stymied by falling incomes, most new enrollment has come from top-quarter students—81% of whom now go to college. The number of college-age youth is rising but only in lockstep with other groups: They'll stay at 10% of the population until 2005, Census projections show. In sum, the number of workers with a BA may edge up 1.5 points by 2000, to 26%—vs. a nearly 7-point hike in the '80s, says Cornell University economist John H. Bishop. He adds: "Even if enrollment rates rise for 10 years, there won't be enough college grads to drive their relative wages down."

Ever since slavery ended, the U. S. has at least partly lived up to the ideal that everyone should have an equal opportunity to prosper. Now, heightened inequality is undermining this concept. The U. S. will continue to suffer socially if the trend continues. And it's likely to suffer economically, too.

By Aaron Bernstein in New York, with bureau reports

the U. S., they rise with inflation. In Austria, groups of unions and employers negotiate national wage settlements that cover most workers. And in Japan, unions ensure that low-skilled workers keep pace in national bargaining. Europe also has more government-mandated protections, such as more generous unemployment, welfare, and child-care payments, which help low-wage workers keep a job or keep afloat.

ADJUSTMENTS. Corporate America has long resisted such measures as too costly. Many economists also argue that they would force companies to hold down hiring—impeding the rapid job growth the U. S. has enjoyed since 1980. Indeed, some European leaders now blame their high unemployment on these policies. Most studies on international inequality agree—but only partly. France's minimum wages probably do contribute to double-digit youth unemployment, although to

what extent is unclear, Freeman says. And Europe's generous welfare and unemployment benefits may ratchet up joblessness by giving some people an incentive not to work.

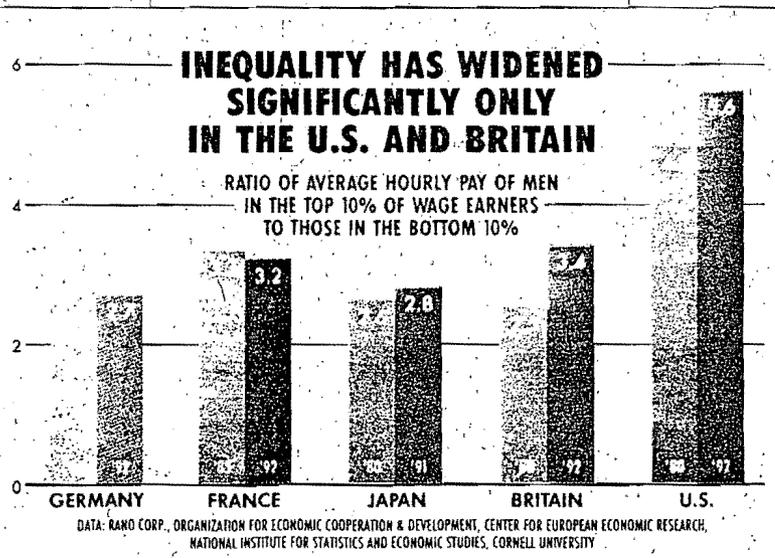
Still, European countries adjust in ways that hold down job losses, the studies find. For instance, French and German job-security laws prompt companies to reduce employee work hours before proceeding to pay cuts and layoffs—all

though the current recession has triggered many furloughs. Extensive worker-training systems in Germany and Japan also offset inefficiencies caused by government intervention by helping less-educated workers become better substitutes for higher-skilled ones. And many European social programs push people to work by placing time limits on welfare or providing day care for single mothers—similar to President Clinton's ideas

for welfare reform. The bottom line on Europe's strategies for fighting inequality is that "in general, the programs do not have major efficiency costs," concludes Freeman.

Of course, the U. S. can't simply copy what other countries do. But Freeman and others argue that it can adapt many European methods to the American context. There's no sign, however, that this is likely to happen anytime soon.

By Aaron Bernstein in New York



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SBA Vows More Lending for Minorities and Women

By JEANNE SADDLER
Staff Reporter of THE WALL STREET JOURNAL

Acknowledging that its loan guarantee program has poorly served minorities and women, the Small Business Administration says it is making a concerted effort to change its ways.

"We're the largest small-business lender in the country," says Erskine Bowles, administrator of the SBA. "If we were a bank, we could be accused of redlining."

The agency wants to at least double the number of loans to these targeted groups by Sept. 30, 1995, says SBA deputy administrator Cassandra Pulley. Last year, the SBA guaranteed 26,812 loans that totaled about \$6.4 billion. (The total loan amount is expected to be \$7 billion in 1994 and \$9 billion in 1995.) Each of the SBA's 68 district directors has been asked to sign an agreement committing the district to meet higher lending targets for minorities and women.

The push to expand the loan program came after agency research showed that black entrepreneurs received only 3% of the SBA's guaranteed loans last year; Hispanic business owners were granted 5% of those funds and women, 14%. In each district, these groups' share of loans was very low in proportion to the number of minority- and women-owned businesses.

"I think that's wrong," Mr. Bowles says of the lending pattern revealed by the statistics.

The SBA's review was partly spurred by the California Reinvestment Committee, a nonprofit group that advocates loans to minorities and low-income groups.

The group did a study of SBA lending practices between 1990 and 1992 and found discrimination against African-American and Hispanic applicants.

But the agency's initiative has sparked controversy among some district directors and lenders. Some say they worry about being held responsible for increasing lending to certain groups when they can't control the approval process banks and other lenders use.

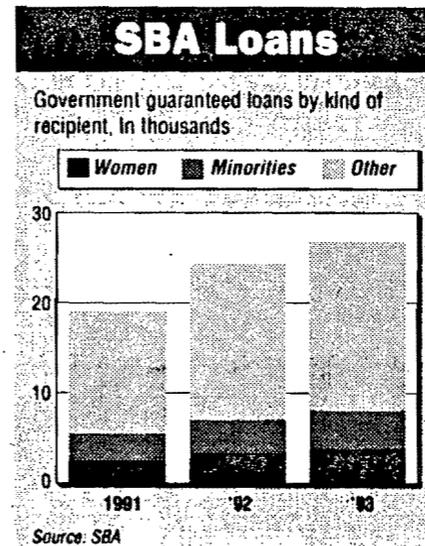
Dorothy Bridges, president of the First Bank branch in South Minneapolis, says bankers are also concerned because it's against the law to ask clients to identify themselves by race. (She says the information is usually filled in voluntarily on SBA forms, however.)

"Anytime a government agency says we're not doing a good job, the banking community tends to react: 'Oh my God, here-come quotas,'" she says. "But I do think we do need to be proactive."

Mr. Bowles says that no director's job is on the line and that the targeted increases were negotiated with each district director based on the share of minority- and women-owned companies in the community. But Mr. Bowles, a former investment banker, says managers will be evaluated on their progress toward the targets.

"This is not a quota deal," he adds. "We're trying to encourage our lenders to set some real goals, based on data, and to reach out to different segments of the marketplace."

The district directors not only have agreed to improve the percentage of guaranteed loans for those groups but also to aggressively market SBA's loan programs



to lenders and to minority and women's business groups.

Now, local SBA officials generally wait for banks to approach them with small-business loans that qualify for a government guarantee. Under the new approach, the SBA wants to drum up demand among potential borrowers.

The SBA's loan program has grown rapidly in the past several years, in part because many banks consider small business loans too risky to make without having the government guarantee 75% to 90% of the borrowed amount.

Marketing made a difference in Houston, where the district office made 70 loans to black business owners last year, compared with only 14 in Richmond, Va.,

which has a slightly higher percentage of black-owned companies in its area.

Beginning in 1991, Houston's district director, Milton Wilson Jr., began working with local groups like the Hispanic Chamber of Commerce and the Commerce Department's Minority Business Development Agency to market SBA programs. He offered lenders regular briefings on SBA loan programs. He also told his loan officers to become "circuit riders" and visit rural and small-town lenders each month. They promised the lenders quick service, pledging to decide whether a loan would get an SBA guarantee within five days.

"When I got here, the staff mainly stayed in the office," Mr. Wilson says. "But I said we've got to get out to the people."

Last year, the Houston district made more loans to black business owners than any other SBA office. Mr. Wilson also approved more international trade loans than any district office. He says federal regulators who enforce the Community Reinvestment Act, which requires banks to show they're meeting local needs, have supported his efforts.

Mr. Bowles says he's giving his district directors tools to reach their goals. The agency's new LowDoc program will allow local offices to use a simple, one-page application for loans up to \$50,000. Another pilot program aimed at women business owners allows them to be certified as pre-qualifying for an SBA guaranteed loan before they approach a bank.

overall pattern of racial discrimination. But based on an interpretation of 46 of 250 of these studies, a much-cited "research summary" published by the federal Office of Juvenile Justice and Delinquency Prevention last December asserted that there was "substantial" evidence of racial discrimination against minority juvenile offenders. This report was drafted in October 1989, peer reviews were ready in February 1991 and the report itself was not published until December 1993. But the report's postscript states that because of "time pressures" and "numerous requests for the final document," OJJDP "decided not to update the research" or "make any major substantive changes." Congressional overseers should see to it that OJJDP, a bureaucratic bastion of sociological cant on crime that has enjoyed large budgetary increases under Attorney General Janet Reno, straightens house.

There is also some evidence that blacks who kill whites are more likely to be sentenced to death than blacks who kill blacks. This is the focus of the Racial Justice Act, which some House Democrats have made the perverse price of their support for the proposed crime bill. But most of the evidence centers on pre-1972 rural Southern jurisdictions; it is hardly conclusive.

The black crime gap is real, not rhetorical or racist, and black Americans' rising fear of crime at a time of declining crime rates nationwide must be addressed. There are at least three things that government can do.

First, give low-income people vouchers so they can protect their homes against crime. The private foundations that have spent tens of millions of dollars to analyze inner-city problems have never spent a penny on such mundane things as deadbolt locks for public-housing residents or private security for public-housing complexes. Uncle Sam should also lend a hand in erecting gates on crime-plagued inner city streets, automatically evicting drug dealers from public housing, installing metal detectors in public schools and cutting aid to cities that don't zone away liquor stores in areas where they serve as magnets of crime and disorder.

Second, redirect existing police personnel to high-crime neighborhoods, add new police manpower and target it on the same neighborhoods, and empower police to work with law-abiding residents and community leaders, aggressively check disorders (vagrancy, graffiti, public drunkenness, aggressive panhandling) that are associated with crime and citizens' fear of crime, and last but not least, arrest the bad guys, charging them to the full extent of the law.

Third, follow through with truth-in-sentencing and related measures, and start keeping track of how many citizens from which neighborhoods are victimized or murdered each year by the roughly 3.5 million probationers and parolees. The federal government can tell us how many prisoners are in various treatment programs. But it cannot tell us how many poor black children have been gunned down by plea-bargained violent criminals. Existing data are limited, but we know that about one-quarter of those arrested for murder are on probation or parole at the time of the offense. Blacks suffer disproportionately from crimes by parolees and probationers since many violent and repeat offenders call the inner city home.

A Civil-Rights Issue

Inner-city crime must be understood as a civil-rights issue. The little Linda Browns of today's urban neighborhoods are being deprived of basic governmental protections and civil rights. It is a contorted conception of civil rights that requires government action against segregated schools but does not require it against violence-ridden ones. It is an empty jurisprudence that sees a civil-rights interest in enabling children to attend the local public school of their choice but sees none in enabling children to walk to school without having to dodge stray

bullets or run from drug dealers.

In a speech last November to black pastors, President Clinton imagined that if the Rev. Martin Luther King Jr. could return to the pulpit today, he would say: "I fought to stop white people from being so filled with hate that they would wreak violence on black people. I did not fight for the right of black people to murder other black people with reckless abandon." Amen.

Mr. DiIulio is a professor of politics and public affairs at Princeton and a fellow at the Brookings Institution.

Haitian Embargo Fails; Restore Aristide

On June 19, I returned from a two-day trip to Haiti convinced that current U.S. policy is fatally flawed. Without a mid-course correction, we will not achieve our goal of returning ousted President Jean-Bertrand Aristide to power.

Internationally imposed sanctions aimed at Haiti's illegitimate military regime are not working. Despite reports to the contrary, including one by Mark Holston in the Journal's June 24 Americas column, the embargo is not having its desired effect of restoring Haiti's democratically elected government.

The embargo is perversely and cruelly impoverishing the poor while enriching the military, which controls the burgeoning contraband trade. Haiti's border with the Dominican Republic has not been sealed off like a prison cell, as Mr. Holston suggests. A variety of goods—particularly gasoline—flow freely across the border in violation of the embargo.

While in Port-au-Prince, I approached a man pouring gasoline into the tank of his beat-up truck. He had paid \$7 per gallon, but the price had dropped \$2 in the past month due to rising reserves of illegally imported gasoline.

Military thugs have even prevented foreign visitors and journalists from witnessing illegal trade over the Dominican Republic border. When U.S. Ambassador William Swing and I tried to visit the border during our visit, we were turned away by armed soldiers who said we needed "special permits" to proceed. Following my trip, the military leadership prohibited me from entering the country, saying my presence there would "no longer be accepted."

Only the serious threat of military force will bring about President Aristide's return. The Haitian people, having no confidence in the embargo, support—indeed, invite—military intervention. If we are unwilling to use force, then we must abandon sanctions that have proven both immoral and politically ineffective.

While the embargo was supposed to force out the military, its cruel effect has been just the opposite. The military is getting rich off both the embargo and illegal drug transshipments. The international community originally hoped the embargo would cramp the lifestyle of Haiti's wealthy elite, who would then convince the military dictatorship to relinquish its power. Instead, the embargo has empowered the military through the contraband market. Military leaders, their wallets fattened from the sale of contraband, now ignore the economic elite and rule the country with an iron hand.

According to United Nations human rights observers, horrific human rights abuses are taking place in Haiti. From February to May, there were reports of 295 murders, 91 abductions, and 66 rapes committed by armed thugs against Haitian citizens. The Cite Soleil fire set by military-backed gangs in December destroyed over 850 homes and left nearly 5,000 residents homeless.

The U.S. and the international community must choose between two options: we can abandon the embargo as a failure and deal with the military dictators, or we can aggressively pursue our long stated goal of restoring Haiti's democratically elected President Aristide.

SEN. BOB GRAHAM (D., Fla.)
Washington

* * *
The Haitian military regime, under the command of Lt. Gen. Raoul Cedras and

working in conjunction with the neo-Duvalierist group FRAPH (Front for the Advancement of Progress in Haiti), has brutalized all segments of the Haitian population, assassinating important figures in the democracy such as the former Justice Minister Guy Malary and torturing villagers who speak against the army. The New York Times reported that the Haitian army has strewn hundreds of "badly mutilated" bodies across the streets of Haitian cities as a message of terror to the citizens. Such "mutilations are a new and gruesome kind of political violence" by "a campaign of pro-military groups to take control" according to the Miami Herald.

The military regime seeks to return to the deadly days of Duvalier. Human rights violations were reduced by 75% under President Aristide and no violations could be attributed to his administration. International organizations and human rights groups hailed President Aristide's institution of democratic reforms during his brief tenure. These included: Abolition of the oppressive "section chief" system and institution of elected civilian administrators; judicial reforms that replaced corrupt appointees with respected judges; collaboration with parliament in the passage of legal reforms of the civil and criminal codes; improvement of prison systems; professionalization of the military; and a massive reduction in drug trafficking, which has since increased dramatically under the military regime.

We urge President Clinton to go beyond requesting the United Nations to take a tougher trade stance against Haiti. The president's sanctions leave many loopholes that would render them ineffective. The inhumane policy of returning Haitians to their deaths needs to end. To ensure this, we have introduced legislation calling for a Haiti policy that stresses: the imposition of a complete trade and commercial embargo with Haiti with the exception of food and medicine; the severance of all air links with Haiti; the freezing of all military officers' assets; imposition of strong sanctions against all countries violating these agreements; deployment of a multinational border patrol between Haiti and the Dominican Republic to halt underground trade; and halting the interdiction and repatriation of Haitian refugees.

REP. CORRINE BROWN (D., Fla.)
Washington

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Inside Politics



Compiled by Alan McConagha

Moving the court right

Judge Stephen G. Breyer's appearance before the Senate Judiciary Committee tomorrow is likely to be characterized by lack of risk or drama, says the Philadelphia Inquirer.

"A genial, smart, prudent, pragmatic judge and a panel of supportive senators will talk for hours about such matters as regulation, privacy and the Ninth Amendment," writes the Inquirer's Aaron Epstein.

"Just about everyone already knows how it will turn out: Unless lightning strikes, the Senate will overwhelmingly, perhaps unanimously, confirm Breyer's appointment to a lifetime job on the Supreme Court. . . .

"Many analysts predict Breyer will find a home in left-center field, somewhere in the vicinity of [Justice David H.] Souter and [Justice Ruth Bader] Ginsburg.

"All of which means that the Breyer-for-Blackmun transition might be a rare instance of a Democratic president's nominee actually moving the court to the right."

'NAACP at Crossroads In Civil Rights Struggle *Group Faces Criticism as Convention Opens*

By Edward Walsh
Washington Post Staff Writer

CHICAGO, July 10—Less than a month after it hosted a controversial summit conference of African American leaders in Baltimore, the NAACP began a critical national convention here today amid an internal debate over the future of the nation's oldest and largest civil rights organization.

At the center of that debate is the NAACP's executive director, Benjamin F. Chavis Jr., whose attempts to revitalize an organization that has been criticized by some as a stodgy bastion of the middle class, out of touch with young, inner-city blacks, have stirred dissension within and concern among outside groups historically aligned with the NAACP.

Chavis, 46, the NAACP's youngest executive director, was the driving force behind the Baltimore summit, which brought together leaders from a broad spectrum of African American organizations, including Nation of Islam leader Louis Farrakhan. But in reaching out to Farrakhan, Chavis has drawn fire from critics who fear that he is attempting to engineer a radical break with the NAACP's traditional role as a moderate, mainstream civil rights organization that has been in the forefront of the legal and political struggles over segregation and inequality.

In a speech to the convention tonight, Chavis said the Baltimore summit established "an unprecedented, ongoing dialogue among African American leaders," reducing divisions among blacks that he said had "impeded our social progress."

Chavis said the strategy and tactics of the NAACP 30 or 40 years ago may not be effective now. "We are not going to let anything or anybody turn us around," he said to the cheering audience. "No bombs, no guns, no racism, no bigotry, no hatred, no prejudice, no news media, no back-stabbing . . . are going to stop the NAACP from moving forward."

"To all of those naysayers and detractors," he added, "if you do not want to go with us on our journey for justice and empowerment, then our freedom train will just simply pass you by."

At a news conference today before the convention's first general session, Chavis predicted "a reaffirmation of the direction we're going. There's not going to be any ambiguity about where we're going."

Chavis said the NAACP had not changed its historic civil rights mission but was "redefining and broadening the definition of civil rights." He said he invited Farrakhan to the Baltimore summit because he and the Nation of Islam "are a critical component of the African American community" and to ignore him would have run counter to the NAACP's objective of broadening its appeal in the black community.

William F. Gibson, chairman of the NAACP's 64-member board of directors and a Chavis ally, said the organization is at a crossroads and must shift its focus to "the fundamental survival questions that many people do not consider civil rights, but it is—because the right to live, the right to raise a family and have a decent home is fundamentally an American civil right."

Asked about a recent Newsweek magazine article that was highly critical of Chavis's leadership, Gibson said outsiders had no right to tell the organization who it should choose as executive director. "Frankly, we don't give a damn about what you think," he said.

Chavis also defended his role as the chairman of a lobbying group that is seeking changes in the Superfund law that governs the cleanup of toxic waste sites. The group, the Alliance for a Superfund Action Partnership, is funded in part by business and industry contributors who are seeking the elimination of financial liability for toxic waste dumping before 1986.

Chavis, who has charged that blacks are the victims of "environmental racism" because so many toxic waste dump sites are near black residential areas, said little progress has been made in cleaning up the sites because of costly legal battles over liability. By eliminating "retroactive liability," he said, the alliance hoped to speed the cleanup of the sites.

His critics, Chavis added, "attempt to take a swipe at me because I am pulling the cover off the bogus implementation of the current Superfund legislation."

Earlier, as an estimated 40,000 convention participants began to gather here over the weekend, Chavis and other NAACP leaders appealed for unity.

Chavis said black Americans face "some critical life-and-death issues," including crime, black-on-black violence, drugs, teenage pregnancy and school dropouts. "We can turn our people around," he said, "but it requires us to embrace each other and lift each other up."

"We are hoping to come forward with unity, hoping that we can bring ourselves together," Gibson said. "Unless we address the issue of division, of fighting among ourselves, this convention will not be successful. We must deal with reasonableness, not rancor."

Thomas Turner, the convention manager and an official of the Michigan AFL-CIO, said Chavis's recent actions have caused concern in organized labor, a traditional ally.

"It's very hard to judge his effectiveness or lack thereof, but I think that Ben Chavis is on a proper course as it relates to this organization," Turner said.

Chavis arrived here Wednesday, and one of his first acts was to meet with local Jewish leaders, who later said they were pleased with the chance to exchange opinions with the NAACP leader. Farrakhan, whose pronouncements have been condemned as antisemitic by Jewish leaders, lives in Chicago but has no scheduled public role in the convention. Asked today whether he planned to meet with Farrakhan here, Chavis said, "possibly."

WILLIAM BENNETT / THAD COCHRAN

Where the pending crime bills fall short

By now the figures are all too familiar. Over the past three decades, violent crime in America has increased by more than 500 percent. Yet, nearly 3 out of every 4 convicted criminals are not incarcerated, and fewer than 1 in 10 serious crimes results in imprisonment.

The American public will not accept widespread lawlessness indefinitely. If the rate of violent crime continues to rise, people at some point will look for a police state to restore order. This makes it all the more urgent that we gain control of our streets.

Unfortunately, members of Congress are using the crime issue as a pretext for doing what they do best: increasing federal spending on social programs, while reducing the independence and authority of state and local officials.

The major effect of the crime bills currently making their way through Congress will be to federalize street crime.

Virtually all violent street crime now falls under the jurisdiction of state and local governments. Yet the Senate version of the crime bill detracts from local authority by adding more crimes to the federal code.

The House version would add 66 felonies to the list of crimes eligible for the death penalty, but it would all but do away with the death penalty by enabling a person convicted of a capital crime to argue that his execution would reinforce a pattern of racial discrimination.

Because the burden would be on the state to prove discrimination was not involved, the so-called Racial Justice Act would make it virtually impossible to implement the death penalty. But the worst feature of this provision is the

message it sends: that race, not the crime itself, is the most important factor in imposing a death sentence.

Both the White House and Capitol Hill are committed to increasing the number of police. However, even though individual merit is nowhere more important than in the hiring of a police officer, the House bill calls for state and local authorities to adopt racial, ethnic, and gender guidelines in hiring.

Since more than 88 percent of the funding would be controlled by the Executive Branch, these "guidelines" could quickly turn into quotas.

Besides burdening state and local authorities with even more federal rules and regulations, these bills would make states and localities increasingly dependent on Washington's largess. Included in the House version is roughly \$9.2 billion in '60s-style social programs to prevent crime. This tax money would fund everything from midnight basketball leagues — with federal rules detailing even the composition of neighborhood teams — to self-esteem classes, arts and crafts, dance classes, physical training programs and conflict resolution training.

If Congress is as serious as its rhetoric about fighting violent crime, it should help provide states and localities with the resources they need to apprehend and lock up felons for their full sentences, and thus put an end to revolving door justice.

For example, it should establish an anti-crime trust fund. Under a proposal by Rep. James Sensen-

brenner, Wisconsin Republican, Congress would rebate an amount equal to 2 percent of federal income tax revenues to the states to spend on crime fighting. This would put between \$45 billion to

Congress should reform federal rules to prevent convicted felons from tying up the court systems with endless appeals. It should also establish a good faith exception to the exclusionary rule to prevent criminals from beating the rap because otherwise

solid evidence was taken in technically imperfect search and seizure operations.

\$55 billion into the hands of the people on the front lines in the war on crime during the next five years.

Because of crowded conditions in many state prison systems, judges are imposing prison caps, which result in early release of

criminals. This must stop.

Congress should reform federal rules, such as those surrounding habeas corpus, to prevent convicted felons from tying up the court systems with endless appeals. It should also establish a good faith exception to the exclusionary rule to prevent criminals from beating the rap because otherwise solid evidence was taken in technically imperfect search and seizure operations.

These are just a few of the

measures that could have a real impact on violent crime.

Until members of Congress adopt a crime package oriented toward empowering state and local governments, they should refrain from talking tough on crime.

Passage of the policies now being considered would only further erode Congress' already damaged credibility. Congress should salvage the few sound policy options left in the crime bills — such as truth in sentencing provisions —

and make a fresh start on a tough problem.

William J. Bennett is the former director of the office of national drug control policy, a former education secretary, and is a distinguished fellow at the Heritage Foundation. Sen. Thad Cochran is a Mississippi Republican. This article was written for the Scripps Howard News Service.

The Black Crime Gap

By JOHN J. DIJULIO JR.

The poverty gap between blacks and whites may be shrinking, but the crime gap is growing. No group of Americans is more devastated by crime than black inner-city citizens and their children. No wonder black urban residents overwhelmingly cite crime as the single biggest problem in their neighborhoods.

In 1992, the violent-crime victimization rate for blacks was the highest ever recorded. Some 113 out of 1,000 black teenage males were victims of violent crimes. This compared with 94 for black teenage females, 90 for white teenage males, and 55 for white teenage females. The rate was 80 for young (age 20-34) black men, compared with 52 for young white men. And the rate was 35 for adult (age 35-64) black males vs. 18 for adult white males. The chances that a black male teenager would be victimized by violent crime were 6.2 times that of a white adult male, 7.5 times that of a white adult female, 15.5 times that of an elderly white male and 37.6 times that of an elderly white female.

Black residents of cities are most at risk. From 1987 to 1989, the average rate of violent-crime victimization among city residents was 92% higher than among rural residents, and 56% higher than among suburban residents. In 1992 the rate at which black males in central cities experienced violent crimes was 2.5 times the rate at which nonmetropolitan white males experienced them. Even within central-city populations, the rate at which black males experienced violent crimes was 53% higher than the rate for white males (up from 31% higher in 1989).

Criminal Data

Now let's look at the data about those who commit crimes.

Statistics show that the vast majority of violent crime is intraracial. About 84% of violent crimes committed by blacks are committed against blacks, while 73% of violent crimes committed by whites are committed against whites.

In 1991 black youths were arrested for weapons-law violations at a rate triple that of white youths. In the same year, the violent-crime arrest rate for black youths was five times higher than that of white youths (1,456 vs. 283 per 100,000). From 1976 to 1991, the murder rate among white youths was stable at two to three per 100,000. Between 1976 and 1986 the murder rate for black youths fluctuated between around seven and 10, then rose steadily to about 14 in 1988, 15 in 1990 and 20 in 1991.

The tragedy of thousands of black youths killed by black youths might be expected to

concentrate hearts and minds on the question of how to stop the violence. Instead, this national tragedy has been trivialized by those who spout errant nonsense about racial disparities in the justice system.

In fact, once one controls for such characteristics as the offender's criminal history or whether an eyewitness to the crime was present, racial disparities melt away. To cite a typical example, a 1991 study of adult robbery and burglary defendants in 14 large urban jurisdictions found that a defendant's race or ethnic group bore almost no relation to conviction rates or other key outcome measures.

In 1980, 46.6% of state prisoners and 34.4% of federal prisoners were black. As the prison population increased during the 1980s, the percentage of blacks changed little. By 1990 48.9% of state prisoners and

overall pattern of racial discrimination. But based on an interpretation of 46 of 250 of these studies, a much-cited "research summary" published by the federal Office of Juvenile Justice and Delinquency Prevention last December asserted that there was "substantial" evidence of racial discrimination against minority juvenile offenders. This report was drafted in October 1989, peer reviews were ready in February 1991 and the report itself was not published until December 1993. But the report's postscript states that because of "time pressures" and "numerous requests for the final document," OJJDP "decided not to update the research" or "make any major substantive changes." Congressional overseers should see to it that OJJDP, a bureaucratic bastion of sociological cant on crime that has enjoyed large

The tragedy of thousands of black youths killed by black youths has been trivialized by those who spout nonsense about racial disparities in the justice system.

31.4% of federal prisoners were black. Compared with white prisoners of the same age, black prisoners are more likely to have committed crimes of violence. In 1988 the median time served in confinement by violent offenders was 24 months for whites vs. 25 months for blacks. For crimes of violence, the mean sentence for whites was 110 months vs. 116 months for blacks, while the mean time in confinement differed by only four months (33 months for whites vs. 37 months for blacks).

At the federal level, a 1993 study showed that the imposition from 1986 to 1990 of stiffer penalties for drug offenders, especially crack cocaine traffickers, did not result in racially disparate sentences. The amount of the drug sold, the offenders'

prior criminal records, whether weapons were involved, and other characteristics that federal law and sentencing guidelines establish as valid considerations accounted for all the observed variation in sentencing.

In short, the best available evidence indicates that race is not a significant variable in determining whether a criminal is arrested, sentenced to probation or prison, or given a long or short term.

Of course, American justice is not yet fully color-blind. But rather than celebrate our progress in approximating this ideal, some prefer to focus attention on whatever evidence of racial disparities they can muster.

For example, there are hundreds of post-1969 studies of minorities in the juvenile justice system. Barely two dozen, however, actually offer evidence of any

budgetary increases under Attorney General Janet Reno, straightens house.

There is also some evidence that blacks who kill whites are more likely to be sentenced to death than blacks who kill blacks. This is the focus of the Racial Justice Act, which some House Democrats have made the perverse price of their support for the proposed crime bill. But most of the evidence centers on pre-1972 rural Southern jurisdictions; it is hardly conclusive.

The black crime gap is real, not rhetorical or racist, and black Americans' rising fear of crime at a time of declining crime rates nationwide must be addressed. There are at least three things that government can do.

First, give low-income people vouchers so they can protect their homes against crime. The private foundations that have spent tens of millions of dollars to analyze inner-city problems have never spent a penny on such mundane things as deadbolt locks for public-housing residents or private security for public-housing complexes. Uncle Sam should also lend a hand in erecting gates on crime-plagued inner city streets, automatically evicting drug dealers from public housing, installing metal detectors in public schools and cutting aid to cities that don't zone away liquor stores in areas where they serve as magnets of crime and disorder.

Second, redirect existing police personnel to high-crime neighborhoods, add new police manpower and target it on the same neighborhoods, and empower police to work with law-abiding residents and community leaders, aggressively check disorders (va-

grancy, graffiti, public drunkenness, aggressive panhandling) that are associated with crime and citizens' fear of crime, and, last but not least, arrest the bad guys, charging them to the full extent of the law.

Third, follow through with truth-in-sentencing and related measures, and start keeping track of how many citizens from which neighborhoods are victimized or murdered each year by the roughly 3.5 million probationers and parolees. The federal government can tell us how many prisoners are in various treatment programs. But it cannot tell us how many poor black children have been gunned down by plea-bargained violent criminals. Existing data are limited, but we know that about one-quarter of those arrested for murder are on probation or parole at the time of the offense. Blacks suffer disproportionately from crimes by parolees and probationers since many violent and repeat offenders call the inner city home.

A Civil-Rights Issue

Inner-city crime must be understood as a civil-rights issue. The little Linda Browns of today's urban neighborhoods are being deprived of basic governmental protections and civil rights. It is a contorted conception of civil rights that requires government action against segregated schools but does not require it against violence-ridden ones. It is an empty jurisprudence that sees a civil-rights interest in enabling children to attend the local public school of their choice but sees none in enabling children to walk to school without having to dodge stray bullets or run from drug dealers.

In a speech last November to black pastors, President Clinton imagined that if the Rev. Martin Luther King Jr. could return to the pulpit today, he would say: "I fought to stop white people from being so filled with hate that they would wreak violence on black people. I did not fight for the right of black people to murder other black people with reckless abandon." Amen.

Mr. Dilulio is a professor of politics and public affairs at Princeton and a fellow at the Brookings Institution.

Today's debate: CAPITAL PUNISHMENT

Death penalty too serious for sound-bite politics

OUR VIEW Lawmakers are elected to make tough decisions. They shouldn't pass the buck.

Who should be responsible for the death penalty? In specific cases, of course, the courts, which impose the sentence.

But more broadly, the death penalty is the responsibility of state lawmakers, whom voters elect to do their bidding and serve their interests.

The system is called representative democracy, and it is both simple and effective. Yet sometimes it breaks down, as it is threatening to do in New York.

For 12 straight years, the New York Legislature has enacted death-penalty laws. For 12 straight years, Gov. Mario Cuomo has vetoed those laws. And for 12 straight years, the Legislature has failed to override.

Voters apparently don't mind Cuomo's death-penalty vetoes too much; he's been re-elected twice. But now, in the middle of a particularly tough campaign against a death-penalty advocate, Cuomo proposes a constitutional amendment be placed on the 1995 ballot asking voters to choose the state's maximum punishment: death; life without parole; or life with parole, the current law.

This is smart politics. It helps remove the death penalty as a campaign issue this year and shifts responsibility for the death penalty from Cuomo to the Legislature.

The outcome is uncertain. Surveys indi-

cate that, like most Americans, New Yorkers support the death penalty but prefer life in prison without parole.

But smart politics is not always smart policymaking. We elect and pay lawmakers to make hard decisions on complex and emotional issues. That function is especially important when considering the death penalty, which, because of the stakes, deserves extra-careful deliberation. Certainly, the debate would be ill-served by a referendum campaign and its predictable, cynical manipulation of voter fears.

The cold, hard fact is that the death penalty is bad law.

To start, several studies, including one from New York state, indicate that the death penalty may actually increase homicides rather than deter them. Moreover, the death penalty is hugely expensive. States spend millions of dollars on each case — money that could better be spent on more effective law enforcement needs. And, of course, the death penalty makes it certain that innocent people will be executed, as has happened in the past.

The problem is that a referendum campaign would bury these facts in a torrent of anecdote and fear-mongering.

Surveys show that Americans who reflect on the death penalty usually turn against it. But a referendum is a test of fear, not reason. It tests demagoguery, not demographics. And that's the wrong way to make law, no matter what you think of capital punishment.

Clinton to look at race concerns in state welfare experiments

By Jennifer Dixon
ASSOCIATED PRESS

WASHINGTON — In a policy shift designed to allay the concerns of civil rights advocates, the Clinton administration will consider race when deciding whether states should be allowed to experiment with welfare reform.

The administration's plans, outlined in a draft obtained by the Associated Press, could also make it easier for the public to influence experiments by the states to change their Medicaid and welfare systems.

Mary Jo Bane, the assistant sec-

retary for children and families at the Department of Health and Human Services, said states were proposing substantial reforms in their welfare programs, and "we believe that they deserve public attention, they deserve public comment."

"We are not trying to design a cumbersome, bureaucratic procedure that slows things down," Bane said Monday. "We're trying to design a procedure to make sure that we get public comment and that we take it into account."

Critics, however, say the plan will allow experiments with reform in the states, which have taken the lead in changing welfare with work and education requirements, time limits and caps on benefits to recipients who have additional children.

They also see the plan as a way for the administration to quell a backlash from liberals who oppose some state welfare reforms as harsh and punitive. Three experiments are also the target of lawsuits involving Medicaid or welfare in California, New Jersey and Tennessee.

Gary Stangler, director of the Missouri Department of Social Services, said states were already developing reforms "within the glare of publicity."

"Anything that puts a chill on (state innovation) is counterproductive to trying to address the serious issues we're wrestling with in the area of human services," he said.

Clinton promised 'elbow room'

President Clinton told governors last year that he would give them the "elbow room" to experiment and promised to approve reforms that he did not necessarily agree with.

His administration has given 15 states permission to experiment with reforming Aid to Families with Dependent Children, and 15 others have requests pending. Five states have received approval for statewide Medicaid reform projects, and six others want permis-

sion to experiment.

Although AFDC and Medicaid are federal-state programs, the secretary of Health and Human Services must waive certain federal regulations to allow experimental projects. The law gives the HHS secretary wide latitude to evaluate state requests for waivers.

According to the administration's draft, states would be required to give the public a chance to comment on experiments before HHS would consider the proposed reform, such as holding hearings.

Provision to protect civil rights

Waiver requests would also be reviewed for potential violations of civil rights laws. States could be required to address the potential impact on groups protected by civil rights laws, such as minorities, who account for more than half of all welfare recipients.

Bane said HHS wanted to make sure that "protected groups are not adversely affected" by state experiments.

"The civil rights question is whether the demonstration itself, in contrast to the current situation, has differential and negative effects on members of protected groups," she said. "What the civil rights concerns asked us to do is to make sure in designing the demonstration, identifiably protected groups are not adversely affected."

Gerald Whitburn, the secretary of health and social services in Wisconsin, which leads the country in welfare waivers, said the administration proposal would "gum up the process and establish new hurdles."

"This is evidence of the backlash that he (Clinton) is getting from old-school liberals who hate many of the no-nonsense welfare initiatives states have been proposing and who vehemently oppose Clinton administration approval of them," Whitburn said. "It puts aggressive, innovative governors like Tommy Thompson (R-Wis.) through new hoops."

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GENDER BIAS IN DRAFTING INTERNATIONAL DISCRIMINATION CONVENTIONS: THE 1979 WOMEN'S CONVENTION COMPARED WITH THE 1965 RACIAL CONVENTION

LAURA A. DONNER*

INTRODUCTION

The United Nations Charter contains general prohibitions against discrimination on the basis of both sex and race, with a directive for equality of all people.¹ Although the Charter does not distinguish between sex and race, the international community has accorded these classifications different priorities. Racial discrimination has long been admonished as evil and morally wrong by nations around the globe, but tolerance continues for actions and policies constituting discrimination against women.² This tolerance is furthered by the attitudes of the governments and organizations involved in international human rights law-making, which continue to treat women's rights with less concern and priority than the human rights of other groups.³

Nowhere is the unequal status of rights more evident than the United Nations conventions addressing racial and sex discrimination.⁴ The 1965 Convention on the Elimination of All Forms of Racial Discrimination⁵ ("Racial Convention") is considered by many to be the most effective international human rights instrument in existence today. The Racial Convention has been described as the "only tool for combating racial discrimination which is at one and the same time universal in reach, comprehensive in scope, legally binding in character, and equipped with

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1. U.N. CHARTER arts. 1, ¶ 3; 13, ¶ 1b; 55, ¶ c; 76 ¶ c.

2. Racial discrimination has violated customary international law for so long, it is now considered to have achieved the status of jus cogens. Only recently have scholars even acknowledged the possibility that the prohibition against sex discrimination may violate customary international law. RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 cmt. a (1987).

3. "Because women have not been viewed as a discrete and insular minority in most societies, they normally have not come within the targeted groups requiring special governmental assistance to promote their rights." Margaret E. Galey, *International Enforcement of Women's Rights*, 6 HUM. RTS. Q. 463, 464 (1984).

4. For purposes of this article, references to sex or gender discrimination should be understood as limited to discrimination against women. This article, like the Convention on the Elimination of Discrimination Against Women, does not address sex discrimination against men.

5. 660 U.N.T.S. 195, entered into force Jan 4., 1969 [hereinafter Racial Convention].

built-in measures of implementation. . . ."⁶

Closely modeled on this successful convention is the 1979 Convention on the Elimination of All Forms of Discrimination Against Women⁷ ("Women's Convention"). The Women's Convention represents an important step in the effort to end discrimination against women, but has been disappointing in its ineffectiveness.⁸ Although the Women's Convention makes a significant contribution as a comprehensive statement of women's rights, it has failed to achieve comparable acceptance and respect of the Racial Convention. Creating a worthwhile and effective instrument outlawing gender discrimination constitutes an incredible challenge. Yet this task would not have been as great, nor the resulting instrument's shortcomings as obvious, had the drafters of the Women's Convention not failed to adopt many of the more powerful aspects of the Racial Convention.

Clearly discrimination on the basis of race and sex are based on different attitudes and perceptions. Any instrument aimed at eliminating discrimination must take into account these differences. For that reason, differences between the Racial and Women's Convention are permissible, even necessary, to their respective success. But different does not have to mean inferior. In creating different instruments, the drafters of the Women's Convention omitted important provisions and mechanisms that were not particular to race issues. They created a document with much less protection against discrimination aimed at women than found in its prototype, the Racial Convention.

This article will explore the weakness of the Women's Convention as compared to the Racial Convention, focussing on areas in which these two discrimination conventions differ. These variations include the respective Conventions' preambles, definitions of discrimination, implementation mechanisms, reservations regime, and provisions for state responsibilities. This article asserts that the inadequate provisions and mechanisms in the Women's Convention, especially as compared to its model the Racial Convention, reveal a lower priority for women's rights that can be attributed to the type of discrimination the Convention claims to prohibit.

6. UNITED NATIONS CENTRE FOR HUMAN RIGHTS, MANUAL ON HUMAN RIGHTS REPORTING 127 (1991).

7. 1249 U.N.T.S. 14, entered into force Sept. 3, 1981 [hereinafter Women's Convention].

8. For general discussions on the Convention's ineffectiveness, see Charlotte Bunch, *Women's Rights as Human Rights: Towards a Re-Vision of Human Rights*, 12 HUM. RTS. Q. 486, 496 (1990) ("Within the United Nations, [the Women's Convention] is not generally regarded as a convention with teeth"); WARWICK MCKEAN, EQUALITY AND DISCRIMINATION UNDER INTERNATIONAL LAW 193 (1983) ("[I]t is a much weaker and more conservative instrument than some earlier conventions."). But see Robert F. Drinan, CRY THE OPPRESSED: THE HISTORY AND HOPE OF THE HUMAN RIGHTS REVOLUTION 47 (1981) (describing the Women's Convention as the "Magna Carta" of the women's movement).

I. HISTORY OF THE CONVENTIONS

The process leading to the adoption of both the Racial and Women's Conventions provides insight into how each group's rights are regarded by the international community. The Racial Convention moved quickly through the United Nations' law-making machinery. The international community was anxious to create a treaty eliminating discrimination on the basis of race. In contrast, the Women's Convention faced lower levels of enthusiasm from the United Nations, with some delegates even questioning the need for a convention outlawing gender discrimination. These different approaches provide an informative backdrop for understanding why these conventions enjoy such different levels of effectiveness.

The specific movement towards the Racial Convention began as a reaction to the wave of anti-semitic behavior which occurred in many countries in the winter of 1959-60.⁹ The General Assembly adopted a resolution in 1960 condemning these actions as violations of the Charter and Universal Declaration of Human Rights and ordered factual information on the events, their causes and motivations be collected in order to determine the most effective measures to prevent such acts.¹⁰ With the information assembled, the General Assembly in 1961 requested that the Commission on Human Rights prepare a declaration on the elimination of all forms of racism.¹¹ On November 20, 1963, the General Assembly adopted the U.N. Declaration on Elimination of All Forms of Racial Discrimination.¹² Responding to the General Assembly's instruction that it give absolute priority to preparation of a convention on the subject, the Commission quickly prepared a draft convention by early 1964. During the 1965 session, the General Assembly unanimously adopted the Convention on the Elimination of All Forms of Racial Discrimination.¹³

The quick development and adoption of the Racial Convention can be traced to the strong political support of the African, Asian and other developing states. These nations played a decisive role in deciding which rights were given special protection in the form of United Nations conventions.

It is certainly no accident that a convention on religious freedom—a subject dear above all to certain Western democracies—was brought before the

9. Egon Schwelb, *The International Convention on the Elimination of All Forms of Racial Discrimination*, 15 INT'L & COMP. L.Q. 996, 997 (1966).

10. *Id.* at 997-98.

11. NATAN LERNER, *THE U.N. CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION* 3-4 (1980).

12. Schwelb, *supra* note 9, at 999.

13. *Id.* The General Assembly would have considered the Convention (and probably adopted it) in 1964 but for a financial dispute that paralyzed the General Assembly's 1964 session. The dispute was over the financing of peace-keeping operations and the application of Article 19 of the Charter. Schwelb, *supra* note 9, at 999.

organs of the U.N. time and time again without success, whereas the Convention on Racial Discrimination and treaties on apartheid, war crimes and crimes against humanity—subjects towards which the Western attitude was distinctly lukewarm, if not downright hostile—were passed by the Assembly in no time at all.¹⁴

The developing nations did not have the same level of commitment to a convention outlawing sex discrimination. This lack of commitment was not surprising; it reflects a long history of discounting the right of women to equality.

Concern with the elimination of sex-based discrimination is a relatively new concept in international law. The general status of women was not considered by an international body until the League of Nations took up the issue in 1935.¹⁵ But it was not until the Charter of the United Nations and peace treaties concluded after World War II that international instruments called for equality of the sexes. To implement these mandates for equality, the United Nations created the Sub-Commission on the Status of Women in 1947. The decades that followed this initial flurry of calls for equality witnessed little progress in the area of women's rights: the treaties concluded were generally narrow in scope and not widely ratified.¹⁶

It was the sense of dissatisfaction with the international protection of women's rights that led to the Women's Convention. On the initiative of the Eastern Europeans, the Human Rights Commission drafted and the General Assembly adopted the 1967 Declaration on the Elimination of Discrimination Against Women.¹⁷ This document represented the first time that the United Nations approached gender discrimination as a complex problem needing a broader, more holistic approach. Although the Declaration did not impose any legal duties, it did focus attention on the need to protect women from discrimination.

Six years passed before any international group took up the idea of creating a legally binding convention outlawing discrimination against women. In 1973, the Commission on the Status of Women called on member states to submit their views or proposals concerning an international

14. Antonio Cassese, *The General Assembly: Historical Perspective 1945-1989*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* 25, 37 (Philip Alston, ed. 1992).

15. Laura Reanda, *The Commission on the Status of Women*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* 265, 265 (Philip Alston, ed. 1992).

16. The United Nations had adopted other conventions aimed at protecting women's rights, but these conventions were narrow in scope and did not enjoy widespread attention or adoption. *See, e.g.*, Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, I.L.O. Convention No. 100, June 29, 1951, 165 U.N.T.S. 303; Convention on the Political Rights of Women, Mar. 31, 1953, 27 U.N.T.S. 135; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Dec. 10, 1962, 521 U.N.T.S. 231.

17. For a full drafting history of the Women's Declaration, *see* U.N. GAOR, 22d Sess., Annex 1, U.N. Doc. A/6678 (1967).

convention prohibiting discrimination against women.¹⁸ For the next six years, work on the Convention involved preparing drafts, considering reports, and debating amendments.¹⁹

The extended time it took to produce the Women's Convention resulted in part from the arguments by some organizations and delegates that a legally-binding convention was unnecessary in view of treaties already in existence which protected women's rights.²⁰ The International Labor Organization had serious reservations about the viability of a discrimination convention protecting women. The ILO argued that if such a treaty was to be created, it should be expressed in general terms and not overlap the conventions of other specialized agencies.²¹ The Women's Convention also faced significant delay because of the long and painful debate over every article by working groups of both the Commission on the Status of Women and the General Assembly.²²

As the end of the 1970's approached, the drafting of the Women's Convention was rushed in order that it be prepared in time for the World Conference on the U.N. Decade for Women in July 1980.²³ Those preparing the Women's Convention accepted that, although it was a far from perfect legal instrument, the Convention would constitute a significant contribution to the Conference.²⁴ Because of this haste and the failure to heed the need for further discussion and refinement, the Convention adopted to protect women from discrimination has serious flaws and weakness.

While both the Racial and Women's Conventions began as Declarations, they followed radically different paths to adoption. The United Nations greeted the Racial Convention with anxiousness and enthusiasm. Because of this support, the Racial Convention was adopted less than two years after the Racial Declaration. In contrast, the General Assembly did not push for the adoption of the Women's Convention. There was no sense of an urgent need to protect women from discrimination. The Women's Convention lumbered on for years in committees and working groups with some even arguing that there was no need legally binding treaty on the subject. The final push to

18. U.N. Doc. E/CN.61/591.

19. Roberta Jacobson, *The Committee on the Elimination of Discrimination Against Women*, in *THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* 444, 445 (Philip Alston, ed. 1992).

20. These treaties included coverage for political rights, discrimination in employment, and discrimination in education.

21. MCKEAN, *supra* note 8, at 189-90.

22. Jacobson, *supra* note 19, at 445.

23. MCKEAN, *supra* note 8, at 192. Note that while the General Assembly's Third Committee had 43 meetings to discuss the Racial Convention, they only spent 2 days discussing the Women's Convention before recommending adoption. Noreen Burrows, *The 1979 Convention on the Elimination of All Forms of Discrimination Against Women*, 1985 NETH. INT'L L.R. 419, 420 (1985). "Such uncharacteristic speed can be explained either by the comprehensiveness of the preparatory work or by the Third Committee's relative lack of interest in the issue or both." Jacobson, *supra* note 19, at 446.

24. MCKEAN, *supra* note 8, at 192.

adopt the Women's Convention came not from the anxiousness to have such an instrument in place, but rather from a desire to make a symbolic gesture of adopting a convention at the 1980 Women's Conference.

These contrasting approaches demonstrate the varying degrees of concern for these two groups which have long been subject to discrimination. The Racial Convention garnered the attention of the United Nations, achieving priority status. The Women's Convention was slow to be adopted, and then only after years of haggling about its need and its breadth.

II. COMPARISONS OF THE TEXT

The Women's Convention is similar to the Racial Convention,²⁵ with the treaties containing similarities in organization and substance. Each convention demands equality for all, with comparable definitions of discrimination, demands for state action, calls for special procedures, and establishment of implementation committees. Yet the Women's Convention departs from many of the more effective approaches taken by the Racial Convention, resulting in a much weaker instrument. The failure of the drafters of the Women's Convention to create a discrimination convention with the same strong provisions as the Racial Convention demonstrates the continuing view that women do not require the same degree of protection against discrimination as do racial minorities.

A. Preamble

In international legal instruments, preambles state the goals and principles the document is seeking to achieve. A clear and concise preamble is important as a backdrop for the interpretation and reception of an international instrument. The Racial and Women's Conventions differ significantly in the approach and breadth of their preambles, resulting in different levels of effectiveness.

The preamble in the Racial Convention provides an expressive objective of the treaty. The preamble states that all human beings are equal before the law and are entitled to equal protection.²⁶ The preamble goes as far as to assert that "any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous."²⁷

The Racial Convention's preamble is decidedly focused and emphatic in its demand for an end to racial discrimination. The only form of racial discrimination specifically mentioned is apartheid. The drafters of the Racial Convention rejected proposals to include condemnation of anti-semitism and

25. *Id.* at 189.

26. Racial Convention, *supra* note 5, pmb1.

27. *Id.*

nazism.²⁸ The explanation given for their exclusion was that apartheid was at that time the only instance of racial discrimination practiced as an official policy of a government.²⁹ This narrow approach concentrates attention on the elimination of all racial discrimination, not just various manifestations that have emerged at different times and places in history.

In contrast to this focussed approach, the preamble to the Women's Convention diverges further from the central issue—the elimination of discrimination against women—than does the preamble to any other international human rights instrument.³⁰ Not only does the Women's Convention call for equal rights for men and women, but attempts to provide a laundry list of the direct and indirect causes of the present state of inequality. These factors include the establishment of a new international economic order, apartheid, the interference of foreign governments with the domestic affairs of other states, detente, disarmament, self-determination and development.³¹ As one author noted, "[i]ts language is considerably closer to that of a political declaration than that of an international treaty."³²

The inclusion of these remote causes of sex discrimination can be traced to the official theme given the Decade of the Women: "equality, development and peace."³³ This theme recognizes the close link between issues relating to women and development and peace within the United Nations.³⁴

The inappropriateness of including these causes did not go unnoticed. The United Kingdom objected that the broad references were "inappropriate and unprecedented" for a legal instrument. The rest of the delegates disagreed, asserting that these references were necessary to recognize the work done during the past few years of the Women's Decade.³⁵

By including these broad goals of humanity within the specific convention relating to discrimination against women, the preamble of the Women's Convention does not further the objectives of the Convention. Instead, the call for an end to all the world's problems is distracting from the true goals of equality and fairness for women. The Women's Convention would have been more effective had the drafters followed the example of the Racial Convention and included a more directed and narrow preamble.

28. Those opposing a specific reference to Nazism in the Convention argued that while reprehensible, historically there had been other equally repulsive and reprehensible evils. Proponents for including nazism argues that nazism was the most striking historical instance of racist doctrines. LERNER, *supra* note 11, at 24.

29. *Id.* at 22.

30. Burrows, *supra* note 23, at 423.

31. Women's Convention, *supra* note 7, pmb1.

32. Reanda, *supra* note 15, at 287.

33. Burrows, *supra* note 23, at 423.

34. *Id.*

35. MCKEAN, *supra* note 8, at 192.

B. Definitions of Discrimination

Another difference between the conventions is their respective definitions of discrimination. In the Racial Convention, Article 1(1) defines racism as:

any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The Women's Convention defines discrimination in Article 1 as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Obviously, the Women's Convention directly modeled its definition of sex discrimination on the definition of racial discrimination in the Racial Convention. However, the drafters did deviate from the definition in one important regard.

The drafters of the Women's Convention omitted the word "preference" from the first clause indicating types of behavior outlawed by the Convention. This omission derives from a conscious decision of the drafters.³⁶ The result is a more limited definition of discrimination. The omission of the word "preference" gives employers the right to choose, all things being equal, a man in preference to a woman for employment.³⁷ In contrast, such a preference based on race would be considered within the definition of discrimination under the Racial Convention. While this difference appears minute in the text, in application the omission of the word "preference" has dire implications for women's right to equality.

C. Implementation Provisions

The Racial and Women's Conventions establish committees to supervise the implementation of their provisions. These committees are key to maintaining international accountability and reviewing of state parties progress towards implementing the Conventions' provisions. However, the Committee established by the Women's Convention possesses much weaker mandates and mechanisms than the committee created by its model, the Racial Convention.

Part II of the Racial Convention creates the Committee on the Elimina-

36. Burrows, *supra* note 23, at 425 (citing U.N. Doc. E/5909).

37. *Id.* at 425-26.

tion of Racial Discrimination, or CERD. The Racial Convention gives CERD three basic functions. First, Article 9 empowers CERD to consider reports of the state parties as to what steps they have taken to give effect to the treaty provisions. Second, CERD is authorized by Articles 11-13 to hear complaints submitted by one state party against another alleging any violation of the Convention. Third, CERD is permitted by Article 14 to consider communications from individuals claiming to be victims of violations of the Convention. CERD meets twice a year for three weeks in Vienna or New York.³⁸ While CERD is not a judicial or quasi-judicial body, and thus does not have the power to absolve or condemn state parties,³⁹ its expansive authority over reports, state complaints, and individual communications places it in a powerful position to expose state violations of the Racial Convention.

The Women's Convention establishes a similar body, the Committee on the Elimination of Discrimination Against Women, or CEDAW, "for the purpose of considering the progress in implementation of the Convention."⁴⁰ Article 20 of the Women's Convention specifies CEDAW's main function: "to meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention."⁴¹ The limited authority and inferior procedures as granted by the Women's Convention interfere with CEDAW's effectiveness as an international force for eliminating discrimination against women. The difficulties experienced by CEDAW can be traced to four main problems with its powers and processes.

First, CEDAW is limited by its inability to consider complaints by state parties or individual communications. The Convention only grants CEDAW the authority to examine the regular state reports and make suggestions and general recommendations.⁴² This omission is a major inadequacy of the Women's Convention.⁴³ CEDAW cannot expand the scope of action beyond the constraints of the reporting system.⁴⁴ Some argue there was no need to give CEDAW power over individual complaints because that mechanism is already available through the Commission on the Status of Women.⁴⁵ Yet the individual petition procedures of the Commission were not established

38. Sandra Coliver, *International Reporting Procedures*, in *GUIDE TO INTERNATIONAL RIGHTS PRACTICE*, SECOND EDITION 173, 176 (Hurst Hannum ed., 1992). Note that since 1986, several Racial Committee sessions have been canceled because of failure of several state parties to pay their contribution. *Id.* at 176-77.

39. UNITED NATIONS HUMAN RIGHTS CENTRE, *supra* note 6, at 140.

40. Women's Convention, *supra* note 7, arts. 17, ¶ 1.

41. *Id.* at art. 20, ¶ 1.

42. *Id.* at art. 21.

43. Theodor Meron, *Enhancing the Effectiveness of the Prohibition of Discrimination Against Women*, 84 AM. J. INT'L L. 213, 216 (1990) [hereinafter Meron, *Enhancing the Effectiveness*].

44. Jacobson, *supra* note 19, at 449.

45. *Id.*

until 1982, three years after adoption of the Women's Convention.⁴⁶ In addition, the Commission began individual petitions only in response to the large number of sex discrimination cases referred to it by other United Nations bodies.⁴⁷ The body created to deal with sex discrimination should have the authority to entertain such allegations. But the limited authority granted CEDAW by the Women's Convention prevents this logical result.

Second, CEDAW suffers from a lack of information from non-governmental organizations (NGOs). Although many NGOs attend the public meetings to observe, CEDAW does not have any formal role for NGOs to provide information to the Committee.⁴⁸ Without detailed information from other sources, CEDAW must rely on the reports of the state parties, which often exaggerate or provide only selective information about the state's accomplishments. There are doubts whether CEDAW has the power to create a formal role for NGOs because of the failure to authorize such a role in the Women's Convention.⁴⁹

Third, CEDAW faces severe time constraints. CEDAW is limited by the Convention's text to only meet 2 weeks out of the year. This provision reflects an overzealous attempt to reduce expenditures: no other human rights treaty organs have been subjected to such time constraints.⁵⁰ "The view that a committee overseeing implementation of the Women's Discrimination Convention would require considerably less time than CERD needed for its work is a reflection of the priority assigned to women's human rights."⁵¹

Every four years, signatory states submit reports to CEDAW on the legislative, judicial and administrative, or other measures adopted to give effect to the Convention.⁵² With 111 state parties and consideration of an average of 6 reports per session, it would take about 19 years to review just one report from each party.⁵³ If either states or nongovernmental organizations are to take CEDAW's work seriously, it must be able to review compliance in a timely and meaningful fashion.⁵⁴ Many state parties have consistently submitted tardy reports, while other have failed to submit any reports at all. This noncompliance with the reporting requirements ironically is the only thing saving the overworked CEDAW from a complete break-

46. *Id.*

47. *Id.*

48. Andrew C. Byrnes, *The "Other" Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women*, 14 YALE J. INT'L L. 1, 36-37 (1989).

49. Burrows, *supra* note 23, at 456.

50. Meron, *Enhancing the Effectiveness*, *supra* note 43, at 213. In contrast, the Racial Convention is silent on the time and frequency of meetings, allowing CERD to establish its own schedule.

51. Byrnes, *supra* note 48, at 59.

52. Women's Convention, *supra* note 7, art. 18.

53. Byrnes, *supra* note 48, at 61.

54. Coliver, *supra* note 38, at 183.

down.⁵⁵

Finally, the fourth problem of CEDAW stems from its geographical isolation from other human rights bodies. CEDAW and the Commission on the Status of Women are the only treaty bodies not serviced by the United Nations Human Rights Center in Geneva.⁵⁶ Some observers believe the placement in Vienna was a concession to then-Secretary-General Waldheim, who wanted to enlarge the United Nations's Vienna office.⁵⁷ The relative isolation in Vienna of these organizations representing women makes even informal cooperation with other committees and staffs difficult.⁵⁸ This isolation affects CEDAW's ability to keep abreast of current human rights development and to draw on the expertise of those involved in other areas of human rights.⁵⁹ Finally, this fragmentation of human rights machinery results in inadequate attention to discrimination against women and contributes to the failure of CEDAW to benefit from innovations of the U.N. mechanisms like special rapporteurs.⁶⁰

The committee created by the Women's Convention was crippled from the start by its weak mechanisms and procedures. Without a change in the enabling provisions of the Women's Convention, CEDAW's prospects for improved effectiveness in the fight against discrimination against women are dubious.

D. Reservations

Another important difference between the two discrimination conventions is their respective approaches to reservations. According to the Vienna Convention on the Law of Treaties, a reservation is "a unilateral statement . . . made by a State, when signing, ratifying . . . or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State."⁶¹ The extent and scope of reservations significantly alter the legal effect of an international convention.

The Racial Convention contains very strict rules about the type of reservations state parties can adopt. Article 20 of the Convention provides that reservations that are incompatible with the object and purpose of the

55. Byrnes, *supra* note 48, at 27.

56. Coliver, *supra* note 38, at 180; see also Sandra Coliver, *United Nations Commission on the Status of Women: Suggestions For Enhancing its Effectiveness*, 9 WHITTIER L.R. 435, 437 (1987) [hereinafter Coliver, *United Nations Commission*].

57. Coliver, *United Nations Commission*, *supra* note 56, at 437-38.

58. Coliver, *supra* note 38, at 180.

59. Byrnes, *supra* note 48, at 60.

60. Meron, *Enhancing the Effectiveness*, *supra* note 43, at 215.

61. Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331.

convention shall not be allowed.⁶² The Racial Convention goes on to declare that reservations will be considered incompatible if at least two-thirds of the state parties to the Convention object to it.⁶³

This mechanism for regulating reservations has been extremely effective. With 128 state parties, there are only four reservations that are purported modifications or exclusions of the obligations assumed under the treaty.⁶⁴ In proposing the clause determining incompatibility, the delegate from Ghana noted that the absence of such a clause "could conceivably nullify the effect of the Convention *ab initio*."⁶⁵

In contrast, the Women's Convention does not contain any similar enforceable restrictions on reservations. Although Article 28 provides that a "reservation incompatible with the object and purposes of the present Convention shall not be permitted,"⁶⁶ this provision does not provide any standards for determining incompatibility. In fact, the Legal Advisor to United Nations opined that not even the Women's Committee is authorized to determine the incompatibility of reservations.⁶⁷

This lack of enforceable limits has resulted in the Women's Convention being one of the most reserved of all human rights instruments.⁶⁸ 23 out of the 100 states parties made a total of 88 substantive reservations, with an additional 25 reservations to the provisions covering dispute settlement.⁶⁹

In response to this high number and the broad nature of reservations to the Women's Convention, state parties in 1984 sought to incorporate a call for other state parties views on reservations that would be incompatible with the text of the ECOSOC resolution on the status of CEDAW.⁷⁰ This effort created considerable tension and contributed to the increased level of division between state parties to the Women's Convention. The vehemence with which nations delegations have asserted their right to make reservations has

62. Racial Convention, *supra* note 5, art. 20, ¶ 1. The "object and purpose" criteria derived from Advisory Opinion on Reservations to the Genocide Convention. "The International Court of Justice used the 'compatibility with the object and purpose of the Convention' as the criterion for the admissibility of reservations to a Convention which was silent on the question of reservation." Schwelb, *supra* note 9, at 1055-56.

63. Racial Convention, *supra* note 5, art. 20, ¶ 2.

64. Belinda Clark, *The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women*, 85 AM. J. INT'L L. 281, 283 (1991). There are an additional 35 reservations to the dispute resolution provisions. *Id.*

65. LERNER, *supra* note 11, at 96. Referring to U.N. Doc. A/Pr.1406, p. 6. *Id.*

66. Women's Convention, *supra* note 7, art. 28, ¶ 2.

67. The Women's Committee might, however, "have to comment thereon in its reports in this context." THEODOR MERON, HUMAN RIGHTS LAW-MAKING IN THE UNITED NATIONS 80 (1986).

68. Rebecca Cook, *Reservations to the Convention on the Eliminations of All Forms of Discrimination Against Women*, 30 VA. J. INT'L L. 643, 644 (1990).

69. *Id.* at 644. The reservations to the dispute settlement provisions are expressly approved by Article 29 of the Women's Convention. There is no such provision in the Racial Convention. *Id.*

70. John Quinn, *The General Assembly into the 1990's, in THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL* 55, 70 (Philip Alston, ed. 1992).

been particularly acute in relation to the Women's Convention.⁷¹ "Some Islamic delegations have displayed sensitivity to criticism of reservations lodged by their countries upon ratifying human rights treaties, asserting the sovereign right to make whatever reservations they regard as appropriate."⁷²

In sum, the weak provisions governing the reservations regime in the Women's Convention caused not only a high number of states to adopt expansive reservations, but contributed to the sense of disagreement and conflict over the meaning and purpose of the Convention. Controversies over the reservations provisions are distracting from the proper focus of the state parties—how they can work towards ending discrimination against women.

E. Obligations of State Parties to Prevent Discrimination

Under the Women's and Racial Conventions, state parties oblige themselves to take action to prevent discrimination. However, the extent and explicitness of the obligation is different.

Article 7 of the Racial Convention requires state parties to undertake "immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination."⁷³ This article specifies the object and purposes of taking state action, as well as the type of activities that should be utilized to achieve that goal.

In its comparable provision, the Women's Convention calls on states "to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices . . . which are based on the idea of inferiority or superiority of either of the sexes."⁷⁴ The article does not define the measures to be taken or the extent to which behavior patterns should be changed.⁷⁵ "To the lawyer this must be the most problematic of all the articles of the Convention for it defies analysis."⁷⁶ The article implies that states must actively engage in social engineering of both behavior and attitudes, but provides no guidance on the extent or nature of these efforts.

In addition to the obligation to modify their population's attitudes, the Racial Convention includes an extensive provision outlining measures state parties must take to eradicate incitement and prohibit racist organizations. Article 4 provides that states must: (1) condemn all propaganda and

71. In 1987, "Egypt and Tunisia expressed disquiet about operative paragraph 11 of General Assembly reservation 42/103 which contained a general exhortation to state parties to lift reservations to international covenants." *Id.* at 71 n.42.

72. *Id.* at 71.

73. Racial Convention, *supra* note 5, art. 7.

74. Women's Convention, *supra* note 7, art. 5, ¶ a.

75. Burrows, *supra* note 23, at 428.

76. *Id.*

organizations based on theories of racial superiority; (2) undertake measures to eradicate incitement to and acts of discrimination; (3) declare the dissemination of ideas of racial superiority or hatred illegal; (4) declare illegal organizations which promote or incite racial discrimination; and (5) not permit public institutions to promote or incite racial discrimination.⁷⁷ The reason for the inclusion of this provision can be traced to the tangible damage suffered because of racial propaganda.⁷⁸

Despite the breadth of the provision covering propaganda in the Racial Convention, the Women's Convention contains no references to outlawing sexist speech or organizations. The failure to include such a provision may be because the definition of the type of proscribed organization would be too difficult.⁷⁹ Yet, to some degree this same problem is faced by states parties implementing the Racial Discrimination. Therefore state parties are not obliged to make groups that advocate discrimination against women illegal.

CONCLUSION

In outlining the differences between these two discrimination conventions, the inadequacies of the Women's Convention are painfully obvious. The Women's Convention is the only comprehensive international instrument aimed at bringing about equality for women, but it lacks force and respect. Improvements must be made in the level of protection given to women by international human rights instruments.

Discrimination is wrong no matter who is the victim. Women deserve the same level of protection from international human rights instruments as racial minorities. The adoption of the Women's Convention has been used by some human rights bodies to justify ignoring the needs of women.⁸⁰ They assure themselves that because the issue of eliminating discrimination against women is already addressed in a convention and by a treaty body, there is less of a need to focus on issues relating to women's equality. But the international community cannot sit back and dismiss the need for improvements in its instruments and mechanisms covering the rights of women. The Convention on the Elimination of All Forms of Discrimination Against Women represents an important achievement in the area of women's human rights. But it is important to recognize the nature and causes of its inadequacies so that the international community can take action in order to improve and enhance women's rights.

77. Racial Convention, *supra* note 5, art. 4.

78. Theodor Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT'L L. 283, 296 (1985).

79. Burrows, *supra* note 23, at 429.

80. Hilary Charlesworth et al., *Feminist Approaches to International Law*, 85 AM. J. INT'L L. 613, 632 (1991).