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The purpose of this paper is to discuss why I think the Reagan administration's avowed commitment[1] to helping only "actual victims" of racial discrimination retards rather than advances the cause of civil rights. I make reference in my title to "seniority" and "the shadow of *Stotts*" because the current administration is relying upon Supreme Court decisions having to do with seniority, particularly its 1984 opinion in *Memphis Firefighters v. Stotts*,[2] to justify a wholesale attack upon race-conscious remedies, not only in employment but in education and public contracting as well.

But how can an effort to *help* actual victims of discrimination be anything but a positive development? Why should I be criticizing rather than praising what the Reaganites are doing? The short answer is that this policy of helping only "actual victims" of discrimination has another objective: namely, to bring to an end a variety of class-based remedies such as goals and timetables, numerical measures, quotas, etc., that courts and administrative agencies have found necessary, in some cases, to rectify the effects of past discrimination and to ensure the absence of discrimination in the future.

The Reagan administration's approach to helping only "actual victims" of discrimination threatens to undermine years of meaningful civil rights enforcement and to hobble future efforts to remedy the lingering effects of discrimination. This position, despite the administration's drumbeat of public statements to the contrary, is not endorsed by the United States Supreme Court or by any of the 12 circuit courts of appeals, the level just below the Supreme Court. It is a position that does not, even if vigorously pursued, offer much hope for realistic change in national patterns of racial discrimination. And, finally, it is not a position that the Reagan administration, in my estimation, *intends* to pursue with vigor. Other evidence suggests that the administration, for all of its avowed commitment to civil rights, is

engaged in a cynical campaign of sloganeering designed to give the appearance of movement where, in fact, there is none.

The Reagan administration's position on this issue is essentially as follows. The Fourteenth Amendment was designed to establish colorblindness as the constitutional standard. *Plessy v. Ferguson*,[3] the 1896 Supreme Court decision that established the "separate but equal" doctrine, violated the colorblind principle (some call it the antidiscrimination principle) by using racial classifications with respect to public accommodations and by providing the basis for Jim Crow laws affecting education, voting, and every other area of public life for the next 58 years. *Brown v. Board of Education*,[4] the 1954 ruling declaring the separate but equal doctrine unconstitutional in the field of public education, rectified the error of *Plessy* and returned us to the original understanding of the Fourteenth Amendment. Race could no longer be an appropriate consideration in the allocation of public benefits or burdens. Since *Brown*, however, the Reagan administration says that society, propelled by federal courts and administrative agencies, has swung back in the direction of race-consciousness, committing the same error as at the time of *Plessy*, albeit in this case *in favor of*, not against, blacks and other racial minorities.

They tend to cite as examples of this trend: busing to achieve desegregation of previously dual school systems because it requires the assignment of children by race; goals and timetables or quotas to remedy proven racial discrimination in employment and housing; and voluntary race-conscious plans to remedy significant underrepresentation of minorities in employment, public contracting, and higher education admissions. Such practices, according to the Reagan administration, not only violate the Constitution but do violence to the purposes of the modern civil rights statutes (like the 1964 Civil Rights Act) as well.

Their solution is as follows to the best of my understanding: (1) Laws should be enforced in a colorblind fashion. (2) Those who discriminate should be enjoined from

doing so in the future. (3) Persons who were the specific targets of such discrimination are entitled to individualized relief ("actual victims"). (4) No other persons are entitled to anything.

But let us look at what the courts have said about the colorblind Constitution. The Supreme Court has never held that the Fourteenth Amendment's Equal Protection Clause prohibits the use of race classifications under all circumstances. Rather, it has required (putting *Plessy* and the separate but equal doctrine line of cases to one side) that racial classifications be justified by the showing of a compelling governmental purpose. Race classifications are disfavored and inherently suspect under this analysis. Post-*Brown*, innumerable classification schemes that disadvantaged blacks or other racial minorities were struck down on this basis. The only Supreme Court case that employed this rigorous test and yet upheld a scheme that penalized a racial minority, before or after *Brown*, was the *Korematsu* decision.[5] This decision found constitutional the relocation of Japanese-Americans during the Second World War.

In more recent years, the Court has upheld racial classifications as constitutionally based upon its conclusion that such approaches were necessary to effectively remedy discrimination against blacks and other racial minorities. In the area of school desegregation, for example, the Supreme Court concluded that the mandate of *Brown* could not be satisfied by a school board's merely announcing that pupil assignments would no longer be made on a racially segregated basis, leaving deeply-rooted patterns of the dual systems in place. Rather, school boards, said the Court, had an affirmative duty to see that the old patterns were ended "root and branch."[6] If busing was necessary to achieve this end, so be it. System-wide racial ratios were later approved as a starting point in determining the level of desegregation required on a school-by-school basis in such systems.[7]

The *Bakke* decision,[8] although it struck down the Davis Medical School special admissions program, did *not* reject the use of race in admissions. Many schools after *Bakke* have continued to take race into consideration in making admissions decisions. These programs have withstood lower federal and state court scrutiny.[9] In the 1980 *Fullilove* decision the Supreme Court upheld a federal 10% set-aside for minority business enterprises as part of a $4 billion public works program.[10]

Lower federal courts and state courts have adhered to these precedents, often recognizing, even if the Supreme Court did not publicize it, that in *Bakke* and *Fullilove* (affirmative action decisions) some justices were no longer using the "compelling interest test" but were using something less rigorous to evaluate the racial classifications at issue. In neither the Supreme Court nor other federal or state courts has the proposition that only "actual victims" of discrimination are entitled to benefit from remedial orders been adopted.

Judicial interpretations of the civil rights statutes have also recognized an appropriate place for racial considerations. In the 1979 *Weber* decision,[11] the Supreme Court upheld the use of race in a crafts-training program agreed to by labor and management. It said that the plan did not violate Title VII of the 1964 Civil Rights Act, which prohibits employment discrimination. The Reagan administration contends that *Weber* was wrongly decided. The Court has also held that busing to achieve desegregation of previously dual systems did not violate another provision of the 1964 Act.[12] It even upheld the use of race to remedy evidence of discrimination in voting as not prohibited by the 1965 Voting Rights Act.[13] In none of these cases has the scope of relief turned on whether one was an "actual victim" of discrimination.

What has been left undecided? The Supreme Court has yet to rule explicitly on several major questions pertinent to this discussion, all of which are raised by cases before it for decision this term.[14] Can courts order race-conscious programs in employment, designed to remedy proven discrimination, that benefit persons other

than those specifically found to have been denied a job, promotion, or assignment based upon race? In other words, are goals, timetables, and quotas appropriate?[15] Can courts approve of settlements or proposed consent decrees that contain provisions designed to avoid the litigation of employment discrimination claims?[16] Can governmental entities establish, consistent with the requirements of the Constitution, voluntary race-conscious affirmative action programs like that approved (insofar as private employment was concerned) in the *Weber* decision?[17]

The Reagan administration contends that all these questions were effectively answered by the Supreme Court's recent decision (6-3) in the Memphis Firefighters case called *Stotts*. A careful reading of the decision, however, does not support such an interpretation. In brief, *Stotts* ruled that lower federal courts could not require that seniority rules be overridden in order to prevent disproportionate layoffs of recently hired black firefighters. I will have more to say about the Court's characterization of the issue presented for decision in a later section. Given that characterization, the Court's decision was quite predictable. First, it had previously held, on several occasions, that Title VII of the Civil Rights Act, which prohibits racial discrimination on both public and private employment, insulates seniority systems from court restructuring, even if they perpetuate other forms of employment discrimination, unless it can be shown that the system at issue itself was created, maintained, or manipulated with a discriminatory purpose or intent.[18] Second, it also had held previously that where discrimination was evident in hiring, promotion, assignment, or other terms and conditions of employment, the appropriate remedy was to give actual victims of such practices, all other things being equal, the seniority they would have had but for the discrimination.[19] This is commonly called the "rightful place" doctrine.

The *Stotts* record was devoid of evidence of either type of discrimination. Properly read, the holding in *Stotts* is merely a reiteration of rulings the Court has

made on several occasions in the past. It reinforces the view that seniority systems enjoy powerful protection from attack under Title VII. Overriding seniority to allow for race-conscious layoffs, *Stotts* says, violates the very essence of that protection. It is in this context of seniority–and only here–that the Court has found a statutory requirement that only "actual victims" be given individualized relief.

It is true, however, that the opinion speaks generally (outside the seniority context) about the Title VII's purpose being to provide only "actual victims" of discrimination with relief. But the discussion is subject to a variety of interpretations, of which the administration's is only one. It is equally true, moreover, that the same opinion notes–and appears to find no statutory problem with–the consent decree that underlies the entire controversy in *Stotts*. Blacks had, several years earlier, filed suit against the Memphis Fire Department alleging racial discrimination in hiring and promotion. That suit was settled prior to trial, and the settlement was embodied in a consent decree in the 1980 trial.

Under that decree, the Memphis fire department agreed to establish a 50% black interim hiring goal and a 20% black promotion goal until the proportion of black representation in each job classification in the fire department was approximately that of blacks in the labor force in the county within which Memphis is located. Parenthetically, the fire department had entered into a similar arrangement with the U.S. Department of Justice in 1974 in settlement of a *federal* employment discrimination suit. The *Stotts* opinion described the 1980 decree in the following terms:

> [I]t is reasonable to believe that the "remedy," which was the purpose of the decree to provide, would not exceed the bounds of the remedies that are appropriate under Title VII.

What the Court found wrong in *Stotts* was not the underlying consent decree containing goals and timetables. Rather it was the attempt by the trial court and court of appeals to engraft upon that decree a provision that had not been agreed to by

the parties that violated Titled VII. That provision, added by the courts, required that in the event of layoffs affirmative action considerations might be permitted to override the application of "last hired, first fired" seniority principles. It is difficult to see, therefore, how *Stotts* can be viewed as prohibiting all use of goals and timetables to assist "nonvictims," as the Reagan administration contends, not only where seniority issues are involved but also in hiring and promotion situations where seniority is not a controlling factor.

The *Stotts* decision explicitly declines to address the question of whether *Weber* can legally be applied to the case of public employers. Yet, one Reagan administration official stated with some confidence, after *Stotts*, that it would not be long before the Court concluded that voluntary affirmative action programs were unconstitutional.[20] Nor does *Stotts* address the question of whether courts can, consistent with the Equal Protection Clause, provide relief to other than "actual victims" in remedying racial discrimination.

I cannot avoid noting here my objection to the way the Supreme Court and indeed the Justice Department characterized the issue in *Stotts*. One is left with the distinct impression that what happened there was that federal courts exercised raw power to favor less senior blacks over more senior whites in the layoff process in the name of affirmative action. Two things are wrong with that characterization. First, Memphis, not the courts, decided that a race-conscious layoff plan was necessary. The Firefighters Union itself had offered a number of racially neutral approaches that would have achieved significant economies (reducing working hours of all employees, for example).

Second, the three white firefighters who were laid off for only a month were characterized as the victims of the layoff plan. Yet they had exactly the same seniority dates as three blacks who were not laid off. The "seniority system," which the lower courts ignored, was, in fact, an alphabetical layoff scheme. In the event

that workers had the same seniority and equal work records, layoffs would occur in reverse alphabetical order. Hence, under the city's original plan, Johnson, Jones, and McFagon, (blacks) were to be laid off and Darden, Dennington, and Harmon, (whites) were to be retained. What happened, therefore, was that blacks–who were equally qualified and of equal seniority to whites–hired pursuant to the consent decree would be laid off and their white counterparts kept on because of the fortuitous first letter of their surnames.

Based upon *Stotts*, the Reagan Justice Department last year sent letters to over 50 communities advising them that their affirmative action programs were illegal and threatening to sue them to have such programs discontinued if they did not do so voluntarily.[21] It should be noted that in all these cases the affirmative action programs being attacked were initiated with the approval of the Nixon, Ford, and Carter Justice Departments. Most communities have refused to change their programs. The mayor of Indianapolis, a Republican, has been most vocal in his opposition to what the department is doing.[22] And lower federal courts have continued to order goals and timetables as remedies for employment discrimination post- *Stotts*,[23] except where doing so would override seniority provisions,[24] viewing those situations as explicitly controlled by that decision.

But why should remedies for discrimination that benefit other than so-called "actual victims" of discrimination be allowed as a matter of public policy, apart from what the current or future legal standards may require? Wouldn't we all be better off if we kept the use of racial criteria to an absolute minimum? Why have the courts taken this approach in the past? Why have federal judges of all political persuasions and state judges, both elected and appointed, all over the country acted as they have? Let me offer a few answers.

I have already spoken about school desegregation and the imposition of an affirmative duty upon school boards to do more than declare the end to segregated

assignment patterns. I take it that this administration's view of school desegregation is that only black children affirmatively assigned to schools by race or denied admission to a public school based upon their race are "actual victims" of discrimination. For their benefit, courts may order specific remedies. But the Supreme Court, at least since 1968, and other courts thereafter have seen things differently. They have viewed the constitutional violation as one against blacks as a class, for which a class remedy is appropriate.

A recent decision by a federal district court in Nashville, Tennessee, approving a consent decree designed to resolve a 17-year-old higher education desegregation case points up this conflict between traditional approaches and the Reagan administration's policies. Without going into excruciating detail about this case (a temptation I find hard to resist since I was co-counsel for plaintiffs during a month-long trial of this case in 1976), suffice it to say that federal courts found in 1972 that the State of Tennessee had been operating a dual higher education system 18 years after *Brown*. Courts also found in 1977 that the state had engaged in specific segregative acts in the Nashville area to provide white college students with a way of avoiding attendance at Tennessee State University (the traditionally black public institution in that community). Specific relief was ordered for Nashville but not for the state as a whole.

The most recent skirmishes have focused on state-wide relief. After much discussion the state and private plaintiffs reached a settlement, which was approved by the district court over the partial objection of the Justice Department. Among other things, the Reagan administration opposes a provision of the settlement that requires the state, over a period of five years, to establish a special "pre-enrollment" program for 75 black sophomore students to train and prepare them for post-graduate study in the state's professional schools. Upon completion of the program, these students will be admitted to the state's schools of law, veterinary medicine, dentistry,

pharmacy, and medicine. The administration's opposition to this program stems from the fact that the 75 students are not "actual victims" of discrimination.

The trial court's opinion contains the following response to that argument:

> It is the past and present state of Tennessee's universities that the Court identifies as the specific instance of racial discrimination; its effects are pervasive throughout the black community, affecting practically all black men, women and children in the state.[25]

The *Washington Post* reported a blunter response from the judge. It quoted him as having said to the department's lawyer in the case:

> You are an embarrassment to the United States Justice Department or maybe it's that someone is telling you what to say....Let's just shell the corn...your real problem is that President Ronald Reagan and Attorney General William French Smith are philosophically opposed to anything that smacks of goals or objectives or quotas. Isn't that right?[26]

That this criticism came from a judge who, I can personally attest, is no bleeding heart or knee-jerk liberal but rather conservative, in fact, may suggest to you how far this administration's policies have departed from conventional doctrine. The Justice Department has appealed the approval of the pre-enrollment program and other provisions that it regards as unconstitutional.

Moreover, goals and timetables or other injunctive relief affording benefits to nonvictims have been granted by courts to ensure that a defendant found guilty of discrimination does not continue such practices in the future, particularly if that discrimination was longstanding, pervasive, and intentional.[27] Courts have not rushed to impose such requirements but have done so often only after lesser measures effected no changes. Courts have tended to avoid imposing goals and timetables or quotas in race discrimination where to do so would displace an identifiable group of incumbent white employees. Hence hiring rather than promotion is the stage of the employment process where such techniques are utilized most often.[28]

Furthermore, consent decrees and settlements have been approved that contain goals and timetables because such voluntary solutions are consistent with the underlying purposes of Title VII, namely, to stimulate corrective measures short of protracted litigation. Voluntary programs fit into the same basic pattern. Finally, a variety of statutory provisions make actual victimization dependent upon procedural niceties, not whether discrimination actually occurred. Under Title VII, for example, victims of discrimination prior to 1964 have little or no recourse. Even so-called "actual victims" post-1964 can lose out by not filing their administrative complaints within 180 days of the violation.[29]

But suppose the "actual victim" approach was used in nonseniority situations? If no victims or only a few of the "actual victims" can be found, then the person guilty of racial discrimination gets a windfall. An employer can be found liable for discrimination against blacks as a class but may be allowed to continue with an all-white, or virtually all-white, work force until another victim comes to light. That operation stands as a potent symbol that one can discriminate and get away with it. It is a continuing sign to blacks that they will not be welcome in that operation and need not apply. Such an approach creates all the wrong incentives and disincentives in terms of the objectives of Title VII. Similar examples could be given in the housing, public contracting, education, and voting areas. What, for example, is the proper remedy for a black that graduated from Tennessee State University 15 years ago? He or she is unlikely–even though an actual victim because of discrimination in admissions–to graduate or to do professional study in Tennessee, to want to take advantage of the pre-enrollment program embodied in the recent consent decree. But that is what the Reagan administration seems to require.

If we found "actual victims" of discrimination, we might also be obliged to seek out whites who were the windfall beneficiaries of discrimination and see to it that, where necessary, remedies for "actual victims" be granted at the expense of

incumbent whites. But the courts have not and will not be willing, it seems to me, to take this approach in even seniority cases where it can be shown that whites occupied positions and situations that would not have been their's but for discrimination against blacks. Hence "rightful place" seniority relief has not been interpreted by lower courts, as the Court pointed out in *Stotts*, to require "bumping" of incumbent whites. The Court's reaction has been understandable, for often white workers have not knowingly discriminated against blacks. The culprit in the piece is the employer. More exacting demands ought to be made upon the employers, not workers, to remedy the discriminatory effects.

But I think that there is evidence that the Reagan administration has no intention of pursuing with vigor this "actual victim" approach. Under the best view of their motivations they simply misunderstand the problems presented by any serious attempt to implement their vision. For example, an official at the Federal Equal Employment Opportunities Commission was questioned about its new emphasis upon requiring "unconditional offers" to place victims of bias in the job they would have had if no discrimination had occurred, even if the job has been filled by another person. "Won't such an approach create another set of victims in the work place–those who were given jobs through discriminatory actions over which they had no control?" he was asked. "Not really," he responded, "we're talking about a job that should have gone to that victim, not a job based on goals and timetables."[30]

How this approach can be viewed as less problematic and less socially divisive than properly utilized goals and timetables in the spirit of Title VII is hard for me to comprehend. Moreover, this type of individualized enforcement has not been pursued even by the Justice Department, to my knowledge, and only half-heartedly by the EEOC or the Department of Labor for the simple reason that their resources could not begin to support such an undertaking. I see nothing to suggest that massive resources to do the job will be forthcoming under this administration.

Viewed less charitably, however, this emphasis upon "actual victims" is nothing but a publicity stunt. The administration has taken or promised certain actions that belie their avowed commitment to this course. Let me mention only four. First, it has already attempted, unsuccessfully, to increase significantly the burden black plaintiffs must carry in order to establish a case of employment discrimination. Under the prevailing doctrine a plaintiff in a so-called disparate treatment case has to show only that he or she is black, was qualified for the job, applied for a job or promotion, was denied the job, and the job remained open thereafter. Yet, the Reagan Justice Department attempts to get the Supreme Court to hold that a case could be established only if the black plaintiff could show that he or she was *as* or *more* qualified than the person actually hired.[31] The logic is simple. If plaintiffs have this heavier burden to carry, they have less chance of prevailing, less chance of qualifying as an "actual victim," and less chance of being entitled to full recovery.

Second, a top Justice Department official has recently suggested that all current requirements that employers maintain personnel records on race, sex, or national origin should be abolished. With no such statistics, there can be no serious search for "actual victims" and no serious assessment of compliance with antidiscrimination laws.[32]

Third, the administration has attempted, ever since the beginning of the first Reagan term, to cut back drastically on regulations promulgated pursuant to Executive Order 11246, the contract compliance order requiring government contractors to take affirmative steps to avoid discrimination against racial minorities. The matter is currently the subject of intense debate between Labor Secretary Brock and Attorney General Meese, with the latter seeking a total end to the use of goals or timetables.[33] Of course, I find it heartening that Secretary Brock is for more modest revisions of the order. But, however that debate is resolved, it is likely that this administration, ultimately, will water down a potent tool utilized by

every president from Franklin Roosevelt to Jimmy Carter to open up jobs for minorities and women.

Fourth, we have seen this play before. Early in Reagan's first term, the head of Reagan's Civil Rights Division in the Justice Department announced that he was going to dispense with traditional desegregation litigation techniques. Instead, he was going to go school by school to ensure that blacks were not denied equal educational resources.[34] I have yet to see that policy implemented in a single community. It was not meant to be.

So, helping only "actual victims" may turn out to be a severe blow to civil rights by bringing class-based relief to a halt and replacing it with what, under the best of circumstances, will be a puny, ineffective attack upon pervasive examples of lingering racial discrimination. What sounds like a noble effort consistent with the best traditions of America–helping "actual victims" of discrimination–is at best a naive and senseless undertaking and at worst a cynical political game.

I have a feeling that the courts will continue to see this program for what it really is. My fear, however, is that public energy and the prior commitment to addressing our legacy of racism will be diverted and disheartened by these untiring efforts of the Reagan administration to turn the clock back.

Notes

[1]Pear, "Rewriting Nation's Civil Rights Policy," *N.Y. Times*, Oct. 7, 1985 at A20, col.3.

[2]*Memphis Firefighters v. Stotts,* 104 S. Ct. 2576 (1984).

[3]*Plessy v. Ferguson,* 163 U.S. 537 (1896).

[4]*Brown v. Board of Education*, 347 U.S. 483 (1954).

[5]*Korematsu v. United States*, 323 U.S. 214 (1944).

[6]*Green v. County School Board*, 391U.S. 430 (1968).

[7]*Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

[8]*Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

[9] See for example, *Doherty v. Rutgers School of Law-Newark*, 651 F.2d 893 (3d Cir. 1981).

[10]*Fullilove v. Klutznick*, 448 U.S. 448 (1980).

[11]*United Steelworkers of America v. Weber*, 443 U.S. 457 (1979).

[12]*Swann, supra* n. 7.

[13]*United Jewish Organizations v. Carey*, 430 U.S. 144 (1977).

[14]Taylor, "3 Bias Cases Before Supreme Court Could Reshape Law on Racial Goals," *N.Y. Times,* Feb. 23, 1986 at 28 col. 1.

[15]*Local 28 Sheet Metal Workers' Int. Assoc. v. Equal Employment Opportunities Commission*, 753 F.2d 1172 (1985).

[16]*Vanguards of Cleveland v. City of Cleveland*, 753 F.2d 479 (6th Cir. 1985).

[17]*Wygant v. Jackson Bd. of Educ.*, 746 F.2d 1152 (6th Cir. 1984).

[18]*Teamsters v. United States*, 431 U.S. 324 (1977).

[19]*Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976).

[20]Greenhouse, "Bias Remedy vs. Seniority," *N.Y. Times,* June 14, 1984 at A17 col. 1.

[21]Pear, "Justice Department Presses Drive on Quotas," *N.Y. Times*, April 3, 1985 at A16, col. 1.

[22]Barron, "Indianapolis Defends Its Hiring Plan," *N.Y. Times*, May 5, 1985 at 6E, col. 4.

[23]See, for example, *United States v. NAACP*, 779 F.2d 881 (2d Cir. 1985).

[24]*Vulcan Pioneers v. New Jersey Dept. of Civil Service*, 598 F.Supp. 732 (D.N.J. 1984).

[25]*Geier v. Alexander*, 593 F.Supp. 1263, 1265 (M.D. Tenn. 1984).

[26]Aplin-Brownless, "Administration Objects to Plan to Integrate Tennessee's Colleges," *Wash. Post*, Sept 30, 1984 at A3, col. 1.

[27]*Morrow v. Crisler*, 491 F.2d 1053 (5th Cir. 1974).

[28]*Kirkland v. New York State Dept. of Correction*, 520 F.2d 420 (2d Cir. 1975).

[29]*United Air Lines, Inc. v. Evans*, 431 U.S. 553 (1977).

[30]Evans and Fields, "Equal-Employment Agency to Focus Its Probes on Individual Victims of Bias," *Chron. of Higher Educ.*, Feb. 20, 1985 at 25, col. 1.

[31]*United States Postal Services Board of Governors v. Aikens*, 460 U.S. 711 (1983).

[32]Evans and Fields, *supra* n. 30.

[33]"Reagan Tells of Weighing Plans to Revise Minority Hiring Rules," *N.Y. Times*, Feb. 13, 1986 at B16, col. 5.

[34]"U.S. Weighs Suits Charging Unequal Minority Education," *N.Y. Times*, Oct. 5, 1981 at B14, col. 3.