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asserted.

On the ... Marshall I. Goldman, associate director of the Russian Research Center at Harvard who is a professor of economics at Wellesley College, said the report was "a very moderate, judicious attempt to heal the wounds."

The disclosures about Mr. Safran's acceptance of C.I.A. money "have affected the credibility of all of Harvard," Mr. Goldman said.

But Mr. Goldman said the case was a "tragedy" because Mr. Safran "had really helped make the Middle Eastern center a better place" in the two years he has run it.

In his report, Mr. Spence acknowledged that the publicity over Mr. Safran's handling of the C.I.A. funds "may have caused a loss of confidence in the center and in the university's ability to follow effectively its policies in areas that are crucial to scholars."

**Disclosure of Financing**

Mr. Spence's report found that Mr. Safran had violated Harvard's guidelines by not disclosing that he had a contract with the C.I.A. to sponsor the conference and by not informing the participants of the agency's role.

Mr. Safran said today that he viewed the C.I.A. as being "like any other source of funds" and that he felt there was no need to disclose the financing.

Harvard has no rule prohibiting professors from accepting research grants from any Government agency, including the C.I.A., Mr. Spence pointed out. But Harvard does have strict rules requiring its faculty members to notify the school whenever they receive Government or corporate funds and insure that the money does not carry any conditions that would abridge academic freedom.

In the case of the book on Saudia Arabia, Mr. Spence said Mr. Safran notified Henry Rosovsky, who was then the dean of the faculty, of the contract with the C.I.A. in May 1982, a week after signing it.

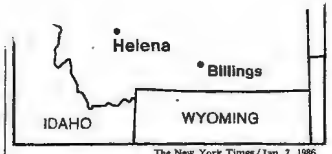
**Restrictions Reported**

Mr. Spence concluded that Mr. Safran had called attention to provisions that gave the C.I.A. the right to review and censor the manuscript and that prohibited Mr. Safran from disclosing the source of his funds to his publisher. Both conditions were in violation of Harvard's rules.

But Dean Spence said, "As far as I have been able to determine, he received no response" from Mr. Rosovsky. As a result, the university did not examine the contract and did not point out to Mr. Safran that it was an "institutional" contract involving Harvard and its rules, not merely an "individual" contract, as Mr. Safran has contended.

"These are clearly administrative errors in the faculty of arts and sciences, and not those of Professor Safran," Mr. Spence concluded.

Mr. Rosovsky concurred in an interview that his office had made "an ad-
m... error." "I regret that," Mr. Rosovsky said.



The New York Times/Jan. 2, 1986

**Libby's 3,000 people long depended on lumbering in the Rocky Mountains.**

... weather ... time for Libby ... Logger Days festival.

Last fall was the town's first annual Nordicfest, with a parade, dances, booths and music. It got good publicity in The Western News; June McMahon, one of the newspaper's owners, was a festival organizer. The activity attracted a fair number of tourists to town for a few days.

Then, in October the Chamber of Commerce board took its annual retreat and ended up in Kimberley, British Columbia. For the last 13 years Kimberley has worn the false front of a Bavarian village and made itself into some-

... P.K., had 54 workers ... crew. Today 12 men do the work; the others have had to carve out lives elsewhere.

The mill, which turns out enough wood each day to make 45 new houses, once employed more than 1,100 workers. They chipped the wood, peeled it for re-assembly as plywood, sawed and sorted it, and moved 80 tons of sawdust every hour into the furnace to generate electricity. Today the saw blades come from Japan and employment hovers around 600. Many of those worry over further company reductions in pending negotiations.

"Things were a lot more personal in my ... should have ... for several years," Mrs. Redman ... has even organized an annual fishing ... with a top prize of $1,000.

There was some concern, however, that the parking meters downtown might discourage visitors from patronizing local stores. So the meters were removed. Now they are back because Libby needs the income. But local citizens are glad to point out free parking spaces around the corner. That way the visitors can avoid paying the required tribute of 10 cents for two hours of parking.

# *Vietnamese Reviving a Chicago Slum*

Special to The New York Times

CHICAGO, Jan. 1 — Four years ago Argyle Street in the heart of this city's rundown Uptown area resembled a ghost town after dark. Its commercial life was dominated by pimps, prostitutes and drug pushers who assembled on unlit, crumbling sidewalks to ply their trades.

Today Argyle Street is fast becoming a flourishing "Little Saigon," The city's small Vietnamese refugee community has turned it into an exotic pocket of restaurants and shops with an Indochina flavor.

On weekends a festive atmosphere prevails as the 50 or so family-owned businesses are crowded by Americans and Vietnamese, Cambodians, Laotians, and Hmong from all over the Middle West.

The three-block strip, often called the Argyle International Area, is in the lower-class, mixed ethnic community on the North Side where the Vietnamese blend in easily. Most of the city's estimated 10,000 Vietnamese have settled in concentrated pockets, providing a strong base for growth and change.

"We really care about this neighborhood," said one restaurateur, Lam Ton. "When I first opened my restaurant here in 1983, I used to sweep the streets myself. People used to look at me very oddly."

Alderman Marion Volini, whose ward includes Argyle Street, observed: "The change has been astronomical. No one used to dare go there after 5 P.M. and now there is a real night life."

**A Long Way to Go**

But the Argyle International Area has a long way to go before rivaling the success of Chicago's highly developed Chinatown on the South Side.

"These are very tiny businesses and some are really struggling," said Ngoan Le, executive director of the Vietnamese Community Center. And while crime has decreased significantly, some immigrants are still afraid of the less well-lit east end of the strip. "Many of us remember being mugging victims when we first came here because we didn't know we shouldn't carry cash with us when we walk around," said Miss Ngoan.

About 80 percent of the refugees who resettled in the Chicago area after Saigon fell 10 years ago decided to stay, said Edwin Silverman, coordinator of the Illinois refugee resettlement program. More than half the 500,000 Vietnamese refugees who came to the United States live in California.

"The Vietnamese who decided to brave the cold and stay have really prospered," Mr. Silverman added. "In fact, they've probably settled more rapidly than any of the other refugee groups who came here."

**Refugees Bent on Survival**

Most of the refugees arrived penniless, bent on survival, said Miss Ngoan. Despite language and cultural barriers, many have struggled through the first steps of economic assimilation.

"What has helped them gain capital is that many families from the same neighborhood in Vietnam will live together in one small apartment so they can pool their resources and live more cheaply," she explained. "To save money they are willing to put up with cramped quarters in run-down buildings in low-rent areas."

Mrs. Volini said: "Argyle Street is a real example of the bootstrap ethic by new arrivals. It's exciting for the people in Uptown to see the American dream being relived before our eyes."


The New York Times/Steve Kagan

**Lam Ton outside Mekong, a restaurant that he opened in 1983 in the Uptown area of Chicago. At right: Other Vietnamese shops and restaurants on Argyle Street.**

She praised the priority that the Vietnamese placed on education, which has driven up reading and mathematics scores in Uptown schools.

"People now see this as a desirable place," she added.

Lan and Lai Le agree. They recently opened a restaurant, Pagolac, with $60,000 Mr. Lai earned by working two full-time jobs for several years.

**'Has a Lot of Potential'**

"We opened here because we think the Chinatown atmosphere here has a lot of potential," said Mr. Lai, who was a police investigator in Saigon in the Vietnam War.

Just a few doors down, Mr. Lam, owner of the Mekong Restaurant, presides over an established and thriving business that caters to an American crowd. Mr. Lam, a former employee of the United States State Department in Saigon, is starting the nation's first Vietnamese frozen food manufacturing business.

Like his compatriots, Mr. Lam, who is president of the Vietnamese Chamber of Commerce, does not borrow from banks. "Generally speaking, we Vietnamese have not explored the banking system in the United States yet," he said.

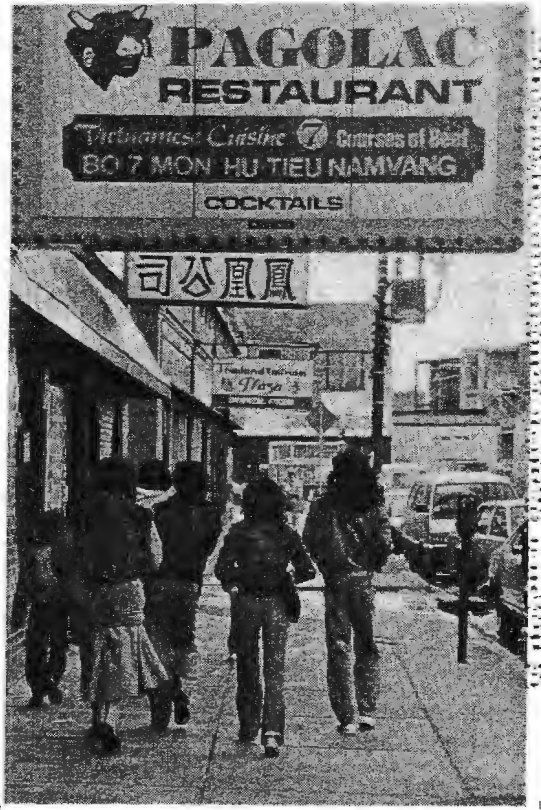
The new arrivals find it difficult to establish credit, said Miss Ngoan. To counteract this, the Vietnamese Community Center has set up a Business Development Project to put together loan packages for businessmen.

The Vietnamese consider the Argyle Street area a permanent home.

"We are trying to encourage more Vietnamese to move to Chicago to strengthen this base," said Mr. Lam. "We think Chicago has a good atmosphere and business opportunities for refugees."

"Right now the competition here is very tough and our prices and profits are too low," complained Pham Chau Nam, a pharmacist who runs a video store out of his pharmacy and subleases parts of his small storefront shop to three businesses.

To this Miss Ngoan observed with a shrug, "It's hard, but it's a good start."




## *Overdue Book Back After Century Passes*

HARRISBURG, Pa., Jan. 1 (AP) — A rare, 328-year-old book, apparently missing from the state library since the last century, was found returned in a library book drop bin, library officials said Tuesday.

The book, a volume of British laws enacted in 1656 and 1657, was discovered Monday in an envelope by surprised library officials, according to David Hoffman, director of library services for the Pennsylvania State Library.

The battered leather-bound copy of "Tounsend's Collection" was published in 1657 and was one of the books purchased for the General Assembly under the direction of Benjamin Franklin, who was ordered to develop the state library.

The volume must have left the library sometime from 1823 to about 1900, said Elliot Shelkrot, the state librarian. "It's part of the collection of books that was purchased during the Colonial period when the General Assembly was meeting in Philadelphia," he said.

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*JUSTICE*

# The New Rights War

affirmative action

## Meese and Brock lock in battle over the idea of affirmative action

They were the wizards of St. Louis, the white men who ran the Monsanto Co., whose mastery of chemistry could cleanse farmland of pests or wrap a nation in synthetic cloth. No mixture seemed beyond their ken—except, that is, the integration of their own work force. By 1971 Monsanto had the second worst record in the industry; few blacks or women worked for the chemical giant, and hardly any who couldn't type or swing a baling hook. But the corporate culture was irrevocably changed that year when Richard Nixon's Labor Department dusted off an executive order first signed by Lyndon Johnson and sent corporate America an unmistakable message: to do business with the federal government, you must embrace affirmative action. For Monsanto, that meant hiring William McEwen, a 28-year-old black man, and telling him to change its ways.

JOHN FICARA—NEWSWEEK

**The Constitution is colorblind:** *Attorney General Meese*

Fourteen years later, McEwen has become, in his own terms, a qualified success story. Using the system of "goals and tz4etasles" for integration that Nixon's men prepared, Monsanto has nearly tripled the number of minority employees, promoted women and blacks into middle management and shattered the customary gender and color bars in craft and technical jobs. "Affirmative action has provided the framework to bring in qualified people," he says. "It has not resulted in our getting helter-skelter, unqualified workers."

**'Goals and timetables':** But having gone this far, McEwen, now a Republican, may see the rules of the game changed dramatically again. Since August, the Reagan administration has been embroiled in a high-level internal conflict over the executive order in question, number 11246. Attorney General Edwin Meese believes that "goals and timetables" for hiring and promoting blacks and women are subterfuges for numerical quotas. Viewing quotas as a kind of racism in reverse, he's determined to weed them out and to substitute a voluntary, hortatory system. "Discrimination," says Meese, "is wrong."

While the president is known to share Meese's views on most civil-rights issues, thus far he has not agreed to any changes. In part that's because Secretary of Labor Bill Brock, with the support of much of the cabinet, has resisted Meese's effort, arguing that 11246 may benefit from streamlining but needs the goals-and-timetables language to stimulate broad compliance. Sixty-nine senators have weighed in at the White House supporting Brock, while civil-rights organizations and business groups like the National Association of Manufacturers have been lobbying overtime. At the same time, the Justice Department is also leading an attack on public-sector affirmative action in the courts. If it manages to win both, affirmative action will mean something very different in the future—if it means anything at all.

Negotiations between Meese and Brock have continued all fall, with about the same success rate as the Geneva arms talks. Each side has leaked news of impending victories, only to beat hasty retreats. Meese's aides think their man has the hole card—his long association with President Reagan—but at the moment even that is being trumped. White House assistants say that chief of staff Donald Regan has made a political decision that, failing a compromise, no resolution of the debate is the best resolution, and he may be able to enforce such an edict. How? Aides say that Regan can simply block Meese from getting to the president. In fact, they say, all phone calls to the president, except those from national-security adviser John Poindexter and a few social friends, must be cleared by Regan—a system that in the first Reagan administration allowed Meese, then a senior White House aide, to screen out Attorney General William French Smith.

This uncertainty does not please the business community. Large firms did not come willingly to affirmative action, but having invested heavily in the program they are reluctant to see it scrapped. "It works," says Jim Conway of the National Association of Manufacturers. "Why change it?" Executives like McEwen say that firms accept hiring goals and timetables because that's the way they do business generally; in the corporate argot it's just another form of management by objective. There are also selfish reasons: however complex 11246 may be, it remains a single system. If it's rolled back, various and conflicting state rules will be invoked, driving corporate personnel officers to distraction. Also, 11246 provides a handy, if not foolproof, defense against lawsuits by impatient minorities or passed-over white male employees: Uncle Sam made me do it.

In practice, 11246 has a mixed record. Its provisions apply to about 73,000 private companies employing 23 million workers. These companies risk losing government contracts, or at least inviting onerous in-

CONTINUED

vestigations, if they do not set and attempt to meet hiring-and-promotion goals for women and minorities. These goals are only rarely fulfilled, however, according to recent research. Jonathan S. Leonard, a labor economist at the University of California at Berkeley, studied the application of 11246 between 1974 and 1980. He reports that "the employment goals that firms agree to are not vacuous, [but] neither are they adhered to as strictly as quotas." Leonard says that the higher the goal is set, the better the company performs, but that on average "firms only achieve about 10 percent of their goals."

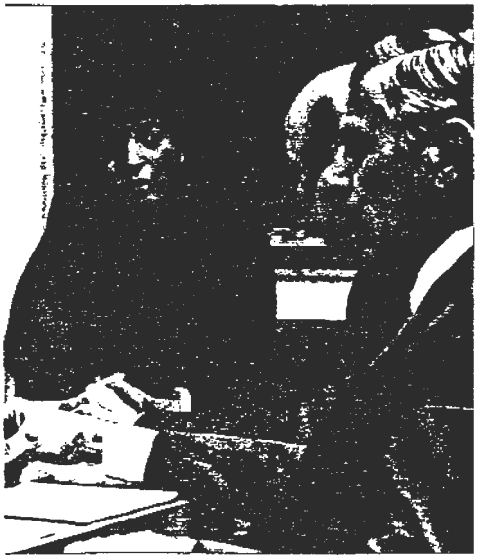
**Fewer complaints:** Meese and his allies may be able to redefine affirmative action by another route. While Brock and the Labor Department have defended 11246 in principle, in practice Labor's enforcement efforts have been less than stalwart. Under Jimmy Carter 13 contractors lost their federal business for 11246 violations, but only 2 have been "debarred," as the bureaucrats call it, during the Reagan years. This administration has also filed fewer complaints and won less back pay for aggrieved employees. It's possible that record reflects more voluntary cooperation from employers, but critics don't think so. "We know the executive order is not being enforced, but we must guard its existence for the day when we have a [different] president," says Anne Ladky, executive director of Women Employed, a Chicago-based group that monitors government affirmative action.

The fight over 11246 is but one part of Meese's serious bid to change the landscape of affirmative action. He and William Bradford Reynolds, the chief of the Justice Department's Civil Rights Division, share a view that the U.S. Constitution is colorblind. In practice that means that only identifiable victims of discrimination—for example, blacks who can prove that they were denied promotions because of their race—can leapfrog ahead of white co-workers. This notion marks a bold change from past administrations and would, at the very least, end most court-ordered programs. Meese and Reynolds are not alone in this fight, drawing particular succor from the arguments of black neoconservatives who suggest that affirmative action stigmatizes its beneficiaries and keeps them dependent on government aid.

The Justice Department is vigorously pursuing its position in the courts. Occasionally that can produce anomalous results, as in a case filed against the San Francisco Fire Department for race discrimination. Justice started that suit in 1984 but now is aligned with the defendants—literally sitting at the city counsel's table—because the remedy being sought would lead to the hiring of some minority women who themselves were not specifically discriminated against. Similarly, in Birmingham, Ala., the Justice Department went into federal district court on behalf of two white firefighters who sued the city for reverse discrimination. They claim to have been passed over for promotions in favor of less qualified blacks. But last week the federal judge ruled in favor of the city, which had contended that it was only implementing a 1981 federal court order, one agreed to by the Justice Department itself.

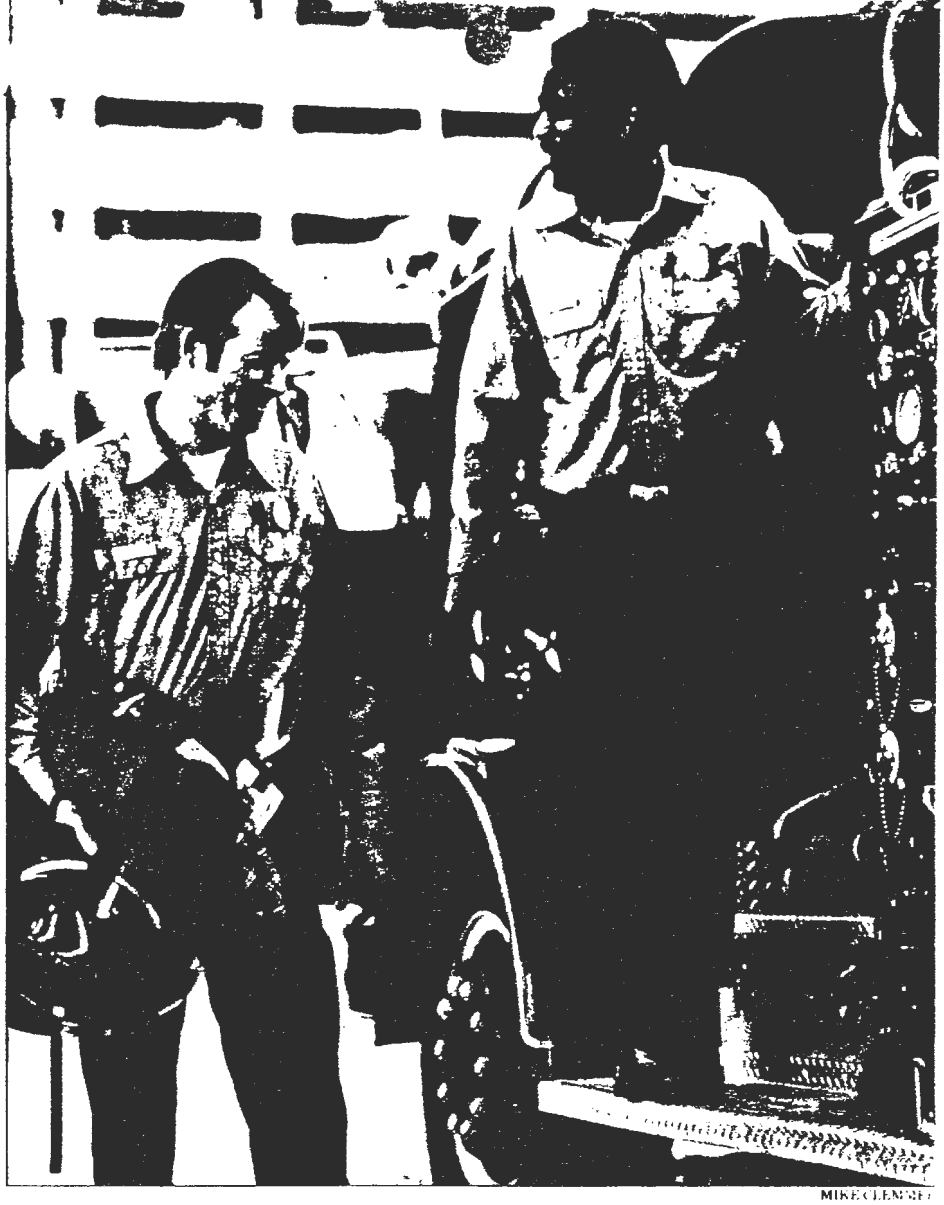
**Actual victims:** Some of the confusion in this area stems from a June 1984 decision by the U.S. Supreme Court in a case brought by Memphis, Tenn., firefighters. There the court ruled that nondiscriminatory seniority systems could not be abrogated to save the jobs of women and minorities hired under an affirmative-action plan. The majority also included language that suggested that court-ordered remedies could be invoked only for actual victims of bias—precisely the Justice Department's position. But every federal appeals court that has had to interpret the decision has read it narrowly. And the Justice Department's efforts to have cities change their practices voluntarily have, for the most part, been ignored.

Later this term the high court will get a



JEFF LOWENTHAL—NEWSWEEK

**Monsanto's changing face:** *Manager Curby*



MIKE CLEMENT

**Affirmative action or reverse discrimination?** *Birmingham firefighters*

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WALLY McNAMEE—NEWSWEEK

**No justification:** *An anti-Meese protest*

chance to say just what it means in three affirmative-action cases, and those decisions could determine the future scope of court-ordered programs. That may be wishful thinking, however; the Supreme Court justices tend to split unpredictably in affirmative-action cases, leaving lawyers to make what they can of the arcana of court opinions.

**Corporate acceptance:** Whatever the outcome of these battles, Monsanto says it has no intention of abandoning affirmative-action goals. If anything, its problem now is figuring out ways not just to hire but to share real power. "The game of the '70s was the numbers," says Robert Berra, a senior vice president. "The game of the '80s is what to do with the people once you got them in." And that, of course, goes beyond the scope of affirmative action. "The higher you move, the more important it is that you're competent and able to do the job," says John L. Mason, a black research chemist who is now president of the Monsanto Fund. Nine blacks and six white women have cracked the company's top rank of 397 managers, and more, like product manager Norma J. Curby, are preparing to move up. But they haven't forgotten where they came from. Says Curby, "Without affirmative action, I'd be dead professionally."

Perhaps the best sign of the corporate acceptance of such programs is the muted grumblings of white males. Cries of reverse discrimination have been replaced by a grudging recognition that affirmative action has become one of the hurdles of a corporate life that was never a pure meritocracy. And, as they get older and face the first signs of age discrimination, white men may say privately that perhaps civil-rights claims have their place after all.

ARIC PRESS *with* ANN MCDANIEL *in Washington,* MONROE ANDERSON *in St. Louis and bureau reports*

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* Reference to Chairman Pendleton

THE WASHINGTON POST . WEDNESDAY, JANUARY 15, 1986

EDWIN MEESE III

# Meese, Brock Set Hiring-Plan Talk

## *White House Tries to Resolve Affirmative-Action Stalemate*

WILLIAM E. BROCK

By Howard Kurtz
Washington Post Staff Writer

The White House has summoned Attorney General Edwin Meese III and Labor Secretary William E. Brock to a meeting Thursday in an effort to resolve the stalemate over the proposed executive order on affirmative action, administration sources said yesterday.

White House chief of staff Donald T. Regan arranged the meeting to determine if the Cabinet's leading antagonists in the affirmative-action debate can iron out their differences on minority hiring requirements for government contractors. It is the first time Regan will be actively involved in the dispute.

However, sources said that Justice and Labor Department officials have put forth no new compromise proposals and remain at an impasse after five months of negotiations.

A White House official said the meeting with Regan is not expected to produce a final agreement. But even if a compromise is reached, he said, it would be political folly to announce anything in the next week, when President Reagan is involved in celebrations of the birthday of the late Rev. Martin Luther King Jr.

The issue surfaced last August, when Meese proposed a draft presidential order that would eliminate minority hiring goals and timetables for federal contractors. Meese contends that the Labor Department program, which operates under a 1965 executive order, amounts to illegal racial quotas.

Brock, who has blocked the Justice Department proposal, has defended the program's effectiveness and the use of goals and timetables in spurring minority hiring. Meese aides recently suggested a compromise that would allow businesses to set voluntary hiring goals, but Brock has maintained that no new executive order is needed, only changes in the program's enforcement rules.

Regan does not want the president to consider the issue until the Cabinet reaches agreement. Sources say Regan is worried about the political opposition to the Meese plan, which includes 69 senators, 180 House members, civil rights activists and part of the business community.

Brock has been supported by Cabinet moderates like Transportation Secretary Elizabeth Hanford Dole and Secretary of State George P. Shultz, while Meese has received strong backing from such conservatives as Civil Rights Commission Chairman Clarence M. Pendleton Jr. and Clarence Thomas, chairman of the Equal Employment Opportunity Commission. *

THE WASHINGTON POST THURSDAY, JANUARY 23, 1986

# 20-Year Affirmative-Action Debate Still Astir

## *Businesses Divided Over Fairness and Necessity of Minority Hiring Regulations*

By Howard Kurtz
Washington Post Staff Writer

B. Lawrence Branch, a drug company executive in Rahway, N.J., credits the federal government with successfully pushing companies like his to hire more minorities and women.

"It's the old hammer hanging over your head," he said of the Labor Department's affirmative action requirements for federal contractors. "Without that, some people wouldn't do anything. With voluntary goals, a lot of companies will say, 'Hey, I volunteer not to do it.' "

But Jim Supica Jr., a contractor in Lenexa, Kan., said he feels differently about the program. He said the government unfairly accused his firm of discrimination for failing to hire at least 12.7 percent minorities and 6.9 percent women to drive its trucks. The company has only two truck drivers, both white men.

"I think you can see the absurd situation you get into," he said. "It sounds like a quota to me."

These divergent views typify the divisions among businessmen over Executive Order 11246, the 20-year-old presidential directive that requires affirmative action by federal contractors.

Many businesses, led by the National Association of Manufacturers and the Business Roundtable, support Labor Secretary William E. Brock in resisting a new executive order that would eliminate minority hiring goals and timetables. Another faction of the business community, led by the Chamber of Commerce and Associated General Contractors, is backing Attorney General Edwin Meese III's push for a new order that would abolish the statistical measures that they view as quotas.

Meese told a news conference last week that his Civil Rights Division, headed by William Bradford Reynolds, has collected "a litany" of cases at the Labor Department "where goals and timetables were actually used as subterfuges for quotas."

But a Justice Department official said later that the information is deemed confidential and would not be released.

The official cited only one case by name—that of Supica, whose name is also being given to reporters by Associated General Contractors.

Joseph N. Cooper, director of the Labor Department's Office of Federal Contract Compliance Programs, said he did not know what Meese was talking about. He said the 1965 executive order enforced by his office specifically forbids the use of quotas, and that he would "come down hard" on any employer found doing otherwise.

"Nobody's ever put any cases before me that involve quotas," Cooper said. "I'm still waiting. I don't see them."

Cooper also disputed statements by a Justice Department official that the program imposes "makeup goals" on companies for past discrimination. He said no such goals exist.

Cooper said contractors must show "a good-faith effort" to recruit and hire minorities and women, and that "they are not penalized if they are not able to meet those goals." He said that debarment from federal contracts, which has been imposed twice since 1981, is "an absolute last resort," and that some rules may be relaxed to ease the burden on smaller companies.

Cooper's office sets hiring goals based on the local availability of minorities and women in a given field. It monitors contractors with more than 20 million employes and adopted corrective plans in 1,158 cases last year.

One leading critic of the current program, the Chamber of Commerce, was unable to name any companies that oppose it. "We have had a number of companies contact us, but they do not want any visibility," said the chamber's Virginia Lamp.

The National Association of Manufacturers, by contrast, cited numerous members that support the Labor Department program. William S. McEwen, director of equal opportunity at Monsanto Co., said many business leaders have grown comfortable with a national system of regulation.

No company wants to face "a situation where 50 states pass 50 different laws and we'd be subject to compliance reviews in 50 different areas," he said.

McEwen said the program also protects companies from reverse-discrimination suits by white employes. "If we try to practice voluntary affirmative action . . . we stand the risk of lawsuits," he said.

Finally, he said that if Reagan abolishes hiring goals, Congress is likely to pass a law restoring the program in a more stringent form.

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McEwen said that when he joined Monsanto in 1971, "it was one of the worst companies I'd ever run into as far as their minority hiring was concerned. They were only going to do that which was necessary to get by, and not a bit more."

But he said the Labor program helped change company attitudes, and that the number of minorities in top management jobs has more than quadrupled in the last eight years.

Branch, director of equal employment at Merck Co., said the Labor Department recently spent eight days collecting "volumes of information" at his firm. In the past, he said, "They were sometimes unreasonable, but recently they have cleaned up their act. Some of the old 'types would have wallowed around here looking for something, dotting i's and crossing t's."

While Merck has greatly increased its hiring of blacks and women in the last decade, Branch said, "we did not make every target" in the latest federal review. But he said the firm has "made a good-faith effort" and that the government "did not come down on our case."

Supica, secretary of United Bridge Co., has a much harsher view of the program. He said three of the firm's 15 employes are minorities, which exceeds the goal for his Kansas area, but that the Labor Department insists that these goals be met for each job category.

In a letter last August, a Labor official told Supica's firm that it had "failed to exert adequate good-faith efforts to achieve the minimum minority hiring goal of 12.7 percent for truck drivers and the minimum female hiring goal of 6.9 percent for carpenters, heavy equipment operators, ironworkers, truck drivers and laborers' trades."

JOSEPH N. COOPER
**. . . has seen no cases involving quotas**

Supica said the only way to meet the goal for his two truck-driving jobs would be to hire one black and one woman, shutting out white men. He said the firm had no full-time female employes because "the heavy construction trades are a difficult area in which to recruit and train women. There just aren't a lot of women in the field. Probably 99 percent of our applicants are male."

Supica acknowledged that he was allowed to retain his government contracts, although he did not meet the hiring targets, by pledging to step up his recruitment efforts. Still, he said, "I'm not satisfied that this is a fair way to apply the regulations."

THE WASHINGTON POST . THURSDAY, JANUARY 16, 1986

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# King Cited in Defense Of End to Hiring Goals

## *Meese Discusses Affirmative Action Stand*

By Howard Kurtz
Washington Post Staff Writer

Attorney General Edwin Meese III said yesterday that he was "trying to carry out the original intent of the civil rights movement" in proposing to eliminate minority hiring goals for government contractors.

Speaking at a news conference on the Rev. Martin Luther King Jr.'s birthday, Meese invoked the slain civil rights leader's name in defending his proposal on affirmative action. That proposal, which has split President Reagan's Cabinet, would change a 1965 executive order and bar the Labor Department from using goals and timetables in pushing federal contractors to hire more minorities and women.

"My views are the same as the president's and the same as those who originated the executive order some 20 years ago or more—and that is that there should be no discrimination," Meese said. "No discrimination means that various devices which have grown up over the years—including the use of quotas to discriminate or other subterfuges for quotas—should not occur."

Meese added that "one of the things Dr. King said in his famous 'I have a dream' speech was that he foresaw a colorblind society, and this is what we're very much dedicated to." He said the Justice Department's approach to civil rights enforcement is "very consistent with what Dr. King had in mind."

Ralph G. Neas of the Leadership Conference on Civil Rights responded that "the executive order has absolutely nothing to do with quotas. Indeed, it forbids their use.

"It is especially scandalous on Martin Luther King's birthday to associate him with those who are attempting to gut the executive order," Neas said. "There is no question that if Martin were alive today, he would be a leader of the extraordinary bipartisan consensus that is fighting to save the executive order."

The White House yesterday postponed a meeting on the issue between Meese and Labor Secretary William E. Brock that had been scheduled for today, according to administration sources. Meese said he hopes to meet soon with Brock who has blocked the Justice Department proposals.

Administration sources suggested that the meeting called by White House chief of staff Donald T. Regan was put off to avoid detracting from the president's role this week in celebrations honoring King.

Meese's stance parallels recent comments by William Bradford Reynolds, assistant attorney general for civil rights, who said he had been "in lockstep" with King and other 1960s civil rights leaders but that today's activists have "twisted" those policies into quotas.

Meese said the Civil Rights Division has collected "a litany" of Labor Department cases "in which goals and timetables were actually used as a subterfuge for quotas." Justice officials said this analysis was not available yesterday. Brock has maintained that hiring goals, involved in 1,100 cases last year, differ from quotas and have helped spur minority employment.

Although 69 senators and 180 House members have signed letters opposing a new executive order, Meese denied "that the majority of Congress is against us on this." He said his plan would increase minority employment by encouraging recruitment.

"If you talk with the black people themselves, there's no indication I have that any of them are in favor of discrimination," Meese said.

# Reagan Tells of Weighing Plans To Revise Minority Hiring Rules

Special to The New York Times

WASHINGTON, Feb. 11 — President Reagan said Tuesday night that his Administration was still weighing proposals to change an executive order under which the Labor Department requires many Federal contractors to set numerical goals for hiring women and members of minority groups.

In response to two questions at his news conference, Mr. Reagan said emphatically that he opposed employment quotas, but he did not say explicitly whether he saw any differences between goals and quotas. Nor did he say whether he agreed with those in his Administration who contend that flexible goals inevitably lead to rigid quotas.

Asked whether he planned to change the executive order, issued in 1965 by President Johnson, Mr. Reagan said the matter was being reviewed by his domestic policy advisers.

"I'm waiting to see what the recommendation is," Mr. Reagan said. "This is still being studied and they haven't presented an actual recommendation to me. All I know at the moment is that what they're studying is how can we eliminate this possibility of a quota system, so I want to tell you that I don't want to do anything that is going to restore discrimination of any kind."

### Idea of Eliminating Quotas

"In fact," Mr. Reagan said, "I'm trying to prevent discrimination with this idea, as I say, of eliminating quotas. So I know it was mentioned here before that supposedly I'm opposed to human, to civil rights. No, I was opposed to certain features of programs that were being advocated, but there were other programs that I did support, and frankly I was doing things about civil rights before there was such a program."

At the news conference, Mr. Reagan was asked directly, "What are your views on goals and timetables?"

He replied: "I think that we must have a colorblind society. Things must be done for people neither because of nor in spite of any differences between us in race, ethnic origin or religion."

The President said that affirmative action programs sometimes became quota systems because personnel officers and members of the "bureaucracy" found such quotas easy to administer.

"We find down there at the bureaucracy level and out there actually in personnel offices and so forth, they choose the easy course, set down a system of numbers and say, well, we'll go by that," Mr. Reagan said.

"It's so easy to fall into a bureaucratic practice of saying, well, isn't this the easiest thing: Let's just tell them they have to have X number and that'll settle it," he added.

### Guideline on Hiring

The executive order says that Government contractors must "take affirmative action to insure" that job applicants are employed "without regard to their race, color, religion, sex or national origin." Labor Department rules provide that if a Federal contractor is "deficient in the utilization of minority groups and women" the contractor must set goals and timetables and make "good faith efforts" to achieve them.

Contractors are then expected to hire and promote women and members of minority groups in rough proportion to the number of available qualified candidates.

The proposals have been a source of debate within the Reagan Administration for more than six months.

Attorney General Edwin Meese 3d opposes the use of numerical goals and quotas on the ground that they have not significantly helped blacks but tend to discriminate against white men. Labor Secretary Bill Brock has opposed major changes in the executive order or the regulations. He notes that the current rules say, "Goals may not be rigid and inflexible quotas."

### Criticism From Blacks in G.O.P.

Meanwhile, two groups of black Republicans have criticized Justice Department efforts to revise the executive order.

The Council of 100, an independent organization of black Republicans that includes many business executives said the proposed changes would be "harmful and destructive" to the interests of blacks.

A separate group, the National Black Republican Council, an affiliate of the Republican National Committee, adopted a resolution saying the current program for Federal contractors should not be "dismantled or replaced." Further, it said the Justice Department proposals would "undermine the compliance process that is now working with the backing of both business and labor."

The resolution says that "the black community and other minorities and women" regard the proposed changes as "an attempt to overturn" civil rights gains won by the Rev. Dr. Martin Luther King Jr. and others.

Milton Bins, chairman of the Council of 100, said in a letter to the President, "We fear that the proposed changes will be the trigger that aborts the development of black businesses and employment."

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# Has Brock Defeated Meese On Anti-Quota Order?

More than seven months after it was drafted with strong support from Atty. Gen. Edwin Meese, a proposed Executive Order to ban Labor Department-imposed employment quotas based on race and sex has yet to be signed by President Reagan.

Though a majority of Cabinet members, together with such key black officials as Civil

MEESE BROCK

Rights Commission Chairman Clarence Pendleton and Equal Employment Opportunity Commission Chief Clarence Thomas, joined with Meese in favor of the order at a meeting of the Cabinet's Domestic Policy Council last October, a minority of Cabinet officials, spearheaded by Labor Secretary William Brock, expressed opposition.

In the months since, Meese, along with Justice Department Civil Rights Ghief William Bradford Reynolds, has fought hard for the Executive Order. At a meeting with a group of journalists in late November, Reynolds said that the original purpose of the civil rights laws—to assure that all citizens are protected against discrimination based on race or sex—had been perverted by the use of numerical "goals" to mean precisely the opposite. Noting that the consistent goal of the Reagan Administration has been to enforce the true intent of the civil rights laws, Reynolds said it was crucial to the success of this policy that the President sign the proposed Executive Order.

On January 15, at a press conference to mark the birthday of Martin Luther King, Atty. Gen. Meese stressed that the elimination of quotas, long advocated by President Reagan, would carry out the original intent of the civil rights movement. "One of the things Dr. King said in his famous 'I have a dream' speech was that he foresaw a colorblind society," said Meese, "and this is what we're very much dedicated to."

President Reagan himself, at his most recent televised news conference on February 11, emphasized his intention to see that so-called "goals" are no longer used as an excuse for basing personnel decisions on race.

Despite the clear wording to the contrary of both the 1964 Civil Rights Act and the 1965 Executive Order creating affirmative action, said Reagan, "we've seen that the affirmative action program was becoming a quota system...we find down there at the bureaucracy level and out there actually in personnel offices and so forth, they choose the easy course—set down a system of numbers and say, 'Well, we'll go by that.' And this is what we're trying to correct."

**But while the President has made no bones about his desire to end employment quotas, Meese and Reynolds have emphasized that the only way the President can effectively do so is to sign the draft Executive Order that Brock and his allies have been resisting.**

Over and over again, however, the White House staff has delayed sending the document to the President's desk. At one point, according to insiders, White House Chief of Staff Don Regan expressed concern that controversy surrounding the Executive Order would detract attention from the November summit meeting with Mikhail Gorbachev.

Then it was delayed for several more months in the hope that Meese and Brock could resolve their differences. And then in January, an Administration official told HUMAN EVENTS last week, "there was a week there where they met — the three of them, Meese, Brock and Regan—a whole bunch of times in a row, and it didn't come to any resolution."

"It's really been kind of dead in the water the last week or two," the official added.

After more than seven months, then, the stalemate between Meese and Brock continues with no certain ending in sight. And with Brock favoring quotas as usual, a continuing stalemate is as good as a checkmate for him. Which is why many conservatives are now wondering if Brock has got the better of Meese in this crucial showdown.

## How "Goals" Become Quotas

As the debate has continued between Atty. Gen. Edwin Meese and Labor Secretary Bill Brock over the proposed Executive Order favored by Meese that would by the stroke of the President's pen put an end to Labor Department-imposed employment quotas based on race and sex (see story, above), the liberal media, not surprisingly, have weighed into the fray on Brock's side.

In the name of implementing a 21-year-old Executive Order signed by President Lyndon Johnson requiring that the employment practices of federal contractors be conducted "*without regard* to...race, color, religion, sex, or national origin" (emphasis added), Brock's Labor Department has been enforcing regulations imposing so-called numerical "goals and timetables" on more than 15,000 corporations employing 23 million workers.

As a result, an Executive Order that was intended to ban discrimination has been perverted into an *affirmative duty* to discriminate. Brock excuses this situation on the grounds that the "goals and timetables" are not rigid employment quotas but merely voluntary targets to help prod employers into hiring more blacks and women.

Meese, along with President Reagan, counters that, because employers are faced with reams of red tape and the danger of losing their government contracts unless they meet the Labor Department's "goals," the better part of valor dictates that they hire the requisite number of blacks and women precisely *because* of their race or sex, thereby unlawfully discriminating against others not so favored. Thus, as the President noted at his February 11 press conference, "we've seen in administering these programs that the affirmative action program was becoming a quota program."

Who's right? Meese and the President? Or Brock? The Washington *Post* recently published both a "straight" news story and an op-ed opinion piece by Harvard University President Derek Bok asserting, in Bok's words, that "Meese's opponents have the better of the argument."

The thrust of both articles was that the regulations imposing "goals and timetables" are administered so loosely that there is little pressure for employers to treat them as quotas. "While the Justice Department has offered little evidence that goals are actually quotas in disguise," wrote Bok, "civil

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rights advocates have pointed to studies showing that employers who fail to meet their goals have not been penalized by the government."

But Victor Riesel, a veteran syndicated columnist who specializes in labor issues, recently obtained a copy of a "conciliation agreement" signed by one federal contractor under pressure from the Labor Department's Office of Federal Contract Compliance Programs (OFCCP).

After studying this document, Riesel concluded that, if the 1965 Executive Order on affirmative action as administered by OFCCP "isn't actually the toughest hiring quota regulation, then Shakespeare didn't write 'Love's Labor Lost.' "

In this particular instance, wrote Riesel, the OFCCP charged that a construction firm that does business with the government "didn't resort to affirmative action in every hire although the company and two unions, the Operating Engineers and the Teamsters, had openings on the project site."

Among the construction firm's other "transgressions": it failed to keep a list of potential sources of female and minority workers and to keep in touch with community organizations.

The OFCCP has tremendous powers. It can "require written reports, inspect the premises, examine witnesses and examine and copy documents" of companies forced to sign conciliation agreements.

Should OFCCP bureaucrats decide that a firm has not made a sincere effort to meet its "goals," it can notify the firm that it has 15 days to respond in writing—or no time at all if OFCCP alleges that delay would cause "irreparable injury."

At that point, "enforcement proceedings" can be initiated to punish alleged violations of the conciliation agreement. Under the terms of these agreements, contractors are informed that violations can subject them to "sanctions set forth in Section 209 of the Executive Order, and/or appropriate relief." One possible sanction: debarment from all future government work, a penalty that could force many contractors to close down.

Companies must keep complete records on their efforts to meet the race-and sex-based "goals."

These records, Riesel notes, "must be available to the regional OFCCP 'upon request.' And six months after the signing of the Agreement, the company must forward to the regional OFCCP a 'narrative statement and appropriate documentation that verifies all corrective measures outlined in part two of this Agreement.' This is to prove that all has been implemented. Semi-annual reports are submitted thereafter.

"The company, which here I will call the X Corp., is in the Steubenville, Ohio/Wierton, W.Va. Standard Metropolitan Statistical Area (SMSA). This Conciliation is stern warning indeed. For what? Well, here's how it's put in the document.

"There was the problem, according to OFCCP, from April to September 1985, of the firm allegedly failing to make 'every good-faith effort to meet the female utilization goal' for crafts in the area. This, says OFCCP, was in violation of 41 CFR 60-4.6, Appendix A, May 5, 1978. That's what it says.

"The craft was the Operating Engineers. The goal for females is 6.9 per cent, utilization is 5.5 per cent. The other craft is the Teamsters. The goal for women is 6.9 per cent. Utilization is 4.2 per cent.

"The remedy ordered was that X Corp. 'will make every good-faith effort to meet the utilization goal for females contained in the applicable regulations for all on-site construction crafts in the region. The goal is currently 6.9 per cent....'

"It was also directed that each hiring opportunity be 'considered for its potential toward meeting the applicable utilization goal.' There must be 'complete documentation maintained.'

"Another problem area is 'failure to make every good-faith effort to meet the minority goals for crafts' in the area in compliance with '41 CFR 60-4.6, Appendix B, Nov. 3, 1980.' The craft on the minority issue is the Teamsters. Goal: 4.3 per cent. Utilization: 4.1 per cent.

"The Conciliation Agreement has a remedy for this: The company 'will make every good-faith effort to meet the utilization goal for minorities contained in the applicable regulations for all on-site construction crafts' in the same area. Same documentation and individual hire procedure as in female utilization.

"Another problem, OFCCP says, is that X Corp. 'failed to establish and maintain a current list of minority and female recruitment sources and to provide written notification' to these sources and community organizations 'when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses as required by specifications....' The firm is to maintain a current list of minority and female sources.

"If all this isn't a quota and hiring-hall system, it's a mighty good facsimile. That's what it's all about."

# Justice Official Says Data Show Quotas for Jobs

By ROBERT PEAR
Special to The New York Times

WASHINGTON, March 28 — The Justice Department today released numerous Government documents that it said were evidence that Federal contractors had been required to meet rigid quotas in hiring women and members of minority groups.

The documents were, in most cases, agreements and correspondence between construction companies and the Labor Department, which enforces the obligation of Government contractors to take affirmative action to hire and promote women and members of minorities. The obligations stem, in part, from a 1965 executive order that the Justice Department says should be amended to prohibit the use of quotas.

The executive order affects 15,000 companies employing 23 million workers at 73,000 separate installations.

### Numerical Goals Specified

Most of the documents released today specify numerical goals set for the hiring of women and members of minorities.

William Bradford Reynolds, the Assistant Attorney General for civil rights, said at a news conference that the goals had been enforced as quotas. When contractors failed to meet these goals, he said, they were cited by the Labor Department as violating Federal regulations.

In one of the documents, for example, the Labor Department told a Texas construction contractor that it had violated Federal rules because it "failed to meet the female and minority goals of 6.9 percent and 24.9 percent, respectively," for such jobs as carpenter, iron worker and mechanic.

Civil rights groups said the documents did not prove there were fundamental or pervasive problems in the program for Federal contractors.

Mr. Reynolds said he was releasing the documents because Attorney General Edwin Meese 3d promised to do so in response to a request from journalists at a recent news conference.

Some Justice Department officials portrayed the release of the documents as a bold step to buttress their position in a dispute with the Labor Department over revision of the executive order.

Mr. Meese has proposed major changes in the order, but President Reagan has not yet approved them. The President's domestic policy advisers have been debating the merits of the Meese proposal for at least seven months.

### A Crucial Distinction

In some of the documents, the Labor Department accused Federal contractors of failing to make "good-faith efforts" to hire women and members of minority groups. In other cases, the department said only that contractors had "failed to achieve" or had "failed to meet" their numerical hiring goals.

The distinction is crucial because Labor Department rules require contractors to make good-faith efforts to hire women and members of minority groups when their numbers in a particular job category were fewer than would be reasonably expected in view of the number of available qualified candidates in a given labor market. But the rules also state, "Goals may not be rigid and inflexible quotas."

A contractor may challenge the enforcement of hiring goals by appealing to Labor Department officials or by asking a Federal court to block the imposition of penalties.

David F. Demarest, a spokesman for Labor Secretary Bill Brock, said the documents released today did not demonstrate a need to change the executive order.

Since 1981, he said, the Government has entered into 5,000 conciliation agreements to assure that Federal contractors provide equal employment opportunity.

"We would acknowledge that there might be cases among the 5,000 where problems may have existed in the way the regulations were applied to a particular case," Mr. Demarest said. "If there are problems, we will certainly correct them."

Ralph G. Neas, executive director of the Leadership Conference on Civil Rights, a coalition of more than 165 unions, civil rights groups and religious and civic organizations, said the documents should be read with caution.

In the last five years, he said, the Labor Department has barred two companies from doing business with the Government because of their civil rights records. "That does not suggest that the Labor Department is erring on the side of overzealousness," he said.

Mr. Reynolds said of the 56 cases covered by the documents, "I don't think these are atypical." However, he praised Mr. Brock, saying the Secretary had made "a very real and productive effort" to avoid the misuse of numerical goals.

Contractors' names were generally deleted from the documents. Mr. Reynolds said that none of the documents had been obtained from the Labor Department. Rather, he said, they were provided to Justice Department officials by individuals, private companies and trade associations, including the Associated General Contractors of America, which has urged Mr. Reagan to revise the 1965 order.

### Flaws in Program Seen

Mr. Reynolds said that, despite the improvements under Mr. Brock, the program for Government contractors was still flawed because it was based on the proposition that there was "some right or correct number" of women or members of minority groups who must be hired.

"If you are told that there is a right utilization number for every race and every gender, and that you must hit that number in all parts of your work force, you get into a gridlock situation," Mr. Reynolds said. "Once you have hit equilibrium, you cannot bring in anybody new or promote anybody up the ladder without knocking your utilization figures out of whack."

While most of the cases cited today involved construction contractors, Terry Eastland, a Justice Department spokesman, said there had been "a substantial number of similar complaints" from colleges and universities covered by the Labor Department rules.

The Labor Department has established special rules for construction contractors, in addition to the general rules that apply to all Government contractors.

Richard T. Seymour, an attorney at the Lawyers Committee for Civil Rights Under Law, said the rules for construction contractors were "far stricter." Such rules were considered necessary, he said, because there was a history of discrimination by craft unions in the construction industry.

In addition, he said, "You do not have a stable work force in the construction industry." Employees may work for a few months at one site, then move to another site, he said.

# A Goal Is A Quota or Is It?

*William Brock*

*Edwin Meese*

**goal** (gōl), *n*, an object or end that one strives to attain.

**quota** (kwō'ta), *n*, a share or proportion which each of a number is called upon to contribute, or which is assigned to each; proportional share.

Webster's definitions of "goal" and "quota" are very clear and precise. A goal is voluntary in nature and is not assigned. A quota, on the other hand, is assigned.

Call it a battle of semantics or, more appropriately, an ideological war, but the difference between a goal and a quota is at the center of an extremely rancorous debate. If anyone could prove that a goal is a quota, then the current controversy over Presidential Executive Order 11246 and how to deal with affirmative action might resolve itself in short order.

As it stands now, however, no one yet has proven that when the federal government tells a company it does

The difference between a goal and a quota is at the center of an extremely rancorous debate centered in Washington with the Department of Labor on one side and the Department of Justice on the other. If anyone could prove that a goal is a quota, then the current controversy over Presidential Executive Order 1146 and how to deal with affirmative action might resolve itself in short order.

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*William Bradford Reynolds*

business with to show a 'good faith effort' to integrate itself through hiring goals and timetables, that it is actually setting a quota.

Presidential Executive Order 11246 covers every private company that contracts with the federal government and affects more than 73 million employees. During the 21 years the order has been in effect, the federal government has only exercised its option to cut off funds to recalcitrant companies twice. In the vast majority of cases, employers are given considerable leeway to meet affirmative action goals.

"The statistics are clear," testified Ralph P. Davidson, chairman of the board of Time, Inc., at a November Congressional hearing. "The Executive Order has increased the proportion of minorities and women in our work force. It has proved an effective tool in overcoming discrimination."

But a vocal minority of highly placed federal government officials, led by U.S. Assistant Attorney General William Bradford Reynolds, are charging that there is no distinction between a goal and quota or a timetable and a rigid deadline.

Reynolds, in a highly controversial speech given last Halloween before the Wilmington, Delaware, Rotary Club, laid down the gauntlet and aggressively attacked goals and timetables.

"Call them goals, quotas, ratios (or what you will), the fact remains that any such numerical device that prefers some over others for racial reasons is outlawed discrimination," Reynolds said. "To label such preferential treatment 'affirmative action' insults common intelligence."

Reynolds argued that any form of affirmative action that relies on goals and timetables inevitably forces an employer to choose workers on the basis of gender, race or national origin.

This creates "reverse discrimination" against more qualified applicants who are denied employment because a less qualified minority is hired instead, Reynolds said, and stigmatizes the entire minority population as not being qualified enough to make it on their own.

"Nor do those who are selected view their 'good fortune' as entirely affirmative. They made it into the work force under a special set of preferential rules, and the stigma of being an 'affirmative action' employee is hard to shake, even for the most qualified," Reynolds said.

"Is it not obvious that such a regime trenches impermissibly on minority civil rights? Is it not equally obvious that quotas, preferential goals and timetables, or

*George Shultz*

other techniques that similarly 'buy into' the notion of proportionality, undermine rather than promote minority interests?"

## A Firestorm of Protest

Reynolds speech touched off a firestorm of protest. A number of groups, including leading Republican politicians and major corporations, asked the simple question, "Where's the beef?" They challenged Reynolds to provide proof that the Executive Order has led to reverse discrimination and the stigmatization of minorities, and they are still waiting.

"(The Department of Labor) has not identified any quota enforcement cases," stated Linda Tavlin, a press spokesman for the department. "We do not enforce quotas."

Replied John Wilson, assistant director of public affairs at the Department of Justice, "We have informa-

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tion to the contrary," but refused to elaborate.

Said Ralph Neas, executive director of the Leadership Conference, "Their silence condemns them," although he was quick to add that since the executive order affects millions of workers, there were bound to be isolated instances of abuse.

"But the litany of abuses that (Reynolds) talks about simply don't exist."

In a response to this criticism, Reynolds held a press conference on March 28 to unveil 20 examples of what he called attempts by the Labor Department to force federal contractors to meet rigid quotas. The examples were compiled by the construction industry and the Association of General Contractors, both of which strongly oppose affirmative action programs.

A Labor Department spokesman said the cases were "ambiguous" and a "pretty small number" of the 5,000 cases his department had handled since 1981. In most of the cases, the Labor Department told firms to review qualified minority applicants before any other applicants could be considered.

This latest salvo is typical of a war of words that has reached to the top of President Ronald Reagan's Administration. Amazingly, although many civil rights groups and minority organizations expressed outrage over Reynold's speech, it was big business and even bigger politicians that said Reynolds, in effect, was talking out of both sides of his mouth.

Reynold's boss, U.S. Attorney General Edwin Meese, strongly endorsed Reynold's position, but they found themselves hotly opposed by Labor Secretary William Brock and Secretary of State George Schultz. This split in Reagan's Cabinet, which is both unusual and intense, has its origins in one of Washington's best political ironies in years.

Presidential Executive Order 11246 was signed into existence by President Lyndon B. Johnson in 1965. But the original executive order proved ineffective and in 1969 President Richard M. Nixon accepted the recommendation of his Secretary of Labor to alter the order to require that anyone bidding on a federal contract should submit goals for minority hiring and must make a "good faith" effort to achieve such goals.

The name of Nixon's Labor Secretary? George Shultz, *the* same George Shultz who is now Reagan's Secretary of State.

The irony of two conservative heavyweights, Shultz and Meese, jousting over an issue that has liberal political backing is a cause of enormous consternation within the Reagan Cabinet and has brought more than a few smiles to the faces of people who support affirmative action programs.

It has also paralyzed the presidential decision-making apparatus. A White House spokesman said Reagan has never issued a statement about the Executive Order and would not until a consensus was reached within his cabinet.

At a February press conference, Reagan said the issue "is being studied and they haven't presented an actual recommendation to me. All I know at the moment is that what they're studying is how can we eliminate this possibility of a quota system, so I want to tell you that I don't want to do anything that is going to restore discrimination of any kind."

As of the end of April, the White House was still studying the issue with no clear resolution in sight. Said a Department of Labor official, "There is no timetable," and that rumors about a possible settlement were sheer "speculation."

## Battle Lines

The battle lines are clearly drawn, with the Department of Labor on one side and the Department of Justice on the other. Neither seems prepared to give in, but since Meese seems to be so insistent and enjoys the ear of the President, no one is assuming that the issue will be permanently deadlocked.

Meese and Reynolds want the federal government to stop requiring private companies to submit hiring goals and timetables for affirmative action purposes. Instead, they want companies to develop their own "voluntary" affirmative action programs and want to prosecute civil rights violations on a case-by-case basis.

They have a few supporters for their position, notably the U.S. Chamber of Commerce and the Associated General Contractors, Inc., both of which have launched substantial lobbying efforts to get the Executive Order amended.

"We don't oppose the Executive Order, but we would support revision," said Virginia Lamp, a labor relations attorney with the Chamber. "We don't oppose affirmative action, but we feel it has been distorted."

A goal is a goal only so long as the federal government doesn't move into the work place and try to enforce a goal by imposing hiring quotas, Lamp said. The government does this when it threatens to cut off federal contracts unless the company complies with the goal.

"The problem comes with the federal government mandating numerical goals. The present Executive Order promotes and encourages gender and race conscious quotas," Lamp said.

"The linchpin of any civil rights effort is our civil rights laws and the Constitution. If someone is very obviously discriminating, the courts are sophisticated enough to look at the statistical vagaries and come up with a decision," she said. "No one is talking about weakening the discrimination laws, in fact, we're in favor of going after the bad apples."

In any debate of this kind, the Chamber can usually count on the support of the National Association of Manufacturers (NAM). But NAM strongly opposes any changes in the Executive Order.

"Affirmative action has worked," said Sara Ross, director of media relations for NAM. "In every aspect of business, you use goals and timetables. It's a good way to do business."

Ross said that when it comes to goals and quotas, "People get those confused all the time. We're vehemently opposed to quotas. But goals and timetables are not quotas."

NAM's board of directors passed a unanimous resolution endorsing goals and timetables and has testified at public hearings in favor of the Executive Order.

"It's crazy to (reverse) something that's working just for ideological reasons," Ross said.

The way opponents of the effort to change the Executive Order see it, the Executive Order is an easy target

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in a much larger campaign to gut the country's civil rights weapons. Reagan has made no secret of his dislike for much of the civil rights apparatus, but is virtually powerless to change anything that requires Congressional approval.

The Executive Order, on the other hand, could be changed by the stroke of a pen and without having to deal with a messy debate in Congress. As the country's top administrator, Reagan, just like any other chief executive officer, can set policy for government employees and agencies.

Related to this debate is the position taken by the U.S. Equal Employment Opportunity Commission (EEOC), which oversees employment complaints in the private sector. The EEOC, it was revealed in March, had been privately ignoring past policies of using goals and timetables as part of the remedy to address past discriminatory hiring practices.

The acting EEOC General Counsel, Johnny Butler, instructed the agency's regional offices not to propose settlements with employers that included goals and timetables as part of the remedy.

"(The Radical Right) doesn't agree with the thrust of the civil rights legislation of the past few decades," explained Ralph Neas, director of the Leadership Conference on Civil Rights. "They want a specific, case-by-case look, which was the law before 1964."

During the past five years, Neas said, Reagan "has lost every battle" involving civil rights changes that appeared before Congress.

"There's no question that a bipartisan consensus on affirmative action exists on Capitol Hill. There's also no question that the executive branch affirmative action apparatus is being dismantled."

In the aftermath of Reynold's Halloween speech, 69 Senators and more than 200 Representatives took the trouble to tell President Reagan not to change the Executive Order. That list included Senate Majority Leader Robert Dole and House Minority Leader Robert Michel.

Given such opposition, Reagan could expect to find himself participating in a political bloodletting of epic proportions if he tampered with the Executive Order, Neas said. If he emasculated the Executive Order and went to the idea of "voluntary" affirmative action, Neas said, Congress would certainly turn immediately around and pass legislation mirroring the intent of the current Executive Order.

Neas and other Congressional watchers predict that the legislation would pass by such mammoth majorities in the House and the Senate that it would be immune to a Presidential veto.

"There's not too much they can do about it," Neas said. "What I'm convinced of is that they know they can't win on Capitol Hill and that their executive branch changes are ephemeral."

The real danger to civil rights legislation, Neas said, will come from any judicial appointments that Reagan can make in the next three years. Especially vulnerable is the U.S. Supreme Court.

"Every night I pray for the continued good health of the Supreme Court," Neas said.

The Washington Times

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# Meese sees changes in affirmative action order

By Jeremiah O'Leary
THE WASHINGTON TIMES

Attorney General Edwin Meese III said yesterday he believes President Reagan will make changes in and additions to the 1965 executive order on affirmative action that sets minority hiring goals for government contractors.

The changes are expected to make goals for the hiring of women and racial minorities voluntary.

The proposed new executive order is reportedly "on hold" in the office of White House Chief of Staff Donald T. Regan, who does not want the president to act until the Jan. 20 birthday celebrations honoring slain civil rights leader Martin Luther King Jr. are over.

Mr. Meese, appearing on NBC's nationally televised "Meet The Press" program yesterday, said he has not been feuding with Secretary of Labor William Brock over whether the executive order by President Lyndon B. Johnson should be rescinded.

"We both agree with the president's policy that quotas and discrimination in hiring are wrong, but there have been some disagreements by members of our staffs on how to express that in terms of the regulations and executive orders on those people doing business with the government," Mr. Meese said.

He said he has no desire to take the teeth out of the 1965 executive order. The order was designed to make sure contractors do not discriminate, but, Mr. Meese said, "Some have turned it into a matter where they use the law to discriminate."

"We want to make sure that the executive order and the regulations are crystal clear to be sure there will be no discrimination nor any preferential treatment on the basis or race, color or sex," he said.

The attorney general said his civil rights division has discovered a number of cases in which employers have used discrimination and quotas in hiring and promotions on the basis of race or sex. He said the business community is split.

But Mr. Meese noted that the U.S. Chamber of Commerce and other business organizations have told the Justice Department that the executive order has led to discrimination and that they do not like the quotas.

It is not clear whether the emerging consensus in the White House and Cabinet represents a victory for either side in the controversy. But Mr. Meese and the conservatives appear to have won their battle against minority hiring quotas, and Secretary Brock seems likely to be left with an altered executive order containing provisions that support fair treatment in hiring of minorities.

"I think we'll be able to work out the details by changing the language of the regulations and with additions to the executive order," Mr. Meese said. He said the original order never contemplated hiring quotas that favored one group or another.

Mr. Meese and the conservatives have argued that the executive order should be changed because of a tendency for rigid hiring quotas to be used by government contractors, although its original purpose was to oppose both discrimination and quotas.

But no action is expected soon, even though the internal struggle in the administration has now been settled largely to the satisfaction of both sides.

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# White House to seek accord on hiring issue

By Johanna Neuman
USA TODAY

White House chief of staff Donald Regan meets with Attorney General Edwin Meese and Labor Secretary William Brock this week in hopes of ending a contentious dispute over affirmative action.

At issue is a 1965 executive order that requires government contractors to make "good-faith efforts" to reach employment goals and timetables in minority hiring.

Meese thinks the order amounts to quotas, and wants to make the goals voluntary.

Brock counters that the order already prohibits quotas.

About 69 senators — plus the National Association of Manufacturers — have urged the president not to change the order.

"There is an overwhelming bipartisan consensus opposing any changes in the executive order," said Ralph Neas, director of the Leadership Conference on Civil Rights.

But conservatives — backed by the U.S. Chamber of Commerce — think they can make — and win — a direct appeal to the president.

"I disagree with a lot of people that there would be grave and enduring problems if the president signs" a new order, White House communications director Patrick Buchanan said Monday.

## PENDLETON URGES AN END TO AFFIRMATIVE ACTION AS 'BANKRUPT' POLICY WHICH HARMS BLACK EMPLOYEES

U.S. Civil Rights Commission Chairman Clarence M. Pendleton, Jr. says that affirmative action has created an "ethnic spoils system" which does more harm than good for blacks and other minority group employees who are the "supposed beneficiaries" of plans which grant employment preferences on the basis of race or sex.

In a Feb. 7 address at a labor law conference in Tampa, Fla., Pendleton urges the Supreme Court to invalidate the use of racial preferences in employment as violations of the Fourteenth Amendment equal protection clause and Title VII of the 1964 Civil Rights Act when it decides three affirmative action cases later this term.

Although he would prefer to see Executive Order 11246 "wiped out" and rely on Title VII alone to combat discrimination, Pendleton also said he supports President Reagan's proposal to revise EO 11246 and remove the Department of Labor's authority to impose minority hiring goals and timetables on federal contractors. Pendleton delivered his remarks at a two-day conference cosponsored by the Stetson University College of Law, NLRB Region 12, and the Florida Bar Labor and Employment Law Section.

Calling himself a "conservative Republican who happens to be black," Pendleton said the issues posed by affirmative action are whether preferential treatment for "government-designated minorities" is needed today, and whether blacks need preferential treatment to make up for past racial discrimination. Pendleton cited with approval an American Enterprise Institute poll in which he said 77 percent of the black leaders questioned said that affirmative action is necessary because of historic discrimination against blacks but that 77 percent of "rank and file" black Americans who were asked the same questions said that affirmative action is *not* necessary.

Pendleton criticized affirmative action as an "ethnic origins spoils system" for individuals who fit into preferred racial, sexual, and ethnic groups. Although affirmative action "started with the best of intentions" to place individuals previously excluded from employment into the American mainstream without regard to race, Pendleton said the program "went sour" and has become a "program of parity" to correct "statistical imbalances" in the work force.

Pendleton maintained that Labor Department guidelines issued in 1968 to enforce EO 11246 which mentioned "goals and timetables" for the first time were the harbinger of a new emphasis on racial balance in the work force. According to Pendleton, the final transformation to a "pure, outright, simple quotas system" occurred in 1971 when DOL issued guidelines covering federal contractors which were blatantly "result-oriented."

As a result of the DOL guidelines, Pendleton said affirmative action was turned into another "original sin" where employers are required "to confess" the underutilization of blacks and other protected minorities in the workplace whenever the required statistical balance cannot be found "in any and all job categories."

### Contrary to Intent of Title VII

Pendleton said the emphasis on racial balance in the work force is "ironic" because the "principal architects" of Title VII, particularly Sen. Hubert H. Humphrey, assured their congressional colleagues in 1964 that Title VII did not authorize EEOC or any federal court to order race-conscious hiring or employment practices to achieve racial balance. Pendleton also noted that recently confirmed D.C. Circuit appeals court judge Laurence Silberman, who helped to enforce EO 11246 as an assistant secretary of labor, later recognized the "injustice and inequality" of affirmative action in a 1977 *Wall Street Journal* article in which Silberman said that "the distinction between goals and timetables on the one hand and unconstitutional quotas" was invalid.

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Pendleton cited with approval black economist Thomas Sowell's observation that affirmative action "goes beyond" assigning blame to an employer by attributing "intra-group variations" in black representation to the actions of the institution. According to Pendleton, Sowell said it is often "impossible statistically or prohibitively expensive" for an employer to rebut the "inference of discrimination" drawn from statistical disparities even if the employer did not discriminate against blacks.

Pendleton said that uncovering the "real danger" of discrimination has been replaced by a "pseudo-scientific" process of "race and gender balancing."

"I am not persuaded that we move toward the goal of a color-blind society by insisting on race-conscious hiring and firing in the workplace simply to achieve a more perfect balance between black and white employees," said Pendleton. He suggested that black employees "too often find" that "an arbitrary quota" works to their disadvantage by acting "as a ceiling" on employment rather than as "a floor or threshold" hiring goal.

As a result of affirmative action, Pendleton said the "equality of opportunity . . . has given way to the equality of results," and blacks are led to "believe the laws were passed to ensure *only* our equal rights" and that they are "due a special preference from government."

"This is where I part company with some of my people," said Pendleton. "I believe that what is due blacks under the law is the granting of equal status and equal opportunity." He called the "insistence on group preferences" through affirmative action a "role reversal" for those who "marched and struggled for equality" nearly three decades ago.

Again citing Sowell's criticism of affirmative action programs, Pendleton said the "allocation of social benefits" on the basis of race can lead to "disharmony" between blacks and whites rather than racial harmony, and he echoed Sowell's warning that "resentments do not accumulate indefinitely without consequences."

Pendleton Supports EO 11246 Revision

Pendleton asserted that the impetus for affirmative action did not come from blacks who fought for civil rights in the 1950s and early 1960s, who always "expressed a willingness to seek our objectives within the legal framework of the U.S. Constitution and the judicial code."

"We never asked for any special laws," said Pendleton, adding that the "basic premise of black America" always has been that blacks "are Americans too" and should be treated accordingly. "These specious concepts of the last 20 years are really alien to that basic premise," Pendleton asserted.

"Affirmative action is not about remedying discrimination; it's about statistical race and gender-balancing, a kind of minority-majority blending in employment and education. It's not about equal opportunity; it's about statistically measured equal results," said Pendleton. "In my opinion, affirmative action means quotas or it means nothing. It offends every principle of individual liberty, individual accountability, and fair play. It's a bankrupt public policy . . . that has done its supposed beneficiaries more harm than good."

He urged the Supreme Court to "take the constitutional high ground" and reject the notion that "discrimination can be eliminated or minimized" by any system of "race balancing in the form of proportional representation." "The main objective of federal, state, and local governments must be to provide equal opportunity based on individual merit," said Pendleton. "With these decisions, the Court can put an end to the long journey we have been taken on" by the liberal proponents of affirmative action, and restore the original understanding of the civil rights laws.

As for proposed revision of EO 11246 to remove the "goals and timetables" concept, Pendleton said he would prefer to see the executive order "wiped out completely" and depend solely on Title VII to protect civil rights in employment. However, Pendleton supports President Reagan's effort to revise the executive order. "Only the President can end government-mandated discrimination with the stroke of a pen," said the commission chairman.

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Regarding the claim that minority employment gains "will be rolled back" if EO 11246 is not reissued in its present form, Pendleton said it was "nonsense," arguing that employment decisions under a revised order would be made "on the basis of merit and standards." He said affirmative action establishes a "new racism" which "substitutes race for standards" and which is "worse than the old racism."

"I don't want anybody's progress demeaned" by special preferences, said Pendleton. "We must stop making society question the accomplishments of its children." Citing the work of "black heroes" like George Washington Carver, Mary McLeod Bethune, and Dr. Daniel Hale Williams, Pendleton said their accomplishments were achieved "without the stigma of discrimination and preferential policies."

End to Audits Urged

Answering questions following his speech, Pendleton said he did not favor continuing OPCCP audits of the personnel practices of federal contractors subject to EO 11246. Pendleton suggested that the funds spent on EEO-1 forms could be spent more usefully on employment training.

University of North Carolina law professor William P. Murphy, who also spoke at the conference, asked Pendleton why states and municipalities subject to consent decrees have generally resisted Justice Department efforts to overturn the decrees to the extent they authorize preferential treatment of blacks and women in public employment. Pendleton said public employers are most concerned about protecting themselves from reverse discrimination suits so "it's an easy cop-out" to follow the numbers contained in a court order. The chairman suggested that employer groups which have supported retention of the present version of EO 11246 are similarly motivated by a desire to avoid litigation.

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WASHINGTON

USA TODAY'S SPECIAL REPORTS FROM THE CAPITAL

# Agreement may be near on affirmative action

AP

MEESE: Wants voluntary timetables

The administration may be near compromise on an affirmative action policy that has the departments of Justice and Labor and the White House at odds. White House chief of staff Donald Regan hopes to meet again this week with Attorney General Ed Meese and Labor Secretary William Brock in an effort to resolve the stalemate. He is said to hope for agreement by next month. Brock wants to keep a current executive order banning quotas in government minority hiring programs but requiring companies to make a "good faith" effort to meet hiring goals and timetables. Meese wants a new executive order banning quotas and making goals and timetables voluntary.

MONDAY, MARCH 31, 1986 The Washington Times

# Regan may referee quota fight

By Jeremiah O'Leary
THE WASHINGTON TIMES

SANTA BARBARA, Calif. — With the Justice and Labor departments entangled like battling elks on the issue of affirmative action changes, White House Chief of Staff Donald Regan is on the verge of stepping in to settle the matter.

"I have volunteered my good offices," Mr. Regan said in an interview over the weekend.

The way things work at the White House, President Reagan is above the fray. "We have not surfaced the issue to him," Mr. Regan said. "The best solution may be to do nothing."

Attorney General Edwin Meese III and Secretary of Labor Bill Brock have been working for seven months on the language of a new White House executive order that would affect the hiring and promotion of women and minorities by federal contractors.

Under a 1965 executive order, federal contractors must take affirmative action to hire and promote women and minorities. The Labor Department, which enforces the order, requires "good-faith efforts" to provide job opportunities for women and minorities.

Although the Labor Department sets numerical hiring goals for federal contractors, its rules state, "Goals may not be rigid and inflexible quotas." Justice Department officials want the order amended to specifically prohibit quotas.

# Mixed Signal in Court

## Affirmative action: hiring, yes; layoffs, no

On affirmative-action questions, the U.S. Supreme Court sometimes seems like a television game show. With each new decision, a square on the large game board is ceremonially retracted, disclosing yet another clue. The audience is then invited to guess the final resolution of the affirmative-action debate, certain only that none of the players—either off the bench or on it—knows for sure. That was the situation again last week as a splintered high court held that the Constitution protects white public employees against most racially motivated layoffs. But at the same time, the court also endorsed affirmative action generally, including plans that cost whites entry-level jobs.

KIRTHMON DOZIER—THE DETROIT NEWS

**We won!** *Celebrating teachers in Jackson, Mich.*

The court's latest mixed message came in *Wygant v. Jackson Board of Education*, a case brought by a group of white teachers in Jackson, Mich. They challenged a labor contract that called for laying off three white teachers for every faculty member belonging to a minority group in order to preserve the school system's racial and ethnic ratios. Five justices agreed that the Jackson plan violated the 14th Amendment's guarantee of equal protection of the laws—the first time the Civil War-era provision has been extended to white plaintiffs.

**Strict scrutiny:** But as often happens in these cases, the majority couldn't agree on a single line of reasoning. Writing the lead plurality opinion for four justices, Lewis F. Powell Jr. held that the courts would "strictly scrutinize" layoff plans that discriminate by race. To pass muster, a public employer must demonstrate "convincing" evidence of past discrimination in the organization in question and must offer a "narrowly tailored" remedy. It is not enough to rely, as Jackson did, on a history of general "societal discrimination" when adopting a layoff policy that will impose "adverse financial as well as psychological effects" on white workers who are personally "innocent" of discrimination.

Powell's remarks were sufficient to decide the case at hand, but the justices insisted on debating the constitutionality of affirmative action in hiring as well. Powell found a distinction between these and layoff policies in that "the burden to be borne by innocent individuals is diffused to a considerable extent among society generally." Justice Sandra Day O'Connor wrote a concurring opinion that went further, urging voluntary governmental efforts and declaring that public employers need not cite prior acts of discrimination before launching a remedial program.

O'Connor also specifically rejected an argument long advanced by the Reagan Justice Department. She declared that all nine justices agreed that affirmative-action plans did not have to be limited to "actual victims of discrimination." Such a view would sharply curtail remedial plans. Two years ago, when the court appeared to endorse that position, the administration exulted; last week, disowned by their only appointee thus far, officials chose to praise Powell's narrow holding.

It was unclear how many affirmative-action programs would be affected by the decision. William Bradford Reynolds, assistant attorney general for civil rights, declared that the opinion undercuts Executive Order 11246, which requires many federal contractors to adopt minority hiring goals. Labor Department officials disagreed with Reynolds; no resolution of the running battle over 11246 is expected soon. Two other affirmative-action cases are still pending. The wait now begins for the next move on the court's game board.

ARIC PRESS *with* ANN MCDANIEL *in Washington*