

## **The Law and Policy of Civil Rights: A Tactical Perspective for Educators**

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I have a dream my four little children will one day live in a nation where they will not be judged by the color of their skin but by content of their character. I have a dream today!<sup>1</sup>

—Dr. Martin Luther King, Jr.

[T]he problem of the Twentieth Century is the problem of the colorline.<sup>2</sup>

—Dr. W. E. B. DuBois

### **Introduction**

This article is presented to share with fellow professional teacher-scholars the preparation of a freshly-formulated teaching project. The aim of this project is to provide a classroom public policy study program wherein students debate policy issues in a carefully structured and professional fashion. This structure encompasses hands-on study of actually-litigated minority set-aside/affirmative action controversies before the U.S. Supreme Court, with every student always utilizing the primary documents (the litigants' briefs) used by the Supreme Court Justices themselves. These briefs provide readymade resources fueling policy debate on either side of each case.

### **The Sequence of Judicial Opinions**

Because a chronological sequence of cases is studied, students are sensitized to the delicate and dynamic interplay of each precedent upon subsequent decisions. They likewise are alerted to the delicate and dynamic

interplay of Justice upon Justice, opinions and dissents being, of course, personally ascribed. This reminds students that *public* policy is a matter of *personal* responsibility. The students are similarly alerted to the delicate and dynamic interplay of various legal authorities, i.e., the equal protection component of the Due Process Clause of the Fifth Amendment,<sup>3</sup> the Due Process Clause of the Fourteenth Amendment,<sup>4</sup> the Equal Protection Clause of the Fourteenth Amendment,<sup>5</sup> Title VII of the Civil Rights Act of 1964,<sup>6</sup> Executive Order 11246 of 1965,<sup>7</sup> and the Taxing and Spending Clause of Article I<sup>8</sup>. This teaches students as apprentice scholars and citizens that there is no “one” minority set-aside/affirmative action law, but numerous “laws.”

Students may be alternately assigned to the pro- or anti-affirmative action position. Or the professor may choose to require each student prepare herself simultaneously to debate for either side or demand, as is done with students learning debating. Still again, the professor may allow students to form self-selected “law firms” to advocate their own chosen policy. Yet again, the professor may vary any of these approaches from week to week as study of new cases is embraced. Student input can be solicited on this classroom “policy” point.

The chain of Supreme Court cases, virtually all of which are productive of opinions defining the law in recent years and hence of practical value to students of policy, includes these:

1. The Supreme Court’s opinion for five of the eight Justices participating in *Hughes v. Superior Court of California in and for Contra Costa*<sup>9</sup> (1950), written by Justice Felix Frankfurter, is an invaluable background to modern-day minority set-aside/affirmative action litigation. The Supreme Court accepted review of that case to weigh claims of infringement of the right to the freedom of speech guaranteed by the Due Process Clause of the Fourteenth Amendment.<sup>10</sup> The broad question therein was whether the Fourteenth Amendment bars a state (California) from exploiting the injunction to prohibit picketing a place of business solely to attain compliance with the demand there be employees hired to approach a racial balance proportional to the racial origin of the business’s customers.<sup>11</sup>

The Progressive Citizens of America had demanded that a California grocery store hire African Americans as white clerks quit or were transferred until the ratio of African American clerks to white clerks approximated the ratio of African American customers to white customers. About half of the customers of the store were African American. Upon refusal of this demand, and to compel compliance therewith, the store was systematically patrolled by pickets bearing placards proclaiming the employer’s refusal to hire African American clerks in proportion to its African American customers.<sup>13</sup>

The Supreme Court’s opinion styled this “picketing to promote discrimination”<sup>14</sup> and warned: “We cannot construe the due process clause as precluding California from securing respect for its policy against involuntary employment on racial lines by prohibiting systematic picketing that would subvert such policy.”<sup>15</sup> Frankfurter’s words of 1950 remain timely for the mid-1990s:

To deny to California the right to ban picketing in the circumstances of this case would mean that there could be

no prohibition of the pressure of picketing to secure proportional employment on ancestral grounds of Hungarians in Cleveland, of Poles in Buffalo, of Germans in Milwaukee, of Portuguese in New Bedford, of Mexicans in San Antonio, of the numerous minority groups in New York, and so on through the whole gamut of racial and religious concentrations in various cities. States may well believe that such constitutional sheltering would inevitably encourage use of picketing to compel employment on the basis of racial discrimination. In disallowing such picketing States may act under the belief that otherwise community tensions and conflicts would be exacerbated. The differences in cultural traditions instead of adding flavor and variety to our common citizenry might well be hardened into hostilities by leave of law. The Constitution does not demand that the element of communication in picketing prevail over the mischief furthered by its use in these situations.<sup>16</sup>

The Supreme Court decided that a state may choose to enjoin picketing to win submission to a demand for employment proportional to the racial origin of business customers because of the compulsory features inherent in picketing (beyond the element of mere communication as an appeal to reason.)<sup>17</sup> Yet it added that an employer of that time need not be forbidden to erect such a quota system of its own free will.<sup>18</sup>

The *Hughes* opinion invites further minority set-aside/affirmative action debate through its final lines:

The injunction here was drawn to meet what California deemed the evil of picketing to bring about proportional hiring. We do not go beyond the circumstances of the case. Generalizations are treacherous in the application of large constitutional concepts.<sup>19</sup>

Justices Hugo Black and Sherman Minton concurred in the Supreme Court's judgment.<sup>20</sup> And Justice Stanley F. Reed concurred independently and concisely: "I read the opinion of the Supreme Court of California to hold that the pickets sought from Lucky Stores, Inc., discrimination in favor of persons of the Negro race, a discrimination unlawful under California law. Such picketing may be barred by a state."<sup>21</sup>

2. In *Regents of the University of California v. Bakke*<sup>22</sup> (1978), the Supreme Court divided 4-4-1. The "bottom line" thereof, read by combining then-Justice Lewis F. Powell, Jr.'s lone swing vote with the reasoning of a bloc of four other Justices, is that under the Equal Protection Clause of the Fourteenth Amendment state universities need not be colorblind in admissions policies. Note how the 4-4-1 split invites student debate.

3. In *United Steelworkers of America v. Weber*<sup>23</sup> (1979), the Supreme Court upheld against Title VII challenge a private affirmative action plan negotiated between an employer and a union. The Justices voted 5-2 (not 5-4) that this plan actually fought, not itself constituted, racial discrimination.

4. In *Fullilove v. Klutznick*<sup>24</sup> (1980), a 6-3 decision, the Supreme Court upheld under the Fifth Amendment a federal public works program that set aside 10 percent of funds for minority business enterprises (MBEs).

5. In *Wygant v. Jackson Board of Education*<sup>25</sup> (1986), a school district layoff (not hiring) plan dispute, the Court indicated a distinction between the permissibility of affirmative action in layoffs and in hiring.

6. *Local Number 28, Sheet Metal Workers International Association v. Equal Opportunity Commission*<sup>26</sup> (1986), was a mere plurality opinion. Observe again how this invites student debate. Therein the Justices upheld a numerical quota for union membership that had been court-ordered rather than voluntarily adopted.

7. *Local Number 93, International Association of Firefighters v. Cleveland*<sup>27</sup> (1986), found inapplicable to voluntary affirmative action measures the remedial limitations imposed by Title VII.

8. In *United States v. Paradise*<sup>28</sup> (1987), a plurality, but only a plurality, of the Justices upheld a 50 percent black promotion requirement by a lower court against the Alabama State Police.

9. In *Johnson v. Transportation Agency*<sup>29</sup> (1987), just six Justices upheld a voluntary affirmative action plan to increase the number of women in jobs where they traditionally had been underrepresented.

10. In *Richmond v. J. A. Croson Co.*<sup>30</sup> (1989), a 6-3 majority of the Supreme Court held, per Justice Sandra Day O'Connor, that a Richmond, Virginia, ordinance requiring all city construction project primary contractors subcontract at least 30 percent of the dollar value thereof to minority-owned enterprises violated the Equal Protection Clause. This decision opened the prospect that numerous state and local minority-contractor programs will be struck down as unconstitutional. But, enhancing classroom policy debate, Justice Thurgood Marshall predicted *Croson* will thwart elimination of the vestiges of past discrimination.

11. In *Martin v. Wilks*<sup>31</sup> (1989), the Supreme Court held that white firefighters in Birmingham, Alabama, had the right to challenge a court-approved consent decree to which they were not parties. These white plaintiffs could not be denied a chance to prove that the decree had resulted in an illegal, race-based preference for black employees. *Wilks* may cause employers to reevaluate their affirmative action plans.

12. In *Metro Broadcasting, Inc. v. Federal Communications Commission*<sup>32</sup> (1990), the Supreme Court decided Metro's suit against the FCC's policy of favoring women and minority applicants for broadcast licenses. This opinion held in favor of the Federal Communications Commission policy.

That defining lawful public policy encompasses personal responsibility is highlighted by students' study of the opinions with an eye to the individual Justices. For example, Justice Harry A. Blackmun, appointed by President Richard M. Nixon in 1970, was born on November 12, 1908. Justice Thurgood Marshall, named to the Supreme Court by President Lyndon B. Johnson during 1967, was born on July 2, 1908. Former Justice William J. Brennan, appointed by President Dwight D. Eisenhower in 1956, was born on April 25, 1906.<sup>33</sup> On

July 20, 1990, Brennan announced his retirement.<sup>34</sup> These birthdates have suggested that the tides of Supreme Court policymaking are vulnerable to an imminent turning. (Justice David H. Souter, an appointee of President George Bush, when on October 8, 1990, he joined the Supreme Court<sup>35</sup> was only 53 years of age.)

### The Supplementary Authorities

Each Supreme Court opinion followed the filing of written briefs by (at a minimum) the two appellant and appellee parties, as well as (in numerous cases) *amicus curiae* briefs filed by third parties. These documents are on the public record with the Supreme Court. Copies of each readily can be obtained in a matter of days via orders placed through such research-resource offices as Federal Document Retrieval (810 First St., N.E., Suite 600, Washington, DC 20002, 202/789-2233). The fee is approximately \$15.00 standard fee per order, plus \$.30 per page, plus tax. Such research costs are high per copy page; but they otherwise are quite low, once it is recalled that exactly what documents are needed is known in advance. This is not a “fishing expedition” research effort, examining documents only some of which may prove of any value.

The courtroom oral arguments in such cases essentially offer the real-world “debate” on the legal issues.<sup>36</sup> Written transcripts of each case argued between October 1, 1981 and September 30, 1987, and from October 1, 1988 to date are available from Alderson Reporting Co. (1111 14th Street, N.W., Washington, DC 20005, 202/289-2261). Oral arguments run about 50 pages per case, costing \$2.85 per page, plus a \$10.00 shipping and handling charge.

Transcripts of oral arguments, like copies of briefs and the consequent judicial opinions themselves, can be edited by the professors to extract for student readers only the relevant minority set-aside/affirmative action issues. Student analytical skills especially will be finely honed when they critically can compare: (a) the topics (and approaches thereto) emphasized in each original written brief to the subsequent handling of the same topics at oral argument; and (b) the matters emphasized at oral argument to the disposition of the controversy in the subsequent judicial opinion.

Educators may recognize that the Wilson-Swan educational project bears some resemblance to the recently-proposed undergraduate composition program of the University of Texas English Department. Therein, as planned, classes numbering approximately twenty-five students each would follow a syllabus and reading list including Paula S. Rothenberg’s *Racism and Sexism: An Integrated Approach*,<sup>37</sup> an introductory-level sociology text, and several Supreme Court opinions addressing civil rights, affirmative action, and the rights of the disabled.<sup>38</sup> These opinions include *Sweatt v. Painter*<sup>39</sup> (1950) and *Brown v. Board of Education*<sup>40</sup> (1954). According to Associate Professor Linda Broadkey, the nine-member teacher committee which formulated this new program attempted to select opinions wherein the Supreme Court was torn sharply between the powerful arguments of either side, in order that Texas students learn that the law can be interpreted in various fashions.<sup>41</sup> Adoption thereof is looked for in 1991.<sup>42</sup>

Supreme Court opinions, litigation briefs, and additional editorial material readily constitute a custombuilt casebook for this course of study. Ginn Press, of Simon and Schuster (160 Gould St., Needham Heights, MA 02194-2310, 617/455-7000 or 800/428-GINN) can work with a manuscript on any size disk, from any operating system. Ginn obtains all permissions for copyrighted material (e.g., editorials or essays on affirmative action). Publishing texts for courses, as here, which have enrollments of 200 or more students annually, Ginn can nationally market texts.

The previously cited authorities are strictly legal sources. History, sociology, and (most especially) economics-oriented supplemental policy treatise resources include Thomas Sowell, *Race and Economics*<sup>43</sup> (1975), *Ethnic America*<sup>44</sup> (1981), *Essays and Data on American Ethnic Groups*<sup>45</sup> (1978), *Markets and Minorities*<sup>46</sup> (1981), *Civil Rights: Rhetoric or Reality?*<sup>47</sup> (1984), *Compassion Versus Guilt, and Other Essays*,<sup>48</sup> (1987), *Affirmative Action Reconsidered*<sup>49</sup> (1975), and *Preferential Policies: An International Perspective*<sup>50</sup> (1990); Robert E. Klitgaard, *Choosing Elites*<sup>51</sup> (1985); Walter E. Williams, *The State Against Blacks*<sup>52</sup> (1982), and *South Africa's War on Capitalism*<sup>53</sup> (1989); William H. Hutt, *The Economics of the Colour Bar: A Case Study of the Economics, Origins and Consequences of Racial Segregation in South Africa*<sup>54</sup> (1964); Gary S. Becker, *The Economics of Discrimination*<sup>55</sup> (1971); Richard A. Posner, *Economic Analysis of Law*<sup>56</sup> (1976), and *The Economics of Justice*<sup>57</sup> (1981); James V. Koch, *The Economics of Affirmative Action*<sup>58</sup> (1976); Alvin Rabushka, *A Theory of Racial Harmony*<sup>59</sup> (1974); Walter E. Block and M. A. Walker, *Discrimination, Affirmative Action, and Equal Opportunity*<sup>60</sup> (1982); Edward C. Banfield, *Unheavenly City Revisited*<sup>61</sup> (1974); Milton Friedman, *Capitalism and Freedom*<sup>62</sup> (1968), chapter seven "Capitalism and Discrimination,"<sup>63</sup> and Milton Friedman and Rose Friedman, *Free to Choose*<sup>64</sup> (1980), chapter five "Created Equal";<sup>65</sup> Merle Lipton, *Capitalism and Apartheid: South Africa, 1910-84*<sup>66</sup> (1985); William Julius Wilson, *The Truly Disadvantaged*<sup>67</sup> (1987); Shelby Steele, *The Content of Our Character: A New Vision of Race in America*<sup>68</sup> (1990); Richard Swedberg, *Economics and Sociology: Redefining Their Boundaries*<sup>69</sup> (1990); Clint Bolick, *Changing Course: Civil Rights at the Crossroads*<sup>70</sup> (1988), and *Unfinished Business: A Civil Rights Strategy for America's Third Century*<sup>71</sup> (1990); Cynthia B. Lloyd and Beth T. Niemi, *The Economics of Sex Differentials*<sup>72</sup> (1979); and Claudia Goldin's *Understanding the Gender Gap: An Economic History of American Women*<sup>73</sup> (1990). Since public policy is made especially at the intersection of economics and law, students should be equipped to draw upon analysis from both professional fields.

### **The Gathering Race Norming Issue**

This approach focuses on minority set aside/affirmative action cases. The logic of such precedents contributes to constructive debate on the mounting controversy concerning the comparable practice of race norming (or "within-group scoring"). Thereunder, examinee-competitors (e.g., for jobs) are ranked

only in relation to other examinees of the same race.<sup>74</sup> Stanford University Professor of Law Mark Kelman points out that race norming ensures that an identical proportion from each normed group is selected at an initial screening stage.<sup>75</sup> And federal equal employment opportunity policy makes employers legally vulnerable should their selection processes carry an adverse impact upon women or racial minorities.<sup>76</sup>

For example, a federally-sanctioned job referral test utilized by the Virginia Employment Commission (as well as by employment agencies nationwide) to help fill thousands of public and private employment slots includes a percentile conversion chart. The system thereby awards substantial bonus points to (or imposes heavy subtractions from) a jobseeker's final score. The goal is to compensate for the lower mean scores on standardized tests of certain racial minorities.<sup>77</sup> Hispanics are ranked only against Hispanics; blacks are ranked only against blacks; and all other applicants are ranked against one another.<sup>78</sup>

Were a black, an Hispanic, a white and an Asian to take the Validity Generalization version of the General Aptitude Test Battery toward an accountant's post, and each to score 300, the black would be ranked at the 87th percentile, the Hispanic at the 74th, and the white and the Asian both at the 47th.<sup>79</sup> Examinations tend to render false negatives of marginal scorers nevertheless capable of adequate job performance. Because some groups have more low scorers than do other groups, they also suffer more false negatives than do those others. This disproportionate impact of selection error is cited for adjustment of minority scores.<sup>80</sup>

## Conclusion

The preceding discussion has shared the preparation of the carefully structured Wilson-Swan public policy study project. Students equipped with all relevant Supreme Court briefs, transcripts of numerous recent oral arguments, and judicial opinions themselves can analyze these legal sources from a dispassionate economic perspective. Until equal rights proponents can highly accurately diagnose a malady, we cannot with a great deal of confidence prescribe the proper medicine.<sup>81</sup> The debate element of this classroom undertaking adds a special zest to this study program for involved students.

Focus upon an up-to-date public policy issue of immediate practical import enhances the value of the Wilson-Swan academic project. This discussion remains current through the October 22, 1990 veto by President Bush of the proposed Civil Rights Act of 1990,<sup>82</sup> a veto sustained in Congress on October 24, 1990.<sup>83</sup> That veto leaves intact the authorities studied herein. Further development of study endeavors along similar lines must prove most timely.<sup>84</sup>

## Notes

<sup>1</sup>*A Testament of Hope: The Essential Writings of Martin Luther King, Jr.*, James Melvin Washington, ed. (San Francisco: Harper and Row, 1986), 219. It was on the August 1963 date of this “I Have a Dream” speech by King for the March on Washington that Roy Wilkins announced to the marchers that Dr. Du Bois had died in Ghana that very morning. Taylor Branch, *Parting the Waters: America in the King Years 1954-63* (New York: Simon and Schuster, 1988), 878.

<sup>2</sup>W. E. B. Du Bois, *The Souls of Black Folk* (Chicago: McClurg & Co., 1983), vii.

<sup>3</sup>U.S. Const. amend. V; *Bolling v. Sharpe*, 347 U.S. 497 (1954).

<sup>4</sup>U.S. Const. amend. XIV, sec. 1, cl 1.

<sup>5</sup>U.S. Const. amend. XIV, sec. 1, cl. 1.

<sup>6</sup>42 U.S.C. sec. 2000 et seq.

<sup>7</sup>2 C.F.R. sec. 339.

<sup>8</sup>U.S. Const. art. I, sec. 8.

<sup>9</sup>339 U.S. 460 (1950).

<sup>10</sup>*Id.* at 462.

<sup>11</sup>*Id.* at 461.

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>*Id.* at 466.

<sup>15</sup>*Id.*

<sup>16</sup>*Id.* at 464.

<sup>17</sup>*Id.* at 468.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* at 469.

<sup>20</sup>*Id.* (Black, J. and Minton, J., concurring in the judgment).

<sup>21</sup>*Id.* (Reed, J., concurring).

<sup>22</sup>438 U.S. 265, 311-13 (1978) (Powell, J.).

<sup>23</sup>443 U.S. 193 (1979).

<sup>24</sup>448 U.S. 448 (1980).

<sup>25</sup>106 S. Ct. 1942 (1986).

- <sup>26</sup>105 S. Ct. 3019 (1986).
- <sup>27</sup>106 S. Ct. 3063 (1986).
- <sup>28</sup>107 S. Ct. 1053 (1987).
- <sup>29</sup>107 S. Ct. 1442 (1987).
- <sup>30</sup>109 S. Ct. 706 (1989).
- <sup>31</sup>109 S. Ct. 2181 (1989).
- <sup>32</sup>110 S. Ct. 2997 (1990).
- <sup>33</sup>George Steven Swan, "The November Election and the Supreme Court," *Human Events*, 1 September 1984: 12.
- <sup>34</sup>Steven Greenhouse, "Brennan, Key Liberal, Quits Supreme Court; Battle for Seat Likely," *N.Y. Times*, 21 July 1990: 1, col. 6.
- <sup>35</sup>Neil A. Lewis, "Sworn In as 105th Justice, Souter Says Shock Recedes," *New York Times*, 21 July 1990: 1.
- <sup>36</sup>Transcripts of Supreme Court proceedings often make fascinating reading, and we lead with this thought not only to mollify the business department, which shelled out over \$300 so we could fascinate ourselves. Daniel Seligman, "Keeping Up," *Fortune* 121 (7 May 1990): 183, 184 (oral argument transcript of *Metro Broadcasting, Inc. v. Federal Communications Commission*, 110 S. Ct. 2997 (1990)).
- <sup>37</sup>Paula S. Rothenberg, *Racism and Sexism: An Integrated Approach* (New York: St. Martin's Press, 1987).
- <sup>38</sup>"A Civil Rights Theme For a Writing Course," *N.Y. Times*, 24 June 1990: 32, col. 2.
- <sup>39</sup>339 U.S. 629 (1950).
- <sup>40</sup>347 U.S. 483 (1954).
- <sup>41</sup>"A Civil Rights Theme For a Writing Course," 32, cols. 1-2.
- <sup>42</sup>"Texas Puts Off Adopting Controversial Course," *Chronicle of Higher Education*, 8 August 1990: A2, col. 5.
- <sup>43</sup>Thomas Sowell, *Race and Economics* (New York: David McKay, Co., Inc., 1975).
- <sup>44</sup>Thomas Sowell, *Ethnic America* (New York: Basic Books, 1981).
- <sup>45</sup>Thomas Sowell, ed. *Essays and Data on American Ethnic Groups*, (Washington: Urban Institute, 1978).
- <sup>46</sup>Thomas Sowell, *Markets and Minorities* (New York: Basic Books, 1981).
- <sup>47</sup>Thomas Sowell, *Civil Rights: Rhetoric or Reality?* (New York: William Morrow and Co., 1984).

- <sup>48</sup>Thomas Sowell, *Compassion Versus Guilt, and Other Essays* (New York: William Morrow and Co., 1987).
- <sup>49</sup>Thomas Sowell, *Affirmative Action Reconsidered* (Washington: American Enterprise Institute for Public Policy Research, 1975).
- <sup>50</sup>Thomas Sowell, *Preferential Policies: An International Perspective* (New York: William Morrow and Co., 1990).
- <sup>51</sup>Robert E. Klitgaard, *Choosing Elites* (New York: Basic Books, 1985).
- <sup>52</sup>Walter E. Williams, *The State Against Blacks* (New York: McGraw-Hill Book Co., 1982).
- <sup>53</sup>Walter E. Williams, *South Africa's War on Capitalism* (New York: Praeger Publishers, 1989).
- <sup>54</sup>William H. Hutt, *The Economics of the Colour Bar: A Study of the Origins and Consequences of Racial Segregation in South Africa* (London: A. Deutsch, 1964).
- <sup>55</sup>Gary S. Becker, *The Economics of Discrimination*, 2nd ed. (Chicago: University of Chicago Press, 1971).
- <sup>56</sup>Richard A. Posner, *An Economic Analysis of Law*, 3rd ed. (Boston: Little, Brown and Co., 1986).
- <sup>57</sup>Richard A. Posner, *The Economics of Justice* (Cambridge: Harvard University Press, 1981).
- <sup>58</sup>James V. Koch, *The Economics of Affirmative Action* (Lexington, MA: Lexington Books, 1976).
- <sup>59</sup>Alvin Rabushka, *A Theory of Racial Harmony*, (Columbia: University of South Carolina Press, 1974).
- <sup>60</sup>Walter E. Block and M. A. Walker, eds. *Discrimination, Affirmative Action, and Equal Opportunities*, (Vancouver: The Fraser Institute, 1982).
- <sup>61</sup>Edward C. Banfield, *The Unheavenly City Revisited* (Boston: Little, Brown and Co., 1974).
- <sup>62</sup>Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962).
- <sup>63</sup>Friedman, *Capitalism and Freedom*, 108-18.
- <sup>64</sup>Milton Friedman and Rose Friedman, *Free to Choose* (New York: Harcourt Brace Jovanovich, 1980).
- <sup>65</sup>Friedman and Friedman, *Free to Choose*, 128-49.
- <sup>66</sup>Merle Lipton, *Capitalism and Apartheid: South Africa, 1910-84* (Totuwa, NJ: Rowman and Allanheld, 1985).

- <sup>67</sup>William Julius Wilson, *The Truly Disadvantaged* (Chicago: University of Chicago Press, 1987).
- <sup>68</sup>Shelby Steele, *The Content of Our Character: A New Vision of Race in America* (New York: St. Martin's Press, 1990).
- <sup>69</sup>Richard Swedberg, *Economics and Sociology: Redefining Their Boundaries* (Princeton: Princeton University Press, 1990).
- <sup>70</sup>Clint Bolick, *Changing Course: Civil Rights at the Crossroads* (New Brunswick, NJ: Transaction Publishers, 1988).
- <sup>71</sup>Clint Bolick, *Unfinished Business: A Civil Rights Strategy for America's Third Century* (San Francisco: Pacific Research Institute for Public Policy, 1990).
- <sup>72</sup>Cynthia B. Lloyd and Beth T. Niemi, *The Economics of Sex Differentials* (New York: Columbia University Press, 1979).
- <sup>73</sup>Claudia Goldin, *Understanding the Gender Gap: An Economic History of American Women* (New York: Oxford University Press, 1990). Claudia Golden is "the first tenured economics professor at Harvard." Jaclyn Fierman, "Why Women Still Don't Hit The Top," *Fortune* 122 (30 July 1990): 40,58.
- <sup>74</sup>Jan H. Blits and Linda S. Gottfredson, "Equality or Lasting Inequality?" *Society* 27 (March/April 1990): 4.
- <sup>75</sup>Mark Kelman, "The Problem of False Negatives," *Society* 27 (March/April 1990): 21, 23.
- <sup>76</sup>Alexandra K. Wigdor and John A. Hartigan, "The Case for Fairness," *Society* 27 (March/April 1990): 12, 13.
- <sup>77</sup>Robert G. Holland, "Racially Rigged Job Test Scores," *Washington Times*, 7 June 1990: F1, col. 1.
- <sup>78</sup>Holland, "Racially Rigged Job Test Scores," F4, col. 1.
- <sup>79</sup>Robert G. Holland, "Big Brother's Test Scores," *National Review* 42 (3 September 1990): 35.
- <sup>80</sup>Holland, "Big Brother's Test Scores," 36.
- <sup>81</sup>"Until feminist lawyers can highly accurately diagnose a problem, we cannot with a great degree of confidence prescribe the correct medicine." George Steven Swan, "Gender Discrimination in Employment of Attorneys: Feminists Sharpen the Issues," *Journal of the Legal Profession* 8 (1983): 139-157.
- <sup>82</sup>Steven A. Holmes, "President Vetoes Bill on Job Rights; Showdown Is Set," *New York Times*, 23 October 1990: 1, col. 4.
- <sup>83</sup>Neil A. Lewis, "President's Veto of Rights Measure Survives by 1 Vote," *New York Times*, 25 October 1990: 1, col. 3.

<sup>84</sup>The Wilson-Swan program transcends such non-comprehensive reference authority as *Landmark Briefs and Arguments of the Supreme Court of the United States*, Philip B. Kurland and Gerhard Casper eds. (Washington: University Publications of America). That source excludes judicial opinions, but includes briefs and arguments in *Bakke* (vols. 99-100, 1978), *Weber* (vol. 112, 1980), *Wygant* (vol. 166, 1987), and *Croson* (vol. 187, 1990).