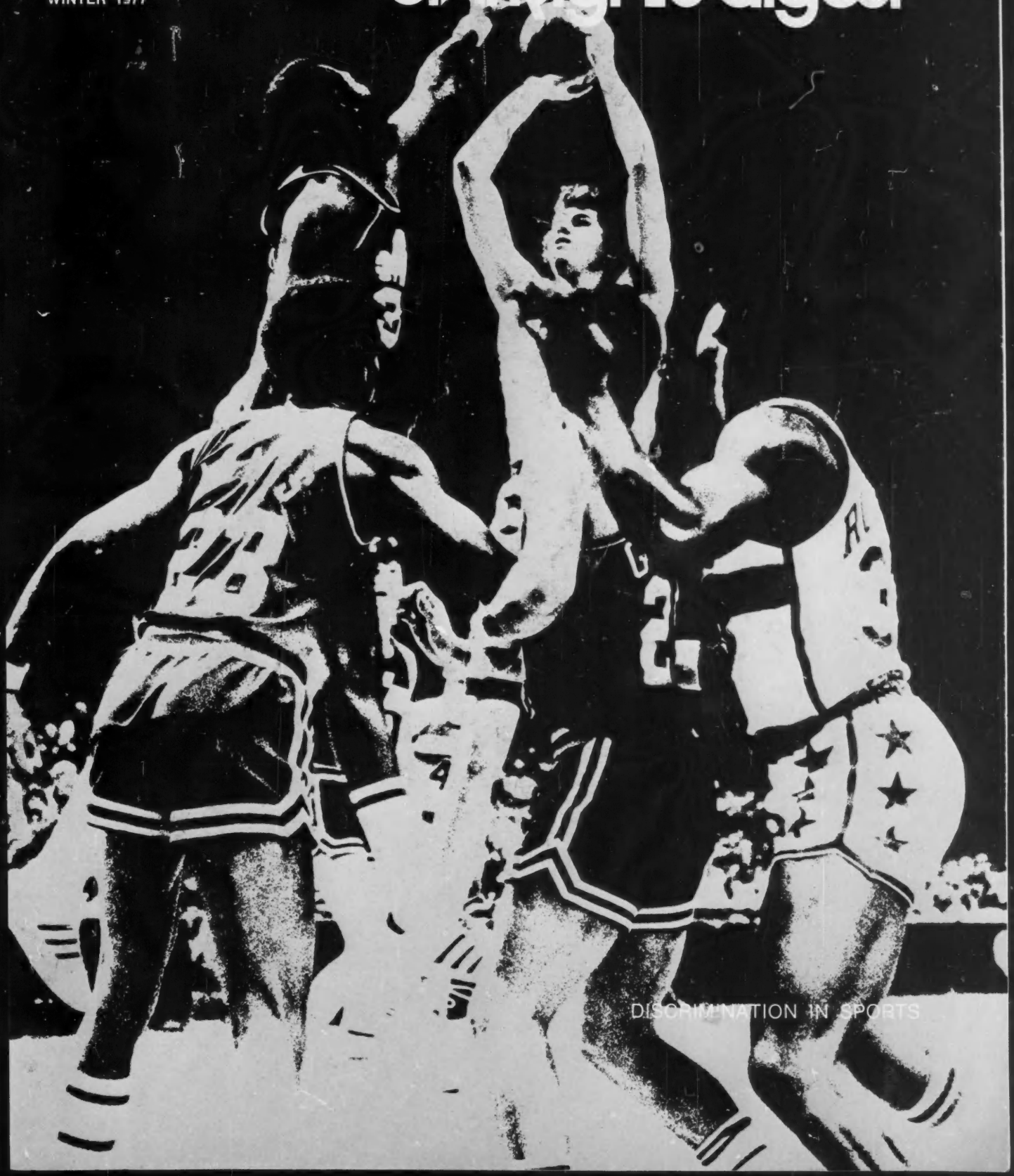
civil rights digest

WINTER 1977



DISCRIMINATION IN SPORTS

IN THIS ISSUE . . . are several articles we think will be of general interest.

First is an update on the status of blacks in professional sports, by two authors who wrote previously on the subject in the *Civil Rights Digest*. Stanley Eitzen and Norman Yetman outline the progress made in recent years and the remaining difficulties blacks experience in getting jobs as quarterbacks, infielders, pitchers, coaches, managers, and officials.

Next Joan Abramson tackles a subject of continuing interest and controversy—affirmative action. She describes how affirmative action is perceived by government officials and by its academic opponents, as well as how civil rights and women's groups interpret the concept. In the process, Abramson examines the evidence that is frequently cited in the current debate and offers some explanations for what she sees as weak enforcement.

Herbert Hill contributes an essay on the responsibilities of the National Labor Relations Board in requiring equal employment practices of employers and unions. He points out the development of legal concepts now available to the NLRB. Hill also notes the administrative advantages to action by the Board compared to the backlogged Equal Employment Opportunity Commission.

Disparate press treatment of black and white crime victims and those involved in violent encounters with police is the subject of Clinton Cox's article. He gives several examples from newspapers that show how a victim's race affect the coverage of crime—from the number of inches in the story, the acceptance of the police version of events, to whether the story appears at all. Most insidious, Cox points out, is the general impression conveyed by the press that some victims are more worthy of sympathy than others, simply because of race.

Last, we include a commentary by Robert Myers on a previous *Digest* article concerning pensions and sex discrimination. Myers prefers a different solution to that offered earlier in these pages.

For more copies of the *Digest* or inclusion on our free mailing list, please write to the Editor, *Civil Rights Digest*, U. S. Commission on Civil Rights, Washington, D.C. 20425.

The *Civil Rights Digest* is published quarterly by the U.S. Commission on Civil Rights as part of its clearinghouse responsibilties. Funds for printing the *Digest* were approved by the Director of Bureau of the Budget on January 29, 1963. Correspondence related to the *Digest* should be addressed to Editor, *Civil Rights Digest*, U.S. Commission on Civil Rights, Washington, D.C. 20425.

civil rights digest Volume 9 Number 2
WINTER 1977

CREDITS: Cover, 15, 21, 24, 38—Harrod; 2—Gary Fine; 9—Baltimore Orioles; 28—UWA Solidarity; 33—Washington Star-News; Inside back cover—National Coal Association.

By D. Stanley Eitzen and Norman R. Yetman

BLACKS STILL SUFFER FROM DISCRIMINATION IN SPORTS

Immune From Racism?

No other aspect of sport in America has generated more sociological interest than race relations. The research interest in race undoubtedly has been influenced by the turmoil of the late fifties and sixties that generated increased academic and critical attention to all phases of black life in America. At the same time the American sports world became increasingly open to black participation during the civil rights era.

Since the early 1960s the percentage of black competitors in each of the major professional team sports (football, basketball, and baseball) have exceeded blacks' proportion (11 percent) of the total U.S. population. In baseball, for example, the 1957–58 season was the year that blacks achieved a proportion equivalent to their percentage in the U.S. population. The watershed year in professional football was 1960 (see Table 1); in professional basketball it was 1958 (see Table 3).

By 1975, blacks comprised better than 60 percent of all professional basketball players, 42 percent of all professional football players, and 21 percent of major league baseball players. An additional 11 percent of major league baseball players were Latin Americans.

The large proportion of blacks and the prominence of black superstars such as Kareem Abdul-Jabbar, Hank Aaron, and O. J. Simpson have led many Americans—black and white—to infer that collegiate and professional athletics have provided an avenue of mobility for blacks unavailable elsewhere in American society. Sports, thus, seems to have "done something for" black Americans. Many commentators —social scientists, journalists, and black athletes themselves—have argued, however, that black visibility in collegiate and professional sports has merely served to mask the racism that pervades the entire sports establishment. According to these critics, the existence of racism in collegiate and professional sports is especially insidious because sports promoters and commentators have projected an image of athletics as the single institution in America relatively immune from racism.

In a previous article (*Civil Rights Digest* August 1972) we examined racial discrimination in American sports—in particular, college basketball. This article examines three aspects of the athletic world alleged to be racially biased—the assignment of playing positions, reward and authority structures, and performance differentials. The analysis will focus primarily on the three major professional team sports (baseball, basketball, and football) where blacks are found most prominently, and therefore slights the obvious dearth of blacks in other sports (e.g., hockey, tennis, golf, and swimming).

Stacking Team Positions

One of the best documented forms of discrimination in both college and professional ranks is popularly known as stacking. The term refers to situations in which minority-group members are

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relegated to specific team positions and excluded from competing for others. The result is often that intra-team competition for starting positions is between members of the same race (e.g., those competing for running back slots are black, while those competing for quarterback slots are white). For example, Aaron Rosenblatt noted in *Transaction* magazine that while there are twice as many pitchers on a baseball team as outfielders, in 1965 there were three times as many black outfielders as pitchers.

Examination of the stacking phenomenon was first undertaken by John Loy and Joseph McElvogue in 1970, who argued that racial segregation in sports is a function of "centrality" in a team sports unit. To explain racial segregation by team position in sports, they combined organizational principles advanced by Hubert M. Blalock and Oscar Grusky.

Blalock argued that:

> 1. The lower the degree of purely social interaction on the job . . ., the lower the degree of [racial] discrimination.
> 2. To the extent that performance level is relatively independent of skill in interpersonal relations, the lower the degree of [racial] discrimination.

Grusky's notions about the formal structure of organizations are similar:

> All else being equal, the more central one's . . . location: (1) the greater the likelihood dependent . . . tasks will be performed, and (2) the greater the rate of interaction with the occupants of other positions. Also, the performance of dependent tasks is positively related to frequency of interaction.

Combining these propositions, Loy and McElvogue hypothesized that "racial segregation in professional team sports is positively related to centrality." Their analysis of football (where the central positions are quarterback, center, offensive guard, and linebacker) and baseball (where the central positions are the infield, catcher, and pitcher) demonstrated that the central positions were indeed overwhelmingly manned by whites, while blacks were overrepresented in noncentral positions.

Examining the data for baseball in 1967, they found that 83 percent of those listed as infielders were white, while 49 percent of the outfielders were black. The proportion of whites was greatest in the positions of catcher (96 percent) and pitcher (94 percent), the most central positions in baseball.

Our analysis of data from the 1975 major league baseball season showed little change from the situation described by Loy and McElvogue in 1967. By 1975 the percentage of infielders who were white had declined slightly to 76 percent, but the outfield was still disproportionately manned by blacks (49 percent). Moreover, pitcher (96 percent) and catcher (95 percent) remained overwhelmingly white positions.

Table 1 compares the racial composition of positions in football for the 1960 and 1975 seasons. The conclusions to be drawn from these data are clear. While the proportion of blacks has increased dramatically during this 15-year period, central positions continue to be disproportionately white. One difference between 1960 and 1975 is that blacks have increasingly supplanted whites at noncentral positions.

On the other hand, blacks appear to have made some inroads in the central offensive positions—for example, a shift from 97 percent white to 87 percent white from 1960 to 1975. But when length of time in the league is held constant, the overwhelming proportion of whites in these positions remains. Among those players in the league 1 to 3 years, 79 percent were white in 1975; 4 to 6 years, 80 percent white; 7 to 9 years, 80 percent white; and 10 or more years, 96 percent white. (The latter may be a consequence of the league's having a small proportion of black players in the past.)

The effects of stacking in noncentral positions are far reaching. In 17 of the 26 pro football teams surveyed, approximately three-fourths of all 1971 advertising slots (radio, television, and newspapers) were alloted to players in central positions.

Second, noncentral positions in football depend primarily on speed and quickness, which means in effect that playing careers are shortened for persons in those positions. For example, in 1975 only 4.1 percent of the players listed in the *Football Register* in the three predominantly black positions—defensive back, running back, and wide receiver (65 percent of all black players)—had been in the pros for 10 or more years, while 14.8 percent of players listed in the three predominantly white positions—quarterback, center, and offensive guard—remained that long. The shortened careers for noncentral players have two additional deleterious consequences—less lifetime earnings and limited

benefits from the players' pension fund, which provides support on the basis of longevity.

Assignment by Stereotype

The Loy and McElvogue interpretation of these data rested primarily upon a position's spatial location in a team unit. However, Harry Edwards argues that the actual spatial location of a playing position is an incidental factor in the explanation of stacking. The crucial variable involved in position segregation is the degree of leadership responsibility found in each position. For example, quarterbacks have greater team authority and ability to affect the outcome of the game than do individuals who occupy noncentral positions.

Thus, the key is not the interaction potential of the playing position but the leadership and degree of responsibility for the game's outcome built into the position that account for the paucity of blacks at the so-called central positions. This is consistent with the stereotype hypothesis advanced by Jonathan Brower (specifically for football, but one that applies to other sports as well) :

> The combined function of . . . responsibility and interaction provides a frame for exclusion of blacks and constitutes a definition of the situation for coaches and management. People in the world of professional football believe that various football positions require specific types of physically- and intellectually-endowed athletes. When these beliefs are combined with the stereotypes of blacks and whites, blacks are excluded from certain positions. Normal organizational processes when interlaced with racist conceptions of the world spell out an important consequence, namely, the racial basis of the division of labor in professional football.

In this view, then, it is the racial stereotypes of blacks' abilities that lead to the view that they are more ideally suited for those positions labelled "noncentral." For example, Brower compared the requirements for the central and noncentral positions in football and found that the former require leadership, thinking ability, highly refined techniques, stability under pressure, and responsibility for the outcome of the games. Noncentral positions, on the other hand, require athletes with speed, quickness, aggressiveness, "good hands," and "instinct."

TABLE 1

THE DISTRIBUTION OF WHITE AND BLACK PLAYERS BY POSITION IN MAJOR LEAGUE FOOTBALL
1960 AND 1975 (IN PERCENTAGES)

	1960*			1975		
Playing position	% of all whites	% of all blacks	Percent black by position**	% of whites	% of blacks	Percent black by position
Kicker/Punter	1.2	0	0	9.0	.2	1.3
Quarterback	6.3	0	0	9.7	.5	3.5
Center	5.3	0	0	6.7	.5	4.9
Linebacker	11.5	3.6	4.2	17.4	8.6	26.0
Off. guard	8.0	1.8	3.0	8.7	4.5	26.9
Off. tackle	8.3	23.2	28.3	8.6	5.7	31.8
Def. front four	11.0	14.3	15.4	12.3	15.7	47.6
End/flanker	22.6	7.1	4.6	11.6	20.2	55.3
Running back	16.5	25.0	17.5	8.1	21.1	65.2
Def. back	9.3	25.0	27.5	8.1	23.2	67.3
	100.0	100.0		100.2	100.2	
Total number	(199½)	(27)	12.3	(870)	(620)	41.6

*The 1960 data were compiled by Jonathan Brower, who obtained them from the media guides published annually by each team. Whenever a player was listed at two positions, Brower credited him as one-half at each position. 1975 data are taken from 1975 *Football Register* published annually by *The Sporting News*. Since both the media guides and the *Football Register* are published before each season, they include only information on veterans. The total N for 1960 is smaller than one would expect, presumably because Brower was unable to obtain media guides for all teams.

**Since blacks were 12.3 percent of the player population in 1960, those playing positions with a black percentage less than 12.3 were underrepresented. In 1975 those positions less than 41.6 percent black were underrepresented.

Evidence for the racial stereotype explanation for stacking is found in the paucity of blacks at the most important positions for outcome control in football (quarterback, kicker, and placekick holder). The data for 1975 show that of the 87 quarterbacks in the league only three were black; of the 70 punters and placekickers mentioned in the *Football Register*, only one was black; and of the 26 placekick holders, not one was black.

It is inconceivable that blacks lack the ability to play these positions at the professional level. Placekick holders must, for example, have "good hands," an important quality for pass receivers, two-thirds of whom were black, but no black was selected for the former role. Kicking requires a strong leg and the development of accuracy. Are blacks unable to develop strong legs or master the necessary technique?

The conclusion seems inescapable: blacks are precluded from occupying leadership positions (quarterback, defensive signal caller) because subtle but widely held stereotypes of black intellectual and leadership abilities still persist in the sports world. As a consequence, blacks are relegated to those positions where the requisite skills are speed, strength, and quick reactions, not thinking or leadership ability.

Another explanation for stacking has been advanced by Barry D. McPherson, who has argued that black youths may segregate themselves in particular positions because they wish to emulate black stars. Contrary to the belief that stacking can be attributed to discriminatory acts by members of the majority group, this interpretation holds that the playing roles to which black youths aspire are those in which blacks have previously attained a high level of achievement. Since the first positions to be occupied by blacks in professional football were in the offensive and defensive backfield and the defensive linemen, subsequent imitation of their techniques by black youths has resulted in blacks being overrepresented in these positions today.

Although his small sample makes his findings tentative, Brower has provided some support for this hypothesis. He asked a sample of 23 white and 20 black high school football players what athletes they admired most and what position they would most like to play if they had the ability and opportunity. The overwhelming majority of blacks (70 percent) had only black heroes (role models) whereas whites chose heroes from both races. More important for our consideration is the finding that black high school athletes preferred to play at the "noncentral" positions now manned disproportionately by blacks in the pros.

Brower concluded that "Since the young blacks desire to perform at the 'standard' black positions, these findings make plain the impact and consequences of the present football position structure on succeeding generations of professional football players." Although the role model orientation does not explain the initial discrimination, it helps to explain why, once established, the pattern of discrimination by player position tends to be maintained.

Since McPherson produced no empirical support of his explanation, others sought to determine whether black athletes changed positions from central to noncentral more frequently than whites as they moved from high school to college to professional competition. Data from a sample of 387 professional football players indicated a statistically significant shift by blacks from central positions to noncentral ones.

That blacks in high school and college occupied positions held primarily by whites in professional football casts doubt on McPherson's model. Athletic role models or heroes will most likely have greater attraction for younger individuals in high school and college than for older athletes in professional sports, but professional players were found distributed at all positions during their high school playing days.

The socialization model also assumes a high degree of irrationality on the part of the player—it assumes that as he becomes older and enters more keenly competitive playing conditions, he will be more likely to seek a position because of his identification with a black star rather than because of a rational assessment of his own athletic skills.

It is conceivable, however, that socialization does contribute to racial stacking in baseball and football, but in a negative sense. That is to say, given discrimination in the allocation of playing positions (or at least the belief in its existence), young blacks will consciously avoid those positions for which opportunities are or appear to be low (pitcher, quarterback), and will select instead those positions where they are most likely to succeed (the outfield, running and defensive backs).

Gene Washington, all-pro wide receiver of the San Francisco Forty-Niners, was a college quarterback at Stanford through his sophomore year, then switched to flanker. Washington requested the

change himself. "It was strictly a matter of economics. I knew a black quarterback would have little chance in pro ball unless he was absolutely superb. . . ."

Stacking in Basketball

Although social scientists have examined the stacking phenomenon in football and baseball, they have neglected basketball. They have tended to assume that it does not occur because, as Edwards has put it:

> . . . in basketball there is no positional centrality as is the case in football and baseball, because there are no fixed zones of role responsibility attached to specific positions. . . . Neverthless, one does find evidence of discrimination against black athletes on integrated basketball teams. Rather than stacking black athletes in positions involving relatively less control, since this is a logistical impossibility, the number of black athletes directly involved in the action at any one time is simply limited.

However, two researchers reasoned that positions in basketball do vary in responsibility, leadership, mental qualities of good judgment, decisionmaking, recognition of opponents' tactics, and outcome control. To confirm this judgment, they undertook a content analysis of instructional books by prominent American basketball coaches to determine whether there were specific responsibilities or qualities attributed to the three playing positions—guard, forward, and center—in basketball.

They discovered surprising unanimity among the authors on the attributes and responsibilities of the different positions. The guard was viewed as the team quarterback, its "floor general," and the most desired attributes for this position were judgment, leadership, and dependability. The center was pictured as having the greatest amount of outcome control because that position is nearest the basket and because the offense revolves around it; the center was literally the pivot of the team' soffense.

Unlike the traits for other positions, the desired traits mentioned for forwards stressed physical attributes—speed, quickness, physical strength, and rebounding—even to the point of labeling the forward the "animal."

Given this widespread agreement that varied zones of responsibility and different qualities are expected of guards, forwards, and centers, the researchers hypothesized that blacks would be over-represented—stacked—at the forward position, where the essential traits required are physical rather than mental, and underrepresented at the guard and center positions, the most crucial positions for leadership and outcome control. Using data from a sample of 274 NCAA basketball teams from the 1970-71 season, they found that blacks were, in fact, substantially overrepresented as forwards and underrepresented at the guard and center positions. Whereas 32 percent of the total sample of players were black, 41 percent of forwards were black; only 26 percent of guards and 25 percent of centers were black. This pattern held regardless of whether the players were starters or second-stringers, for college or university division teams. Thus racial stacking is present in college basketball.

But in professional basketball in 1972, which was two-thirds black, this pattern was not present. It would be interesting to see whether such a pattern may have occurred earlier in the history of professional basketball, since during the 1974-75 collegiate season, the races were relatively evenly distributed by position. The pattern of stacking detected in 1970-71 had not persisted. Thus, although stacking has remained in football and baseball, the situation in basketball (most heavily black in racial composition of the three major sports) would appear to have undergone substantial change during the first half of the 1970s.

Rewards and Authority

Discrimination in professional sports is explicit in the discrepancy between the salaries of white and black players. At first glance such a charge appears to be unwarranted. Black players rank among the highest paid in professional baseball (seven of 10 superstars being paid more than $100,000 in 1970 were black), and the mean salaries of black outfielders, infielders, and pitchers exceed those of whites. However, it was reported that substantial salary discrimination against blacks exists when performance levels were held constant. Blacks earned less than whites for equivalent performance. In addition, the central positions in football are those where the salaries are the greatest.

An obvious case of monetary discrimination becomes apparent if one considers the total incomes of athletes (salary, endorsements, and off-season earnings). The Equal Employment Opportunity Commission report of 1968 revealed that in the fall of 1966 black athletes appeared in only 5 percent of the 351 commercials associated with New York sports events. Our own analysis of the advertising

and media program slots featuring starting members of one professional football team in 1971 revealed that 8 in 11 whites had such opportunities, while only 2 of 13 blacks did.

Blacks do not have the same opportunities as whites when their playing careers are finished. This is reflected in radio and television sportscasting where no black person has had any job other than providing the "color."

Officiating is another area that is disproportionately white. Major league baseball has had only two black umpires in its history. Professional basketball has only recently broken the color line, and in football, blacks are typically head linesmen.

Although the percentage of black players in each of the three most prominent American professional sports greatly exceeds their percentage of the total population, there is ample evidence that few managerial opportunities are available to blacks. (Black ownership, of course, is nil.) Data from 1976 sources *(The Baseball Register, Football Register,* and *National Basketball Association Guide)* show that of the 24 major league baseball managers and 26 National Football League head coaches, only one was black. Five of the 17 head coaches (29 percent) in the National Basketball Association (NBA) were black.

Assistant coaches and coaches or managers of minor league baseball teams also are conspicuously white. In 1973, there were but two black managers among more than 100 minor league teams. During the same year in the National Football League, which had a black player composition of 36 percent, there were only 12 blacks, or 6.7 percent, among the 180 assistant coaches.

Finally, despite the disproportionate representation of blacks in major league baseball, only three coaches (less than 3 percent) were black. Moreover, black coaches were relegated to the less responsible coaching jobs. Baseball superstar Frank Robinson, who was appointed the first black major league field general after the conclusion of the regular 1974 season, has pointed out that blacks are excluded from the most important roles. "You hardly see any black third-base or pitching coaches. And those are the most important coaching jobs. The only place you see blacks coaching is at first base, where most anybody can do the job."

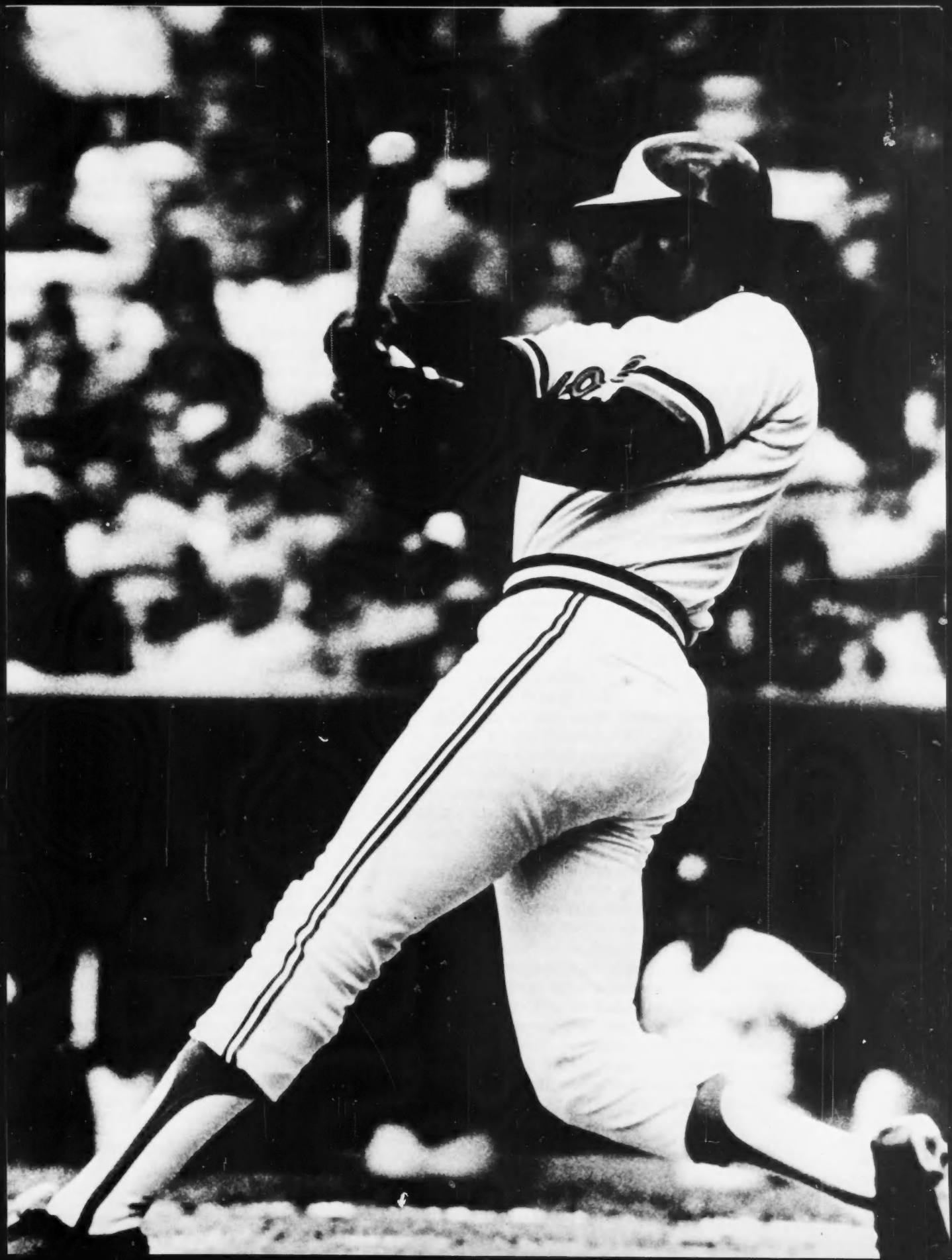
Robinson's appointment, coming more than 27 years after the entrance of another Robinson—Jackie—into major league baseball, was the exception that proves the rule. So historic was the occasion that it drew news headlines throughout the Nation and a congratulatory telegram from President Ford.

The dearth of black coaches in professional sports is paralleled at the college and high school levels. Although many predominantly white colleges and universities have, in response to pressures from angry black athletes, recently made frantic efforts to hire black coaches, they have been hired almost exclusively as assistant coaches, and seldom has a coaching staff included more than one black. As of this writing (1976), not a single major college has a black head football coach, and only a handful of major colleges (Arizona, Georgetown, Harvard, Illinois State, E. Michigan, and Washington State) have head basketball or track coaches who are black.

Blacks, however, are increasingly found on the coaching staffs of college basketball teams. Researchers have reported that the number of black head coaches increased from two in 1970 to 21 in 1973. However, their data are misleading since they included both major (NCAA Division I) and smaller schools. Nevertheless, an appreciable change did occur between 1970 and 1975, when the percentage of black head basketball coaches at major colleges increased from 0.64 percent to 5.1 percent, while the percentage of major colleges with black members on their coaching staffs increased from 20 percent in 1971 to 45 percent in 1975.

The pattern of exclusion of blacks from integrated coaching situations also has characterized American high schools. Blacks, historically, have found coaching jobs only in predominantly black high schools. And, although the precise figures are unavailable, it would appear that the movement toward integration of schools in the South during the 1960s has had the effect of eliminating blacks from coaching positions, as it has eliminated black principals and black teachers in general. So anomalous is a black head coach at a predominantly white high school in the South, that when, in 1970, this barrier was broken, it was heralded by feature stories in the *New York Times* and *Sports Illustrated.* And the situation appears to be little different outside the South, where head coaches are almost exclusively white.

The paucity of black coaches and managers could be the result of two forms of discrimination. Overt discrimination occurs when owners ignore competent blacks because of their prejudices or because they fear the negative reaction of fans to blacks in leadership positions.



The other form of discrimination is more subtle, however. Blacks are not considered for coaching positions because they did not, during their playing days, occupy positions requiring leadership and decisionmaking. For example, in baseball, 68 percent of all the managers from 1871 to 1968 were former infielders. Since blacks have tended to be "stacked" in the outfield, they do not possess the requisite infield experience that traditionally has provided access to the position of manager.

Blacks are also excluded from executive positions in organizations that govern both amateur and professional sports. In 1976, only one major NCAA college had a black athletic director. On the professional level, there was no black representation in the principal ownership of a major league franchise. No black held a high executive capacity in any of baseball's 24 teams, although there was one black assistant to Baseball Commissioner Bowie Kuhn. Nor have there been any black general managers in pro football. Professional basketball's management structure is most progressive in this regard, although ownership remains white. Two of 17 NBA clubs had black general managers in 1973. However, it was a noteworthy event, when in 1970, former NBA star Wayne Embry was named general manager of the NBA Milwaukee Bucks, thereby becoming the first black to occupy such a position in professional sports.

Ability and Opportunity

Another form of discrimination in sport is unequal opportunity for equal ability. This means that entrance requirements to the major leagues are more rigorous for blacks. Black players, therefore, must be better than white players to succeed in the sports world. Aaron Rosenblatt was one of the first to demonstrate this mode of discrimination. He found that in the period from 1953 to 1957 the mean batting average for blacks in the major leagues was 20.6 points above the average for whites. In the 1958-to-1961 time period the difference was 20.1 points, while from 1962 to 1965 it was 21.2 points. In 1967, he concluded that:

> . . . discriminatory hiring practices are still in effect in the major leagues. The superior Negro is not subject to discrimination because he is more likely to help win games than fair to poor players. Discrimination is aimed, whether by design or not, against the substar Negro ball player. The findings clearly indicate that the undistinguished Negro player is less likely to play regularly in the major leagues than the generally undistinguished white player.

Since Rosenblatt's analysis was through 1965, we extended it to include the years 1966-70. The main difference between blacks and whites persisted; for that 5-year period blacks batted an average of 20.8 points higher than whites. Updating this analysis, we found that in 1975 the gap between black and white averages was virtually identical (21 points) to what it had been previously.

The existence of racial entry barriers in major league baseball was further supported by Anthony H. Pascal and Leonard A. Rapping, who extended Rosenblatt's research by including additional years and by examining the performance of blacks and whites in each separate position, including pitchers. They found, for instance, that the 19 black pitchers in 1967 who appeared in at least 10 games won a mean number of 10.2 games, while white pitchers won an average of 7.5. This, coupled with the findings that blacks were superior to whites in all other playing positions, led to the conclusion that: ". . . on the average a black player must be better than a white player if he is to have an equal chance of transiting from the minor leagues to the major."

Moreover, Gerald Scully's elaborate analysis of baseball performance data has led him to conclude that, ". . . not only do blacks have to outperform whites to get into baseball, but they must consistently outperform them over their playing careers in order to stay in baseball." Similarly, another analysis of professional basketball in 1973 revealed that black marginal players are less likely to continue to play after 5 years than are white marginal players.

Jonathan Brower found that the situation in professional football paralleled that in baseball and basketball. First, the most dramatic increases in the numbers of black professional football players occurred during the middle sixties and early seventies. Table 2 shows the increasing percentages of blacks in professional football; basketball data is in Table 3.

Moreover, Brower found that, as in baseball and basketball, "Black . . . players must be superior in athletic performance to their white counterparts if they are to be accepted into professional football." His data revealed statistically significant differences in the percentages of black and white starters and nonstarters. Blacks were found disproportionately as starters, while second-string status was more readily accorded to whites. Whereas 63 percent of black

TABLE 2

PERCENTAGE OF BLACKS IN PROFESSIONAL FOOTBALL

Year	Percentage of Black Players
1950	0
1954	5
1958	9
1962	16
1966	26
1970	34
1975	42

players were starters in 1970, 51 percent of white players were. Conversely, 49 percent of white players, but only 37 percent of black players, were not starters in that year. These findings led Brower to conclude that "mediocrity is a white luxury."

Inequality on the Bench

Our earlier research investigated whether black athletes were disproportionately overrepresented in the "star" category and underrepresented in the average, or journeyman, category on college and professional basketball teams. Our investigation showed that the black predominance in basketball is a relatively recent phenomenon, and that basketball, like football and baseball, was largely segregated until the late 1950s and early 1960s.

There are records of black basketball players on teams from predominantly white colleges as far back as 1908, but such instances were rare during the first half of the century. In professional sports, the National Basketball Association remained an all-white institution until 1950, 3 years after Jackie Robinson had broken the color line in baseball and 4 years after blacks reentered major league football after having been totally excluded since the early 1930s.

Table 3 documents the striking changes in racial composition of basketball since 1954. From the immediate post-World War II situation (1948), when less than 10 percent of collegiate squads were integrated, to 1975, when over 90 percent contained members of both races, substantial and impressive progress was made toward integration. Not only were more schools recruiting blacks, but the number of black players being recruited at each school increased dramatically. The most substantial increase among collegiate teams was during the period between

TABLE 3

RACIAL COMPOSITION OF COLLEGE AND PROFESSIONAL BASKETBALL TEAMS 1948-1975

	College			Professional
Year	% of teams with blacks	Black players as % of total	Average # of blacks on integrated squads	Black players as % of total
1948	9.8	1.4	1.4	none
1954	28.3	4.5	1.6	4.6
1958	44.3	9.1	2.0	11.8
1962	45.2	10.1	2.2	30.4
1966	58.3	16.2	2.8	50.9
1970	79.8	27.1	3.4	55.6
1975	92.3	33.4	5.0	63.3

1966 and 1975, which can be partly attributed to the breakdown in previously segregated teams throughout the South.

Although blacks comprise approximately one-tenth (11 percent) of the total U.S. population, by 1975 they accounted for more than one-third (33.4 percent) of the Nation's collegiate basketball players. The percentage of black players on college basketball teams is even more striking when one considers that in 1975 blacks comprised only 9 percent of undergraduate students, and nearly half (44 percent) attended predominantly black institutions.

The change in the professional game is even more marked, for blacks have clearly come to dominate the game—numerically and, as we shall note more fully below, statistically as well. As contrasted to the situation two decades ago, organized basketball—on both the collegiate and professional levels—has eliminated many of the barriers that once excluded blacks from participation. The changes in professional baseball and football, while not so dramatic, occurred primarily during the middle sixties.

Having determined that black players are disproportionately overrepresented on collegiate and professional basketball teams relative to their distribution within the general population, we systematically examined the roles they played. Specifically, we wanted to determine whether blacks have been found disproportionately as starters and whether the average number of points they score has been higher than that of whites. In order to determine whether starting patterns had changed significantly in the years during which the

TABLE 4

% OF BLACKS AMONG THE TOP FIVE SCORERS

1958	69
1962	76
1966	72
1971	66
1975	61

percentage of black players had increased so dramatically, it was necessary to examine the distribution of blacks by scoring rank over time.

Defining the top players as those with high offensive productivity as measured by their scoring average, we discovered the same situation of unequal opportunity for equal ability in basketball that others found in professional baseball. Using data from 1958, 1962, 1966, and 1970 professional and collegiate records, we found that the higher the scoring rank, the greater the likelihood that it would be occupied by a black player.

While black players comprised no more than 29 percent of all the members of integrated teams during the years 1958-70, in each of these years nearly half—and in some years, more than half—of the leading scorers were black. Conversely, blacks were disproportionately underrepresented in the lowest scoring position. Moreover, our data revealed that between 1958 and 1970, no less than two-thirds—and in some years as high as three-fourths—of all black players were starters.

Recent Progress

Data from the 1975 season, however, indicates that although blacks continue to be overrepresented in starting positions, a steady and substantial decline has occurred between 1962, when 76 percent of all black college basketball players were starters, and 1975, when the percentage had dropped to 61.

These changes are shown above. In other words, black basketball recruits are no longer only those likely to be starters. Thus, unlike professional baseball and football, which show little change during the past two decades, college basketball appears increasingly to provide equal opportunity for equal ability. Moreover, these changes parallel the decline in positional stacking and the increase of black coaches in college basketball previously noted.

In professional basketball, where they have come to dominate the game, blacks were slightly overrepresented in starting roles until 1970, when equal numbers of blacks were starters and nonstarters. Following Rosenblatt's approach in comparing white and black batting averages, we compared the scoring averages of black and white basketball players for 5 years (1957-58, 1961-62, 1965-66, 1969-70, 1974-75).

Although scoring averages were identical for both races in 1957-58, blacks outscored whites in the remaining years by an average of 5.2, 3.3, 2.9, and 1.5 points, respectively. While a slight gap remains between the scoring averages of whites and blacks, the magnitude of the difference has declined as the percentage of black players in the league has increased. This is in contrast to the situation in professional baseball, where the mean batting average for blacks has remained 20 points greater than the average for whites for nearly two decades.

Black Participation

The data presented here suggest both continuity and change in traditional patterns of race relations. Perhaps the most striking fact is that black participation in intercollegiate and professional sports continues to increase—especially in football and basketball. Several possible explanations for this phenomenon—the genetic, the structural, and the cultural—have been advanced.

First, it has been suggested that blacks are naturally better athletes and their predominance in American professional sports can be attributed to their innate athletic and/or physical superiority. As sociologists, we are inclined to reject interpretations of black athletic superiority as genetically or physiologically based, especially since racial categories in any society, but particularly in the United States, are socially and not scientifically defined. At best, given the paucity of data to support such a position, our stance can be no better than an agnostic one.

Another explanation that has been advanced to explain the disproportionate number of blacks in professional and collegiate sports resides in the structural limitations to which black children and adults are subjected. Since opportunities for vertical mobility by blacks in American society are circumscribed, athletics may become perceived as one of the few means by which a black can succeed in a highly competitive American society; a black male's primary role models during childhood and adolescence are much more likely to be athletic heroes than are the

role models of white males. And the determination and motivation devoted to the pursuit of an athletic career may therefore be more intense for blacks than for whites whose career options are greater.

Jack Olsen, in *The Black Athlete*, quotes a prominent coach:

> People keep reminding me that there is a difference in physical ability between the races, but I think there isn't. The Negro boy practices longer and harder. The Negro has a keener desire to excel in sports because it is more mandatory for his future opportunities than it is for a white boy. There are nine thousand different jobs available to a person if he is white.

A final explanation of the disproportionate black prowess in major sports emphasizes the extent to which the cultural milieu of young blacks positively rewards athletic performance. James Green has questioned whether the lure of a professional career completely explains the strong emphasis on athletics among blacks. He argues that the explanation that a black manifests a "keener desire to excel . . . because it is mandatory for his future . . ." simply reflects the commentator's own future orientation.

An alternative explanation of strong black motivation, according to Green, is the positive emphasis in black subculture that is placed on the importance of physical (and verbal) skill and dexterity. Athletic prowess in men is highly valued by both women and men. The athletically capable male is in the comparable position of the hustler or the blues singer; he is something of a folk hero. He achieves a level of status and recognition among his peers whether he is a publicly applauded sports hero or not.

Nearly as dramatic as the proportion of blacks in player roles is the dearth of blacks in administrative, managerial, and officiating positions. Although significant advances have occurred for black athletes in the past quarter of a century, there has been no comparable access of blacks to decisionmaking positions. With the exception of professional basketball, the corporate and decisionmaking structure of professional sports is virtually as white as it was when Jackie Robinson entered major league baseball in 1947. The distribution of blacks in the sports world is therefore not unlike that in the larger society, where blacks are admitted to lower-level occupations but virtually excluded from positions of authority and power.

The fact that black participation in the three major professional team sports continues to increase has led many observers to conclude incorrectly that sports participation is free of racial discrimination. As our analysis has demonstrated, stacking in football and baseball remains pronounced. Blacks are disproportionately found in those positions requiring physical rather than cognitive or leadership abilities.

Moreover, the data indicate that although the patterns have been substantially altered in collegiate and professional basketball, black athletes in the two other major team sports have been and continue to be found disproportionately in starting roles and absent from journeymen positions. The three interpretations previously considered—the genetic, the structural, and the cultural—appear inadequate to explain these patterns.

A genetic interpretation cannot explain the prevalence of blacks in starting roles or their relegation to playing positions that do not require qualities of leadership or outcome control. Even if blacks possessed genetically based athletic superiority, they should not be systematically overrepresented in starting positions or "stacked" in "black" positions, but should still be randomly distributed throughout the entire team.

As Jim Bouton (a former major league baseball player who has challenged the racial composition of major league baseball teams) has written, "If 19 of the top 30 hitters are black, then almost two-thirds of all hitters should be black. Obviously it is not that way."

Similarly, explanations emphasizing the narrow range of opportunities available to blacks or the emphasis upon athletic skills in black subculture fail to explain adequately the distribution of blacks by position and performance.

Sport as Example

Despite some indications of change, discrimination against black athletes continues in American team sports; sport is not a meritocratic realm where race is ignored. Equality of opportunity is not the rule where the race is a variable. These conclusions have implications that extend beyond the sports world. If discrimination occurs in so public an arena, one so generally acknowledged to be discrimination free, and one where a premium is placed on individual achievement rather than race, how much more subtly pervasive must discrimination be in other areas of American life, where personal interaction is crucial and where the actions of power wielders are not subjected to public scrutiny.

MEASURING SUCCESS

OR, WHATEVER HAPPENED TO AFFIRMATIVE ACTION?

By Joan Abramson

"Affirmative action can best be described as an inverted hat. All we can do is try to see that everyone who should be in the hat when hiring decisions are made is there."

This definition of an affirmative action was offered to me last year during a discussion with a high level official in the Office for Civil Rights (OCR) at the Department of Health, Education, and Welfare. When I protested that what came out of the hat was probably more important than what went in, and that the measure of successful affirmative action was who obtained jobs, promotions, equal pay, and tenure, my protests were waved aside: "That has nothing to do with affirmative action," I was told.

Several days later another OCR official confirmed that this passive definition, totally unrelated to any results or any reasonable change in employment patterns, was indeed the "operative" definition of affirmative action. "Absent a finding of discrimination," he said in lawyerly and very official sounding tones, "there is nothing we can do. Affirmative action is strictly voluntary."

"Affirmative action has come to mean what it is not," he explained. "What it *is* is a reaching out and including in of people who were left out because of discrimination. The OFCC (Office of Federal Contract Compliance of the Department of Labor) added goals and timetables. The OFCC looks at affirmative action as a way to remedy underutilization. But underutilization isn't discrimination. It isn't even a prima facie showing of discrimination. Affirmative action as a reaching out is all right. OFCC continues to believe in goals and timetables. But to add a remedy in the event there has been no reaching out is a mistake. You cannot require a remedy without a finding of discrimination."

In his recent book, *Affirmative Discrimination,* Nathan Glazer laments:

> "Affirmative action" originally meant that one should not only not discriminate, but inform people one did not discriminate; not only treat those who applied for jobs without discrimination, but seek out those who might not apply. In the Civil Rights Act of 1964, it was used to mean something else—the remedies a court could

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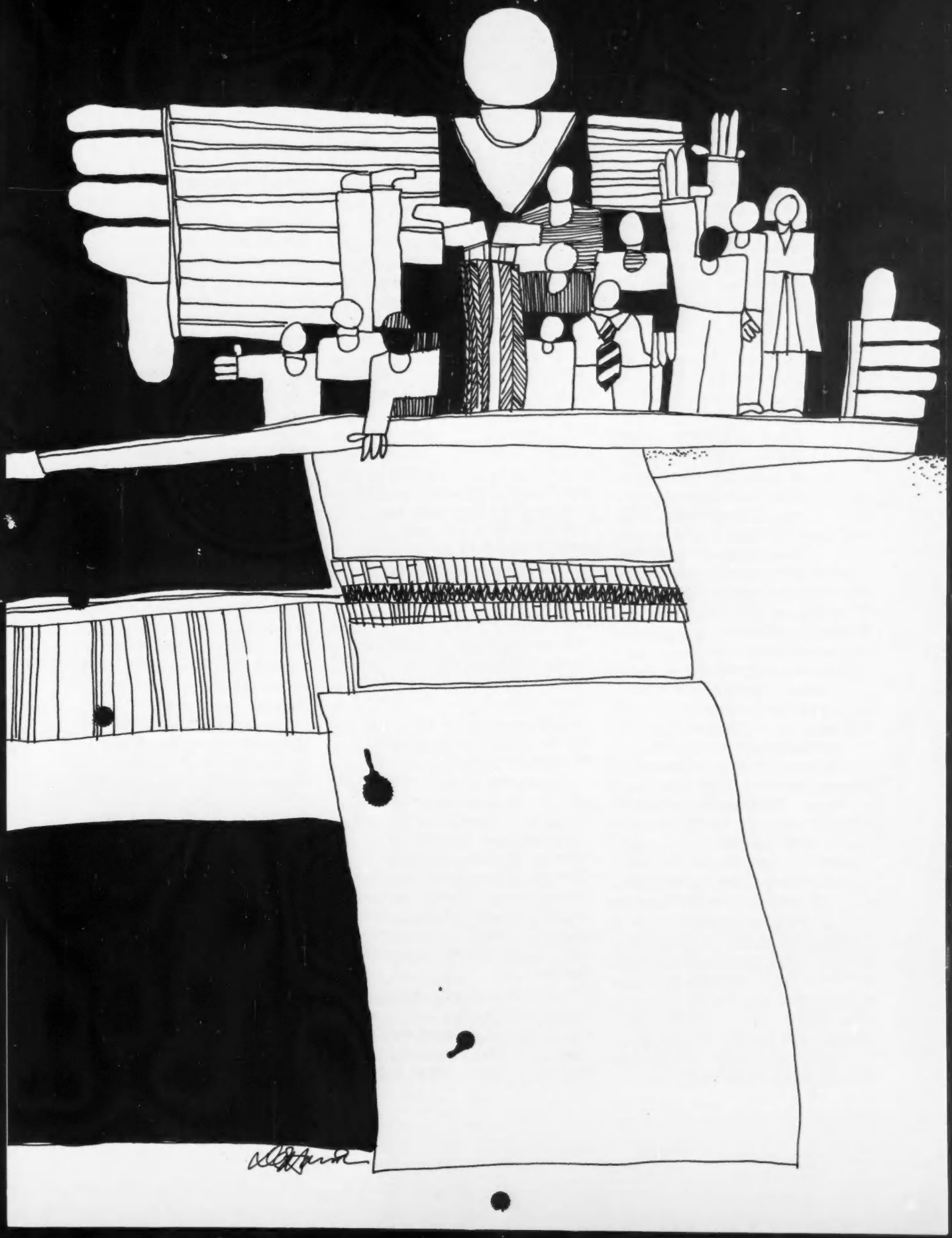


impose when some employer was found guilty of discrimination, and they could be severe. The new concept of "affirmative action" that has since emerged and has been enforced with ever greater vigor combines both elements. It assumes that everyone is guilty of discrimination; it then imposes on every employer the remedies which in the Civil Rights Act of 1964 could only be imposed on those guilty of discrimination.

His view is shared by a number of men in the academic world. Richard Lester, for example, in his 1974 book, *Antibias Regulation of Universities*, defines government imposed affirmative action as requiring preferential treatment of women and minority group members at the expense of better qualified white males.

The point is echoed all the way down to such popular journals as *Reader's Digest*, where one recent article quoted a long line of university administrators and faculty members expressing such alarmist views of affirmative action as: "Washington is using the force of law to compel colleges to hire underqualified and unqualified persons as professors merely because they are members of one 'minority' or another."

These contrasting views are indeed puzzling. On the one hand we have men—mostly from the academic world—raising a cry of alarm and warning that government, while it started with a benign and acceptable view of affirmative action, has twisted that concept into a tool for forcing employers to hire the unqualified over the qualified, merely on the basis of race or sex. On the other hand, we have government officials —the very persons supposedly inflicting all this damage—calmly claiming that affirmative action is nothing more than an effort to include all comers into a "pool" from which hiring is done and, further, insisting that affirmative action is strictly voluntary and that they can do nothing to intervene in the event that only majority males come out of that pool with jobs, let alone with promotions, high salaries, or job security. The government spokespersons insist that affirmative action is what Glazer and his fellows claim it was and is no longer.

What is Affirmative Action?

Glazer is of course correct in pointing out that affirmative action has two separate origins. He is wrong, however, in assuming that the implications of both have blended into one inseparable and ominous concept.

The concept of court-ordered affirmative action derives from the Civil Rights Act of 1964 and does operate on the theory that when a court has established discrimination exists it can fashion affirmative action remedies that include preferential hiring and quotas for members of groups victimized by discrimination in the past.

The concept of affirmative action under the Executive Orders, on the other hand, is based on the theory that the government has the right to demand that certain conditions be met by contractors. One of those conditions is the existence of fair, nondiscriminatory employment practices. If a contractor does not wish to fashion his employment practices in a nondiscriminatory manner and make an effort to assure that persons are hired, promoted, and treated without regard to their race or sex, he presumably has the right not to contract with the government to provide goods and services. If he does wish to contract with the government he can suffer the inconvenience, if that is what it is, of assuring that his workforce is fairly hired and fairly treated.

But Glazer and the OCR officials are wrong in some of their assumptions about this kind of affirmative action. It is incorrect to assume that Executive Order affirmative action is a voluntary concept. And it is equally incorrect to hold that it covers nothing more than the inclusion of sufficient women and minority group members in the pool of job applicants. The Executive Orders, at least those of the 1960s when affirmative action as a concept first began to take shape, state clearly that "the contractor *will take* affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin."

Whether or not such nonvoluntary requirements are a legitimate or (as Glazer would have it) an illegitimate addition to what affirmative action should be is entirely beside the point. They

grew out of the 1960s when, in fact, it was academics who were leading the way, pointing out that when systemic discrimination has occurred over long periods of time, it is not enough for an employer simply to state that he will no longer discriminate. For it was widely recognized that the effects of past discrimination will be carried into the future by simple laissez faire. An employer was obligated to go out of his way to analyze his employment practices so that any having a disparate and discriminatory impact were eliminated and their effects reversed.

This is what affirmative action, as a creative approach to ending discrimination, came to mean. In a 1973 statement, the U. S. Commission on Civil Rights said:

> We have defined 'affirmative action' as steps taken to remedy the grossly disparate staffing and recruitment patterns that are the present consequences of past discrimination and to prevent the occurrence of employment discrimination in the future. In order to properly undertake an affirmative action program under E.O. 11246, the Federal contractor must analyze its employment patterns and 'utilization' of minorities and women.

Thus affirmative action as a concept was based on two things: the recognition that past discrimination, albeit sometimes unconscious and systemic rather than conscious and personal, will be perpetuated without a continuing, conscious effort to eradicate it; and the recognition that such an effort must be mandatory rather than voluntary.

Both the academics who seek to maintain the status quo and the OCR officials whose idea of affirmative action is that it is voluntary "absent a finding of discrimination" are wrong. Affirmative action is clearly required under the Executive Orders by all Federal contractors. And it is based on the fact that discrimination can be assumed if a workforce analysis shows that women and minority group members are not employed in proportion to their availability in the appropriate workforce.

Bridging Two Concepts

Up to this point little difference exists between the 1964 Civil Rights Act concept and the Executive order concept of affirmative action. The employer might consider that he has a choice, however, once discrimination is located. He can take those actions which are necessary to correct discrimination—set up goals and timetables for hiring, promotion, and retention of employees, and make a good faith effort to meet them. Or he may choose to evade and to face the possibility of a discrimination complaint and, ultimately, of court-ordered affirmative action which can include such things as quotas and preferential hiring to meet those quotas.

If he chooses the first alternative—an alternative he is legally obligated to choose if he is a Federal contractor—he can make an honest effort to select qualified employees and to recognize that qualifications and merit are not always synonymous with being white and male. If he chooses the second, he may find that the court will pick his employees for him.

The role of the government in monitoring affirmative action bridges these two concepts. A vigorous and careful government effort to assure that government contractors have solid affirmative action plans and stick to them with reasonable good faith can help bring about an end to employment discrimination.

First, government oversight can be of great value simply by making it less troublesome for an employer to comply than to not comply. And second, it can make it easier for employees to complain and win discrimination suits by assuring that even recalcitrant employers have records that will reveal the statistical consequences of their employment policies. Without the government as a partner in this effort, employees or potential employees may find it overwhelmingly difficult to establish a clear statistical pattern for the purpose of filing discrimination complaints. The absence of records can thus become a tool for evading the law. But a strong government presence can prevent such evasion.

The leadership among those arguing that government-imposed affirmative action is illegal has come from the academic community—the same community that took the lead in the 1960s in demanding an activist and creative definition of affirmative action. Perhaps it did not occur to that

community during the 1960s that the activist definition might also apply on campus. It did, however, occur to women and minority males. And once they began an attempt to gain affirmative action on campus, white male academics began a loud and persistent barrage of writing, speaking, and lobbying to retain the status quo.

In the meantime, government remained passively receptive to the gradual erosion of affirmative action. Over the past 8 years the government has been biased in favor of academics who claim that violence is being done to the traditional ideals of the campus. And the pleas of women and minority group members that they, too, deserve a place on the campus have been ignored.

It is vital to examine the arguments of the academics and helpful to examine them in the context in which they are made—the context of campus employment. The campus is in itself a major employer of professional people. It is also the exclusive training arena for professionals in other areas of the economy. Further, the campus has been the center of the drive to erode affirmative action as a workable tool for overcoming discrimination for the entire economy.

What has happened, in both the campus and government camp, is that the noncourt version of affirmative action has been all but forgotten. Both campus advocates for the status quo and OCR officials are in agreement in insisting that there is really only one kind of affirmative action and that it demands a prior legal finding of discrimination to trigger it.

They disagree, however, as to whether or not such affirmative action is in fact being implemented. OCR personnel insist that noncourt affirmative action is a myth created by the Office of Federal Contract Compliance; that the whole paraphernalia of underutilization, goals, and timetables is meaningless "absent a finding of discrimination," and that they cannot impose such meaningless and illegal concepts. Pro status quo academics meanwhile insist that, even without courtroom findings of discrimination, illegal affirmative action with quotas and preferential treatment is being imposed on one and all by overzealous and heavy-handed government agencies.

Why government officials who do not seem to believe in affirmative action outside the courtroom would even want to enforce zealously the court version of it, complete with preferential hiring and quotas, remains a mystery. Whether in fact they are doing so, however, can be tested by two means: first by examining the evidence used by academic alarmists to prove that this is so and second by examining the actual state of enforcement by the Office for Civil Rights.

The Evidence

The evidence cited by the alarmists is eye opening. For example, Glazer, writing in 1975, cites an incident from an Ivy League university where an HEW regional representative asked why no women and minority students

were enrolled in a graduate department of religious studies. When told that the program required a reading knowledge of Hebrew and Greek, the HEW representative advised the university to end "those old fashioned programs" that require ancient languages. Writing in 1976, Ralph K. Bennett quotes the same incident. Glazer, but not Bennett, gives a citation for the incident: an article published in early 1972 by Sidney Hook, one of the original and most vehement spokesmen against affirmative action. And Bennett, but not Glazer, tangentially mentions that HEW had apologized for the incident since even HEW considered it an improper interpretation of the regulations. Thus we have a 4-year-old report of an incident that is even older, and that HEW has admitted is not proper affirmative action, still being used as evidence of what affirmative action is.

In another example, Malcolm J. Sherman, in a 1975 article in the *AAUP Bulletin*, quotes a survey of sociology professors as evidence that affirmative action requires preferential treatment. In a 1973 journal, it was reported that 47 percent of the male sociologists and 42 percent of the female sociologists surveyed believed that some candidates for faculty positions in sociology had been selected preferentially due to the demands of government affirmative action. The same survey is cited by Glazer. And it is referred to by Miro Todorovich, another antiaffirmative action activist, in a 1975 letter in the *Civil Rights Digest*.

Of course, the sociologists surveyed could have been misinformed. Or they could have been informed correctly. In either case, the use of such an opinion survey, an outdated one at that, has the ring of an advertising claim that 82.7 percent of all doctors surveyed prefer a certain brand of whiskey or laxative, ergo, the hapless consumer is urged to conclude, the whiskey or laxative is guaranteed to operate with the authority of medical science.

Another example: In a speech given at the U.S. Commission on Civil Rights consultation on affirmative action in higher education in September 1975, George Roche III, another longtime leader in the campus drive against affirmative action, made the following statement:

> Samuel H. Solomon, special assistant to the Office of Civil Rights, has already investigated a number of cases and has discovered that a number of America's colleges and universities are engaging in reverse discrimination favoring women and minority candidates for faculty and staff jobs over equally qualified or better qualified white males. Solomon himself has commented, "I've been out on the campus trail in recent weeks and I am getting the impression that most of the institutions are engaged in some form of discrimination against white males."

Roche offered no citation for either the direct quote or the "discovery" of reverse discrimination attributed to Solomon.

The same quotation was used in late 1975 in a *Change Magazine* article by Todorovich and Hook: "In an interview given by HEW ombudsman Samuel Solomon on April 30, 1973, he said he had completed investigations of 12 complaints (out of more than 70 filed) and had found evidence of reverse discrimination in each. He is quoted as saying 'I've been out on the campus trail in recent weeks, and I'm getting the impression that most institutions are engaging in some form of discrimination against white males.' " Hook and Todorovich, though they provide us a clue that the information is almost 3 years old at the time of their own article, fail to cite any source for the quotation.

The job of HEW ombudsman was created by HEW under pressure from campus men and such organizations as the Anti-Defamation League, which feared that measures taken to eliminate discrimination would, in themselves, be discriminatory. The groups, moreover, feared that reverse discrimination was rampant on the college campus. But the ombudsman's job was eliminated in 1974, under pressure from the same groups, because the ombudsman was unable to find evidence of reverse discrimination on the campus. Some of the campus advocates for the status quo seemed to prefer the unexamined illusion to the ombudsman's failure to find

reverse discrimination. Thus, when Roche, Hook, and Todorovich were quoting the ombudsman, he had already been out of office for well over a year. What is more, by September 1975, when Roche uses the present tense to describe the ombudsman's activities, the former ombudsman was on leave from HEW.

As to the quotation itself, the former ombudsman told this writer that it can be traced to a misinterpretation of something he said in an interview with a reporter from the *Los Angeles Times*. Said the ombudsman: "What I did say a number of times is that it (reverse discrimination) was overblown. I did document some cases wherein university departments discriminated against white males in an apparent effort to fulfill what they perceived as their affirmative action obligation. But, I never thought it to be the widespread practice as claimed by Hook and Todorovich. I think it was often the case that departments used the excuse of affirmative action to avoid turning down candidates for reasons of inadequate credentials. That way the onus could be placed on the Feds. I conducted all my investigatory work via correspondence and the telephone—never onsite. Yet, somehow it came out in the *LA Times* article that I had been 'out on the campus trail' seeing all sorts of bad stuff. That quote threw me, because I know I didn't make it. Peter Holmes and our PIO sat with me during the interview, and neither heard me say anything of the kind. I saw the *Change* article—sent to me by a friend who spotted it—and shuddered when I saw that that misquote was still being used to justify the Hook/Todorovich position."

Thus an ex-HEW ombudsman, who has not been ombudsman since 1974, is erroneously quoted and requoted in 1975 to prove that reverse discrimination is a living reality. Out of such stuff is the case for the horrors of reverse discrimination made.

It is almost exclusively this kind of evidence, plus the seemingly obligatory heart-rending tale of a couple of superbly qualified white males who have been forced to pump gas or fry hamburgers for a living, that makes up the evidence on which the academic alarmists base their case and arrive at the conclusion that affirmative action is synonymous with preference, quotas, and the disintegration of the merit system.

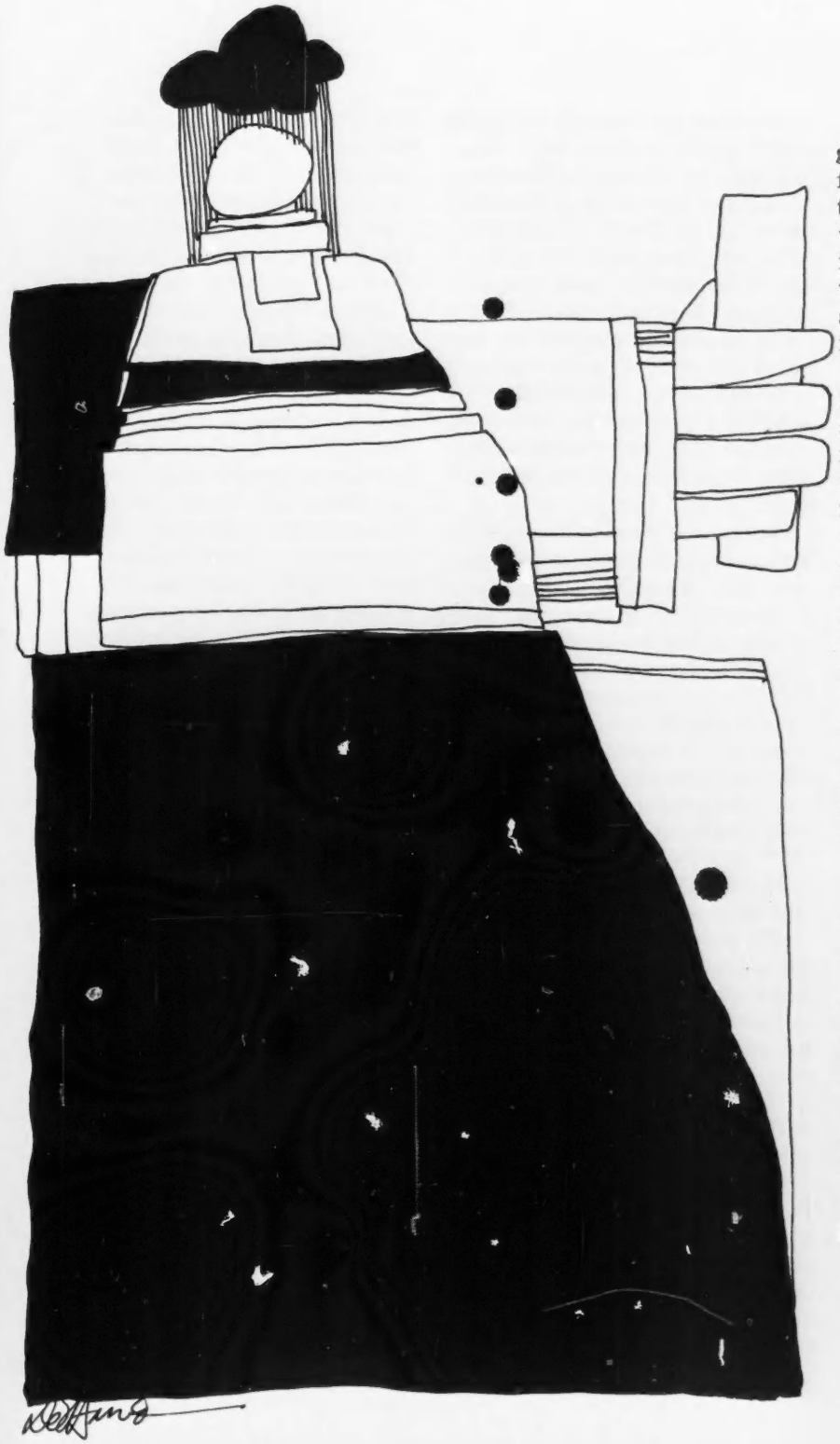
The Explanations

Statistics are not a common element in these articles. Indeed, a case is often made that statistics are a false tool and do not prove anything at all about discrimination; even if women and minority group members are underrepresented year after year, one cannot conclude that this is due to discrimination against them. Thus Glazer bemoans the "downgrading of acts of discrimination . . . in favor of statistical pattern-seeking . . ." Yet those familiar with the law know that "acts" of discrimination are rarely possible to prove without evidence of a statistical pattern of disparate treatment.

The argument that follows generally refers to ethnic differences or "taste" or to assumed differences in primary preoccupations, such as raising children. Equality of opportunity, we are told, does not necessarily produce equality of results. The natural effect of an equal chance is to find that when one counts up all the individual achievers a disproportionate number of them may come from certain racial, ethnic, or sex groups. The argument, presented definitively by Paul Seabury in his 1972 *Commentary* article, "The Idea of Merit," and echoed ad nauseum by the antiaffirmative action academics, is really nothing more than thinly disguised elitism. It presumes unquestioningly that the current state of affairs can best be described as one in which equality of opportunity and a merit system in fact prevail and it goes on to argue that the current makeup of our university faculties is nothing short of a "democracy of merit."

Nowhere in these academic tirades is merit defined except, perhaps circularly, in terms of those who have been rewarded by the system: If one has made it in the academic world, then one can be defined as meritorious since the academic world operates on a merit system.

But statistics do tell us some things. They tell us, first, that women and minorities are not making it in the academic world. In fact, they tell us that the status of women in that world has grown worse in recent years despite the



growth in the pool of women trained for employment as academics. And they also tell us that HEW has willingly found universities to be in "compliance" with the law at the same time that university statistics reveal a deterioration in the status of women.

The academic alarmists might, indeed, simply accept these statistics as further proof that the merit system works and that white males are naturally more meritorious. (Such a contention could easily be challenged by examining the vague and subjective definitions that are assigned to "qualifications," "promise," and "merit" in the academic world.) But how the alarmists can, in the face of these statistics, continue to claim that government-imposed "reverse discrimination" is the current modus operandi on the campus is difficult to understand.

In 1973, the American Council on Education released a study that showed that the percentage of women among college and university faculty members had gained only nine-tenths of one percentage point over the preceding 5 years. Looking back, one can state that those 5 years were indeed a time of relatively spectacular gains and rich rewards for women; the most recent studies by the Office of Education and the American Association of University Professors indicate that women are now losing ground as a percentage of college and university faculty members.

According to the 1976 AAUP survey of college and university

professors, women are losing ground as a percentage of faculty members and the relative gap in earnings between men and women on the faculty is increasing. AAUP reports, for example, that in only one year, between 1974–75 and 1975–76, the percentage of women faculty members fell by eight-tenths of one percentage point, from 22.5 to 21.7 percent. Further, the fall occurred where it counts, in the upper, tenured ranks. Thus it would appear that while women are still (as they have always been) acceptable as low-ranked and temporary lecturers and instructors, they are still unable to push into the positions that carry full colleague status. The AAUP report states that there has been a "general drift of faculty members to the more senior ranks." It adds: "Women have not participated in that drift."

These are hardly the figures one would expect from years of "preferential hiring" or from the hiring of unqualified women at the expense of qualified white males. To the contrary, it is a picture we might well expect to find if the prevailing conditions for hiring and promotion were preferential for white males.

Enforcement by HEW

OCR's record in imposing campus compliance is no more convincing than the AAUP statistics if one is looking for evidence that antidiscrimination enforcement is heavy handed. It is hardly characterized by quotas or the forced hiring of women and minorities. Overall, OCR has an undistinguished record. As of last March, it circulated a list of 49 colleges, universities, and junior colleges with approved affirmative action plans. This is not exactly a staggering record of success, given the over 2,000 universities and colleges estimated to be in OCR's supervisory population and given the years OCR has had to develop a record of compliance activity. The picture is even more discouraging when one examines some of the actual affirmative action plans.

At my own former university a class complaint of discrimination was filed with OCR in 1972. In 1974, preliminary findings supporting the allegations of discrimination were released by OCR. In the meantime, OCR had begun negotiating with the university to develop an affirmative action plan. The plan was released in 1973 and, following additional promises to perform certain kinds of data collection, an agreement was reached in spring 1976. The class complaint was then dropped on the grounds that the affirmative action plan would somehow speak to the issues raised in the complaint. However, despite the plan, the university has managed to *reduce* women as a percentage of the faculty by 4 percentage points in an 8-year period and *reduce* women as a percentage of the tenured faculty by the same 4 percentage points during the same 8-year period. A quarter of that reduction has occurred since the university released its affirmative action plan.

Ironically, the preliminary finding of discrimination made by OCR in 1974 pointed to the low percentage of women on the faculty as evidence of discrimination. That percentage had decreased by 1976, when HEW dismissed the complaint.

At the University of California at Berkeley, after years of bickering and delay, an affirmative action plan was approved that by now is well known for its opulence in length and its stinginess in promise to increase employment for women and minority group members. The plan promised to increase the number of minority individuals by 2.78 individuals and the number of women from 6.5 to 13 percent over a 30-year period.

For the most part, civil rights activists took the plan as evidence of Berkeley's arrogance and OCR's unwillingness to enforce the law. What was not known at the time was that the 30-year timetable for accomplishing these all but meaningless goals was in some cases in error. Someone had left off a plus sign. In their latest annual update of the plan, Berkeley officials corrected the earlier oversight and several departmental timetables were changed to read "30+". A footnote in the annual submission informs the reader that "an entry of 30+ in the years-to-parity column implies a minimum of 30 years to achieve parity." In other words, Berkeley has promised *not* to achieve equity within at least the next 30 years.

The antiaffirmative action crew of course took immediate advantage of the Berkeley plan

to bolster its case. It now serves as "evidence" that there isn't much discrimination anyway, since HEW has accepted the low level of goals and timetables in the plan as valid. Thus Todorovich writes: "In fact, widespread programs were instituted without the least statistical knowledge of the actual size of disproportions which were, however, assumed to be immense . . . Now, as the facts come gradually to light, it has become clear that the disproportions, where they existed at all, were small. The new Berkeley plan graphically shows the triviality of the disproportions." HEW's willingness to accept a ludicrous plan is now being used as further evidence of the almost nonexistent nature of the problem of discrimination on the campus.

The element of surprise is no longer present for those who have followed OCR activities and, therefore, OCR's acceptance of the Berkeley plan and the followup material was not unexpected.

Indeed, OCR officials have been open about their dislike for their affirmative action supervisory role. Peter Holmes, who was director of OCR during the Berkeley negotiations, claims that Revised Order Number 4, which contains the regulations under which affirmative action is supposedly implemented, is a "nit-picky, burdensome, paperwork requirement." Martin Gerry, who followed Holmes as OCR director, adds that the regulations are "unintelligible and counter-productive." And Caspar Weinberger, who was Secretary of HEW during much of the uproar surrounding Berkeley, considers the regulations "totally unrealistic in connection with universities and more suited to a brewery." With this attitude on the part of leadership, it is not surprising that the regulations, which an unwary reader may find simple enough, are viewed as cumbersome, obscure, and unworkable. There simply is no desire within the Office for Civil Rights to make them work.

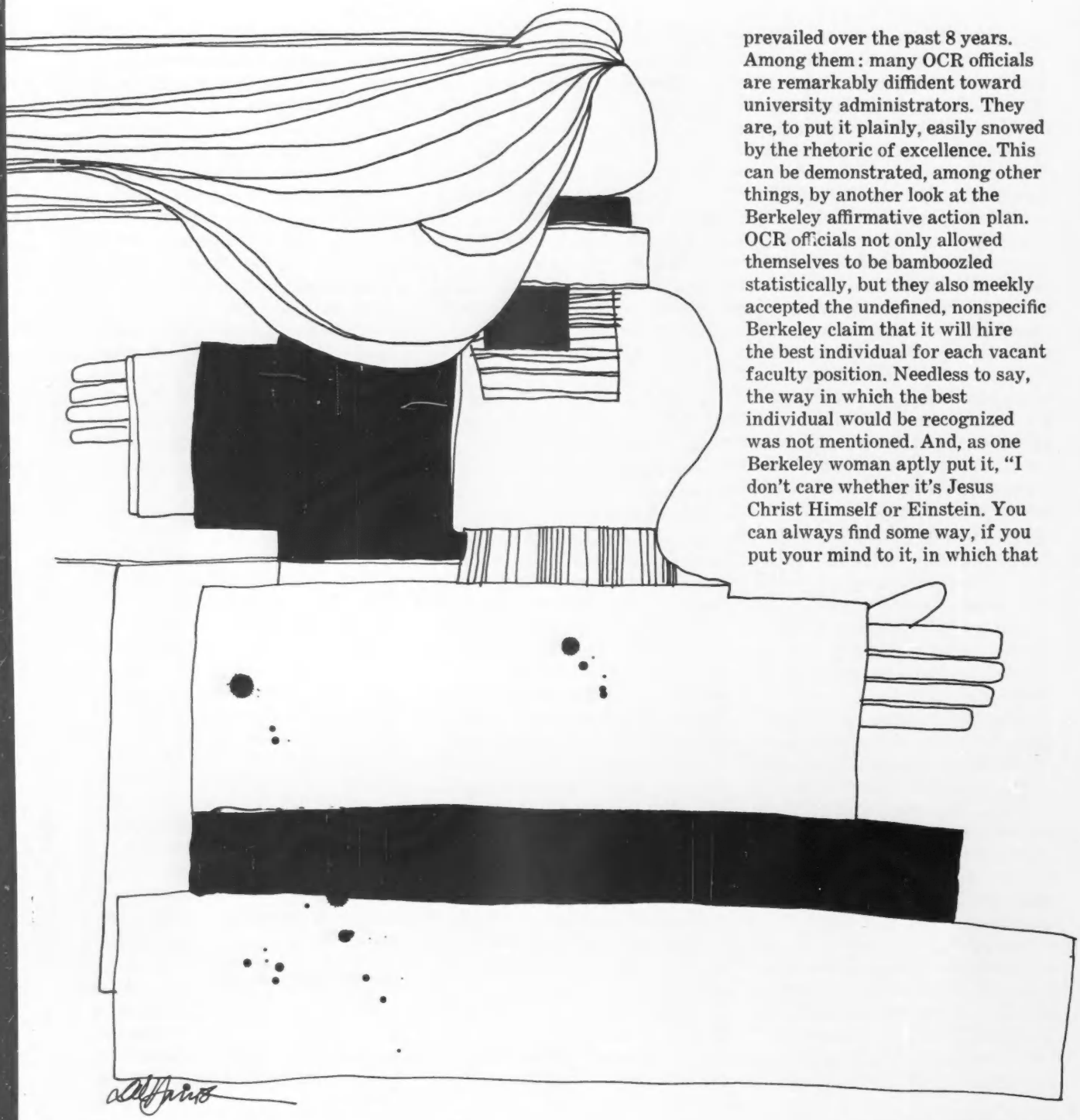
From the point of view of women and minority group members who have long attempted to gain a fair share of campus jobs, this is exactly where the most exasperating difficulty lies. It would be hard enough to cope with reluctant university administrators and with white male faculty members who have become convinced that jobs for women and minority individuals will automatically mean quality will suffer and excellent white males will go jobless. The university faculty employment system, if it differs at all, might be said to differ in the degree of input employee can have into who shall join their ranks. In actuality, this input has never been as strong as professors would like to believe. There has always been room in the academic world for the powerful president, dean, or department chairman to impose his will over the collective objections of faculty members when it comes to hiring and tenure decisions. But it is probably true that, as crony hiring systems go, the university system is among the most liberal in including its professional employees among those cronies who are allowed to take part in decisions on the distribution of employment perquisites.

But because it is essentially a crony system—the academic world would be happier, no doubt, with the term "mentor system"—it is wide open to abuse. Standards and criteria for employment decisions could hardly be more subjective: terms such as "merit," qualifications," and "promise" are bandied about glibly and any plea that they be pinned down in terms of measurable qualities is generally met with an argument that to do so would somehow crush a fragile structure on which the excellence of future generations depends or would destroy the academic freedom on which current research depends.

But to cope with these difficulties without a strong government presence in the background is all but impossible. Universities, quite simply, need not listen to arguments concerning the necessity of examining their faculty employment systems or questioning the real basis on which decisions about faculty perquisites are made. They need not listen because they know that they need not change. They have already successfully convinced the government that its presence on the campus is neither required nor desirable.

The Reasons for Failure

There are a number of reasons for this beyond the obvious one that a negative political climate for civil rights enforcement has



prevailed over the past 8 years. Among them: many OCR officials are remarkably diffident toward university administrators. They are, to put it plainly, easily snowed by the rhetoric of excellence. This can be demonstrated, among other things, by another look at the Berkeley affirmative action plan. OCR officials not only allowed themselves to be bamboozled statistically, but they also meekly accepted the undefined, nonspecific Berkeley claim that it will hire the best individual for each vacant faculty position. Needless to say, the way in which the best individual would be recognized was not mentioned. And, as one Berkeley woman aptly put it, "I don't care whether it's Jesus Christ Himself or Einstein. You can always find some way, if you put your mind to it, in which that

individual—black, white, male, female—is a little less good than perfection."

Another reason is simply the close connection between universities and government. Top leadership is often interchangeable between the two. This closeness leads to a situation where civil rights enforcement agencies have often begun to operate on a pattern that is familiar in other regulatory agencies: the regulator all too often becomes an advocate for the industry under regulation rather than a watchdog for the public interest or an enforcer of the law. In the past few years, the key cabinet posts in civil rights—Labor, HEW, and Justice—have been or are filled by former university professors. Thus government is especially sympathetic to the argument that academe is a special and fragile place where normal enforcement regulations cannot be made to apply.

The attitude of these leaders was made clear recently by yet another refugee from academe in yet another cabinet post. Henry Kissinger, when informed that a career State Department employee had charged the department with race and sex bias, replied that the department was a special place where ordinary regulations covering discrimination did not fit.

Another reason for lax enforcement, I am convinced, is that within HEW there is a firm disbelief in sex discrimination as a real issue. Indeed, one high level female official recently confirmed that conviction during an interview —after asking me to turn off my tape recorder.

This is a conviction that OCR officials share with university administrators and faculty. And despite years of research that one would think sufficient to prove that women are as capable of intellectual endeavor as are men, it is a conviction based on a firm belief that women as a group are simply not as capable as men, not as motivated as men, and not as career-oriented.

This attitude is particularly crucial in higher education. It is not difficult, and perhaps not even overly upsetting, for white male academics to make a space here and there for a minority male colleague. Indeed, even if minority males were eventually admitted to the ranks in exact proportion to their presence in the population, their numbers would not be so large that they would be truly visible or unsettling.

However, the potential for women of all races is far larger and thus far more frightening. No matter how remote it may seem, one wonders sometime if the notion that women could some day make up over half the college professors in the Nation might not be so horrifying and unsettling that heels have been dug in well in advance of the onslaught. University teaching, after all, is a fairly comfortable way of life and it is to all intents a clubby male life at the present time. If women were allowed in and up the ranks, things would certainly seem different. And change from a comfortable status quo is something few human beings relish.

There is no reason to think that attitudes on the campus are about to change. Nor is there reason to believe that male faculty members, department chairmen, and deans are suddenly going to be able to recognize "merit" in women, using the same vague and subjective means of judgment that has kept women off the campus thus far.

The Government's Role

A strong government presence is therefore essential. If it cannot be used to ensure that lack of progress will mean withdrawal of Federal funds, it can, at the least, be used to ensure that statistics are kept and lack of progress is monitored.

Yet OCR is doing neither. Not only is it true that individuals cannot be assured of gaining equity through OCR, but they are also further handicapped if they attempt to seek equity through the courts. It is virtually impossible to prove discrimination in a court of law without adequate data on an employer's workforce, employment practices, and salary patterns. The collection of such data is a basic minimum for a proper affirmative action plan.

But few universities have affirmative action plans. And those few that do are often permitted to collect data in such a way that they obscure employment patterns. My own former university, for example, is providing data on promotions and tenures for those "eligible for promotion consideration" and "eligible for tenure consideration." Exactly what "eligible" means is never explained in the plan. Thus women appear

to do very well: those few who are "eligible" generally gain promotion and tenure. The problem is, of course, that one cannot tell from the plan if men and women are considered eligible in equitable or disparate ways. But we know from other university records that women are rarely considered eligible, while the proportion of men considered eligible is substantial.

And at Berkeley the government has turned its eyes politely away from what's basically a statistical con game. Berkeley changed its faculty data base in its first followup submission. Thus it is impossible to figure out how many women and minority group members did work their way into the permanent faculty. The annual figures submitted most recently simply are not comparable to earlier figures submitted to the government. And the statistician responsible for data collection claims that the data base will be changed again before the next submission. When asked if this did not make comparisons impossible and any analysis of progress purely speculative, the statistician admitted that this was so but claimed it was a price the university was willing to pay in order to "clean up its classifications."

When a corporation changes its method of recordkeeping, the law demands that stockholders be given some clue to the means of comparing old and new figures. No such clue was felt necessary by the Berkeley administration. Thus I was told that the closest "approximation" might be gained by subtracting certain categories of employees not considered to be academic employees in the new report from the total of faculty employees in the old report. But an approximation is not good enough when one is dealing with the miniscule goals set out by the Berkeley plan. The changing data base has made it impossible to see whether Berkeley has met even these miniscule goals.

OCR, by tolerating such statistical games, is failing in its duty to impose meaningful affirmative action on the campus. What is worse, it is hamstringing others who may wish to attempt bringing court-ordered affirmative action to the campus.

Using the System

Affirmative action once had a ring of optimism about it. One could think of it in terms of new and innovative approaches to ending employment discrimination. And universities, of all places, seemed to lend themselves to such approaches.

A university president or chancellor, if he became serious about meaningful affirmative action, would find that many of the tools for creating action were already available to him. He could provide incentives for hiring women and minority group members. Extra faculty positions could be made available to those departments that found and wished to hire qualified women and minority individuals. Reduced teaching loads and paid leaves of absence could be provided lower ranked women and minority group members who needed time to complete a thesis or to engage in sufficient writing and research to advance to more permanent positions. Policies could be implemented that assured that qualified women and minority lecturers are given the chance to switch to regular faculty jobs before searches are conducted for new employees to fill those jobs. Women and minority faculty, normally overburdened with student advising and with committee work since there are so few of them to go around, might be given credit toward advancement for such work rather than being punished if the work slows their traditional research. These are only a few of the techniques that come to mind for helping to overcome the effects of past discrimination. And that, after all, is what affirmative action is supposed to do.

In fact, every one of these techniques is currently used by universities, but for quite different purposes. Extra faculty jobs, often accompanied by high rank, instant tenure, and off-scale high salaries, are carved out with great frequency when university presidents have a friend retiring from a television network or a corporate board. Special pleas for extra faculty spots are honored when a chairman wishes to bring in a former college roommate who feels the sudden need to escape an arthritis-producing climate or the environs of a bad marriage. Such special appointments are generally accompanied by great fanfare and by publicity releases that tell the world that the university has been given a golden

opportunity to gain the "wisdom" accrued by its new superstar.

Reduced teaching loads and paid leaves of absence are commonly granted perquisites, assigned when a colleague claims he needs to escape for awhile from the demands of students. Given the campus honor system, no one bothers later to ask if any real work emerged from the extra research time. White male colleagues who long ago dropped even a facade of research are frequently promoted on the grounds of their long service, their committee work, or their loyalty. And local professional men who teach an occasional campus course, or more distant acquaintances or former students, are often fitted into jobs before they are advertised. Thus, when an opening is announced, the advertisement is written in such a way that only the preselected white male has the required qualifications.

None of these techniques are considered unreasonable because the self-contained and circular logic of the academy insists that its male beneficiaries are patently the most qualified persons in any case. At my own former university, for example, a new vice-president was selected without any search whatsoever. When the president was questioned about the selection he responded that it was so obvious that the new man was the most qualified individual that any search would have been a ruse.

These techniques have, in fact, been the major means whereby women and members of minority groups have been excluded. The techniques continue to be used in the time-honored ways and women and members of minority groups continue to be excluded from the campus. But when one asks why the same techniques might not be used to overcome the effects of past discrimination, one is generally told—both by campus administrators and OCR officials —that their use would be illegal because it would be preferential. The same administators and officials do not acknowledge that the continued use of them in support of the status quo might also be regarded as illegal and preferential.

As long as this situation continues on the campus and in the agencies, one can only view the continuing tirades about the horrors of reverse discrimination, quotas, and preferential hiring as a well-orchestrated and successful technique for maintaining the status quo and keeping the Federal presence at bay. And as long as the Federal agencies continue to waste valuable time and tax dollars on explaining how affirmative action cannot work, how the most minimal record-keeping is "nit-picky," and how any means that might be used to improve the status of women and minority group members is really illegal because it would be preferential, there is little hope for change. The Office for Civil Rights, rather than preventing campus violations of the antidiscrimination laws is, in fact, abetting continued violation.

Whether the situation can be turned around under a new administration remains to be seen.

By Herbert Hill

FEDERAL LABOR POLICY AND EQUAL OPPORTUNITY

MANDATE FOR CHANGE

Prior to the adoption of Title VII of the Civil Rights Act of 1964, the National Labor Relations Act (NLRA) and the Railway Labor Act (RLA) were the only Federal legislative remedies potentially available to victims of racial discrimination in employment. For many years, the National Labor Relations Board (NLRB), the enforcement agency established by the NLRA, remained unresponsive to complaints of racial discrimination. However, the history of the NLRB reflects a slow process of evolution from a general policy that abstractly required nondiscrimination, to law, and then to practice. This transformation has occurred in several distinct phases, each marked by general unwillingness on the part of the Board to use its power against discriminatory employment practices.

From its inception the NLRB could have applied extensive administrative resources against the more overt discriminatory practices of employers and labor unions. However, for years the Board rejected the numerous petitions it received regarding racially motivated employment abuses. History shows that interests of employers and labor unions were directly represented within the Board's membership, while the community of black workers had neither such representation nor the institutions and the power that management and labor possessed and used. The domination of the agency by organized employers and organized labor caused black wage earners to resort to the Federal courts in an often vain attempt to protect their rights, forcing them to bear the expense and protracted delay of litigation.

The NLRA was, of course, primarily concerned with regulating relationships between employers and labor unions. This, however, does not excuse the

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Board's failure to use its powers for swift and pervasive action against the discriminatory practices of management and organized labor, especially after 1944 when the Federal courts began to develop the judicial remedy of the duty of fair representation. Moreover, the Board has not been merely neutral in its response to the issue of discriminatory practices based on race; it has provided vital protection and a full range of government services to both labor unions and employers engaged in discrimination.

Because the NLRA itself deals inadequately with the entire problem of racial discrimination in employment, and because the NLRB has been loath to bring its administrative power to bear on the problem, "creative interpretation" by the courts has been necessary, but it has emerged very slowly. The issue of fair representation was forced into the courts because the administrative processes of the Federal regulatory boards were effectively closed to black workers.

The railway labor boards established pursuant to the RLA have to an even greater degree than the NLRB been unresponsive to complaints of discriminatory practices. A high concentration of black workers with unique traditions and status in their communities existed within the railroad industry. This factor, combined with the harsh injustices they suffered, impelled them to initiate the early court cases that brought racial discrimination within the duty of fair representation.

As initially expressed by the courts, the only prohibition of racial discrimination in employment was an ambiguous doctrine requiring labor unions to treat whites and blacks alike in the collective bargaining process. Although black employees were denied membership in the exclusively white railroad brotherhoods, the unions negotiated terms and conditions of employment for black workers which directly—and adversely—affected many aspects of their job status. The doctrine of fair representation was not applied to exclusionary union membership practices for many years; unions that were free to exclude blacks from membership were somehow expected to treat them fairly in other vital phases of the employment relationship.

This contradiction in the law remained until 1964, when the NLRB indicated that it would begin inquiring into the racial practices of labor unions if complaints of discrimination were properly filed. The Federal courts were quick to confirm the Board's authority to deal with problems of job discrimination based on race, but the Board's power in this area has been infrequently used. The NLRB's administrative power to conduct investigations at its own expense, to issue cease and desist orders, and to proceed directly to Federal court for enforcement of its orders, gives it the potential to serve as an important vehicle for the redress of racial discrimination in employment, but its history in the area of civil rights has been one of great possibility and little practical effect.

The Addition of Title VII

In response to a nationwide movement of racial protest, Congress adopted the Civil Rights Act of 1964, which included Title VII, the Equal Employment Opportunity Act. Administrative responsibility for the operation of Title VII rests with the Equal Employment Opportunity Commission (EEOC). The Commission itself has no direct enforcement powers; its functions consist of investigation, persuasion, conciliation, and, since March 1972, initiation of lawsuits in the Federal courts. During the first decade of the law's existence, the primary method of enforcement was through private litigation. However, before potential plaintiffs may file lawsuits, they must exhaust extensive and delaying administrative procedures.

Prosecuting charges of racial discrimination in employment before the National Labor Relations Board offers black workers an additional remedy, not an alternative remedy. Cases brought under the NLRA and Title VII confirm the fact that the NLRB and the EEOC often have concurrent jurisdiction and that black workers may simultaneously approach both forums to obtain redress. However, the Board has retreated from the court's broad interpretation of its authority. Arnold Ordman, the NLRB's general counsel, in reply to an inquiry from Senator Jacob Javits of New York, stated in 1966 that the Board would continue to follow the practice of "deferring" to the EEOC in cases of racial discrimination:

> *The National Labor Relations Act is primarily designed as a law concerned with problems of labor-management relations and organizational rights rather than racial discrimination.* On the other hand, Title VII . . . is aimed directly at racial discrimination. . . . In any particular case . . . my policy is to examine the particular factual situation and to make a determination to defer or not to defer (to EEOC), as the case may be, on the basis of my judgment as to whether deferral will best effectuate the intent of Congress.

The NLRB's general counsel is responsible for issuing a complaint against a union or an employer when a charge alleging an unfair labor practice is filed with the Board; without his complaint, the case cannot proceed. Therefore, the general counsel's view that the resolution of racial issues is not an important purpose of the Board means that few such cases will be brought.

Despite both the clear implications of an emerging body of law over a 25-year period and the explicit statements of the court in *Local 12, United Rubber Workers* v. *NLRB*, the Board has refrained from adopting a policy requiring the exercise of its powers in complaints alleging racial discrimination. A long line of cases at the judicial level and also at the administrative level makes it evident that the Board's constitutional duty to take affirmative action when presented with evidence of racial discrimination by unions and employers is mandatory, not discretionary. Yet the Board has continued since 1965, when Title VII became effective, to refuse to issue complaints and to defer to the EEOC. Except in a small number of cases, the Board has rejected jurisdiction in questions of racial discrimination.

Remedies and the NLRB

As a result of several judicial and administrative cases, the NLRB could become a channel through which workers experiencing racial discrimination might seek effective relief. Its availability as a powerful administrative agency to decide such questions has been firmly established. Its possibilities for effective action in this area have not yet been fully explored because the quest for administrative relief has shifted to Title VII and the Equal Employment Opportunity Commission, designed specifically to deal with discrimination in employment.

This shift has taken place despite the fact that the EEOC has no means of enforcing its decisions short of litigation, and plaintiffs are required to exhaust administrative procedures before litigating. The NLRB's capacity for effectively and creatively obtaining the lawful rights of minority workers thus remains of continuing importance. The Board has the power, already exercised in nonracial contexts, to enjoin discriminatory bargaining agreements, to decertify unions engaged in discriminatory practices, and to compel unions and employers—through the issuance of cease and desist orders enforceable by the Board in the Federal courts—to alter their illegal racial practices.

The NLRB can offer cost-free procedures to victims of racial discrimination, but there is an administrative barrier; the right to go to court under the NLRA is conditioned on the issuance of a complaint by the Board's general counsel. The general counsel may at his discretion refuse to issue a complaint on any ground.

As an alternative, the Board could require written assurances from all unions it certifies as exclusive bargaining agents and from all employers and unions filing unfair labor practice complaints that they are not engaged in racially discriminatory practices. The Board would then have the responsibility of policing the written assurances and upon a finding of violation could invoke stringent sanctions to bring the offending party into compliance.

Leo Weiss, an NLRB attorney who has suggested such procedures, adds:

> There is no question that such an approach would impose upon the NLRB a substantial quantity of additional work. Nor is there any question that the penalties suggested are severe and would impose substantial hardships on unions which are guilty of racial discrimination.
>
> But there is also no question that such a program would provide unions with considerable encouragement to abandon the racially discriminatory practices in which some of them are now engaged.

The current contradictory role of government agencies in civil rights enforcement within Federal Government is a most serious problem. For example, in several cities where the Justice Department initiated litigation against construction labor unions for violations of Title VII, the Department of Labor declared these very same organizations to be in compliance with the law by virtue of their participation in a "Hometown Plan" and provided Federal funds for training programs of dubious value. (See *Civivl Rights Digest* Summer 1974.)

Individual black workers and local and national civil rights organizations do not possess the necessary resources to investigate, sue, and monitor every discriminator in the Nation. This problem is compounded by the failure of the Federal and State administrative agencies, such as the regulatory commissions, to enforce civil rights laws in the industries they regulate. Because discriminators are not likely to make significant changes in discriminatory employment practices unless the risk

of maintaining these these practices outweighs the benefits which now flow from them, it will be necessary to increase the risk to discriminators by utilizing the full range of powers that can be exercised by government agencies.

As a first step toward compelling some uniformity among courts and administrative agencies dealing with employment discrimination, the Court of Appeals for the Fifth Circuit formulated a constitutional standard in *Jenkins v. United Gas Corp.* The court held that the executive and judicial arms of the government are under a constitutional duty to act affirmatively in cases involving employment discrimination and to order an end to such discrimination. The court stressed that failure to act affirmatively is the equivalent of sanctioning the forbidden act. Such official sanction is, of course, constitutionally prohibited.

Admittedly, a distinction must be made between regulatory agencies, such as the Interstate Commerce Commission, and the NLRB. The question is whether the *Jenkins* principle can be applied to agencies of government on which the legislature has not conferred specific responsibility to deal with employment discrimination. The application of this principle would bring the operations of the NLRB and other government agencies into conformity with the requirements of Title VII.

For example, a finding of probable cause by the EEOC against a labor union should automatically provoke an investigation by the Board leading to a possible denial of certification. A determination by a Federal court that a labor union is in violation of Title VII should lead to action by the Board resulting in possible rescission of certification. A similar approach could be invoked against employers by other agencies of government. An EEOC finding of reasonable cause involving an employer and labor union jointly in the railroad industry, for instance, should require the Interstate Commerce Commission to initiate the process leading to possible revocation of the interstate carrier's license.

Objections to Using the NLRB

It is frequently argued that problems of racial discrimination must not be permitted to interfere with the stability of the collective bargaining process. While most commentators generally admit the desirability of eliminating job discrimination, they warn against approaches that might have a disruptive effect upon industrial peace. Alteration of many aspects of the collective bargaining system is necessary in the light of judicial interpretation of Title VII. That the goal of equal employment opportunity must be given at least equal priority with the purposes of collective bargaining was indicated by Justice Powell on behalf of a unanimous Court in *Alexander v. Gardner-Denver:*

> These [collective bargaining] rights are conferred on employees collectively to foster the processes of bargaining and properly may be exercised or relinquished by the union as collective bargaining agent to obtain economic benefits for unit members.
>
> Title VII, on the other hand, stands on plainly different ground; it concerns not majoritarian processes, but an individual's right to equal employment opportunities. Title VII's strictures are absolute and represent a congressional command that each employee be free from discriminatory practices.

Some commentators have argued that the NLRA should not be used as a vehicle for eliminating discriminatory employment practices and that Title VII should be the exclusive remedy. This argument not only ignores the implications of *Jenkins* which were carried forward in *Alexander v. Gardner-Denver,* but also ignores the legislative history of Title VII and the Board's response to the relevant aspects of that history.

In *Business League of Gadsden* a majority of the Board reiterated its position in *Hughes Tool* that certain forms of racial discrimination by a bargaining agent, such as the refusal of a union to process the grievance of a black employee, are unfair labor practices. The majority also noted the line of cases represented by *Ford Motor Co. v. Huffman* in which the Court defined the statutory obligations of the collective bargaining agent to represent all members equally.

The Board concluded that its powers were not limited by Title VII, referring to the legislative history of that act to support its contention. In enacting Title VII, Congress expressly refused to give exclusive jurisdiction over employment discrimination to the EEOC. (The Senate twice rejected a proposed amendment that would have had that effect.)

Furthermore, the Supreme Court in *Alexander v. Gardner-Denver* took note of the legislative history of Title VII. Given this history, it is evident that nothing contained in Title VII detracts from the statutory authority of the NLRB to invoke its considerable powers in appropriate cases of job

discrimination based on race.

The NLRB has existed for over 40 years and has accumulated extensive power and influence. The policies and practices of the NLRB directly affect employers and labor unions and, indeed, the entire functioning of the collective bargaining system. By contrast, the EEOC is a new Federal agency that came into being in 1965. It is, by any standard of comparison, a weak and administratively awkward agency. By 1974 it was suffering from a crisis of leadership, serious internal conflicts, a huge backlog of unresolved cases, and diminishing authority and influence within the government and the industrial relations community.

Even if the EEOC were the very paragon of administrative efficiency, it could not by itself achieve the purpose of Title VII. Other government agencies must accept responsibility for enforcing civil rights laws within their jurisdictions. If blacks and other minority workers are not to be denied the most effective remedy, the EEOC and the NLRB must function with concurrent jurisdiction.

In many situations, resort to the Board would be more effective than resort to the cumbersome and financially expensive Title VII procedures. Of great importance to minority workers, who frequently do not have adequate resources to pursue a Title VII claim to final exhaustion, is the fact that the NLRB provides a cost-free procedure from initial investigation to litigation in an appellate court. In addition, the time lag for cases pending before the NLRB is much shorter than in the district courts where an aggrieved worker is required to file suit if the EEOC is unable to obtain compliance with the law. Further, the NLRB, unlike the EEOC, is not required to defer to State and local fair employment practice agencies.

Unfortunately, the history of the NLRB in relation to problems of racial discrimination suggests that it will not rush to seize the great opportunity generated by Title VII. If the NLRB were to enforce the legal prohibitions against job discrimination that are within its authority, it would have a major impact in eliminating patterns of employment discrimination. Unfortunately, there is every reason to believe that this development will be postponed until the courts compel the NLRB to fulfill the constitutional imperative as a matter of national policy.

Although evolving case law has established that racially discriminatory employment practices by labor unions and employers are unfair labor practices that the NLRB is obligated to halt, other litigation has raised the question whether union members who belong to minority groups may independently protest an employer's racial practices without the formal sanction of the collective bargaining agent.

The Problem of Exclusive Representation

Section 7 of the NLRA guarantees workers the right to engage in concerted activity in dealing with their employer with respect to terms and conditions of employment. Section 9(a) of the act provides that when the employees are represented by a certified collective bargaining representative, that union shall have the exclusive authority to bargain on behalf of those working under its jurisdiction. The potential conflict between these two provisions was presented in two cases initiated by black workers— *NLRB v. Tanner Motor Livery, Ltd.* and *Western Addition Community Organization v. NLRB (The Emporium).*

The issue involved was the extent to which dissident minority group union members would be protected from dismissal if they picketed or otherwise protested the racial practices of their employer without the consent of the union to which they belonged. The question is therefore whether section 9(a), the "exclusivity" section of the act, restricts the right to engage in activity otherwise protected under Section 7. The practical question is what recourse is available to minority union members when the majority of the union membership fails to support their demands for nondiscriminatory working conditions.

In *Tanner,* two black union members had picketed the company in protest against its discriminatory practices without trying to obtain the union's sanction or to use its grievance machinery. The company promptly dismissed them because of their activity and they filed unfair labor practice charges with the NLRB. The Board found the activity protected, issued a complaint against the company, and subsequently ordered it to reinstate the protesting workers.

On review, the Court of Appeals for the Ninth Circuit held that although the picketing was concerted conduct under section 7 of the act, it could not be protected by the NLRB because only the union itself, the exclusive bargaining agent, was empowered under section 9(a) to engage in picketing. In reversing the Board's determination, the court analyzed and followed judicial precedents in cases involving similar protests by dissident union members

over nonracial issues. It gave little weight to the fact that racial discrimination was at the heart of the protest in the case before it and that an extensive body of Federal antidiscrimination legislation—apart from labor legislation—protected the employee from retaliatory dismissal.

In *Emporium,* the Court of Appeals for the District of Columbia relied upon the intent of Congress expressed in Title VII to reach a decision opposite to *Tanner.* In that case, several black members of Local 1100 of the Retail, Wholesale, and Department Store Union, AFL-CIO, filed grievances with the union in protest against discriminatory practices by their employer, a large department store in San Francisco. The union initiated grievance proceedings, but it presented the grievances as individual cases rather than on the storewide or pattern basis requested by the black employees.

Believing that the union was not vigorously pressing their complaints, these employees then abandoned the grievance procedure and, without union sanction, picketed the store and distributed leaflets on their off-duty time. After union officials had unsuccessfully urged them to stop picketing, the Emporium management dismissed two protest leaders from their jobs.

A community group, Western Addition Community Organization, then presented an unfair labor practice petition to the NLRB seeking the workers' reinstatement. The Board dismissed the complaint, holding that since they had not proceeded with their protest through the union, the protest was not protected under the NLRA, and the employer was free to dismiss them.

The court of appeals reversed the NLRB, sustaining the right of "a minority group who has reasonable grounds for believing that the union is not proceeding against all discrimination . . . to assert its claim of racial discrimination in a manner which it considers would be more successful." The court held that dissident minority protest over racially discriminatory employment practices stands upon a different plane in Federal labor law from other types of dissident protest and that it is entitled to special protection from coercion.

Limiting the Right to Protest

In *Tanner* both the NLRB and the court had ignored the prohibition against racial discrimination and the protection against retaliatory firing contained in Title VII. The court of appeals in *Emporium,* however, ruled that Title VII was, in a sense, companion legislation to the NLRB when the issue of racial discrimination was raised.

The court further stated that whenever the Board is presented with facts showing that minority union members were protesting discrimination on their own, an inquiry should be conducted into the question of why the union did not sanction or support the protests: "[O]n the issue of whether to tolerate racial discrimination in employment the individuals in a union cannot legally disagree. The law does not give the union an option to tolerate *some* racial discrimination, but declares that *all* racial discrimination in employment is illegal."

In such circumstances, said the court, the Board should conduct its own inquiry into "whether the union was actually remedying the discrimination to the *fullest extent possible, by the most expedient and efficacious means.* Where the union's efforts fall short of this high standard, the minority group's concerted activities cannot lose its Section 7 protection."

Thus the court held not only that union members who belong to a racial minority have the right to protest against racial discrimination in employment with or without the sanction of their union, but further that the Board itself is under an obligation to insure that the union does everything within its power to eradicate the discriminatory pattern.

On February 18, 1975, the Supreme Court, in response to an appeal from the NLRB, reversed the circuit court's decision. The Court held that while national labor policy gives the highest priority to equal employment opportunity, workers cannot bypass the exclusive bargaining agent because of dissatisfaction with efforts to eliminate discriminatory job practices through available grievance procedures. The Court noted that the labor agreement "had a no-strike or lockout clause and it established grievance and arbitration machinery for processing any claimed violation of the contract, including a violation of the antidiscrimination clause."

In response to the contention that Title VII remedies are inadequate, the Court stated: "Whatever its factual merit, this argument is properly addressed to the Congress and not this Court or the NLRB."

Justice Douglas argued in dissent:

> The Court's opinion makes these Union members—and others similary situated—

> prisoners of the Union. The law, I think, was designed to prevent this tragic consequence. . . . The employees were engaged in a traditional form of labor protest, directed at matters which are unquestionably a proper subject of employee concern.

In ruling that the black workers could not bypass the exclusive bargaining representative, the Supreme Court in *Emporium* reinforced the doctrine of union exclusivity expressed in section 9(a) of the NLRA. It left little doubt that the traditional interpretation of "exclusive representation" will continue to be a significant obstruction in realizing the rights of black workers. Given the absence of internal democracy in many labor unions, where the rights of minorities are frequently violated, this rigid concept of exclusivity is not justified. A more flexible interpretation is essential. The doctrine as currently enforced does not encourage the democratic process within unions and makes effective representation of the interests of blacks and other minorities extremely difficult. Adequate safeguards to protect the fundamental rights of racial minorities and others in the collective bargaining process are necessary. In practice, this means recognizing the right of minorities to engage in protected, concerted activity against discriminatory job practices, with or without union approval, and denying the remedial powers of the NLRB to labor organizations engaged in unlawful discrimination.

Aiding and Abetting Discrimination

A far-reaching decision involving another aspect of the relationship between the NLRB and racial discrimination was made by the Court of Appeals for the Eighth Circuit in *NLRB v. Mansion House Center Management Corp.* In this case, the court of appeals held that the NLRB has an obligation to inquire into the racial practices of labor unions and that it is constitutionally prohibited from certifying as exclusive bargaining representative a union that engages in discriminatory racial practices.

In *Mansion House* an employer had refused to bargain with a union that until 1968 had maintained segregated locals and whose later membership practices allegedly discriminated against blacks. The union then complained to the NLRB, which ordered the company to bargain. The appellate court reversed the Board's decision and denied enforcement of its order:

> In substance we hold that the remedial machinery of the National Labor Relations Act cannot be available to a union which is unwilling to correct past practices of racial discrimination. Federal complicity through recognition of a discriminating union serves not only to condone the discrimination, but in effect legitimizes and perpetuates such invidious practices. Certainly such a degree of Federal participation in the maintenance of racially discriminatory practices violates basic constitutional tenets.

Prior to *Mansion House*, the issue of discrimination by a union had arisen only in the context of revocation of certification and not with regard to initial certification. For various reasons—including employer reluctance to admit to interim liability, worker reluctance to defy the bargaining agent, and the paucity of minority workers' resources—suits to revoke certification on the grounds of racial discrimination have rarely been brought, and the existence of this remedy has had minimal impact on the discriminatory practices of labor unions.

In contrast, stringent enforcement of an antidiscrimination policy at the stage of initial NLRB certification would have a maximum effect on union racial practices, since initial certification is vital for most labor unions. *Mansion House* held for the first time that unions engaging in racial discrimination should be denied initial certification and that employers could invoke the discriminatory racial practices of a labor union as a reason for refusing to bargain.

As a result of litigation and the fact that the NLRB has found itself increasingly confronted with racial issues, on June 11, 1974, the Board announced a new policy in cases involving discriminatory practices of labor unions. The Board stated that it would consider in its certification procedures contentions that a union should be denied certification as a collective bargaining agent because of alleged discriminatory practices. However, "[w]hen an objection is filed with the NLRB in a representation election case, claiming that a union practices discrimination, the NLRB will judge the merits of the objection before issuing a certification—but only after an election the union has won." Furthermore, the Board refused to specify "what degree or form of invidious minority group discrimination would be sufficient to warrant withholding certification."

The new policy was adopted in connection with

the Board's decision in a case involving a union election at Bekins Moving & Storage Co. in Miami, Florida, and Local 390 of the International Brotherhood of Teamsters. The issue arose after the employer claimed that the union was disqualified from seeking a certification election under section 9(c) of the NLRA on the ground that it engaged in discrimination against women as well as against Spanish-speaking and Spanish-surnamed workers. In its 3-to-2 opinion, the Board acknowledged its constitutional obligations under *Mansion House*, but the Board decided to move very cautiously. It would proceed:

> On a case-by-case basis, to determine whether the nature and quantum of the proof offered sufficiently shows a propensity for unfair representation as to require us, in order that our own action may conform to our constitutional duties, to take the drastic step of declining to certify a labor organization which has demonstrated in an election that it is the choice of the majority of employees.
>
> It is not our intention to take such step lightly or incautiously, nor to regard every possible alleged violation of Title VII, for example, as grounds for refusing to issue a certificate. There will doubtless be cases in which we will conclude that correction of such statutory violations is best left to the expertise of other agencies or remedial orders less draconian than the total withholding of representative status.

In the period between the announcement of the new policy and early 1976, the Board did not deny certification to any unions that won representation elections. In its decision in *Grant's Furniture Plaza* the Board held that statistical data demonstrating a discriminatory pattern, together with the Justice Department complaint documenting the international union's discriminatory practices against black and Spanish-surnamed workers, were insufficient evidence on which to base a denial of certification.

The Board took a similar approach in *Bell and Howell Co.*, a sex discrimination case. And in a construction union case, the full five-member board affirmed the decision of an administrative law judge that Sheet Metal Workers Local 102, in Washington, D.C., was not practicing racial discrimination even though it had repeatedly failed to refer nonwhite workers for employment. The Board accepted the opinion that there was no "substantial evidentiary basis" to sustain the charge of racial discrimination.

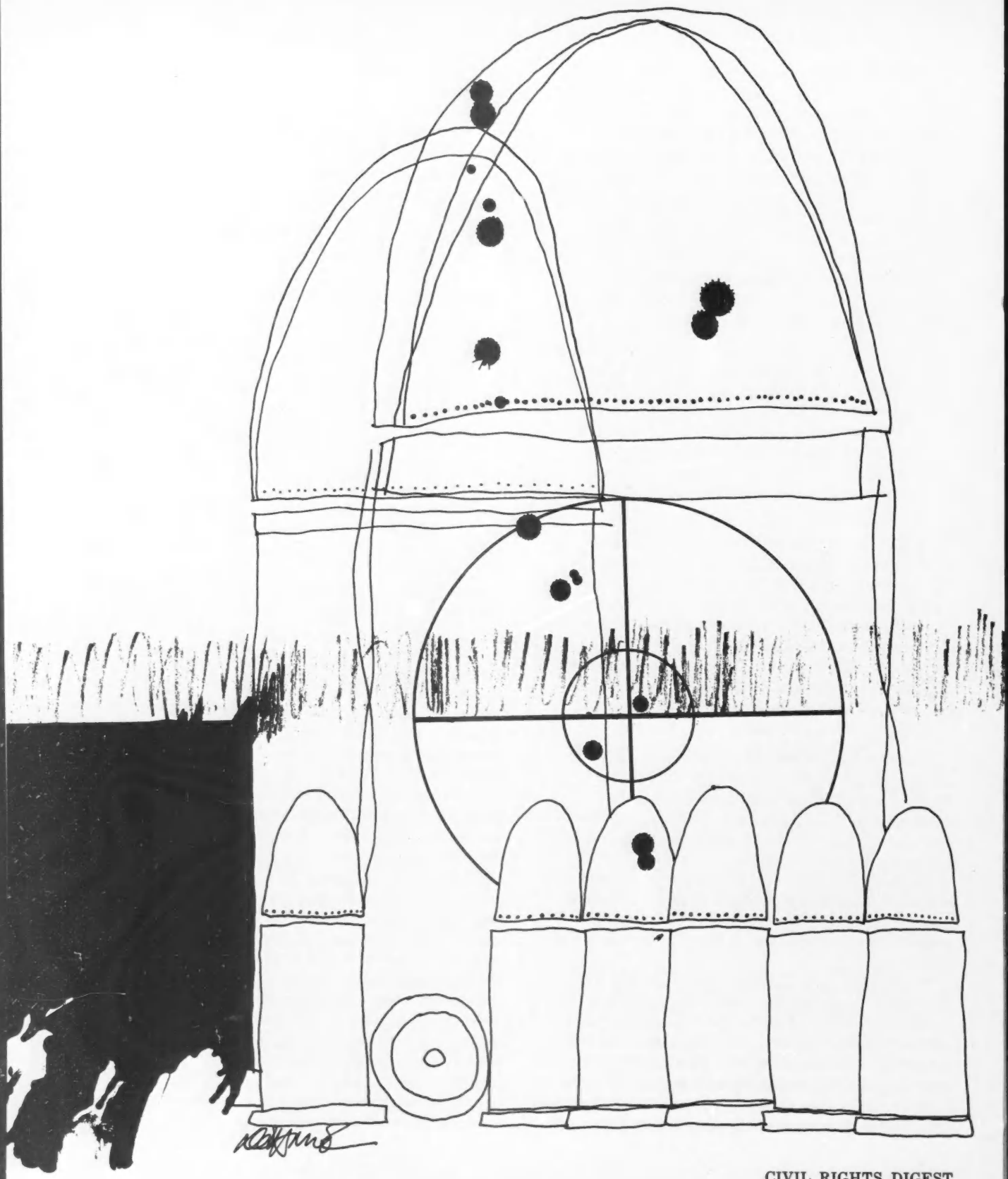
The Board's refusal to act in these cases suggests that it has established excessive standards of proof. Its rejection of statistical evidence suggests that the Board is not complying with the intent of *Mansion House*, which held that statistical evidence is valid in establishing that a union has been guilty of discriminatory racial practices.

The Duty of Fair Representation

In dealing with the issue of fair representation, the National Labor Relations Board has failed to use its powers to attack discriminatory racial practices. By neglecting the problems of black workers for so long while encouraging and strengthening labor organizations regardless of their racial practices, the Board has directly contributed to the severity of racial problems facing other government agencies.

Moreover, the responsibility confronting unions and Federal labor agencies has been greatly enlarged by Title VII. Under the earlier doctrine, the duty of fair representation was passive in nature. Title VII not only prohibits discrimination by both union and employer but also changes the duty of fair representation to a requirement that the bargaining representative act affirmatively to prohibit employer discrimination. Under Title VII, a union violates the law by agreeing to a collective bargaining contract that embodies racially discriminatory provisions, even if the union was not originally responsible for the discriminatory practices. Thus labor unions, which by their passivity or tacit consent allow discrimination against black workers and other minorities, are recognized as bearing equal responsibility under law with discriminatory employers.

It is doubtful that the NLRB has grasped the full significance of the concept of the duty of fair representation as generated by cases brought under Title VII of the Civil Rights Act of 1964, and certainly it has not begun to understand the remedies required in cases of that character. The right to be the exclusive collective bargaining agent flows from a statute. The exclusive character of the bargaining relationship in turn generates the duty to represent all workers fairly. It seems quite sound to argue that where there is a failure of fair representation, the right to be the exclusive representative must be revoked.



By Clinton Cox

Meanwhile In Bedford-Stuyvesant...

WHY WHITES DIE ON PAGE ONE

On the night of Oct. 30, 1975, the body of 15-year-old Martha Moxley was discovered in the exclusive Belle Haven section of Greenwich, Conn. She had been beaten to death with a golf club. In the 7 days that followed, *The New York Times*, the New York *Daily News*, and the *New York Post* devoted almost 1,800 lines and nine photographs to her death.

In those same seven days, 12 people were murdered in Harlem. The victims ranged in age from 19 to 53. All were black or Hispanic. The *Times* mentioned only five of the victims, and those briefly. Among them was an Hispanic couple police said may have "been engaged in the illegal traffic of narcotics. . . ." The *Times* offered no photos. The *Post* gave 85 lines to four of the 12, including the couple and a man found in a small park, "which police described as a hangout for derelicts." The *Post* also ran no photos. The *News* completely ignored all 12 victims. On the other hand, during the same period, the *Times* ran front-page stories about the sentencing of a Harlem youth for the murder of a young white woman in New York.

Blacks and Hispanics commit crimes; their role as victims is slight. The victims are white. And the closer they are to the middle-class status of the paper's white editors, the bigger the story. With only the rarest exceptions, that is the picture of the New York City homicide world that emerges from the intellectual *Times*, the conservative *News*, and the liberal *Post* week after week.

The picture presented by New York City Police Department statistics, however, differs radically from that of the papers. The figures for 1975 show that Central Harlem's 28th Precinct was the city's murder capital, with 96 killings in its less than one square mile. There were almost five murders a day in the city, for a total of 1,645, and almost half the victims lived in Harlem, East Harlem, or Bedford-Stuyvesant. The complete homicide analysis for 1975 won't be available until late spring or early summer, but it will probably show the same general patterns that existed in 1974.

In 1974, 80 per cent of the victims were males. Almost half the victims were black, almost 30 per cent Hispanic, and a handful Oriental. Whites accounted for only 21.8 per cent of all homicides. Almost 85 per cent of all victims were murdered by members of their own race. In the real homicide world, the average victim is a male who is black or Hispanic; two and one half times as many black and Hispanic women

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are murdered as white women; white women comprise only one-half of one per cent of all victims, and white women under 21 comprise a miniscule .0057 per cent of the victims.

The skewed homicide coverage of the *News*, *Times*, and *Post* is just one way the papers carefully structure (or rather, restructure) reality along racial lines comfortable to them. For example, last year on the evening of Wednesday, June 25, a 32-year-old black man was shot to death by two white policemen. One officer emptied his revolver at Philip Wright, while the other fired at him five times. Wright was struck nine times: once in the left side of his chest, twice in the left side of his head, and five times in his back. According to a witness, some of the shots were fired while Wright was on the ground.

The *Post* completely ignored the story. The *News* and *Times* ran stories on Thursday and Friday, but without photos. The *News* devoted most of its Thursday story to the police version, although saying in its opening paragraph that "police and bystanders gave conflicting accounts of what touched off the shooting." The *Times* made no mention of conflicting accounts in their first story. The fact that Wright was an ex-convict with a history of mental illness was prominent in both stories, with the *Times* saying in its opening paragraph that police described Wright as "a psycho."

Of the 13 sentences in the *News*' piece, only one was given to the bystanders who disputed the police version, although the shooting occurred on a crowded corner in daylight. In the next to last sentence bystanders were quoted as saying "the policemen clubbed him to the ground and then shot him in the back." Almost a third of the story described alleged injuries to the officers, although eyewitnesses said the policemen were never struck by Wright.

The *Times* and *News* stories are case studies in the tendency of editors and reporters to accept unquestioningly the police version of an incident involving a black, even if that version should have raised serious questions about the propriety of police actions. That acceptance is also revealed in the way the story is written. In the first two sentences telling how Wright allegedly rushed the officers "for no apparent reason" and "began beating the officers about the face and head with a metal bar," the *News* gives the attribution as "police said."

By the third sentence, however, the police claims have become accepted as unchallenged fact: "The officers, trying to defend themselves, fired 11 shots at their attacker." How can the police assertion be accepted as fact when eyewitnesses contradict it? A later sentence disputing the police version was undercut even before the reader saw it. For the reader had already been told that the two policeman *had* to shoot at Wright 11 times in order to defend themselves.

The *Times* followed a similar practice. After leading off the police version with, "As the incident was reconstructed initially by the police," the *Times* proceeded to drop attribution altogether and present the police allegations as fact: "The officers, who were later treated at St. Luke's Hospital for bruises of the head and shoulders, then [after being 'suddenly attacked'] drew their guns and opened fire, apparently

killing the man on the spot." The *allegation* in the first paragraph that the policemen were suddenly attacked gets transformed into a *statement* that they were suddenly attacked.

Given Wright's detailed mental and criminal records, the reader saw no reason to doubt the police, unless he kept thinking about those 11 shots, wondered how many struck Wright, and found out he was shot five times in the back. The reader's possible uneasiness was not shared by editors and reporters at the *Post* and *News*, though, and only briefly at the *Times*. But the uneasiness *was* shared by the Guardians Association, an organization of black members of the NYPD, which was especially critical of those shots in the back. The Guardians' questioning was not reported, however, then or later.

Two days after Wright was killed, followup stories appeared in the *News* and the *Times*. The *News* led off with an announcement from District Attorney Robert Morgenthau that a Manhattan grand jury was going to investigate the killing. The 14-sentence story then once again recounted the police version. Again the bystanders' version was only given one sentence near the bottom of the story, and that sentence was almost identical to the one used in the first story: "Bystanders in the neighborhood disputed the cops' account, charging that they clubbed Wright to the ground, and shot him in the back." Clearly, details of what the bystanders had seen was not a priority item. The *Times* followup story was the first and last in any of the papers to raise the question of why Wright was shot nine times, even after he lay on the ground. The bulk of the story was devoted to an interview with Mrs. Ennis Francis, eyewitness and Democratic leader of the 70th A.D.

Francis said Wright had been arguing with the policemen, who "pushed him away." A few moments later Wright "suddenly rushed past me at the officers," Mrs. Francis declared, but claimed he never got close enough to hit the officers with "some kind of stick" (the *Times* had described the alleged weapon as "a flat metal bar with ragged edges about 30 inches long"). While she watched, one of the policemen "started firing straight at him." Mrs. Francis said she turned away in horror as Wright started to fall, and when she looked again "he was lying flat on his face, not moving." The district leader said she felt the officers had been justified in firing because of Wright's actions. But she echoed other community sentiments when she asked: "Why did they have to empty their revolvers and keep shooting after he was down? Why didn't they just shoot him in the arm instead of killing him?"

This marked the end of the Philip Wright coverage. The *News* concerned itself almost solely with the police version. The *Times* eventually posed the basic question of the number of shots fired, but failed to press the police for answers or to follow through on the district attorney's promised investigation. As far as the papers were concerned, Philip Wright was worth no more copy. But suppose the incident had occurred with just one change—that of race. Suppose Wright had been a white man shot nine times, five of them in the back, by two black cops on a crowded corner in a white neighborhood. Would the *Post* have ignored the story? Would the *Times* have been content to do a total of slightly over 150 lines with no photos, and the *News* less than 130 with no photos? Most of all, would the editors have let the stories go by without making reporters press the police about those five bullets in the back? Would the editors have been content with spending the bulk of their coverage on the police version of the killing, when that version was contradicted by easily available witnesses?

Five days after the Wright killing, another police incident aroused the anger of Harlem residents. At about midnight on June 30, four white ex-cops left the 135th Street station house after being laid off because of budget cuts. The four had allegedly been drinking in the station house. From the station they then reportedly went into the Blue Note Bar on West 135th Street and Eighth Avenue, where they were rowdy and screamed epithets, including "nigger." After leaving the bar, the four ex-officers walked to a nearby grocery store, which was closed. Nineteen-year-old Wesley Peartree was standing outside, and the four asked him to help them get in to buy beer. Peartree told the expolicemen he didn't work there, but was simply waiting for his girl friend who was an employee at the store.

The four men then kicked and punched Peartree and, according to witnesses, at least one of them pulled his service revolver (which was supposed to have been turned in when the men left the station house after their last tour). The beating continued for 10 to 15 minutes, when the four went back to the station house. A few feet away from the store, the body of 29-year-old Otto Lee was found in a gutter. Angry residents charged

that the four had killed Lee, but police said he was a drug addict and apparently died of an overdose.

Peartree was able to identify two of the policemen who attacked him, and they were charged with third-degree assault. There were at least two demonstrations on Tuesday, including one outside the station house. There was also a meeting inside the station house between residents and police. There were no stories in the papers on Tuesday, but all three ran stories Wednesday, apparently because of the demonstrations. There were no photos. The coverage seemed fairly straightforward, although the *Times* failed to make any mention of Lee; the *Post* accepted without question the police version that Lee had apparently died of an overdose; and the *News* omitted any mention of the demonstrations. But on the whole, the reporting was as fair as could be expected on an incident involving the police and black people. The *News* story, especially, seemed to pull no punches as it recounted Peartree's version of what had happened to him.

But the coverage ended after one story each in the *News* and *Post*, and two in the *Times*. For those acquainted with the situation, the coverage was as notable for what was left out of the stories as for what was put in.

On Tuesday afternoon, demonstrators, angered at the police killing of Wright, the beating of Peartree, and the unsuspected killing of Lee, tied up traffic for several hours at the corner of 125th Street and Adam Clayton Powell Boulevard, totally blocking the main east-west route. Police cars and a mobile command post lined the block between the boulevard and Lenox Avenue. Scores of police carrying nightsticks and wearing riot helmets mustered at the State Office Building. Finally, crowds of teen-agers smashed one of the big plate glass windows in Blumstein's Department Store. Metal grills were quickly rolled down to protect other windows along the street, and police raced into the intersection to clear it. *Times* coverage was sparse. The *News* and *Post* printed nothing.

This lack of coverage was just the beginning, however. Anger remained high in the community because of these and other citizen-police incidents in Harlem and other black areas. In fact, there were so many stories of police brutality in Harlem and Bedford-Stuyvesant during the summer that residents theorized the police were trying to start a riot in order to prevent more layoffs.

Tuesday night's demonstration at the 135th Street station house brought out many people who said they had seen the four ex-policemen racing along the street yelling "nigger." One young woman said she'd seen at least one of the men pull his gun and wave it threateningly at passersby, including a woman and child who were pulled to safety. A policeman confirmed a report that the four had been chased back into the station house by irate residents, who had begun coming out into the street with guns when the beating of Peartree continued.

The demonstration led to a meeting inside the station house. In response to demands from the demonstrators—who included ministers and representatives of Manhattan Borough President Percy Sutton and Rep. Charles Rangel—Chief Thomas Mitchelson, head of all uniformed police officers, came to the station house from his Queens home. The demonstrators had asked for a meeting with Commissioner Michael Codd, but their request was refused.

At the meeting in the station house, Mitchelson was asked why only two of the ex-officers were arrested when four men were involved, and why those two were only charged with third-degree assault. He said that witnesses were still being questioned. He was asked if the four men had beaten Otto Lee to death and replied that Lee hadn't died from violence. A preliminary autopsy had not revealed the cause of death, though, Mitchelson admitted, and he said the results of a second autopsy would be made available in 4 or 5 days. Residents demanded to know why no charges were made for violation of the Sullivan Law, since the four were supposed to have turned in their guns before going off duty, and why no additional charges were made against the two or against other policemen for refusing to divulge the names of their companions. Mitchelson's basic response to questions was that the investigation was still underway.

The following day's stories made no reference to this meeting. The *Post* came closest with mention of the "small peaceful demonstration" outside the station house, and added: "Police assured the demonstrators that the ex-cops were not connected in any way with the death of a reputed addict a few feet from the scene of the alleged assault . . . ." So much for the questions raised by residents, and so much for the unusual late-night meeting inside the station house between residents

and one of the highest-ranking men in the NYPD.

In the next 3 weeks there were at least three more meetings between residents and officials. On July 8, a heated meeting took place in the State Office Building between residents, Mitchelson, and Roosevelt Dunning, the Police Department's deputy commissioner for community affairs. Dunning said the second autopsy report was still pending. Mitchelson and Dunning promised to ask Codd and Mayor Beame to take prompt action on five demands to improve community-police relations in Harlem. None of the papers reported this meeting.

On July 15, a coalition of black residents from Harlem, Queens and Brooklyn met in the Theresa Towers with Sutton, State Sen. Carl McCall and other officials. The coalition demanded an investigation into the death of Lee, and called on city and police officials to meet with them to discuss possible solutions to alleged police abuses. One man said "the question of attacks on black people by policemen is not isolated, but is citywide." Sutton promised to use his office to counsel city officials for some kind of solution. The coalition set July 22 as the deadline for a meeting with Codd. None of the papers reported the Theresa Towers meeting.

On July 22, the meeting with Codd was finally held. Attending the session in police headquarters were residents, Democratic National Vice-Chairman Basil Patterson, Councilman Samuels, and representatives of Sen. McCall and Sutton. Entertainer Sammy Davis, Jr. met briefly to voice his support before the residents were bussed down to One Police Plaza. Codd said the Wright and Lee deaths were "under continuing investigation." None of the papers reported this meeting, which was the last one held. There were no followups on whether the two other ex-policemen who terrorized a Harlem neighborhood were ever charged, on the disposition of the two third-degree assault charges, or on the final autopsy report on Lee. Readers of the three papers also were not told that the precinct commander was transferred after the Peartree incident because he'd lost control of his men.

Contrast the papers' treatment of the Wright and Peartree-Lee incidents with that given the police killing of Frank Ardito. On the evening of Nov. 5, the 16-year-old Ardito—a white youth from Lake Ronkonkoma, L.I.—died after he was shot in the back by a New York City policeman. The slaying occurred on the East Side moments after the officer had wounded the youth's 18-year-old brother. Officer Francis McConnell claimed the youths had been harassing an old man and that, when McConnell intervened, they struck him and fled. A friend of the dead youth, however, said the off-duty officer had not identified himself as a policeman and had dragged Ardito out of the car and slammed him against a wall.

The *Post*, at least, was consistent. It devoted no space to the killing. But the *Times* and *News* gave it wide coverage. Whereas no photos were run of Wright, Lee, or the battered and bruised Peartree (or, conversely, of the ex-officers who rampaged through the neighborhood), in their first story on Ardito the *News* ran photos of Ardito, his brother, Andre, their friend Danny Bomento, and Mr. and Mrs. Frank Ardito, Sr.

The *News* story ran on page two under the headline, "Parents Assail Cop in Killing of Youth." This time the story began with a forceful presentation of the civilian side: "The parents of a 16-year-old Long Island boy, who was shot and killed by an off-duty cop Tuesday night, charged yesterday that the police officer killed their son without reason, despite the cop's claim he was defending himself." Eight of 17 paragraphs gave the youth's side of the story.

The *Times* story also was a sharp contrast to its initial story on Wright. The Wright story had begun: "Firing a total of 11 shots at close range, two police officers shot and killed a 32-year-old man on a Harlem street corner after the man, described by the police as a 'psycho,' had allegedly attacked the officers with a metal bar at 116th Street and Eighth Avenue." The opening paragraph of the *Times* Ardito story, however, began: "In what the family termed a 'senseless killing' and the police said was the 'proper performance' of a policeman's duty, a 16-year-old high school senior from Long Island was shot in the back and killed by an off-duty police officer on the East Side late Tuesday night." The third paragraph emphasized that Ardito was killed while running away. The fact that Ardito was shot once in the back was worth putting in the first paragraph of the *Times* story. The fact that Wright was shot five times in the back was not worth putting anywhere in the first story.

A third Harlem incident occurred on Oct. 20, 1975, when police surrounded a tenement on East 126th Street, where a robbery suspect had taken refuge. Quinton Applewhite, a 53-year-old unemployed cook who lived in the building, tried to leave. He held his

hands in the air and was reportedly calling out, "Hold it, hold it." The police responded by shooting him 13 times.

The *News* reported that Applewhite, who wasn't identified until the eleventh paragraph, "took the 13 shots as he ran down the front steps." Applewhite must have been one hell of a dude: hit 13 times and running all the way. The readers of the *Times*, *News*, and *Post* would see no photos of the live Applewhite, and read no human interest stories about the hopes and dreams of his 53 years. There would be no stories asking awkward questions. But there were questions from other sources.

Retired policeman William H. Johnson, Jr., president of the Federation of Negro Civil Service Organizations, Inc. and president emeritus of the Guardians Association, sent a Mailgram to Commissioner Codd beginning, "I write you out of a deep sense of shock." Johnson protested the "gross misuse of force," and hoped "for corrective action." Guardians President James Hargrove referred derisively to the police explanation that the killing was another "tragic mistake," and asked, "Is there a take-no-prisoner attitude in the black community? Apparently so."

Chairman Charles Gilliam, of the Grand Council of Guardians (composed of black city, housing and transit police), said a promised police investigation would be conducted by the same officers who had always "exonerated the police officers involved" in previous killings of blacks "even when there was evidence to the contrary. . . ." Other black officers questioned why the Hostage Negotiation Team wasn't used to try and talk the robber into surrendering, and claimed that the assistant district attorney on the scene refused to conduct in-depth interviews of the white officers involved.

None of these statements was printed in whole or in part, in the *Times*, *News*, or *Post*. The latest "tragic mistake" by New York police in a black community would receive as little attention as possible. The police report on Applewhite has still not been released.

On Jan. 15, the United Church of Christ's Anti-Crime Task Force made public a report on *Crime and the Minority Community*. The group was composed of a cross-section of the city's black community, and made several recommendations aimed at providing better police services to residents in the city's black and Hispanic communities. The report claimed that there is a "disparity between police services rendered in white communities and in minority communities."

The newspapers ignored the report. Editors might argue that the story was not that important, though most blacks and Hispanics would probably disagree. During that same time period, however, the papers were ignoring a story whose importance is undeniable: the first full-scale investigation in this country into whether a police department discriminates in providing services to residents in minority communities. The investigation is still underway, and is being conducted by the Civil Rights Division of the Law Enforcement Assistance Administration. The probe follows an administrative complaint from the Guardians Association charging discriminatory employment practices in the NYPD, and a subsequent complaint by the United Church of Christ charging the department with discrimination in the providing of services. Both complaints are being investigated, but while the Justice Department has examined employment practices in other cities, the investigation of services is the first of its kind. The fact that all three papers have ignored the story is not surprising. Why should any editor or reporter be interested in the quality of services the police are providing "those people"?

Thanks to the three newspapers, I know that Martha Moxley had a "love of life" and a joyous spirit that would "rub off on everyone around her." I know that Frank Ardito was an industrious boy who had never been in trouble with the police, was exceptionally close to his brother, and was planning to join the Navy in a few days. I know about the broken hopes and dreams of a lot of people, all white, but I don't even know the name of a 19-month-old black infant who was beaten to death in Bedford-Stuyvesant last October. I don't even know if Cristobal Rosario Bultron, who had been dead 5 days when he was found gagged and tied to his bed in his Lower East Side apartment, had any dreams he was fighting to make come true or if anyone grieved over his dying. That child, Bultron, and the hundreds of others murdered each year in Harlem, Bedford-Stuyvesant, and the South Bronx (the Siberias of this country) remain strangers to me, in death as in life. The newspapers see to that, just as they see to it that photos of black and Hispanic criminals often stare out at me from the papers, and that stories about these criminals are more likely to be printed than stories about black and Hispanic victims. The *Times*, *News*, and *Post* constantly remind me in myriad ways that some lives are worth caring about and some are not.

FORUM:

Pension Benefits and Sex

By Robert J. Myers

Along with the tide of sweeping changes that have occurred in the drive for equal treatment of females and males has come the demand for unisex life tables. Such tables recognize mortality variation only for differences in age, and not by sex. The Fall 1975 issue of the **Digest** contained a thought-provoking article on this subject entitled "Equality in Retirement Benefits—The Need for Pension Reform," by Barbara Bergmann and Mary Gray, both professors of economics. The thrust of that paper was that unisex life tables should be used in all instances for determining pension amounts and pension costs.

I strongly support equal treatment by sex under pension plans, just as for many years I favored and worked for such equal treatment by sex under the Social Security program. However, the use of unisex life tables in connection with pension plans does **not** result in equal treatment, but rather in unjustifiable discrimination. I know of no actuary, female or male, who supports such use.

Scientific analysis of the actuarial and technical aspects of pensions and insurance is a complex matter and is normally not within the competence of those who have not had extensive training in actuarial science or pensions and insurance. Many pitfalls prevail for the unwary or ill-informed. Before proceeding with the particular issue on hand, let us look at a few rather common errors that the actuarially-untrained commit in the particular area of life tables.

First, consider a married couple where the husband has an average expectation of life of 46 years and the wife has an expectation of 53 years. Some would assert that it is "obvious" that the woman will have a period of widowhood of 7 years. Such is by no means the case; the real situation is shown by the fact that it is probable that in two-thirds of such cases, the wife will outlive the husband and have an average period of widowhood of about 19 years.

The fallacy of this method of "analysis" is clearly indicated by considering the case where the wife is somewhat older than the husband and has a shorter life expectancy. Under these circumstances, the conclusion that there would be no possible period of widowhood is obviously incorrect. In some cases, widowhood would occur.

A second illustration of misuse of life tables by persons without actuarial knowledge arose when the social security program was enacted in 1935, with a minimum retirement age of 65. At that time, some people quite rightly pointed out that the expectation of life at birth was only 60 years for men and 64 years for women. However, they then quite erroneously concluded that this retirement age was too high because nobody would ever attain age 65 and receive a retirement benefit—all this despite the fact that there were then about 8 million people aged 65 or over!

The Bergmann-Gray paper argues in favor of the use of unisex life tables on the grounds that it is no longer permissible for an employer to treat any particular woman as though she were "the average woman." Specifically, they pointed out that, in the case of a job requiring heavy lifting, women cannot be automatically rejected because the average woman could not perform the job, but rather that each person must be tested individually.

But the "average person" theory does not by analogy carry over to the pension and insurance field. An objective lifting test can be precisely measurable at the time it is given. But in the area of mortality, precise individual predictions as to future experience are impossible. If it were the case that accurate individual predictions of future longevity could be made, we would not have any commercial sale of life insurance and annuities, because there would be no "insurance" element involved. Rather, there would be only payments-certain in the future.

Bergmann and Gray rest their case for using unisex life tables and uniform annuity and insurance rates by age on what might be called the "overlap" theory. Specifically, they agree that, on the average, for a given initial age at consideration women will die later than men. But they assert that this fact is negated by the considerable overlap in the distribution of future ages at death. For example, they give the case of two groups of people, 1,000 men at age 65 and 1,000 women of the same

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age. If these two groups are followed through the life table until all are deceased, they state that an overlap of 84 percent will occur. By this, they mean that 84 percent of the men can be matched up with 84 percent of the women as having identical years of death.

On the surface, this "analysis" seems appealingly convincing that all men are not like the "average man" and that all women are not like the "average woman" and, in fact, that far more similarities than differences exist in mortality by sex. Thus, it might seem to the lay person that unisex tables are called for. It should be noted in this situation that the 16 percent of the unmatched men have an average age at death of about 70 years, whereas the 16 percent of the women who are unmatched have an average age at death of about 88.

Bergmann and Gray apparently made their analysis on the basis of the United States White Life Tables for 1959–61, since Bergmann also quoted the 84 percent overlap in a draft Statement on Equal Pension Benefits for Men and Women prepared for use in commenting on guidelines proposed by the Departments of Labor and Health, Education, and Welfare, and cited that source.

The "overlap" method of analysis is an example of erroneous technique in the area of life tables. This can most easily be demonstrated by a reductio ad absurdum argument. Exactly the same overlap analysis could be applied to the matter of taking age into account in the determination of life insurance and annuity values. Again using the U.S. White Life Tables for 1959–61, let us consider a group of 1,000 men aged 65 and another group of 1,000 men aged 60. Here we find an overlap of 85.3 percent. Does this mean that we should use "uni-age" life tables—or, in other words, no life tables at all?

Further, compare a person aged 20 and a person aged 90; there can be instances where the latter would outlive the former! The answer obviously is that we must distinguish by age in measuring insurance and annuity valuation. And in the same way, too, we should distinguish by sex, because each of these two elements is immutable (or virtually so), and each has a significantly measurable sizable effect on mortality.

It can quite correctly be pointed out that other characteristics such as race, geographic location, smoking, medical history, and family history are significant determinants of future mortality. However, on the whole these elements do not have anywhere near the overall importance of age and sex, and also, some of them can be changed at the will of the person involved or by future occurrences. Although such other characteristics may be used for individual underwriting, they would tend to have little aggregate effect on the large groups generally involved in pension plans.

An interesting example of the unequal treatment of females and males that arises when unisex life tables are used in connection with pension plans is what occurred recently in the United Nations Joint Staff Pension Plan. Quite properly, the benefit provisions were changed to provide equal treatment of female and male participants. But one other change was made that quite understandably aroused the ire of many female participants.

The UN plan permits, at the time of retirement, commutation into a lump sum of one-third of the pension. Previously, the factor for determining lump sums for females had properly been larger than that for males of the same age. But now, a unisex life table is used, and the payments are identical for female and male participants of the same age and pension amount. The net result is unfair treatment, because the woman who elects commutation is surrendering a right for less than its worth, whereas for a man the reverse is the case.

Unisex life tables will also result in unequal and unfair treatment if insurance companies are required to use them. Males would be financially foolish to buy annuities determined on this basis. And if women purchased annuities, the unisex table developed from the actual experience will necessarily degenerate into a strictly female life table. Hence, women would be no better off than they are currently when two different tables are used, and men would be prevented from buying annuities at proper rates. The reverse situation, of course, would prevail for life insurance.

In the case of pension plans, if unisex life tables are required, employers with predominantly male work forces might tend to self-insure by establishing a trusteed plan, whereas employers with predominantly female work forces might wish to buy annuities at unisex rates from an insurer.

What is the proper and equitable answer to this matter of equality in pension benefits? Admittedly, there is no simple answer, because the situation is very much like that of "which came first, the chicken or the egg?" In other words, no solution is totally acceptable.

Thus, in the case of a defined-benefit plan (i.e., where each participant receives a pension of a certain percentage, such as 2 percent, multiplied by the years of service, and then by the average salary), the cost to the employer will be more per dollar of payroll for a female worker than for a male worker of the same age. Since fringe benefit costs are a part of compensation, this at first glance hardly seems equal pay for equal work! On the other hand, as Bergmann and Gray point out, in defined-contribution plans—although there is then equal pay for equal work—there is no equality of monthly benefits. (Defined contribution plans exist where the pension is actuarially determined according to the demographic characteristics of the retiree from the accumulated contributions at interest, with the contribution rate the same for all members.)

I believe that the best and most equitable situation is when the input items (i.e., those initially determined in establishing the plan—contribution rates in defined-contribution plans and pension rates in defined-benefit plans) are equal for both sexes. This is the position that HEW took in its regulations for Title IX of the Education Amendments of 1972, effective July 21, 1975.

READING & VIEWING

BOOKS RECEIVED

A New Birth of Freedom by Herman Betz (Westport, Conn., Greenwood Press, 1977). Explains how and why the Republican Party transformed military expedience into a civil rights policy between 1861–1866. *200 pp.*

Quiz Book on Black America by Clarence N. Blake and Donald F. Martin (Boston, Houghton Mifflin Co., 1976). A collection of 105 quizzes grouped by category such as business, literature, entertainment, etc. *207 pp.*

Racism in American Education: A Model for Change by William E. Sedlacek and Glenwood C. Brooks, Jr. (Chicago, Nelson-Hall Publishers, 1976). Outlines a six-page program for eliminating racism, aimed primarily at whites and white-oriented institutions. *227 pp.*

Comparative Human Rights ed. by Richard P. Claude (Baltimore, Johns Hopkins Press, 1976). Essays on the development, problems, and future directions of the study of human rights, on five continents. *410 pp.*

Refugees from Militarism by Renée Goldsmith Kasinsky (New Brunswick, N.J., Transaction Books, 1976). A study of American draft evaders and deserters who went to Canada between 1965–1970—how they got there, and how they're doing. *301 pp.*

Internal Combustion by David Allan Levine (Westport, Conn., Greenwood Press, 1976). An account of race relations in Detroit between 1915–1926, with particular attention given to the racial violence of 1925. *223 pp.*

Henry Sylvester Williams and the Origins of the Pan-African Movement, 1869–1911 by Owen Charles Mathurin (Westport, Conn., Greenwood Press, 1976). The story of a black schoolmaster from Trinidad who organized the first Pan-African conference in July 1900 and set in motion the formal Pan-African Movement. *183 pp.*

Silence to the Drums by Margaret Perry (Westport, Conn., Grenwood Press, 1976). An appraisal of the literature of the Harlem Renaissance, including a

brief survey of the social environment in which the renaissance arose. *194 pp.*

The Social Impact of Revenue Sharing by Paul Terrell (New York, Praeger Publishers, 1976). Describes and analyzes the impact of general revenue sharing on social planning and social programs in seven sites selected for their innovative use of funds. *115 pp.*

The Defendant's Rights Today by David Fellman (Madison, Wisc., University of Wisconsin Press, 1976). An update of the author's earlier work, detailing the changes in criminal law since 1958, particularly in Federal law. *446 pp.*

Nobody Speaks For Me! by Nancy Seifer (New York, Simon and Schuster, 1976). Ten working class women recount their experiences battling the status quo. *477 pp.*

Minority Access to Federal Grants-in-Aid by John Hope, II (New York, Praeger Publishers, 1976). A study documenting how minority groups are short-changed in the allocation of Federal money through grant programs. *267 pp.*

Roger Baldwin by Peggy Lamson (Boston, Houghton Mifflin Co., 1976). A biography of the founder of the American Civil Liberties Union, whose life mirrors the ups and downs in the struggle for civil liberties. *304 pp.*

Federal Grants-in-Aid by Anita S. Harbert (New York, Praeger Publishers, 1976). A somewhat technical study of Federal-State relations with regard to Federal grant programs and the effects of the programs on social policy. *173 pp.*

Dependence and Exploitation in Work and Marriage ed. by Diana Leonard Barker and Sheila Allen (London, Lougman, Inc., 1976). Essays on sex roles in Great Britain, with regard to topics as diverse as home work (cottage industries), journalism, and purdah. *265 pp.*

The Negro Almanac ed. by Harry A. Ploski and Waren Marr, II (New York, Bellwether Co., 1976). A comprehensive compilation of facts concerning black Americans, newly revised. *1206 pp.*

PAMPHLETS

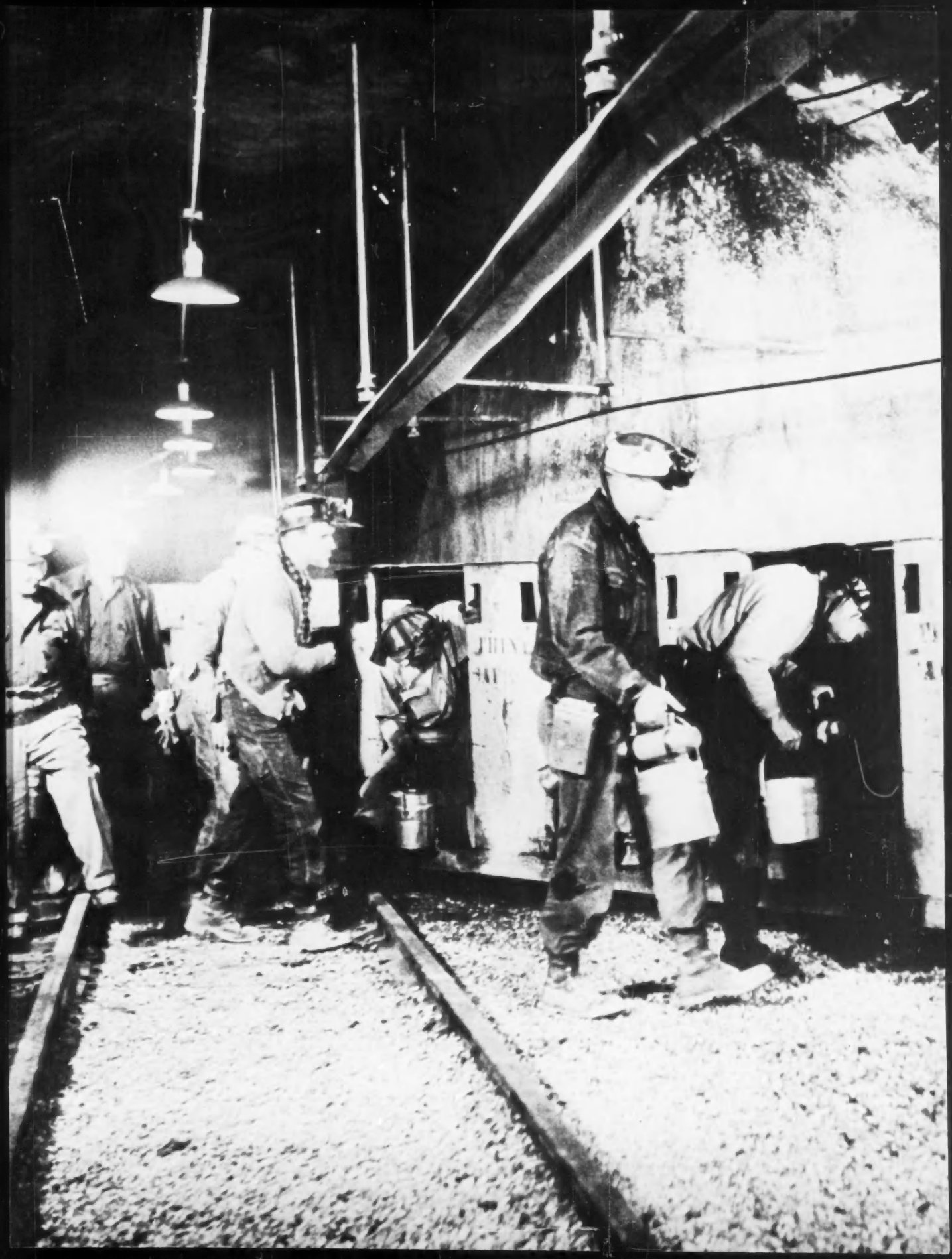
Because of Sex by Eliza K. Paschall and Elizabeth B. Turlington (Atlanta, Feminist Committee Press, 1975). A handbook on sex discrimination designed for the woman holding or looking for a job. *70 pp.* (Write Feminist Committee Press, 1090 Lanier Blvd., N.E., Atlanta, GA 30306)

Illegal Aliens: An Assessment of the Issues (Washington, D.C., National Council on Employment Policy, 1976). Summary of a conference on illegal aliens, with background papers. Some recommendations are controversial. *77 pp.* (Write The National Council on Employment Policy, 1819 H St., N.W., Washington, D.C. 20006.)

Social Factors in Educational Attainment Among Puerto Ricans in U.S. Metropolitan Areas, 1970 (New York, Aspira of America, Inc., 1976). The first in a series, this report identifies forces in the schooling process that create delays in completion, limit attainment, foster dropouts, and reduce chances for higher education. *46 pp.*

A Caseworker's Guide to the New York State Juvenile Justice System by Marion C. Katzive (New York, Vera Institute of Justice, 1976). A guide and staff training manual for agencies and individuals in New York State; while aimed at one State, this publication may serve as a model for interested persons elsewhere. *48 pp.* (Write Vera Institute of Justice, 30 East 39th Street, New York, N. Y. 10016; $2.50.)

Testing . . . Grouping: The New Segregation in Southern Schools? by Roger Mills and Miriam M. Bryan (Atlanta, Southern Regional Council, 1976). Handbook on evaluating and challenging standardized testing that may constitute a discriminatory practice. *78 pp.* (Write Southern Regional Council, 52 Fairlie Street, N.W., Atlanta, GA 30303; $2.50.)



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