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THE WHITE HOUSE
WASHINGTON

16 Nov 79

Secretary Vance
Zbig Brzezinski

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Rick Hutcheson

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Phil Wise

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November 15, 1979

The President of the United States
The White House
Washington, D.C.

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Mr. President:

The interest shown by your government and by many Americans in behalf of my liberation were undoubtedly a determining factor towards my recent release and reunion with my family. Also, your arrival at the presidency of the United States was intimately linked to the end of a 16-year complete isolation while imprisoned.

Furthermore, your Human Rights policy has been not only a great moral stimulus for Cuban political prisoners, but also an important support in facing abuses in Cuban jails.

In spite of Mr. Castro's earlier promises to release his political prisoners there are still thousands of men and women in prison and work camps. More than a thousand of them were detained during the early days of the regime. Among them: revolutionaries, labor leaders, workers, peasants and intellectuals. Today, there are also many young cubans in Castro's work camps for refusing to participate in his African adventure as well as others in prison for attempting to leave the island or due to their religious and political beliefs.

I wish to express my family's and my own gratitude to you, as well as a sincere hope that you may continue your efforts towards the liberation of all the Cubans who still suffer captivity because of their beliefs.

Respectfully yours,



Huber Matos

P. O. Box 55-7740
Miami, Fl. 33155

50-R

November 7, 1979

The President of the United States
The White House
Washington, DC

Mr. President:

~~The interest shown by your government and by many Americans in behalf of my liberation~~ were undoubtedly a determining factor towards my recent release and reunion with my family. Also, your arrival at the presidency of the United States was intimately linked to the end of a 16-year complete isolation while imprisoned.

Furthermore, your Human Rights policy has been not only a great moral stimulus for Cuban political prisoners, but also an important support in facing abuses in Cuban jails.

I wish to express my family's and my own gratitude to you, as well as a sincere hope that you may continue your efforts towards the liberation of all the Cubans who still suffer captivity because of their beliefs.

Respectfully yours,



Huber Matos

PO Box 55-7740
Miami, Florida 33155

THE WHITE HOUSE
WASHINGTON

16 nov 79

Ed Torres

The attached was returned in
the President's outbox today
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Rick Hutcheson

Lloyd Cutler

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THE WHITE HOUSE
WASHINGTON

11/15/79

Mr. President:

Lloyd Cutler will speak
with Ed Torres re why
you selected Renfrew in
spite of the law review
article.

Rick

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for Preservation Purposes**

THE WHITE HOUSE

WASHINGTON

November 15, 1979

*I read the
article
J*

MEMORANDUM FOR: The President

FROM: Ambassador Esteban E. Torres *ETT*

SUBJECT: Potential Nomination of Judge Charles
Renfrew as Deputy Attorney General

The nomination of Charles Renfrew as Deputy Attorney General presents a political problem of serious magnitude. Due to a law review article authored in 1977 Judge Renfrew can expect to encounter heavy opposition from Hispanic groups who will challenge his ability, as second in command of the Department of Justice, to effectively enforce affirmative action principles for Hispanics. This problem will manifest itself most obviously before the Senate Judiciary Committee who must give approval to the nomination. The following points are crucial:

- Hispanic groups such as the United League of Latin-American Citizens (LULAC) and Mexican-American Legal Defense and Educational Fund (MALDEF) have enlisted the assistance of other groups outside the Hispanic community such as the Urban League. Such a strategy cloaks this broadened effort as a defense of affirmative action generally and not as it particularly relates to Hispanics.

- Senator Kennedy as Chairman of the Judiciary Committee can be expected to mount an attack clothing himself as the spokesman for those groups that have suffered discriminatory treatment. Likely allies include Senators Bayh and De Concini, the latter having a substantial Hispanic constituency.

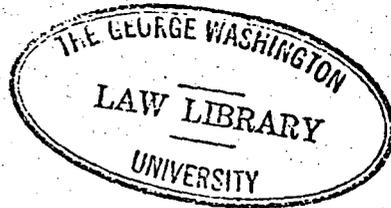
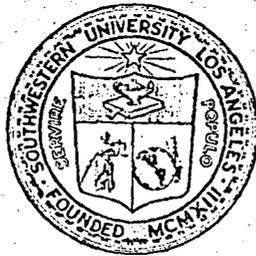
- Without a doubt politization of the Department of Justice should be avoided. Nomination of someone as Deputy Attorney-General who stands in line with your notion of applicability of affirmative action principles to Hispanics honors this commitment while assuring Hispanics, blacks and women of your continued support of this constitutional concept.

- Regardless of the reasons, the Hispanic community feels highly disappointed with the notion of Jerry Apodaca not being named to the Cabinet. The nomination of Charles Renfrew is being perceived as anti-Hispanic on the assumption that your administration tacitly endorses his constitutional philosophy through his nomination. Such a perception cannot be dismissed by the mere assertion of "vigorous enforcement" of affirmative action for Hispanics as a matter of policy.

Recommendation - Since Charles Renfrew has not been formally nominated, it is suggested that the search for Deputy Attorney General be continued so as to identify an individual in line with your philosophy of affirmative action.

APODACA

SOUTHWESTERN UNIVERSITY LAW REVIEW



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AFFIRMATIVE ACTION: A PLEA FOR A RECTIFICATION PRINCIPLE*

Charles B. Renfrew**

More than twenty years ago, in *Brown v. Board of Education*,¹ the Supreme Court provided the impetus for ending racial discrimination in public schools. Since that time, university officials have embarked upon novel courses of action designed to implement that goal. Ironically, the Supreme Court must now decide whether the Constitution necessarily inhibits efforts specifically designed to increase minority participation in higher education. The mootness decision in *DeFunis v. Odegaard*² forestalled a resolution of the preferential admissions controversy, but the opinion reflected the Court's belief that the issue was likely to be presented again quickly. "If the admissions procedures of the law school remain unchanged, there is no reason to suppose that a subsequent case attacking those procedures will not come with relative speed to this Court, now that the Supreme Court of Washington has spoken."³ The Court referred directly only to the admissions policies at the University of Washington which Marco DeFunis challenged. Yet, given the prevalence of preferential minority admissions programs in state universities nationwide, the statement carried much broader predictive significance. The Supreme Court's recent decision to review the determination of the California Supreme Court in *Bakke v. Regents of the University of California*⁴ means that a decision on the merits is likely.

© 1977 by Charles B. Renfrew, United States District Judge for the Northern District of California.

* This article will appear in a forthcoming book tentatively entitled CONSTITUTIONAL GOVERNMENT IN AMERICA: ESSAYS AND PROCEEDINGS FROM SOUTHWESTERN UNIVERSITY LAW REVIEW'S FIRST WEST COAST CONFERENCE ON CONSTITUTIONAL LAW (R. Collins, ed. 1978).

** I wish to express my gratitude to my law clerk, Jane E. Genster, for her invaluable assistance in the preparation of this article.

1. 347 U.S. 483 (1954).
2. 416 U.S. 312 (1974).
3. *Id.* at 319 (per curiam) (footnotes omitted).
4. 18 Cal. 3d 34, 553 P.2d 1152, 132 Cal. Rptr. 680 (1976), cert. granted, 429 U.S. 1090 (No. 76-811, 1976 Term).

The magnitude of the issue, coupled with the certainty of its imminent reassertion after the *DeFunis* decision, prompted widespread discussion in the legal community. In law review articles and in *amicus curiae* briefs submitted in connection with the cases, many of our most eminent scholars have addressed the central social, political and constitutional questions which this issue poses. Are racial classifications,⁵ whatever their motivation and whoever their beneficiaries, necessarily so pernicious as to be constitutionally untenable? The question evades easy resolution. One can advance cogent arguments, buttressed by an impressive array of case analysis and significant socio-political or economic theory, both for and against the reverse discrimination inherent in preferential minority admissions. There is simply no sharp line which separates the permissible from the impermissible in this context, and thus I cannot offer any firm or certain conclusions. I would, however, like to share some of the concerns which dominate my thinking on the subject and offer a possible approach which focuses more sharply upon the circumstances in which preferential treatment is afforded.

I begin with the assumption that the primary purpose of preferential minority admissions programs in graduate schools is to increase significantly the number of minority persons in the various professions, rather than to afford greater access to education to the culturally and economically deprived or to enrich the educational experience of all students at a particular institution.⁶ In short, although greater cultural and economic heterogeneity within student bodies may be a valuable by-product of increased minority

5. While racially mixed ancestry may make difficult the racial determination of any individual, current EEOC definitions add to these difficulties. For example, "white", with the effect of exclusion from an affirmative action program, is defined as "[a]ll persons having origins in any of the original peoples of Europe, North Africa, the Middle East, or the Indian subcontinent." 41 Fed. Reg. 17,601, 17,602 (1976); 1 EPL. PRAC. GUIDE (CCH) § 1710.

6. The structure and operations of the special admissions programs which have come to the courts' attention support this assumption. At the law school of the University of Washington at the time relevant to *DeFunis*'s complaint, the special consideration afforded a portion of the applicants was triggered solely by an applicant's avowal that he or she was a member of one of four minority groups which the University believed warranted special attention—Black Americans, Chicano Americans, American Indians, and Phillippine Americans. *DeFunis v. Odegaard*, 82 Wash. 2d 11, 507 P.2d 1169, 1174, (1973). The question of cultural and economic disadvantage was irrelevant in the decision making process. 507 P.2d at 1198 (Hale, C.J., dissenting).

During the time period relevant to *Bakke*'s complaint, the special admissions program at the medical school at the University of California at Davis purported to be open to individuals from economically or educationally disadvantaged backgrounds. *Bakke v. Regents of the Univ. of Cal.*, 18 Cal. 3d 34, 40 n.5, 553 P.2d 1152, 1156-57 n.5, 132 Cal. Rptr. 680, 684-85

admissions, the immediate goal is racial and ethnic diversity in the professions. Thus, the classification is based upon race and/or national origin and, I think, necessarily so. Weighting admissions programs in favor of minorities is the only available method practically adapted to achieve this goal within the next several generations.⁷ Finally, I accept the fact that preferential minority admissions do deprive members of the Caucasian majority of educational opportunities which they would have enjoyed, but for their race.

Under these circumstances, are preferential minority admissions ever constitutionally permissible? If so, are they equally justifiable regardless of the nature of the institution responsible for their creation? Finally, does the constitutionality of special admissions programs depend upon the ethnic or racial minority which they are designed to benefit?

The first question—the legality of reverse discrimination — has been the subject of voluminous commentary. Proponents of preferential admissions programs have generally advanced five interests to justify the policy:

6.5 (1976). In one respect, the program is less inclusive of minorities than the program utilized by the University of Washington; it excludes from special consideration a minority group member who cannot demonstrate disadvantage to the committee's satisfaction. At the same time, it is more inclusive of minorities in that it recognizes a broader range of minority groups. However, in operation, the special admissions program is certainly as exclusive of majority group members as that used by the University of Washington. Since the program began in 1969, no nonminority individual has ever been admitted under its auspices. Rather the trial court found, and the University did not challenge upon appeal to the state supreme court, that nonminority applicants were barred from participation in the special admissions program. *Id.* at 44, 553 P.2d at 1159, 132 Cal. Rptr. at 687.

In short, despite a disadvantaged background and the diversity which he or she might bring to the institution, the Appalachian Caucasian need not apply.

7. The July 25, 1977, San Francisco Chronicle reported that a study prepared by Franklin Evans, a researcher with the Education Testing Service in Princeton, New Jersey, concluded that if schools had followed a racially-blind admissions policy, only one in five black students admitted last fall would have been accepted.

Dissenting in *DeFunis*, Mr. Justice Douglas suggested that admissions of minority students could be adequately increased through a racially neutral selection process which afforded special consideration to culturally and/or economically disadvantaged students. *DeFunis v. Oberg*, 416 U.S. 312, 320 *passim* (Douglas, J., dissenting). This seems unlikely. It has been estimated that in order to maintain a minority representation of 15-20%, an institution which opted to a racially neutral admissions program for the disadvantaged would have to admit 40-50% of its students under this category. Sandalow, *Racial Preferences in Higher Education: Political Responsibility and the Judicial Role*, 41 U. CHI. L. REV. 653, 690 n.113 (1975). It is highly unlikely that the institutions could support the increased financial aid demands which such admissions would entail, and it is impossible to believe that the professions could benefit from the exclusion of those students best qualified under traditional criteria from such a large percentage of its places.

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(1) fulfillment of legal obligations imposed by federal and state affirmative action programs, (2) correction of the discriminatory effects of traditional admissions criteria, (3) representation of a cross-section of society in institutions of higher learning,⁸ (4) promotion of increased minority representation in the professions, and (5) correction of the effects of past discrimination.⁹ Of these five potential interests, only the nexus of the fourth and fifth appears to me to be a strong enough basis for judicial validation of a flat racial or ethnic preference.

Reference to affirmative action obligations imposed by state or federal law cannot inform the constitutional question. Quite clearly, if a sufficient number of qualified minority professionals are not available to fill positions in the required percentages, the demands of affirmative action programs will have to be restructured to conform with the number of available professionals. Affirmative action goals must follow constitutional interpretation rather than dictate it.

Likewise, speculation about the possible discriminatory effect of traditional admissions criteria, particularly standardized tests, is not a convincing rationale for the programs. Professor Posner is surely correct in stating that if the examinations were proven inaccurate as predictors of educational success with respect to disadvantaged minorities, the issue would not be one of preferential treatment at all.¹⁰

Finally, the concept that a racial classification becomes permissible if it accords with a university's or court's sense of a healthy and interesting racial, ethnic, and cultural blend is unprincipled. The diversity of experience may enrich education, but it is not clear that the constitutionality of racial classifications can vary with the proclaimed goals of any institution. The chief goal of a manufacturing plant is productivity. Yet it is fatuous to suggest that an employer who hired only men because he strongly believed

8. The goal of representation of a cross-section of a society in all institutions of higher learning too easily falls into the statistical parity described with unusual insight by Nathan Glazer in *AFFIRMATIVE DISCRIMINATION: ETHNIC INEQUALITY AND PUBLIC POLICY* (1975). He pointed out that such a goal, despite its avowed good intentions, may cost more than it benefits. Not only does it promote ethnic and racial groupings, causing division and disharmony among races, but it replaces our concern for individual claims to consideration on the basis of justice and equity with a concern for rights for publicly determined and delimited racial and ethnic groups.

9. The conglomerate of interests potentially served are summarized in O'Neil, *Racial Preference and Higher Education: The Larger Context*, 60 VA. L. REV. 925, 942 (1974).

10. Posner, *The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities*, 1974 SUP. CT. REV. 1, 7.

that the presence of women impedes productivity would pass muster under Title VII of the Civil Rights Act,¹¹ or that a public employer who hired exclusively members of one race to forestall the distractions generated by perceived racial tensions would receive constitutional approval. Moreover, defining certain goals as constitutionally protected and others as legally suspect would serve only to insure that the permissible goals would be advanced by any challenged institution. The difficulty of proving the motivation which actually inspired any given program would be insurmountable.

It is rather the fact of minimal minority representation in the professions coupled with a history of past discrimination which sets reverse discrimination apart from other racial classifications. If preferential admissions policies are constitutionally permissible, the justification must necessarily be that a minority's current underrepresentation in a particular field can be said, with some certainty, to be the result of a pervasive and long-term pattern of *de jure* discrimination by the Caucasian majority.

Those who argue that preferential admissions are constitutionally impermissible frequently emphasize the importance of developing and adhering to neutral principles applicable to all racial and ethnic classifications, regardless of the group identity of the beneficiary and victim. Professor Posner's contention that "the distribution of benefits and costs by government on racial or ethnic grounds is impermissible"¹² is the clearest example of this approach.

The value of racially neutral principles, in securing both the appearance and actuality of justice, can hardly be denied. Their value can, however, be overstated. Were we, in the Rawlsian fashion, to step behind the veil of ignorance and formulate governing principles for a newly organized society,¹³ I have no reason to doubt that we would choose a racially neutral principle such as Professor Posner suggests. And were a society to evolve according to such a principle, justifying deviation from it at any future point would be exceedingly difficult.

Racially neutral principles seem to promise justice when adopted by a society without a past. Yet they guarantee no more than the appearance of justice when elected by an existing society without regard to its past. If the current distribution of societal advantages has been shaped to a significant

11. 42 U.S.C. § 2000e *et seq.* (Supp. II, 1972).

12. Posner, *supra* note 10, at 22.

13. J. RAWLS, A THEORY OF JUSTICE (1971).

extent by past inequities toward a particular racial or ethnic minority, the imposition of Posner's principle will prolong the effects of the historical discrimination and thus further hinder the disadvantaged group. Under these circumstances, it would appear that the only just legal principle is one designed to compensate for unrectified historical wrongs.¹⁴ It is one I call the rectification principle.¹⁵

Assuming momentarily that a case for reparations can be made by various minority groups, the first question is whether either the equal protection clause of the fourteenth amendment, or the case law interpreting it, poses an absolute barrier to the use of such a principle in the context of preferential admissions. The language of section 1 of the fourteenth amendment is straightforward: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." Despite the fact that the amendment was principally directed at remedying the legal inequalities that accompanied slavery, the congressional debate on bills which preceded the fourteenth amendment and on the fourteenth amendment itself suggests the legislators' awareness of the scope of the clause, and its possible application to persons other than freedmen and, indeed, other minorities.¹⁶ Yet, given the context of the times, it is not surprising that the legislative history offers little assistance in addressing the issue of preferential minority admissions. It is difficult to believe that mid-nineteenth century congressmen gave any serious consideration to the possibility that minorities might some day be the beneficiaries of favorable discrimination at the expense of the white majority. Thus, the legislative history contains no blueprint for meeting a situation in which the prohibitive language of the amendment conflicts with its ameliorative purpose.

Alexander Bickel's painstaking study of the legislative history led him to conclude that the amendment's framers, aware that they were formulating

14. It is interesting to note that the conservative social philosopher Robert Nozick views the rectification of historical wrongs as a legitimate basis for the redistribution of holdings. See Nozick, *Distributive Justice*, 3 PHIL. & PUB. AFFAIRS 45, 48-49, 125-26 (1973). Nozick's theory of entitlement generally eschews Rawlsian redistribution to maximize the position of the least advantaged. Nozick notes, however, that the entitlement theory cannot be used "to condemn any particular scheme of transfer payments, unless it is clear that no considerations of rectification of injustice could apply to justify it." *Id.* at 126.

15. Support for this principle may be found in *Morton v. Mancari*, 417 U.S. 535 (1974), in which the Supreme Court held that the Indian preference provided by the Indian Reorganization Act of 1934 was not in violation of Title VII of the Civil Rights Act as extended to federal employees.

16. See generally Bickel, *The Original Understanding and the Segregation Decision*, 69 HARV. L. REV. 1 (1955).

a constitution, intentionally chose "language capable of growth," "whose future effect was left to future determination."¹⁷ He suggested, although in a different context, that "the record of history, properly understood [leaves] the way open to, in fact invite[s], a decision based on the moral and material state of the nation [at the present time], not 1866."¹⁸ Thus, the legislators of the past seem to direct us to the evolved wisdom of the present to resolve modern fourteenth amendment controversies.

A study of equal protection precedent regarding race suggests that the fourteenth amendment can accommodate a rectification principle, although that message is not unqualified. The fourteenth amendment guarantee of equal protection is a personal right,¹⁹ "universal in [its] application, to all persons . . . without regard to any differences of race, of color, or of nationality . . ."²⁰ Classifications based upon race have become the paradigm of suspect classifications, and when subjected to strict scrutiny have been found constitutionally impermissible. The Supreme Court so found in *McLaughlin v. Florida*:²¹

[W]e deal here with a classification based upon the race of the participants, which must be viewed in light of the historical fact that the central purpose of the Fourteenth Amendment was to eliminate racial discrimination emanating from official sources in the States. This strong policy renders racial classifications "constitutionally suspect," . . . and subject to the "most rigid scrutiny," . . . and "in most circumstances irrelevant" to any constitutionally acceptable legislative purpose.²²

Whether strict scrutiny is the appropriate standard of review for discrimination which favors rather than hinders minorities has been the subject of extensive debate. Strict scrutiny is a standard of review — a formula designed by the judiciary to ensure the fulfillment of the equal protection clause guarantee — rather than a constitutional mandate itself. It is rooted in the judiciary's special solicitude for discrete, historically disadvantaged minority groups to whom the political process can be expected to be, and has in fact been, unresponsive.²³ This fact suggests that the propriety of strict scrutiny depends upon a showing of majority action which victimizes a minority, and has prompted some to contend that the catalyst for extraordi-

17. *Id.* at 63, 64.

18. *Id.* at 65.

19. *Shelley v. Kraemer*, 334 U.S. 1, 22 (1948).

20. *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

21. 379 U.S. 184 (1964).

22. *Id.* at 191-92 (citations omitted).

23. *See, e.g., United States v. Carolene Prod. Co.*, 304 U.S. 144, 152-53 n.4 (1938).

nary judicial review is lacking when majority action hinders the majority, as in the preferential admissions context.²⁴

The argument is a strong one, recommended by the traditional notion of separation of powers and, to some extent, by the Supreme Court's recent decision in *United Jewish Organizations of Williamsburgh, Inc. v Carey*.²⁵ Given the profound intellectual ambivalence which the issue creates, and the societal values which compete for recognition in this context, the resolution of the controversy will undoubtedly entail some consideration of a societal ideal and a balancing of the respective veils of color-consciousness and color-blindness toward its attainment. Such a decision is more appropriately relegated in the first instance to the legislature than to the courts:

When such choices must be made, the effort ought to be to draw from the legislature, as the most broadly representative, politically responsible institution of government, a focused judgment about the appropriate balance to be struck between competing values. Once the legislature has made such a judgment, courts ought to be extremely hesitant to upset it, for if the values to which law gives expression are to change over time, the legislature's warrant for making the necessary decisions is a good deal stronger than that of the courts.²⁶

However persuasive this argument might be, it is largely irrelevant to the issue of preferential admissions as it has been presented to the courts.²⁷ The admissions practices in question are not the product of legislative deliberation and enactment, but rather the formulations of more insulated groups of university officials.²⁸ University officials may design admission policies under authority properly delegated to them by state legislatures, and thus, in law and in theory, many such policies may be labelled legislative judgments. Yet, if greater judicial deference is owed a legislative decision to discriminate against the majority than a similar decision to discriminate against a minority, that deference must stem from the fact, rather than the fiction, of the broad-based fact finding, debate, and publicity which would presumably precede such a legislative decision.

24. See Ely, *The Constitutionality of Reverse Racial Discrimination*, 41 U. CHI. L. REV. 723 (1974).

25. 430 U.S. 144 (1977), especially the concurring opinion of Justice Brennan at 176.

26. Sandalow, *supra* note 7, at 700-01.

27. This point is similarly made by Sandalow, *id.* at 698.

28. It is questionable whether the nature of a university enables it to engage in vital public debates and evaluation concerning the implementation of preferential admissions programs. Experience in the late sixties points out that the university appears to be peculiarly vulnerable to pressure from aggressive special interest groups which seem to threaten its existence. See Hauser, *Political Actionism in the University*, 2 DAEDALUS 265 (1975).

One might decide that a majority which chooses through the representative political process to discriminate against itself is constitutionally entitled to do so.²⁹ Yet I find no convincing support for the proposition that a state-imposed racial classification, even if it does represent the considered judgment of the majority whom it injures, is entitled to a presumption of constitutionality. Others can debate whether such a classification must be "necessary to promote a *compelling* governmental interest"³⁰ or "must serve important governmental objectives and must be substantially related to achievement of those objectives."³¹ For purposes of this discussion, I will assume that the standard of review is strict scrutiny.

Not since *Hirabayashi v. United States*³² and *Korematsu v. United States*³³ has the Supreme Court permitted the use of racial classification, except to remedy prior illegal discrimination. This prior discrimination exception exposes the contradiction in the law as applied to the preferential admissions controversy, and may lay the foundation for the development of a broader rectification principle. Despite the fact that equal protection is an individual rather than a group right, the federal courts have in the past temporarily subjugated personal interests to group interests to rectify racial injustice. However suspect racial classifications may be, the courts have frequently sanctioned and in fact have required the use of race-conscious remedies to redress past discrimination.³⁴ The courts have moved cautiously in this area, acutely aware of the thorny problems of reverse discrimination which racial preferences and quotas entail. They have universally required a showing of a discriminatory status quo, *i.e.*, a demonstration of present

29. It should be recognized that this formulation presents a series of questions which are more easily posed than answered. For instance, would legislation passed by a state be entitled to the same deference as legislation enacted by Congress pursuant to section 5 of the fourteenth amendment? If so, would not a state whose collective minority population exceeds that of its Caucasian population be barred from instituting preferential minority admissions? It has been estimated that it will be so in California by the middle 1980's. Is the majority upon which the theory focuses determined by the racial and ethnic backgrounds of the voters or of the legislators?

30. *Dunn v. Blumstein*, 405 U.S. 330, 342 (1972), quoting *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969) (emphasis in original).

31. *Craig v. Boren*, 429 U.S. 190, 197 (1976).

32. 320 U.S. 81 (1943).

33. 323 U.S. 214 (1944).

34. *E.g.*, *United Jewish Organizations of Williamsburgh, Inc. v. Carey*, 430 U.S. 144 (1977) (remedial voting redistricting); *Swann v. Charlotte-Mecklenberg Bd. of Educ.*, 402 U.S. 1 (1971) (school desegregation); *United States v. Montgomery Bd. of Educ.*, 395 U.S. 225 (1969) (school desegregation); *NAACP v. Allen*, 493 F.2d 614 (5th Cir. 1974) (employment discrimination); *Vulcan Soc'y of New York City Fire Dep't, Inc. v. Civil Serv. Comm'n*, 490 F.2d 387 (2d Cir. 1973) (employment discrimination); *Carter v. Gallagher*, 452 F.2d 315 (8th Cir. 1971), *cert. denied*, 406 U.S. 950 (1972) (employment discrimination).

disparate minority representation in a field which is reasonably believed to stem from past illegal discrimination. But the precedent for relief based upon such a showing is open-ended.

Those who would restrict the precedent set by race-conscious remedies frequently characterize their use as a carefully circumscribed response to specific, past, proven discrimination. From this characterization flows the contention that preferential admissions are justifiable only for a university proven guilty of past discrimination, and only in favor of the minorities against whom that particular school has discriminated. Given the operation of the judicial system, the courts' prescription of race-conscious remedies tends to be triggered by a finding of illegal discrimination on the part of a defendant and tailored to correspond to the extent and degree of the illegality. Yet, this does not describe the outer ambit of judicial validation of remedial racial preferences. Courts have, for example, upheld employment quotas imposed by state and federal contracting requirements, not upon a demonstration of past discriminatory practices by particular, challenged defendants, but instead upon a general showing by the government that an industry is racially imbalanced and that the imbalance stemmed from past, broad-based discrimination.³⁵ Therefore, general approval for preferential admissions programs following proof that academia has widely discriminated against identifiable minority groups is not such a novel step.

Similarly, the present accepted remedial response is often described as narrowly formulated to benefit only proven victims of discrimination rather than their children and their children's children. This description is followed by the argument that preferential admissions deviate from past remedial practices in benefitting groups rather than individuals. Courts have indeed expressed concern that the boundaries of relief be restrictively drawn and, where the facts of the case permit, prescribed preferential treatment only for those proven injured.³⁶ But surely relief which consists of a hiring quota for a given period of time carries a broader, more general preference, extending beyond those individuals who actually suffered discrimination at the hands of a defendant to a gross, group preference³⁷ — much like that afforded by preferential minority admissions programs.

35. *E.g.*, *Associated Gen. Contractors of Mass., Inc. v. Altschuler*, 490 F.2d 9, 16-19 (1st Cir. 1973), *cert. denied*, 416 U.S. 957 (1974).

36. *See, e.g.*, *Chance v. Board of Examiners*, 534 F.2d 993, 998 (2d Cir. 1976); *Kirkland v. New York State Dep't of Correctional Servs.*, 520 F.2d 420, 430 (2d Cir. 1975), *cert. denied*, 429 U.S. 823 (1976).

37. *See, e.g.*, *Vulcan Soc'y of New York City Fire Dep't, Inc. v. Civil Serv. Comm'n*, 490 F.2d 387, 398-99 (2d Cir. 1973).

One could continue to point out the limitations of each potential basis for distinguishing race-conscious remedies presently used by the courts from racially preferential admissions policies. Exhausting the list would, I believe, ultimately demonstrate only that the cases offer no dispositive ground for rejecting as a matter of constitutional doctrine the use of a rectification principle in university admissions. The dangers of and motivation for the two forms of race-consciousness are identical. The evils of racially based remedies are, in substance, the same as those of preferential admissions: At some point, for some segment of affected individuals, race becomes the definitive factor. The catalyst for the imposed remedies and the rectification principle is likewise the same: A minority's minimal representation in a particular field is reasonably believed to result from racial discrimination. And, in the final analysis, the justification is the same: In the absence of an extraordinary societal response, a status quo derived from race discrimination is most likely to be reinforced and prolonged.

The hesitation to read past precedent to permit preferential minority admissions programs stems, in large part, from the seemingly boundless nature of the license to classify upon racial and ethnic grounds to which affirmation might extend. Many have expressed the fear that, once given judicial approval, such preferences could be extended for an indeterminate period of time to innumerable racial and ethnic groups. Such concerns are not entirely baseless. In addition to special programs for blacks, Spanish-surnamed, American Orientals, and American Indians, the Office of Federal Contract Compliance Program has set up outreach and positive recruitment programs for individuals of Eastern, Middle, and Southern European ancestry, such as Jews, Catholics, Italians, Greeks and Slavs.³⁸ While these programs deal with employment matters, there is every reason to believe that any group, once it has received special benefits because of its particular ethnic identity, will obtain, or seek to obtain, special preference in other areas such as education if some type of statistical parity program is adopted as the touchstone. The potential scope and duration of preferential admissions programs does set them apart from most of the remedies adopted by the courts to date. If validated by the Supreme Court, the programs would undoubtedly be maintained by many schools which presently operate under them and perhaps instituted by some which presently have no such program. Moreover, their cessation is more likely to depend upon the diminution of public support for their continuance, than upon the expiration of a court order.

However, judicial affirmance of a rectification principle in the context of preferential admissions would entail some clear theoretical limits. The

38. 41 C.F.R. § 60-50.1(b) (1976).

principle of reparations gives no carte blanche to preferential admissions, but is grounded upon the basic premise of remedial case law: "[W]hile quotas merely to attain racial balance are forbidden, quotas to correct past discriminatory practices are not."³⁹ The rectification principle does not authorize a grand scheme of social engineering which proceeds blindly toward the goal of statistical parity in the professions. Nor does it ignore the fact that various racial, ethnic, and cultural groups may value some occupations more highly than others, and freely orient themselves professionally consistent with those priorities. Nor does it assume that minimal representation necessarily stems from pervasive discrimination, without considering the practical, expected difficulties posed by recent immigration, cultural disorientation, and language barriers.

Proponents of preferential admissions programs ordinarily refer to "minorities," without distinguishing among the various groups. *Yet minority status, standing alone, is insufficient to justify preferences under the legal theory which I have advanced. In order to invoke a rectification principle, minority status must be paired with a history of pervasive discrimination by the majority. Finally, minority status and past discrimination are not sufficient conditions. In order to justify racially conscious remedies, it must be satisfactorily proven that the effect of the discrimination is an underrepresentation in a particular field; that is, there must be a demonstrable current social problem caused by historical injustice.*

The rationale of the rectification principle poses a problem rarely addressed by legal thinkers. Our national history not only evinces discrimination of varying nature and degree against a series of minority groups, but also suggests that the lingering effects of such injustice differ with respect to the various groups. Although the quantum relationship between past discriminatory practice and present group status cannot be estimated with any certainty, an extensive link is clear in some cases. More than a century ago, Alexis de Tocqueville recorded the existence of "three races" in the United States—the European, the Indian, and the Negro.⁴⁰ Today, we could probably gain general societal agreement that the discriminatory behavior of the white majority is quite directly responsible for the disadvantaged position of the American Indian and the American Black. The historical basis for this societal perception requires little elaboration.

De Tocqueville commented only briefly upon the plight of the American Indian: "The Indians will perish in the same isolated condition in which

39. *United States v. Wood, Wire & Metal Lathers Local 46*, 471 F.2d 408, 413, and cases cited therein (2d Cir.), cert. denied, 412 U.S. 939 (1973).

40. A. DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 370 (Vintage ed. 1945).

they have lived⁴¹ Although isolation has not been the goal of modern governmental policy toward the Indians, the treatment afforded the American Indian by the white majority has resulted in their continuing seclusion from the mainstream of American life. The conduct of the white majority was early characterized by extremes: The plunder and fragmentation of Indian society by early European settlers was followed by the federal government's announced broad solicitude for the tribes' future, a paternalism not without its opportunism. The majority's behavior has since been characterized by ambivalence: Governmental policy has wavered between the goal of cultural integrity and autonomy for the Indian and the goal of cultural assimilation. Whatever the wisdom or benefits of these approaches, they have not notably advanced the end of social equality for the American Indian.

The history of Black Americans is one with which we are all painfully familiar — a people whose very presence on the continent resulted from physical brutality and coercion, who first experienced life in this country as slaves, whose emancipation fostered the thirteenth and fourteenth amendments, and whose continuing battle for social equality has been the mainstay of equal protection litigation ever since. De Tocqueville commented that "slavery recedes, but the prejudice to which it has given birth is immovable."⁴² While his vision has not proved fully accurate, it long remained more correct than any of us can comfortably admit. We do not and cannot know precisely how the distribution of societal advantages between blacks and whites might differ if blacks had been able to and had chosen to immigrate to the United States as free persons, or had de jure racial prejudice proved amenable to rapid extinction. But we know that the composition of our professions would be very different and, for that reason, the moral responsibility of the white majority vis-a-vis the blacks seems clear.

The history of extensive and long-lived de jure discrimination distinguishes those minorities from all others in the United States. Once we move beyond those minorities whose inferior status was governmentally approved, it becomes increasingly difficult — if not impossible — to estimate our historic debt. Can we determine with any precision the degree of past discrimination necessary to justify national remedial action? The difficulty of this inquiry is illustrated by reference to the Spanish-surnamed Americans. How do we evaluate the claim of this group to preferential treatment,

41. *Id.*

42. *Id.* at 373.

LIBRARY

LIBRARY

in light of the more regionalized, less pervasive, but clearly discernible prejudice which they have suffered?

The fact of such prejudice is undisputed. Yet has it been the pervasive *de jure* and nationwide discrimination suffered by blacks and native Americans? The greater number of these Americans either came to this country voluntarily or are the descendants of those who did. What effect does this have when contrasted with the experience of blacks and native Americans? How do we rationally justify a difference in the treatment given an immigrant from Cuba from that given an immigrant from India? The definition of Spanish surname or Hispanic given by the EEOC is also broader than the class of persons who may have suffered any prejudice. Hispanic is defined as "all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race."⁴³ Should a Portuguese immigrant receive less favorable consideration than one from Spain simply because of the difference in national origin? This is not to say that there may not be, indeed should be, programs giving recognition to persons from culturally or economically deprived backgrounds, but participation in such programs should not be restricted by race or national origin.

The task of calculating the impact of discrimination against any group other than American Indians and blacks is likewise elusive. Focusing upon the professional achievements of Asian Americans may help to illustrate the problems of this sort of assessment. It is indisputable that during the late nineteenth century the Chinese suffered widespread discrimination in the western United States. It is often pointed out that Chinese Americans are minimally represented in the legal profession in this country. Yet is it clear that the relatively small number of Chinese attorneys results from majority prejudice? Chinese culture has traditionally respected very little the legal profession and has stressed achievement in the sciences. Given the much greater number of Chinese Americans in the fields of medicine and engineering in this country, it may be that the group's representation in the two professions is a result of cultural background and choice, rather than a product of past discrimination. If this is the case, the conditions of the rectification principle cannot be met. Past discrimination without lingering pronounced social effects does not stimulate a remedial response.

Fairly analyzed, a rectification principle imposes a rather heavy burden upon the group which claims entitlement to its benefits. Because no other group can cite a history of *de jure* discrimination of similar magnitude, nor

43. 41 Fed. Reg. 17,601, 17,602 (1976); 1 EML. PRAC. GUIDE (CCH) ¶ 1710.

claim comparably egregious results, a national rectification principle must perhaps, fairly and logically, be limited to American Indians and blacks. Such a restriction admittedly cleaves a distinction which ignores some unsavory American history. But law making consists largely of line drawing, and the threshold for judicial affirmance of racial preferences is a very high one. Objectively viewed, a rectification principle is not a panacea for the social problems created or exacerbated by limited minority representation in the professions. The Supreme Court may in its wisdom decide that the questions posed by *Bakke* are more appropriately answered by resort to a different legal theory. Congress may perhaps decide that the social ills caused by economic and educational disparity among various ethnic and racial groups require a broader, more inclusive response. However, if the standard of review is strict scrutiny and the justification is past majority injustice with marked continued effects, the license for preferential minority admissions may be less expansive than those who support the university policies have previously recognized.

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THE WHITE HOUSE
WASHINGTON

Phil has seen

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THE WHITE HOUSE
WASHINGTON

Mr. President:

Strauss would like to bring Neil Hartigan by today for you to thank him for his endorsement. Its a 2 minute drop-by and I suggest at 11:28 am.

approve disapprove

Phil

D

THE WHITE HOUSE
WASHINGTON

*Phil has
seen.*

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THE WHITE HOUSE
WASHINGTON

Mr. President:

Kraft would like to
bring Ed Kelly of Chicago
by for a thank you for
his endorsement. He's
now in Hamilton's office.

Phil

approve disapprove

J

12:25 PM
12:70 PM

THE WHITE HOUSE
WASHINGTON

November 15, 1979

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MEETING WITH DORIS BRENNER
Friday, November 16, 1979
12:20 p.m. (5 minutes)
Oval Office

From: Dan Tate *DT*

I. PURPOSE

To meet with Doris Brenner, a member of the White House Staff, who is leaving to work for Department of Transportation Congressional Liaison.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

Doris Brenner has been working as a Staff Assistant in your Congressional Liaison office with me since you were inaugurated. She has been a tireless and extremely loyal employee for you. Besides trying to keep me out of trouble, she also managed to carry out many important responsibilities assigned specifically to her (e.g., clearing our Presidential nominees with interested Senators and Committees and notifying affected offices -- a truly mammoth task). After working an 11-hour day here, Doris goes to school several nights a week to achieve her Masters in Business Administration.

She is joining the Congressional Liaison staff at the Department of Transportation where she will be a lobbyist and work primarily with the Senate. This is a great step for her in her career. She will do a fine job for Secretary Goldschmidt and for you. Today is her last day.

Participants: Doris Brenner and Dan Tate

Press Plan: White House Photo

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

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Meeting with
James and Mary Whitmore
Friday, November 16
12:15 p.m.
(3 minutes)
The Oval Office

(by: Alan Raymond)

- I. PURPOSE: brief greeting and photo opportunity
- II. BACKGROUND, PARTICIPANTS, PRESS:
- A. Background: Jim Whitmore is presently performing as Will Rogers at Fords Theater and had invited the President to attend the November 4 performance on the centennial anniversary of Rogers' birth.
- Purpose of this meeting is for the President to thank Whitmore for contributing his time and talent by appearing in three anti-inflation public service ads produced by the Advertising Council, Inc.
- B. Participants: The President
James Whitmore, Actor
Nancy Whitmore, his wife
- C. Press: White House Photographer
- III. OTHER INFORMATION: The Ad Council public service campaign was produced at the request of and in cooperation with the administration. It is funded in part by the departments of Agriculture, Labor, Treasury, and Commerce.
- Whitmore volunteered to portray Rogers in the television ads, which include some Rogers humor and focus on the need for a cooperative effort to fight inflation and offer a free booklet on inflation, "Dollars and Sense."

12:10 PM

THE WHITE HOUSE

WASHINGTON

November 15, 1979

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MEMORANDUM FOR THE PRESIDENT

FROM: JACK WATSON *Jack*
SUBJECT: Brief Meeting with Mayor Richard Stanton
of Manchester, New Hampshire 12:10 p.m.

Mayor Stanton is a conservative democrat who was just re-elected with over 60% of the vote. He has always been helpful and friendly to your Administration. He is one of several New Hampshire mayors who will publicly endorse you for re-election next Friday at a press conference.

The Mayor and his aide, John Hoben, will meet with Bruce Kirschenbaum of my staff prior to seeing you, for the purpose of discussing a downtown redevelopment project for Manchester. We will follow up with him on these matters, but it would be appropriate for you to reference your interest in his efforts to revitalize the city.

THE WHITE HOUSE

WASHINGTON

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November 16, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE KIRSCHENBAUM *BK*

SUBJECT: Mayor Charles Stanton of Manchester, New Hampshire

The Mayor is here to discuss a new plan for downtown redevelopment.

Last year (November 1978), the question of such development went to referendum. Two questions of general support won but the specific plan/developer lost.

The Mayor has now built consensus on a new plan he needs federal help with.

Manchester Background

- 96,000 population
- According to the Mayor, in the last five years downtown has lost:
 - 30% of its office space (IBM, telephone company and others have moved to suburbs).
 - 50% of its retail space (has no major department store or movie theatre).

KIRSCHEBAUM, BRUCE

1:00 p.m.

THE WHITE HOUSE

WASHINGTON

November 15, 1979

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MEMORANDUM FOR THE PRESIDENT

FROM: JACK WATSON ^{Jack} STU EIZENSTAT

SUBJECT: Meeting with the Governors on Iranian
Situation, Friday, November 16, 1979
1:00 - 1:30 p.m. East Room

Purpose of the Meeting. The purpose of the meeting is to brief the governors and their energy aides on the Iranian situation and to ask for their help in ameliorating the potential shortfall.

Participants. The briefers will include Secretaries Duncan, Vance, Miller, Deputy Secretary Sawhill and myself. A list of governors who will attend is attached.

Press Plan. The press will cover your remarks. Press will have an opportunity to meet the governors after the briefing.

Agenda.

- 11:30 - Lunch in the State Dining Room
- 12:20 - Move to the East Room
- 12:30 - Introduction by Jack Watson
- 1:00 Secretary Duncan--Overview of international oil supply and demand situation
- 1:00 - Presidential remarks and brief
- 1:30 question and answer period
- 1:30 - Deputy Secretary Sawhill--Federal and state
- 2:00 roles in responding to the potential shortfall
- 2:00 - Secretary Vance--Overview of the inter-
- 2:25 national situation
- 2:25 - Secretary Miller--Economic implications
- 2:45 of the situation
- 2:45 - Further Questions and Answers
- 3:00 - Meeting Concludes

TALKING POINTS

- I have asked you to join me here today so that we together, as partners, can ensure that we are prepared to respond to meet our energy needs over the course of the next weeks and months -- and well into the future. I want to share with you information I have on the impacts and consequences of the takeover of our embassy in Iran and of the actions which I have taken to secure the release of our hostages without compromising fundamental American principles and policies.
- I have asked Secretaries Vance, Miller, and Duncan, and the Deputy Secretary of Energy, John Sawhill, to give you that briefing and to answer your questions.
- At this critical time, my first concern is for the lives of the 60 Americans who are being held hostage in an act of terrorism which is totally outside the bounds of international law and diplomatic tradition. Though we each feel anger and outrage at what has happened to our countrymen and women, all Americans, and especially those of us in public office, must respond firmly but calmly. I enlist your continued support and help.
- The United States has made no move, and will make no move, that can be used to justify violent or imprudent action by anyone. While we are pursuing every possible avenue of diplomatic resolution, we are also acting unilaterally as appropriate, with restraint, but without hesitation. As you know, I have:
 - ordered an immediate halt to further U.S. imports of Iranian oil;
 - instructed Secretary Vance and Ambassador McHenry to oppose any U.N. Security Council discussion of Iran's problems as long as hostages are held;
 - discouraged the issuing of permits for demonstrations on federal properties in Washington to discourage further violence;
 - frozen Iranian official funds in U.S. banks; and
 - directed our immigration authorities to review the visas of some 50,000 Iranian students who are guests in this country.

-- At this point it is too early to assess precisely the impact of the Iranian situation on U.S. oil supply. The amount which Iran and other producing nations supply to world markets is at least as important as the amount we purchase directly. The consequences of the situation will depend upon production decisions made in Iran, and on the reactions of other producing and consuming nations. We do know, however, that the U.S. stock situation, and that of other countries, is good. Because we acted with foresight and prudence last spring and summer, our home heating oil supplies are high and we are well-prepared in that area to meet a cut-off of Iranian supplies.

If heating oil supplies were to become tight, we are prepared to take all necessary steps, including mandatory requirements. In addition, gasoline stocks are almost 3 1/2% higher than they were a year ago at this time.

-- Although we cannot yet know the impact of the current Iranian situation on our supply of imported oil, we have proven two things beyond all doubt. The first, which I have consistently stated since assuming office, is that our current reliance on foreign oil is unacceptable as a matter of national security. The second is that under no circumstances while I am President will economic blackmail influence the fundamental policies of our nation.

We must prepare ourselves to deal with a range of contingencies, whether stemming from this act of terrorism in Iran, other disturbances of the world market, or further price and production decisions which OPEC may take -- as early as its next meeting in Caracas.

-- There are several things we know that we must do.

- There are some states or regions of the country which, because of historical supply patterns, have been heavily dependent on Iranian sources of crude oil for their refineries. I have directed Secretary Duncan to ensure that necessary actions are taken to protect the citizens of those affected states and to do so promptly. The Secretary has the necessary authority to make sure that any dislocations or regional imbalances are quickly addressed.

- Second, we know that we must put in place the kinds of contingency plans which will ensure that, if we need them, our country is prepared to distribute scarce supplies fairly. The Energy Emergencies Act of 1979 which I signed into law less than two weeks ago contains significant authorities for stand-by gasoline rationing and for state conservation plans which we must work vigorously to implement. You have additional powers under federal and state law which can help to manage shortages.

55
Thermostats
Pub bldgs/factors
Oil → Cool unit

- The most immediate way to alleviate our dependence is through conservation. We must all act. I have asked Secretary Duncan to give conservation the highest priority within the Department. He has responded and given Deputy Secretary John Sawhill major responsibility in contingency and conservation planning. Secretary Duncan and Deputy Secretary Sawhill will not only be working directly with you and local governments on developing conservation measures, but will be reaching out to implement conservation measures throughout all sectors of our society -- industry, unions, community development groups, churches -- everyone, everywhere.

-- We will continue to monitor our supply situation and to provide you with the kinds of information which you will need to assess individual situations within your states. This will help you determine what actions within your own discretionary authority are warranted.

-- I must stress to you the importance of carefully coordinated actions by federal and state governments to cope with any shortages which may arise in the coming months. The eyes of the world -- both our allies and those with less friendly intent -- will be closely focussed on us all. We must -- and I know we will -- have full and bipartisan cooperation among all levels of government in this country. I know I can count on your support.

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GOVERNORS ATTENDING THE MEETING
November 16, 1979

ALEXANDER, LAMAR (Tennessee)
ATIYEH, VICTOR (Oregon)
BOWEN, OTIS (Indiana)
BRENNAN, JOSEPH (Maine)
BYRNE, BRENDAN (New Jersey)
CARLIN, JOHN (Kansas)
CARROLL, JULIAN (Kentucky)
CLEMENTS, BILL (Texas)
CLINTON, BILL (Arkansas)
DALTON, JOHN (Virginia)
DREYFUS, LEE (Wisconsin)
EVANS, JOHN (Idaho)
FINCH, CLIFF (Mississippi)
GALLEN, HUGH (New Hampshire)
GARRAHY, JOE (Rhode Island)
GRASSO, ELLA (Connecticut)
HUGHES, HARRY (Maryland)
HUNT, JIM (North Carolina)
JANKLOW, WILLIAM (South Dakota)
KING, BRUCE (New Mexico)
KING, ED (Massachusetts)
LAMM, DICK (Colorado)
LINK, ART (North Dakota)
LIST, BOB (Nevada)
MATHESON, SCOTT (Utah)
MILLIKEN, BILL (Michigan)
NIGH, GEORGE (Oklahoma)
QUIE, AL (Minnesota)
RAY, DIXY LEE (Washington)
RILEY, DICK (South Carolina)
SNELLING, DICK (Vermont)
THOMPSON, JIM (Illinois)

OTHERS ATTENDING THE MEETING

BARRY, MARION (Mayor of Washington, D.C.)
SCRANTON, BILL (Lt. Governor, Pennsylvania)
MIXSON, WAYNE (Lt. Governor, Florida)
MILLER, TERRY (Lt. Governor, Alaska)

re 1:50 p.m.

THE WHITE HOUSE

WASHINGTON

November 16, 1979

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MEMORANDUM FOR THE PRESIDENT

FROM: JACK WATSON *Jack*

SUBJECT: Update on Meeting with the Governors
at 11:30 a.m., November 16, 1979

Governor Brown will be attending the session this afternoon. He was one of the first Governors to publicly support your action stopping the purchase of Iranian crude. He also called for immediate implementation of odd/even and minimum purchasing programs in the State of California. The press criticized his actions to some degree because they maintained he caused the public to panic. He will probably emphasize the need for intensive long-term conservation and extensive use of solar energy. He is opposed to any use of nuclear power in the future and even in the interim. He is on the side of advocating a moratorium on further licensing nuclear plants.

This morning you received a letter from the National Governors Association signed by Governor Bowen and Governor Lamm (~~attached~~). In this letter, the Governors state that they are instituting a three-point plan of action:

- o implementation of "fast track" energy conservation; the term "fast track" is one added by Governor Lamm. In asking for fast track conservation, the Governors point out that "contingency measures", such as odd/even plans, can have little or no impact on price...on the other hand, conservation measures that permanently reduce energy demand can cushion the adverse impacts on our citizens of rising prices. (NOTE: Governor Lamm is borrowing the term "fast track" from the EMB issue though he is not here advocating rapid establishment of that Board.)

- o establishment of a comprehensive interstate conservation information exchange to share the latest ideas on conservation measures. The Governors are developing this on their own through the National Governors' Association and welcome DoE's cooperation in this effort.
- o implementation of emergency conservation contingency measures once it is demonstrated that the Iranian situation will result in an actual shortfall of petroleum supplies to our nation. Governor Lamm and Governor Bowen state that they are encouraging "the submission of tentative state contingency plans in anticipation of any shortfall that may occur." Sawhill will mention in his briefing that we hope to have implementation of these plans well underway by the first of the year, and that we will be working with the National Governors' Association staff to set specific timetables. (Before these schedules are set and announced, however, DoE should submit a workplan to you for approval.)

All of these points are completely consistent with our program and schedule.

The Governors are also asking for our support for passage of the Energy Management Partnership Act which we submitted earlier this year. You should note, given the opportunity, that we are strongly supporting passage of this Act and that Secretary Duncan is giving this the highest priority.

The letter further notes that they will be calling a major conservation conference. Again, we should strongly support such a conference and offer the Administration's assistance.

THE WHITE HOUSE
WASHINGTON

November 7, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: JODY POWELL 

SUBJECT: The Advertising Council Census Campaign

The Advertising Council has developed an excellent public service campaign aimed at increasing public understanding of the 1980 Census. On November 15, they will send out their first mailing to the media.

They would like to include a copy of the attached letter in their first public service kit, which will be sent to 850 television stations, 6000 radio stations, 10,000 newspapers and 6500 magazines and other publications.

The text of the letter has been approved by Vince Berabba and he says he is very pleased with the Ad Council's campaign.

It should be returned to Pat Bario and she will get it to Mr. Keim.

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THE WHITE HOUSE

WASHINGTON

November 7, 1979

To Bob Keim

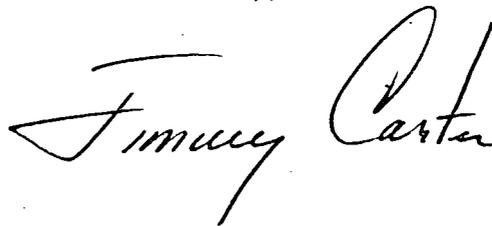
I am delighted that The Advertising Council has developed and is about to distribute a public service advertising campaign for the Twentieth Decennial Census, which will begin April 1, 1980.

The Census has become an invaluable tool, providing all Americans with vital, non-personalized facts and figures about our constantly changing society. This information forms the basis for countless decisions made by government, industry, labor, academia, the communications industry and many others.

I sincerely hope that the broadcast and print media, which provide the valuable public service time and space necessary for your campaigns, will make the fullest possible use of the material you will be sending them in the coming months. In particular, I hope that the media will give special and featured coverage to the Census message during the six weeks prior to April 1, 1980.

My thanks to The Advertising Council and all cooperating media for their efforts to promote public understanding and voluntary compliance with the 1980 Census.

Sincerely,

A handwritten signature in cursive script that reads "Jimmy Carter". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Mr. Robert Keim
President
The Advertising Council, Inc.
825 Third Avenue
New York, New York 10022

THE WHITE HOUSE
WASHINGTON

The attached was returned in the President's outbox. It is forwarded to you for your information.

Rick Hutcheson

16 Nov 79

FOR THE RECORD

MCDONALD HAS A COPY OF THE
ATTACHED.

THE WHITE HOUSE
WASHINGTON

November 15, 1979

*I incorporated
language from
AG, Cy & Chiz
J*

MEMORANDUM FOR THE PRESIDENT **Electrostatic Copy Made
FROM: AL MCDONALD *AM* for Preservation Purposes**
SUBJECT: AFL-CIO Speech

Legal Counsel is particularly concerned to make sure that the references in your speech today concerning the issuance of permits on Federal properties in Washington and a review of Iranian visas of Iranian studies are carefully worded. Suits may well be filed on these situations and they want to make sure that we have made no public statements that would jeopardize our legal positions in these upcoming contests.

If I could see your revisions, I would like to check these with our Legal Counsel and with the Attorney General's office simply to verify that we have no problems.

*P.S. - Susan has now shown
me these passports and I will
see that they are cleared legally -
*AM**

NAT COUNC NEGRO WOMEN 11/16/79

JOROTHY HEIGHT = NAT AGEN '80's

Pos. COURT VOL, AM NO SOUL

27 ORG PART of AM SOUL

TOGO, SENEGAL - PIG BANKS

ONE FISH

JOROTHY - SOUTH → NURSES,
BAPTIST - PRES, REELECTED

MARY McLEOD BETHUNE

JOBS, ED

DOED,

SANCTIONS, ZIM, RHOD

DOUBLE DISCRIM - ERA

EEOC → BLACK JUDGES

CHILD DEV, HOUSING, IMMUN

XPORT, INFL, ENERGY,

SALT, FAMILY,

CLOSE TO PEOPLE

Negro Women
11/16/79
Reception for Natl. Council

5:30 PM

THE WHITE HOUSE
WASHINGTON

November 15, 1979

MEMORANDUM FOR THE PRESIDENT

Electrostatic Copy Made
for Preservation Purposes

FROM: LOUIS MARTIN *LM*
GRETCHEN POSTON

SUBJECT: RECEPTION FOR NATIONAL COUNCIL OF NEGRO WOMEN
FRIDAY, NOVEMBER 16, 1979 5:30 P.M.

I. PURPOSE

To greet approximately 500 guests of the National Council of Negro Women who are in Washington for the 39th National NCNW Convention, November 14-17, 1979

II. BACKGROUND, PARTICIPATION AND PRESS

A. BACKGROUND: The National Council of Negro Women is an umbrella organization embracing twenty seven sections. Founded in 1935 by the late Mary McLeod Bethune, the Council now has an outreach to about four million women. Dorothy Height has been Council President since 1957.

The Council has been engaged in a wide variety of domestic and international concerns. After more than forty years of involvement in issues of survival and fulfillment, the issues of the Council today are the plight of children, the elderly, and families, unemployment in an inflationary economy, the crisis in energy and new opportunities in international relations.

B. PARTICIPANTS: The primary participants are representatives of the Council's national organizations and local units.

C. WHITE HOUSE STAFF: Louis Martin is coordinating.

D. PRESS: White House Photographers and Open Press Coverage

III. FORMAT AND TALKING POINTS

A. FORMAT: The President's remarks will be responded to by Dorothy Height.

B. TALKING POINTS: The Speechwriters have prepared talking points.

THE WHITE HOUSE
WASHINGTON

November 14, 1979

MEMORANDUM FOR THE PRESIDENT

FROM: Al McDonald
Rick Hertzberg
Achsa Nesmith

SUBJECT: Talking Points:
National Council of
Negro Women - Nov. 16

Attached is a set of talking points
for the above.

Cleared by

Stuart Eizenstat
Sarah Weddington
Jody Powell
Louis Martin
Anne Wexler

5:30 p.m.

A-1

THE WHITE HOUSE
WASHINGTON

November 13, 1979

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MEMORANDUM TO THE PRESIDENT

From: Rick Hertzberg
Achsa Nesmith

Subject: National Council of Negro Women
Reception, November 16

1. Whatever you wish to say about the situation in Iran.
2. It gives me great pleasure to welcome you here this evening to the White House.

One of the strongest supporters of voluntary action anywhere --my wife Rosalynn--has said that without volunteers America would have no soul. You here tonight, gathered under the banner of the National Council of Negro Women but representing 27 national organizations, are a very important part of America's soul. Volunteering is love made manifest, and you are proof of what love translated into action can do.

obvious to others

3. I am delighted also to welcome your visitors from Togo and Senegal. You have reached out to people around the world to share your techniques, such as "pig banks"*. You are helping not only to improve nutrition today, but to improve the ability of people to feed themselves tomorrow. There can be no more important aid to developing nations than to give their people--especially the women--the tools to build better lives for themselves and their children.

Fish and meal

4. Your President, Dorothy Height, typifies the dedication and selfless perseverance that are why this group has made such a difference in the lives of people in every community in our nation. I felt her insights and vision would make an important contribution to any serious look at our nation's future. That's why I appointed her to my Commission for a National Agenda for the 80s.

Dorothy and I have a number of things in common. We were

*Pig banks have given poor people in rural Mississippi an opportunity to raise their own livestock, and with the help of AID the National Council has helped set up similar programs in third world nations.

born in the South, although she left early in life. Our mothers were both nurses, and the Baptist church was an important influence on both our lives. There are differences, though--she was elected president at the national level long before anyone outside of Georgia knew my name.

5. The Council has worked with child development, housing, immunization and career counselling. You have provided supportive services for pregnant teen-agers and young women in trouble. Not only have you pointed out needs to the nation, but you have started us on the long and difficult road to solutions.

You have taken your stand where you were, where the need was. By your example, by the opportunities you have opened up for others, by the potential you helped fulfill, you have proved over and over again that one woman can make a difference in the lives of those around her.

Close to people

6. Your founder, Mary McLeod Bethune, fought for jobs and education and these have remained two of your major concerns. Jobs were my first domestic priority as President and with your help we created more jobs than ever before in the history of this nation, opening up new opportunities for women and black youth.

Yet all our gains are threatened by runaway inflation. The next months will be difficult for all of us. Job opportunities will tighten. Energy costs will rise. We must work together to make sure that the most vulnerable of our people do not suffer unfairly.

7. We increased federal funding for education by more than 25 per cent in one year alone, most of it for aid to college students from low and moderate income families, and for teaching basic skills to disadvantaged children. I am proud of what we have accomplished. We fought for a separate Department of Education to increase the effectiveness of our education dollars and to ensure equality of opportunity in education for all Americans.

8. With your help we won that fight, just as earlier we won the fight for the Panama Canal treaties. With your help we will win ratification of the SALT II treaties. You have shown your vision and your understanding that America bears a special responsibility to work for peace. I announced this week my intention to extend sanctions against Zimbabwe-Rhodesia. I will need your help on that as well.

9. You have lived with double discrimination. ERA can put the full weight of the Constitution behind your rights to equal justice and equal opportunity as women. It is important to deal with legislators in the unratified states, but also to get the message to other groups you work with -- not just women's groups, but all groups.

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10. Because you have also lived with racial discrimination all your lives, you know that legal rights are not just secured in the law books. They are finally secured in the courtrooms of this nation. I was determined when I took office to make sure that the federal judiciary was more broadly representative of our people. For that reason, I have appointed more black judges than all other previous Presidents combined. And I have not completed my work.

I was also determined that they would be highly qualified, sensitive, capable individuals. I knew that they would be deciding what our rights would be -- in credit, in housing, in employment, in education, in every aspect of our lives -- not just for the rest of this administration, but for many years to come. Federal Judges, unlike presidents, serve not for four years or even eight years. They serve for life. There is probably nothing I have done as President that will have more effect on your lives, and the lives of your children.

11. These are difficult times. There are no easy solutions to our nation's problems, no simple acts of President or Congress that can make them go away. Our major domestic problems require, as never before, the quiet, steady practice of individual responsibility. To conserve energy, to control inflation, to complete the long fight for the rights of every American--these things demand that every American be willing to do what must be done, unselfishly and in a spirit of sharing.

If history has taught us anything, it is that the difficult times can strengthen and unite us. They can be times of great breakthrough, especially in human rights, if we will it.

This has been your gift to our nation--your example of individual responsibility, of caring, of sharing. We need that kind of individual responsibility today as never before, if we are to preserve our hard-won gains and build a brighter tomorrow.

#

2:30 PM



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEETING ON THE 1981 BUDGET
Friday, November 16, 1979
2:30 P.M. (two hours)
The Cabinet Room

From: James T. McIntyre, Jr. *J. McIntyre*

I. PURPOSE

To discuss the 1981 Defense budget. Supporting materials were provided on Wednesday.

II. PARTICIPANTS

| | |
|---------------------|------------------|
| The Vice President | Jake Stewart |
| Harold Brown | Hamilton Jordan |
| Graham Claytor | Jody Powell |
| Ralph Crosby | Frank Press |
| Stuart Eizenstat | James McIntyre |
| Frank Moore | John White |
| Jack Watson | Bowman Cutter |
| Zbigniew Brzezinski | Randy Jayne |
| David Aaron | Dale McOmber |
| Henry Owen | David Sitrin |
| Victor Utgoff | Richard Stubbing |
| Jasper Welsh | |

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THE WHITE HOUSE
WASHINGTON

11/16/79

Jody Powell
Anne Wexler

The attached was returned in
the President's outbox today
and is forwarded to you for
appropriate handling.

Rick Hutcheson

THE WHITE HOUSE
WASHINGTON

11/16/79

Mr. President:

Rex Granum concurs.

Rick

THE WHITE HOUSE
WASHINGTON

November 14, 1979

MEMORANDUM FOR THE PRESIDENT

FROM:

ANNE WEXLER *AW*
BOB MADDOX *BM*

SUBJECT:

Special Call to Prayer for the Iranian Crisis

A number of individuals and national religious groups have called and written to say they would eagerly support and publicize a Presidential call for special prayer for the critical issue confronting us: Iran.

Some of these groups are meeting on Monday, November 19. If during the weekend you could call for special prayer on Thanksgiving Day, these groups would spread the word through national secular and religious press and television.

Such a call would further rivet the nation's attention on the problem and could lead us to an even deeper sense of unity in the midst of these crises. If you concur, a draft statement by Achsah Nesmith is attached for your approval.

approve disapprove

J

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Nesmith 11/16/79

CALL FOR NATIONAL PRAYER

As we approach our traditional day of national Thanksgiving the hearts of all Americans are heavy with concern for the safety of those held hostage in Iran.

We join with people of all faiths throughout the world who adhere to fundamental principles of human rights and international law. We are united with them in seeking an end to acts of terrorism against innocent people.

On Thanksgiving Day and during the holiday weekend, I ask all Americans to make a special prayer at churches and synagogues and places of public meeting.

Let us seek God's guidance in our search for peace and human brotherhood, and pray for the safe return of those whose lives are threatened. May we come with gratitude for our abundant blessings, and humility before the heavy burden of world responsibility that our blessings and power have brought.

ck
J.C.

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THE WHITE HOUSE
WASHINGTON

November 16, 1979
4:15 p.m.

Mr. President:

Robert Abboud, President, First National Bank of Chicago, wanted to congratulate you on choosing Phillip Klutznick for Secretary of Commerce. Wonderful choice--should help a lot in Illinois.

Phil

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THE WHITE HOUSE
WASHINGTON

November 16, 1979
3 p.m.

MR. PRESIDENT:

Senator Warner returned your call. If you were calling to express appreciation, you need not do it. He will be with you on major issues.

However, if you need help, he'll be in his office.

Phil

regular foreign affairs breakfast 11/16/79

THE WHITE HOUSE
WASHINGTON

For All

11/179

New cabinet in Iran

Israeli action - govt status?

Allies help us in Iran

Rhodesia

Habib mayor

E.I.T.s

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TNF

Parade permit

SALT - Magmihan amend.

Cy re UN

- 1) Release hostages
- 2) Int Commission under UN re H.R. Viol.
- 3) Legal system available re assets
- 4) Honoring contracts Iran ↔ US
- 5) Dip net in acc in int law/j custom

Harold - Mining

Iran students

11/16/79
W.H. Conference on Librarians

WH Conf on LIBRARIES 11/16/79
Boy XMAS BOOKS (C.H.H.S. GENTON C.H.S.)
Amy - book BANQUET = NO
2-3 day - 2/3 - wk
1st Pub Office - # 5

Now as President
- Jefferson - Quit School.
LIB of CONG.

TRUMAN - ONE of BEST ED.
DEMOCRACY - INFORMED PUB.
MOBILE SOCIETY

CONTIN ED = EXPAND LIFE
BLIND, INFIRM, ISOLATED
EXPLOSION - INFO ASSESS.
COLLECT, COLLECT, STORE-DIST.

EXPLORE NARROW INTEREST
Do ED
PRIVATE = MEDIA, LIONS, ETC
ACCOMM TO Δ WORLD

Gov's re ENERGY 11/16/79

Energy Briefing with Governors 11/16/79

BOWEN/LAMM - FAST TRACK
CONS = XCH IDEAS = CONTING.

BROWN - 1ST OK IRAN

MAJOR CONSERVATION CONFER.

PARTNERS = 2 1/2 YR EFFORT

IRAN DRAMATIZES NEED

NOT CONDEMN IRANIANS

RADICALS & TERRORISTS

PERMITS = IMPORTS = VISAS =

ASSETS = UNSC

ENERGY EMERG'Y ACT = 2 WKS
AGO

STATE CONSERV. RATIONING

SUPPLIES NOW OK.

FUTURE ?

SHARE INFO/ACTION

THE WHITE HOUSE
WASHINGTON

November 16, 1979

Mr. President:

Although you have already signed the Congressional Awards Bill, we could bring Wallop and perhaps Byrd in tomorrow for a photograph around 10:00. Before checking to see if they are available, I wanted to get your approval.

Approve _____ Disapprove _____

PHIL

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THE WHITE HOUSE
WASHINGTON

Rob. Byrd
Let's try

November 15, 1979

MEMORANDUM FOR FRANK MOORE

FROM: DAN TATE *D*

SUBJECT: Proposed Signing Ceremony for Congressional Awards Bill

The Senate sponsor of this bill, which is innocuous, is Malcolm Wallop (R-Wy). He has been very persistent in asking for a signing ceremony for the measure. Apparently, he is very proud of the bill and has contacted me on several occasions to express his strong interest in a ceremony.

More importantly, Senator Robert Byrd called me to encourage a signing ceremony. He thinks it would be helpful in bringing Wallop around on SALT. He called me personally to ask.

I recommend that we have a small ceremony. This is not a major piece of legislation so a full-blown affair would neither be necessary nor appropriate. We could gather a small group of people, of course including Wallop, and take care of the entire matter in a matter of minutes.

Again, I would recommend that we follow the suggestion of Senator Byrd with whom I concur on my own.

NOTE: The last day for action is Monday, November 19.