AFFIRMATIVE ACTION FROM A LABOR MARKET PERSPECTIVE

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Affirmative Action From A Labor Market Perspective[1]

Phyllis A. Wallace

For nearly thirty years, public and private employers, unions, anti-discrimination regulatory agencies, civil rights organizations, and the federal courts have grappled with the issue of how to accommodate both equality and diversity in the workplace. From 1941, successive executive orders issued by U.S. Presidents had imposed an obligation on federal procurement contractors not to discriminate in employment on the basis of race, religion, color, or national origin. The term affirmative action was introduced in 1961 in President Kenedy's Executive Order 10925. Federal contractors were also instructed to "take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin."[2] Nearly a decade passed before the concept of affirmative action which from a social science perspective is essentially a technique of utilizing race, ethnic, and gender specific policies and procedures in the allocation of resources or opportunities in labor markets, attained specificity in terms of goals and timetables.

In the early 1960's a limited number of procedures mainly special outreach and recruitment and assessment of pre-employment policies helped to facilitate expanded employment for minorities. The substantive details of the 1961 executive order were incorporated into Executive Order 11246 in 1965 which required all federal contractors and subcontractors with more than 50 employees and a contract of $50,000, to take affirmative action to hire minorities (women were included later) or risk losing their contracts. Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment by employers, labor organizations, and employment

agencies because of an individual's race, color, religious, sex, or national origin. The 1972 amendments to the Act permitted Federal courts to order such affirmative action as may be appropriate in order to remedy past discrimination.[3] Under this provision these courts, after a finding of discrimination, have ordered unions to grant immediate membership to minority applicants, ordered employers to hire or promote specified members of minority and non-minority workers up to a certain percent of the workforce, ordered employers to adopt special recruitment, reinstated workers with or without back pay, and negotiated consent decrees between adversaries under the auspices of the courts.

The accommodation of unions to equal employment opportunity pressures has ranged from hostility and resistance to cooperation. Conflicts surrounding the referral and training policies of some craft unions in the construction industry, strategies used by several large industrial unions to protect seniority principles and the enforcement of contract rights though arbitration represented the areas of significant tension between unions and black workers.[4] In six of the ten Supreme Court decisions discussed in this report, unions or quasi-unions in the public sector were parties.

Numerous controversies have arisen around the issue of whether groups protected under the anti-discrimination laws have benefitted at the expense of other participants in the labor market.[5] In 1979 the Supreme Court in the Weber case articulated a doctrine of not harming innocent victims in order to compensate those who had been adversely affected by past employment discrimination. Affirmative action "must not unnecessarily trammel the interests of white employees."[6] However, over the past

decade with the expansion of the mix of affirmative action techniques and more efforts to clarify and to provide more precise definitions in the statutory and constitutional areas, vociferous debates have divided American society on the question of whether affirmative action, even as a temporary means of redressing past employment discrimination, becomes preferential treatment for some and reverse discrimination for others. While this legal and philosophical battle raged, many private sector employers quietly and without imposition of sanctions by the courts or regulatory agencies, incorporated equal employment objectives into their routine human resource management programs.

In June 1989 the Supreme Court in three decisions (Wards Cove, Patterson, and Martin v. Wilks),[7] each a 5 to 4 decision, made a dramatic shift in the interpretation of affirmative action, away from the disparate impact doctrine of Griggs. The unanimous Griggs v. Duke Power Co. decision in 1971 provided a broad definition of employment discrimination. Chief Justice Burger wrote "...Congress directed the thrust of the Act to the *consequences* (italics in the original) of employment practices, not simply the motivation."[8]

We therefore enter the 1990's faced with two contrasting approaches: paradoxically at the same time that the Supreme Court has injected new uncertainty into previously well-settled law, the business community which had early on objected to affirmative action has moved forward on a constructive, pragmatic basis without the Court's help. Will the labor markets of the 1990s reflect the more narrow legalistic dimensions of affirmative action or will they because of dramatic demographic shifts now under way pursue more pragmatic ways to treat equality and

diversity? Some of the highlights of "reverse discrimination" cases from Weber to Martin v. Wilks are noted, followed by a preliminary assessment of the three June 1989 cases on affirmative action. Next we examine the present status of corporate affirmative action programs, summarize the considerable research literature on the economic status of minorities and women, and speculate on the future of affirmative action in employment in the 1990's.

Reverse Discrimination From Weber to Martin v. Wilks

During the decade after Weber the Supreme Court according to Justice Edwards of the D.C. appellate court, has said with some caveats that preferential remedies are permissible in several settings to help minorities and women who are not necessarily indentifiable victims of discrimination in order to help America reach a more just society.[9] The 1979 Weber case (United Steelworkers of America v. Brian F. Weber), in which the Supreme Court upheld the validity of an employer and union in a collective bargaining agreement, voluntarily reserving fifty percent of the slots in a plant craft training program for blacks, established a standard for voluntary race conscious plans in an affirmative action context. The court stated that such plans must not unnecessarily trammel the interests of white employees; must not require the discharge of white workers and their replacement with new black hires; must not create an absolute bar to the advancement of white employees; should be a temporary measure, "not intended to maintain racial balances, but simply to eliminate a manifest racial imbalance."[10] The untrammeled standard in the case of Weber required no preferential layoffs, recalls, transfers or terminations of white workers and did not render them ineligible for promotion or hire.

The majority opinion stated that the only question before the court was the narrow statutory issue of whether Title VII forbids private employers and unions from voluntarily agreeing upon bona fide affirmative action plans that accord racial preference. It noted that voluntary compliance was the preferred method of enforcement of Title VII and that the provision of an industry wide collective bargaining agreement (United Steelworkers and the aluminum industry) by which a joint company union committee established goals for reducing racial imbalances in the skilled jobs, fell within the permissible boundary."[11]

During the next decade the Supreme Court continued to examine the demarcation between permissible and impermissible voluntary affirmative action plans. In 1984 and 1986 it struck down plans that protected jobs of blacks who had less seniority than whites and held that race based layoffs violated the Fourteenth amendment. (Firefighters Local Union No. 1784 v. Stotts and Wygant v. Jackson Board of Education)[12] In 1987 in the Johnson v. Transportation Agency of Santa Clara County, the court reiterated the Weber conclusion that employers need not show that they had engaged in prior discrimination in order to justify the use of affirmative action. The court upheld a voluntary plan that permitted consideration of sex of a qualified applicant as a factor in a promotion decision within a traditionally segregated job classification in which women had been significantly underrepresented.[13]

In the plurality opinion of the Sheet Metal Workers the court noted "The purpose of affirmative action is not to make identified victims whole but to prevent discrimination in the future. Such relief is provided to the class as a whole rather

than to individual members; no individual is entitled to relief and beneficiaries need not show that they were themselves victims of discrimination."[14] All of the answers seem to have been given, but this was a decade when the outcome on some of key civil rights cases was a fragile majority. The assault on the federal civil rights agencies by the Reagan administration was unrelenting, and the Department of Justice reversed some of its earlier positions before the federal courts. Fifty years ago a shift in the composition of the Supreme Court had moved that court to a more liberal perspective on New Deal legislation. Now a more conservative court was ready in June 1989 to reopen issues on affirmative action on which it had spoken authoritatively eighteen years ago.

June 1989 Cases

Three decisions (Wards Cove v. Atonio, Patterson v. McLean Credit Union, and Martin v. Wilks) in June 1989 were immediately perceived as redefining the scope of the Civil Rights Act, and one reviewer noted that these cases "reach a dramatic shift in the Court's interpretation of Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866 (Section 1981)." In the Wards Cove v. Atonio (June 5, 1989) the burden on minorities and women to prove discrimination was made more difficult. The legal framework of disparate impact cases under Title VII was perhaps undermined. The disparate impact doctrine of discrimination established in 1971 in the landmark Griggs v. Duke Power Co. held that employment practices and procedures that may be neutral in intent, "cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices. --- The Act proscribes not only overt discrimination but also practices that are fair in form but discriminatory in operation."

If such procedures disproportionately exclude members of the protected groups, they are unlawfully discriminatory unless shown to be a business necessity. Wards Cove noted that a racial imbalance in one segment (department or unit) of an internal workforce does not alone establish a violation of Title VII and that such a statistical disparity must be linked to a specific challenged job practice.

Now that the burden of proving discriminatory impact must remain at all times with the plaintiffs, the outcome was seen as a major setback for unskilled Eskimo, American Indian, and Filipino workers at two remote Alaskan canneries. They claimed that they had been channeled into lower-paying jobs while the more desirable jobs went to white workers. Betty Murphy, former Chairman of the National Labor Relations Board, states that this decision effectively repudiates the Griggs v. Duke Power Co.[15] Since Griggs the burden of proof had passed from plaintiff to employer once a plausible case of employment discrimination had been made. The proper statistical comparison required in the majority decision on Wards Cove was not the discrepancy (two areas of internal labor market) between the percentage of nonwhites employed as cannery workers and those employed in noncannery positions but the disparity between racial composition of the specific jobs (in the internal labor market) and racial composition of the qualified applicant pool in the relevant external labor market.

Justice Blackman's dissent said that a bare majority of the Court had taken three major strides backward in the battle against race discrimination. "The Court upset the long-standing distribution of burdens of proof in Title VII disparate impact cases. It bars the use of internal workforce comparison in the making of a prima

facie case of discrimination, and it requires practice by practice statistical proof of causation."

The Martin v. Wilks case decided on June 12, 1989 provided a procedural means for reverse discrimination suits by white individuals, not parties to original consent decrees, who may now claim harm. White firefighters who were not parties to two 1981 consent decrees settling race discrimination charges against the city of Birmingham Alabama, and the Jefferson County Personnel Board challenged the promotion made by blacks under the consent decree as a violation of their Title VII and fourteenth amendment rights. Thus affirmative action terms negotiated years ago were reopened and many court approved plans may be exposed to new law suits. A number of reverse discrimination suits have been filed in which earlier consent decrees have been challenged.

The Patterson v. McLean Credit Union case reaffirmed that Section 1981 of the Civil Rights Act of 1866 applied to private conduct but held that on the job racial harassment was not prohibited because that provision does not apply to conduct occurring after a contract has been formed or after an individual had been hired. Until the Patterson decision the federal lower courts had unanimously construed Section 1981 to forbid all forms of intentional race discrimination in contractual relations including racial discrimination in employment. The decision effectively overruled two decades of decisions regarding the meaning and scope of Section 1981.

In a study to assess the impact in the lower federal courts of the Patterson decision, the NAACP Legal Defense Fund found that between June 15th and November

1, 1989 at least 96 Section 1981 claims involving 50 different cases were dismissed solely because of the Patterson ruling. None were seeking affirmative action.[16] Although the issue in Patterson was racial harassment, questions remain about whether promotion, transfer, discharge, dismissal, retaliation or salary claims would fit under the new interpretation of the making and enforcement of contracts. A consequence of the ruling by the Supreme Court has been to put a chilling effect on lower courts. Private attorneys may be less inclined to litigate these issues. Section 1981 provides compensatory and punitive damages not available under Title VII.

Secretary of Labor, Elizabeth Dole said on June 19th after the three decisions that the Administration would "likely" seek legislation to ameliorate the impact of recent Supreme Court decisions on affirmative action and that these recent court decisions make it "harder to bring cases, harder to win cases, and easier to challenge consent decrees."[17] Others Also noted that these decisions marked a watershed in an attempt to redefine the statutory and constitutional framework of civil rights law by toughening of standards to prove bias.

Corporate Affirmative Action Strategies

Despite what appears to be a major reversal for the litigation of employment discrimination cases, corporate employers have indicated that they remain firmly committed to company programs on affirmative action. Earlier in 1989 Fortune had surveyed 202 CEOs of Fortune 500 and Service 500 companies and 42 percent had indicated that despite court decisions and disheartening statistics, they remain fully committed to affirmative action. Fifty-nine percent said that they did not plan to

change their established programs, and 68 percent characterized the effect of the programs on U.S. business as good, very good, or outstanding.[18] Thus, where moral suasion, threats of litigation and back pay or front pay adjustments may have yielded limited benefits, the new demographic dynamics in labor markets and the widespread use of computers in human resource management systems may assist in the institutionalization of affirmative action programs in a representative segment of corporate America (Mobil Corp, Merck, Corning Glass, Gannett Publications, Aetna Life and Casualty, Xerox, Monsanto). One of the beneficial by products of affirmative action has been its effect on human resource procedures. Without affirmative action U.S. industry would not have set up human resource planning tools and procedures. Development in micro-computers and software capabilities in the 1980's enabled human resource planners to develop models to determine the consequences of different hiring, promotion, and separation policies.[19] Since these corporations have adopted goals and timetables to meet competitive corporate objectives, this may eventually shift affirmative action from the emphasis on remedial to prospective activities. Professor Sullivan has aptly outlined the issue, "But because corrective justice focuses on victims, and retributive justice on wrongdoers, predicating affirmative action on past sins of discrimination invites claims that neither nonvictims should benefit, nor nonsinners pay. --- Public and private employers might choose to implement affirmative action for many reasons other than to purge their own past sins of discrimination. --- Looking forward does not forget sins for discrimination, it just sees them as less in need of remedy than redemption."[20]

Economic Status of Minorities and Women

It is necessary to review the present economic status of the two largest groups, minorities and women, that are included in the preferred categories under the anti-discrimination laws. While legal scholars have argued about such aspects of affirmative action as whether the statutory purpose of promoting equality of opportunity forecloses racial goals, what are the constitutional boundaries of affirmative action, and does an affirmative action plan have to be victim-specific to be permissible under the law, economists have attempted to measure (with mixed success) the impact of affirmative action activities on the economic well being of minorities and women.[21] Despite some improvements, large disparities in income and employment between blacks and whites persist, and there has been uneven progress in reducing occupational segregation by sex and closing the income gap between men and women. Discrimination is only one of several factors operating in labor markets. Productivity characteristics (education, training, work experience, age, industry, and occupational status) shape economic outcomes.

Because current statistics are readily available, black economic status is discussed. However, Hispanic workers accounting for seven percent of the civilian labor force as compared with eleven percent for blacks, experience some of the same disadvantages in the labor market. A brief summary of findings from an exhaustive review of data published by the National Research Council (NRC) in its Blacks and American Society: A Common Destiny (1989) follows.[22] The economic status of women relies on a research volume by the Industrial Relations Research Association on Working Women: Past, Present and Future (1986) and several more recent reports.[23]

Economic Status of Blacks

The NRC report noted that "By almost all aggregate statistical measures-incomes and living standards; health and life expectancy; educational, occupational, and residential opportunities; political and social participation -- the well being of both blacks and whites has advanced greatly over the past five decades. By almost all the same indicators, blacks remain substantially behind whites. --- The greatest economic gain for blacks occurred in the 1940's and 1960s. Since the early 1970's, the economic status of blacks relative to whites has, on average, stagnated or deteriorated." Some of the reasons for this dismal assessment are: (1) a significant slowdown in the U.S. economy since the early 1970s and shift of the industrial base, from blue collar manufacturing to service industries (2) falling real wages and employment -- while blacks weekly and hourly wages have risen relative to whites, blacks relative employment rates have deteriorated significantly, (3) enormous increase in non-workers among black men in the prime working age, (4) increase in black poverty rates associated with increases in female headed black families, with one or no working adults. In 1985, thirty one percent of black and eleven percent of white families lived below the federal poverty line, (5) large occupational differences between blacks and whites with overrepresentation of blacks in low wage - low skill jobs. Although black real per capita income in 1984 was one third higher than what it had been in 1968, it was only 57 percent of white incomes, the same relative position as in 1971.

Nevertheless, dramatic improvements in earnings and occupational status were

made by a younger, well educated segment of the black workforce. Many have gained from expanded opportunities associated with enforcement of antidiscrimination laws, and litigation in the federal courts, and improvement in educational achievement. The proportion of black families with incomes of more than $50,000 increased from 4.7 percent in 1970 to 8.8 percent in 1986, but still only 24 percent of black families attained the middle class living standards of the U.S. Bureau of Labor Statistics ($20,517 in 1979) as compared with 50 percent of white families.

Studies covering the late 1960's and early 1970's showed positive employment and occupation effects of enforcement of federal contractor antidiscrimination regulations.[24a] Leonard's analysis of the 1974-1980 period reports larger employment effects and some occupational upgrading of black males.[24b] A study by Heckman and Payner of the textile industry in South Carolina, for the 1940-1980 period shows that implementation of anti-discrimination regulations after 1964 produced a dramatic upswing in black employment. They report "Our analysis suggests that the government, in providing both affirmative action pressure and a justification for employing blacks, had a profound influence on the employment of status of South Carolina blacks in the mid-1960's.--- [It] provides us with a view in microcosm of what likely occurred throughout the South during the 1960s." It offers strong evidence for the role of federal affirmative action programs in securing black progress in traditionally segregated sectors."[25]

The NRC findings imply negative developments for blacks in the near future and developments that do not bode well for American society:

(1) Improvements in status of blacks relative to whites are likely to slow

even more as the rate of increase of the black middle class is likely to decline.

(2) One third of the black populations will continue to be poor and further deterioration in the relative employment and earnings of black men is likely.

(3) A growing population of poor and uneducated citizens, disproportionately black and minority will pose challenges to the nation's abilities to solve emerging economic and social problems of the twenty-first century.[26]

Among the major options suggested for reduction of impediments to black advancement are provision of services to enhance skills and productive capabilities, facilitation of national economic growth and reduction of discrimination and involuntary segregation.

Economic Status of Women

The increased labor force participation since 1960 of women, especially young married women with small children has transformed the workplace. The decline in birth rates, long term growth in real wages, increase of divorce rates, increased educational attainment, growth of service industries were some of the major forces that helped to shape the role of women in the labor market. Women's share of civilian labor grew from 33 percent to 45 percent and is expected to reach almost half of all workers by the year 2000. Fifty-six percent of adult women now work outside of the home. Between 1972 and 1986 the civilian labor force increased by 35 percent, and women accounted for slightly more than three fifths of the net addition of 30.8 million workers to the workforce. The U.S. Bureau of Labor Statistics estimates that between 1986 and 2000 women will account for more than three fifths

of all the new workers.[27] Despite their greater presence in labor markets, their wages on average are well below wages for males (The ratio of annual earnings of full time year round females as compared with males was 64.6 percent in 1986). The difference is due almost entirely to the fact that women work in low wage industries and in occupations that are predominately female. An extensive research literature has developed on why the sex differentials in wages persist. Some of the differences can be explained by productivity characteristics. Women may have more discontinuous work experience and different educational backgrounds.

However, Blau and Beller found that for the decade 1971-1981 the female-male earnings ratio increased substantially for whites (from 50 percent to 60 percent) and less for blacks (from 64 percent to 67 percent).[28] They concluded that their findings suggest declining gender discrimination as conventionally measured as well as changes in women's aspirations. The decline of occupational segregation during the 1970's was concentrated in the traditionally male professionals and mangers. Women MBAs increased form 4 percent of the total in 1972 to about a third of all MBAs in 1986.[29] The AT&T consent decree in 1973 provided a mechanism for major restructuring of the internal labor market of the largest employer in the country and six years later the utilization of women had improved significantly. Women mangers, above entry level positions, more than doubled.[30] One out of every five of the nation's doctors and lawyers is a woman.

The changes in the composition and mix of workers have introduced more flexible work schedules, greater emphasis on part-time, modification in maternity leave, and retirement benefits. Implementation of employment discrimination laws

especially guidelines on sex discrimination by EEOC improved job conditions and dealt with issues such as height and weight requirements, seniority and transfer, pregnancy, and sexual harassment.

In 1989 a New York Times survey of 1025 women and 472 men reported that despite a closing of the gap between men and women, most women believe the basic goals of the women's right movement have not been fully realized and nearly half of the women said that the gains have come at too high a price. Fifty-six percent of the women, compared with 49 percent of men said that American society has not changed enough to allow women to compete with men on an equal basis. Among full time workers, 83 percent of the working mothers and 72 percent of working fathers said that they felt torn between demands of paid employment and family life.[31]

Although dramatic inroads had been made in some of the well paying professional and managerial jobs, by 1989 women were still engaged in a major effort to enter senior levels of responsibility.[32] The Price Waterhouse v. Hopkins decision from the Supreme Court in 1989 described the difficulties of one top performing woman senior manager and officer who was denied a partnership in one of the large national accounting firms. Lower courts had found that sex stereotyping had played a part in the negative assessment of her candidacy for partnership." "Virtually all of the partners' negative remarks about Hopkins - even those of partners supporting her- had to do with her 'interpersonal skills' --- There were clear signs, though that some of the partners reacted negatively to Hopkins' personality because she was a woman. One partner described her as 'macho'; another suggested that she 'overcompensated for being a woman'; a third advised her to take "a course at charm school"---

Another supporter explained that Hopkins 'had mature[d] from a tough-talking somewhat masculine hard-nosed manager to an authoritative, formidable, but much more appealing lady partner candidate.' But it was the man who, as Judge Gesell found, bore responsibility for explaining to Hopkins the reasons for the Policy Board's decision to place her candidacy on hold who delivered the coup de grace: in order to improve her chances for partnership, Thomas Beyer advised, Hopkins should 'walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled and wear jewelry.'[33]

Demography of the Labor Markets of 1990s[34]

"The U.S. Department of Labor has indicated that approximately 85 percent of the net additions to the civilian labor force between 1986 and the year 2000 will be women, minorities, and immigrants. This sharp increase in the heterogeneity of the labor force may have a short run negative impact on productivity as the system absorbs these workers. A key requirement in these future workplaces where women will account for almost half of the total labor force, is flexibility to allow accommodation of work and family roles. Since minority workers, as a group have lagged behind other workers in terms of skills and education, large doses of training may be necessary." These jobs will require more technical knowledge and problem solving ability.

The enormous expansion of the labor force during the past two decades has ended. The large supply of young entrants to the labor market (in the 16 to 24 year age group) will decline. The American Society for Training and Development in its

examination of the state of the American education and training system, concluded that demographic trends in the United States are on a collision course with economic, technical, and organizational changes that demand higher levels of job related skills. In addition to the shrinkage of available labor pool at the entry level, the entry level employees will be drawn increasingly from populations in which human capital investments prior to work have been insufficient.[35] Employers will respond to the new demographic profile of more marginal entrants by increasing expenditures on education and training. Members of the Committee for Economic Development (CED) and the Business Roundtable sensing that their own economic survival is threatened have argued that the quality of education must be improved, especially at the pre-college level and in the poorest schools where minorities are concentrated. Thus, intervention in the educational process, provision of remedial education, stay-in-school incentives, career counseling, scholarships to college, adopt a school, or establish a partnership with a school has been undertaken in order to guarantee a quality workforce at a later period. This will be the scope of affirmative action for minorities in the 1990s, emphasizing prospective action rather than the remedying of past discrimination.

Future of Affirmative Action

Given the major demographic changes in American workforce of the 1990's (women, minorities, and immigrants will account for 85 percent of the growth in the labor force by the end of the century), affirmative action will encompass a broader scope of programs of specialized training, education, and outreach to disadvantaged individuals, mostly minority groups members in the workplace. It will also include

greater emphasis on flexible work schedules, child care and other issues of primary importance to women workers. These programs will be undertaken voluntarily by employers to meet international competition in global markets. Recently the Chairman of AT&T in discussing the major support that his company would give to teenage girls living on the margins, noted: "A generation ago the U.S. accepted the mantle of world economic leadership --- Today, America's ability just to compete never mind lead, is being called into question. That won't change if we continue to accept the fact that many of our children are living and learning in ways that makes them unemployable."[36]

Even if Congress passes legislation to ameliorate the impact of the June 1989 Supreme Court decisions on employment discrimination, the action on affirmative action may occur in another arena, not the judiciary, legislative, or executive branches of the Federal government. These programs will have metamorphosed. into less threatening personnel practices designed to help American industry sustain a competitive edge.[37] As we move into the 1990's with its clearly different profile of America workers, private employers may be able to move away from remedies for minorities and women that would appear to burden or deny benefits to other workers. Of course, there is a role for public policy through assisting private employers in development of first rate employment and training strategies for those workers with significant deficits in human capital. The Federal government undertook, with limited success, to deal with the issue of race and poverty in the various manpower programs of the 1960s and 1970s. The next decade will set higher standards and the participation of private employers will ensure that good training programs will be a priority for all of the participants in the labor market. Employers, large and small,

public and private will have to deal with this heterogeneity of the workforce in creative ways.

An overhaul and upgrading of the employment and training programs of the Federal government might enable many disadvantaged individuals to become better prepared for jobs in mainstream labor markets. "These training systems should be locally based and not isolated from the employment community, especially the small business world where many jobs are located. For smaller firms there is a need to develop training consortiums that can aggregate their training needs in collaboration with local training institutions such as community colleges and apprenticeship programs. Large firms if they will, can afford to provide quality training. Small firms cannot.

As a researcher on employment discrimination issues since the mid 1960s, I am struck by two unanticipated and frequently overlooked events: (1) It is ironic that there has been such a proliferation of minority groups (disabled workers, older workers, etc) seeking protected status that the majority group has become a much smaller percent (perhaps as low as 25 percent) of our civilian workforce (2) Many of the plaintiffs who initiated the litigation fifteen years ago (Wards Cove and Martin v. Wilds) may no longer be in the labor market. Present workers in the 25 to 44 age group, the prime or core group, were either born after or entered the labor market around the time of the passage of Title VII of the Civil Rights Act of 1964. Thus, it would seem appropriate that affirmative action in the decade of the 1990's be geared to enhancing human capital of the American workforce. Basic education, training, and re-training programs will be the critical factors in helping the U.S. economy maintain

its competitive edge in many global marketplaces, and all workers should benefit from such programs.

Footnotes

1. This report focuses on affirmative action only in employment. The Supreme Court has ruled on affirmative action in other areas; especially higher education(Regents of the University of California v. Bakke, 438 U.S. 265, 1978) and more recently on minority set aside programs in state and local government subcontracting (City of Richmond v. J.A. Croson, 109 S. Ct 706, 1989).

2. Executive Order 10925, 26 Fed. Reg 1977 (1961).

3. Public Law No. 92-261 (1972), Sec. 706(g).

4. Phyllis A. Wallace and James W. Driscoll, "Social Issues in Collective Bargaining," U.S. Industrial Relations 1950-1980: A Critical Assessment, edited by Jack Stieber, Robert B. McKersie, and D. Quinn Mills, Industrial Relations Research Association Series, Madison, Wisconsin: 1981.

5. Prohibition of racial discrimination in employment has been treated under the Fourteenth amendment to the Constitution and under Section 1981 of a post Civil War statute which prohibits discrimination against blacks in the making of contracts.

6. 443 U.S. 193 (1979).

7. Wards Cove Packing Co. v. Atonio (57LW4583 (1989); Patterson v. McLean Credit Union (109 S. Ct. 2643) (1989); Martin v. Wilks (109 S. Ct. 2180, (1989).

8. 401 U.S. 432 (1971).

9. Harry Edwards, "The Future of Affirmative Action In Employment," 44 Washington and Lee Law Review 763 (1987).

10. 443 U.S. 208.

11. Phyllis A. Wallace, The Weber Case and Collective Bargaining, Working Paper, Sloan School of Management at MIT, WP#1091-79, Nov. 1979.

12. 467 U.S. 561 (1984) and 476 U.S. 267 (1986).

13. 480 U.S. 616 (1987).

14. Local 28 of the Sheet Metal Workers International Association v. EEOC, 106 S. Ct. 3019 (1986).

15. Betty S. Murphy, Wayne S. Barlow and D. Diane Hatch, "Supreme Court Redefines Scope of Civil Rights Act," Personnel Journal, vol. 68, No. 8 (Aug 1989) pp. 22-26.

16. "Analysis By NAACP Legal Defense Fund On Impact On Supreme Court's Decision In Patterson v. McLean Credit Union," Daily Labor Report No. 223, November 21, 1989.

17. Daily Labor Report, No. 117, June 20, 1989.

18. Alan Farnham, "Holding Firm on Affirmative Action," Fortune, March 13, 1989, Vol. 119, No. 6, pp. 87-88.

19. See Allen S. Lee and George E. Biles, "A Microcomputer Model for Human Resource Planning," Human Resource Planning, Vol. 11, No. 4, 1988 pp. 293-315.

20. Kathleen M. Sullivan, "Sins of Discrimination: Last Term's Affirmative Action Cases," Harvard law Review, Vol. 100: (Nov. 1986), No. 1, pp. 96, 98.

21. A sizeable body of empirical studies has been published during the past twenty years. For references see Phyllis A. Wallace, Title VII and The Economic Status of Blacks, Sloan School of Management, MIT, Working Paper WP1578-84, July 1984.

22. Gerald D. Jaynes and Robin M. Williams, Jr. editors, Blacks And American Society, Washington, D.C.: National Academy Press, 1989.

23. Francine D. Blau and Marianne A. Ferber, "Occupations and Earnings Of Women Workers," in Working Women edited by Karen Shallcross Koziara, Michael H. Moskow, and Lucretia Dewey Tanner, Industrial Relations Research Association Series, The Bureau of National Affairs, Inc., Washington, D.C. 1987. Francine D. Blau and Andrea H. Beller, "Trends In Earnings Differentials By Gender, 1971-1981, Industrial and Labor Relations Review, Vol. 41, No. 4 (July 1988) pp. 513-529.

24.a. Orley Ashenfelter and James Heckman, "Measuring the Effort of an Antidiscrimination Program" in Evaluating the Labor Market Effects of Social Programs edited by Orley Ashenfelter and James Blum. Princeton N.J.: Princeton University. Industrial Relations, 1976, pp. 46-84. Charles Brown, "The Federal Attack On Labor Market Discrimination: The Mouse that Roared?" in Ronald Ehrenburg, ed. Research in Labor Economics, New York: JAI Press, 1984. George Burman, The Economics of Discrimination: The Impact of Public Policy, Ph.D. Dissertation, Graduate School of Business, University of Chicago, 1973. Richard B. Freeman, "Changes in the Labor Market for Black Americans, 1984-1972," Brookings Paper on Economic Activity No. 1 (1973): pp. 67-120. Andrea H. Beller, "The Economics of Enforcement of An Antidiscrimination Law: Title VII of the Civil Rights Act of 1964," Journal of Law and Economics, 21 (1978), pp. 359-380.

24.b. Jonathan Leonard, "Employment and Occupational Advance Under Affirmative Action," Review of Economics and Statistics, 66, No. 3 (August 1984) pp. 377-385.

25. James Heckman and B. Payner, "Affirmative Action and Black Employment," Proceedings of the Industrial Relations Research Association, December 1988, p. 323.

26. Jaynes and Williams, op. cit, p. 26.

27. Hudson Institute, Inc. Workforce 2000, Indianapolis, Indiana: June 1987.

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