



**HARVARD JOURNAL
OF
AFRICAN AMERICAN
PUBLIC POLICY**



John F. Kennedy School of Government
Harvard University

TRIBUTE TO THE HONORABLE A. LEON HIGGINBOTHAM, JR.

Remembering Leon

Henry Louis Gates, Jr.

Harvard Farewell

Joseph S. Nye Jr.

Working with the Judge

Mitsi Sellers

Promises Kept

F. Michael Higginbotham

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OF
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**JOHN F. KENNEDY SCHOOL OF GOVERNMENT
HARVARD UNIVERSITY**

SUMMER 2000

Cambridge, Massachusetts



NOTES TO CONTRIBUTORS

Harvard Journal of African American of Public Policy, founded in 1989 at John F. Kennedy School of Government, Harvard University, is committed to a comprehensive and interdisciplinary examination of the interactions between public policy and the lives of African Americans. It specifically aims to:

- Provide an arena for sound, methodologically diverse and solution-oriented policy discourse on issues affecting the African American community
- Encourage scholarly dialogue and communication among academics, policy makers, community leaders and practitioners; and
- Improve the public policy process by integrating the perspectives of African Americans into the formulation, implementation and evaluation of public policy.

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In addition to articles, the *Harvard Journal* features essays, lectures, community-based initiative profiles, symposia, position papers and book reviews.

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- (a) Type manuscripts on one-sided 8.5" × 11" paper in 12-point, double-spaced font.
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Editor's Note: The deadline for submissions for Vol. VI, No. 2 is November 1, 2000.

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What happens to workers who enter the labor market in low wage jobs? Do they remain working poor for most of their careers or do they graduate to better employment once they have work experience and references? In the context of welfare reform, these questions assume new significance. This article examines the career pathways of a sample of inner city workers from Harlem and reports on a four-year follow-up that shows surprising wage gains and occupational mobility over time. It also explores the stability of workers' attitudes toward opportunity, welfare reform, and racial barriers in the labor market.

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Most of the literature on the welfare-to-work transition argues that maintaining, rather than finding, employment is the highest hurdle. This article investigates how welfare-reliant mothers recover from unsuccessful experiences in the labor market. It finds that respondents develop employment strategies that include finding work with "family friendly" institutionalized benefits, improving their problem-solving skills, and marshaling resources to improve their capacity to handle work and family. Negotiating the conflicts between work and single motherhood with limited resources remains a formidable task, but the respondents develop strategies over time to better manage family and work simultaneously.

85 **No Equal Justice:
How the Criminal Justice System Uses Inequality**
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This article is an adaptation from David Cole's *No Equal Justice: Race and Class in the American Criminal Justice System* (1999). It maintains that the criminal justice system not only fails to live up to its promise of equality before the law, but affirmatively, depends upon the exploitation of inequality. Virtually all criminal justice decisions present a trade-off between protecting people from crime on the one hand, and protecting society from abuses by the state on the other. The tension is inescapable. While declining to extend those rights equally to all, society has mediated this tension in a particularly illegitimate way. The article further maintains that this reliance on double standards is not only morally wrong, but counterproductive as well. The double standards also contribute to the racial divide in America on issues within and beyond criminal justice.

95 **The Relationship between Race and Mental Health Treatment**
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Using data from the Louisiana Office of Mental Health, this article examines racial disparities in mental health treatment and the influence of the race of the psychiatrist on diagnosis. While they find an association between race of the patient and the diagnosis, the authors maintain that the race of the psychiatrist was relatively unimportant to diagnostic decisions. Additionally, the results indicate that the race of the client was related to the distribution of services. After controlling for diagnosis, white clients received more services than comparable black clients did.

113 **The Bridge over the Racial Divide: Coalition, Politics and the Pursuit of
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Based on the author's new book *Bridge Over the Racial Divide*, this article highlights the rising economic inequality among American families and the fact that it is not only accompanied by new constraints on the use of federal resources to combat social inequities; it is also occurring at a time when government policies and actions tend to exacerbate rather than alleviate the economic stresses of ordinary families. This article explains why a national, multiracial political coalition is needed to generate programs that improve the personal life of families. It also spells out conditions that facilitate the formation of such a coalition.

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This essay discusses the issue of police brutality, while focusing on the beating and sodomization of Abner Louima, and the murder of Amadou Diallo and the professional football player, Demetrius DuBose. This essay argues, contrary to popular belief, that what happened to Louima, Diallo and DuBose were not isolated incidents but rather three examples of a line of black men who faced the prospect of police brutality on an everyday basis. The author uses Bobby E. Wright's framework to explain why police officers treat blacks unjustly. Finally, he proposes steps blacks can take to mitigate the problem.

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This reflective speech examines the underlying causes of racial inequality in the United States from the perspective of an eminent law professor. Going beyond the standard affirmative action debate, the author looks at the foundations of American society and questions its ability to succeed with programs aimed at improving race relations, without having substantive nationwide introspection.

- 161 **Judge A. Leon Higginbotham, Jr.'s Search for Judicial Pluralism**

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This inaugural Judge A. Leon Higginbotham Lecture honors the work of the late Judge and asserts that interpretation of the law cannot be separated from the social issues that the law is to resolve. The lecture contends that different perspectives and backgrounds can often bring an equally different interpretation of what might otherwise appear to be a very clear set of facts or circumstances. To be able to make sound judgments, judges must be able to call upon a diversity of experiences.

* *These authors were presenters at the Saturday School Program at Harvard Law School. The Editorial Board of the Harvard Journal extends a special thanks to Charles J. Ogletree, Jr., Jesse Climenko Professor of Law, the founder and director of the program.*

"There is no time for foolishness."

—A. Leon Higginbotham



ALOYSIUS LEON HIGGINBOTHAM, JR.

1928-1998



ALBERT EINSTEIN

1879-1955

REMEMBERING LEON

HENRY LOUIS GATES, JR. *

Like many of us gathered here this afternoon, I knew *of* Leon Higginbotham long before I met him, long before I would come to enjoy the pleasure of his splendidly luminous and towering company. I first heard *about* him from a tailor and a dry cleaner named Rosie, who pressed and mended the clothes of my classmates and professors and colleagues at Yale during my career there, first as a student and then as a faculty member between 1969 and 1985. Rosie was an institution, having performed his haberdashery artistry for decades of Yalies long before fate led me to New Haven.

"Have you ever heard of Judge Leon Higginbotham?" Rosie asked me one day, most probably just after I had explained why I couldn't settle my account with him. "No," I responded, assuming that this Higginbotham person must be black, since white people rarely asked me this sort of question about people who weren't. He was a brilliant student at the law school in the fifties, Rosie proceeded to narrate his tale, and he had finally secured an interview with a major Philadelphia law firm, against all odds, since the world of corporate law in the fifties was an all-white affair. Young Leon was quite nervous about this interview, so much for the race being at stake; he wanted his suit cleaned and pressed just so.

"You're wearing *that* suit?" Rosie recalled himself exclaiming to a startled Leon, as both peered down at the threadbare elbows of the second-hand three-piece suit that served Leon on all formal occasions. "It didn't even fit him too good," Rosie added, almost in a whisper, as if not wanting to offend his subject all these years later. "His arms dangled out of it like a giraffe in a Cub Scout's uniform," he continued. "So I gave him a suit, a nice one too, one from Brooks Brothers," which some rich Yalie had left after graduation. "He looked good, he was smart, but you know what?" Rosie asked, staring at me across the counter. "They *still* didn't give him the job, because he was a colored man. Not even the brilliant Leon Higginbotham, who was already a legend over at the Law School." "There weren't too many of you guys around here in the fifties," Rosie confided, reminding me of the affirmative action program that had changed the face of Yale so dramatically in 1969, and which—I would learn so much later—Leon had helped to design and implement. "If you are looking for a hero," Rosie concluded, "this guy's your man."

I next heard Leon's name spoken by an editor at The Oxford University Press, Susan Rabiner, who had mid-wifed Leon's *In the Matter of Color* to print, and who would see my first book into print as well. "If you are searching for a hero, a role model," Susan had confided one day, just after announcing that Leon's book

* *W.E.B. Du Bois Professor of the Humanities, Professor of English, Chair, Afro-American Studies, Director, W.E.B. Du Bois Institute for Afro-American Research, Harvard University.*

had broken Oxford's sales record for a scholarly book, "Leon Higginbotham is it. He's a Mensch," she added, sending me later in the day to a dictionary to learn precisely what sort of character Susan had declared that Judge Leon Higginbotham possessed.

Several years later, my friend Houston Baker, a distinguished literary critic at Penn, was on the phone with me, discussing the state of our branch of the profession, when out-of-the-blue, he began to laugh. "What's so funny?" I asked him. "Oh, nothing," he responded. "I was just thinking about Leon Higginbotham," he continued. "I ran into him on campus today. He has all of this new energy. He told me that he had finished three articles for law journals, he was writing two new books, he was planning a new initiative on affirmative action, and he was lecturing all over the country." When Baker asked him if he had time to have a drink, so that he might ascertain from whence had sprung all of this vigor and renewed energy, the Judge apologized, saying that he didn't have time. He was off to meet a certain scholar in the History Department. Where was he getting all of that energy? I asked naively. "Her name is Evelyn Brooks," Baker responded, as we burst into laughter. "That Evelyn must be some powerful woman," Houston added, after we both stopped laughing, "because Leon is one hard-headed dude."

When Anthony Appiah and I came to Harvard in 1991, we decided that the Department most urgently needed an historian. So, along with Werner Sollors, we set out to find the very best person in the country to teach African American history. Soon it was apparent that the very best candidate was a scholar at Penn, Evelyn Brooks Higginbotham, and she emerged swiftly as our unanimous first and only choice. There was only one problem: her spouse would need a job as well. And while it is always extraordinarily difficult to recruit married couples to faculty positions at Harvard, we felt so strongly about Evelyn's candidacy that we cast caution to the wind and called the deans of the Kennedy and the Law Schools. And thank God we did. Despite the number of stellar faculty that today are members of the Afro-American Studies Department, no appointments were more important to establishing the department's academic stature than was the hiring of Evelyn and Leon Higginbotham. And we all have Evelyn to thank for that.

Negotiating with Leon was a true learning experience for me, and I used to think that I was a fair negotiator. Just let me say that after this process had ended, I visited Jeremy Knowles and asked if we could tear up my contract, and begin negotiations all over again with Leon as my agent!

Leon didn't really make requests; I think it is fair to say. Rather, he issued commands. Even the questions he asked you had the force and structure, somehow, of grandly irresistible declarations, in response to which you had little choice but to say "Yes, sir, your honor. Why, I was just thinking the same thing." The most powerful formulation in Leon's considerable arsenal of rhetorical strategies was his evocation of Evelyn. When Leon declared that "Evelyn and I think," or "Evelyn

and I feel," the subsequent request had the force of Hurricane Hazel in the fifties, which destroyed all of Johnstown in a sudden, cataclysmic flood. In fact, Leon's voice had an uncanny capacity of evoking black flowing robes and a gavel—making it difficult not to respond, rather abjectly, "Thank you, your Honor." Leon didn't really discourse; he rendered judgements.

I'll never forget a phone call I received late one night at 1:00 A.M. "It's Leon," Sharon said, as I stumbled towards consciousness. "Evelyn and I believe that you should change one sentence in your article," he began, referring to a quotation about racism that I had quoted from one of our mutual friends. "He *couldn't* have meant to say that," Leon explained patiently, as if to a dimwitted child. "So change it!" I can't just change it, I retorted weakly, struggling to marshal an argument as to why. "Of course you can," Leon boomed back, the flapping of his judge's robes echoing through the phone line. I can only change it if our friend tells me to change it, Your Honor, I responded. And with that, I bid my dear friend adieu.

As I attempted to return to my peaceful slumber, wondering whether or not this conversation had actually occurred or whether I had merely dreamt it, the phone rang once again. "It's Leon," Sharon said. "Wait just a minute," Leon said when I got on the line, "I've set up a conference call." For the next 45 minutes Leon, our friend, and I debated the merits of our friend's statement, while the two of them argued about possible alternatives. The next morning—do I need to say it?—I informed the magazine that my friend would like to alter one of his quotes.

Leon was a stern but loving uncle for us. At his stamina, his energy, his commitment to justice and social equality, his towering integrity, his determination, and his eloquence in speaking truth to power, I could only marvel. Leon was the rock to which so many of us could cling in times of storm and stress, turning to him as we did for sage counsel in matters private or public, great or small. Leon was the wise man in our little world peopled by the clever and witty. And I miss him: I miss his towering strength, his daunting energy, and his hardheaded, stubborn will. But most of all, I miss his laughter, which seemed to emanate from the depths of his canyon of goodwill, compassion, and forgiveness of human folly—especially the folly of his younger colleagues—those, for me, at least, were the qualities of Leon's that I admired most. And we shall miss him all the more, as we age and are succeeded by brash young colleagues so self-confidently full of themselves that they sometimes forget to listen.

We shall miss him; but we shall not forget him.

Once I came to know Leon as a colleague here at Harvard, it was easy to understand why Rosie-the-Tailor and Susan Rabiner urged me to find in him a hero. When I think about what I most admired in Leon Higginbotham, I have to say that it was Leon's twin passions—his unrelenting passion for honor, and his passion, unwavering to the end, for his beloved Evelyn. When I tried to think of a way to express these passions, I realized that I could do no better than to cite Lovelace:

*Tell me not, sweet, I am unkind,
That from the Nunnery
Of thy chaste breast and quiet mind.
To war and arms I fly.*

* * *

*I could not love thee, dear, so much,
lov'd I not honor more.*

* * *

*Stone walls do not a prison make,
Nor iron bars a cage;
Minds innocent and quiet take
That for an hermitage;
If I have freedom in my love,
And in my soul am free,
Angels alone that soar above
Enjoy such liberty.*

Leon was our very own man of honor, amidst a sea of compromise, accommodation, and complicity. But Leon could not have loved honor *so very much*, my friends, loved he not Evelyn more.

HARVARD FAREWELL

JOSEPH S. NYE, JR.*

The Kennedy School of Government has had its share of august faculty members over the years. But we were and are particularly proud that Leon Higginbotham made his academic home at the Kennedy School for four too-short years, until his untimely passing in December 1998. As the Public Service Professor of Jurisprudence, Judge Higginbotham had a profound influence on the scores of students he taught in his popular but challenging courses. He was a towering figure, imposing in both physical and intellectual stature. Students and faculty alike at the School were invariably deeply impressed by the force of his ideas and the passion and power with which he presented them.

Judge Higginbotham had a deep commitment both to producing serious historical scholarship and to playing an active role in current public policy debates. He was able to write masterful historical works while he was an active serving judge. However, the pressure to maintain an aura of non-partisanship on the bench impinged on his full participation in the policy debate arena (although he was hardly tight-lipped about his views). Leon once told me that one of the things he liked most about being a member of the Kennedy School faculty was the School's connectedness to the government realm and to issues of public policy, which fit well with his own post-judicial understanding of how he wanted to make his contribution. Moreover, Leon's own commitment to politics, to history, to law, and to policy made him very appreciative of the Kennedy School's multi-disciplinary intellectual environment, and made him as well one of the School's most active promoters in the outside world.

Leon Higginbotham was at once the embodiment of the promise of the American dream and a stinging rebuke to that dream's terrible centuries-long inconsistencies. He was the son of working-class parents who, in the classic manner of a Horatio Alger character, raised himself up out of the poverty of Depression-era Trenton to the heights of American jurisprudence. Yet Judge Higginbotham had to surmount a vicious institutionalized racism that Alger's bootstrapping protagonists never encountered in order to realize his abilities and ambitions.

Many readers are doubtless familiar with the dreadful indignities the young Leon Higginbotham encountered as an undergraduate fruitlessly seeking a heated dormitory at Purdue University and as a freshly-minted lawyer looking for work in Philadelphia. The irony in the latter case could not have been more stark—an African-American Yale law School graduate interviewing at a law firm in the City of Brotherly Love, where the Declaration of Independence had been proclaimed and the Constitution ratified, and now where his interviewer duly praised his academic record and then stated bluntly, "Of course, you know there's nothing I can do for you."

* *Dean, John F. Kennedy School of Government, Harvard University.*

Personal experience combined with Leon's deeply humanistic worldview to make him a ceaseless champion of all the victims of discrimination, and to keep him keenly aware that the legal system could be either a force for promoting equality or for perpetuating inequality. He found himself confronting this issue starkly on April 5, 1968. Leon Higginbotham, now a prominent U.S. District Court judge, sat in the Oval Office in the company of President Lyndon Johnson, Supreme Court Justice Thurgood Marshall, and other notable figures, where the subject was the assassination the previous day of Dr. Martin Luther King. As the gathered figures mulled Johnson's worried question, "What can we do now?", Judge Higginbotham asked himself a deeper question: "Why . . . in the land of the free and the home of the brave, had even brave blacks so often failed to get free? Why had that very legal process that had been devised to protect the rights of individuals against the will of the government and the whim of the majority been often employed so malevolently against blacks?"

As a jurist Leon Higginbotham was in the system in order to heal the system, to make it work for every American. One of his key weapons was the Fourteenth Amendment's due process and equal protection clauses. He put his commitment simply: "I can think of no issues that are more important than quality of life in our society with options for all. And I'm not talking about options for black people alone, or for women alone, but options for all."

"Options for all" in America—Leon Higginbotham devoted his life, as an attorney, as a jurist and as a professor, to the pursuit of that straightforward but profound goal. For his accomplishments he was awarded the Presidential Medal of Freedom in 1995. America has not achieved the goal for which Leon worked so diligently. Indeed, we still have far to go. But despite his own apprehensions toward the end of his life over the future of equality in the United States, Leon Higginbotham's ceaseless efforts have brought us significantly closer to making his vision of justice a reality.

WORKING WITH THE JUDGE

MITSI SELLERS*

Even though I had heard only that Judge Higginbotham was a man involved in various, interesting projects, his immediate impression on me was of a legend. His head reached as high into the expanses of the sky as his voice plunged into the depths of the sea. Even while sitting, he seemed to overwhelm both his chair and the space that surrounded him. The only things that rivaled his presence in the office were the papers stacked and strewn everywhere. But as the Judge laughed his high-pitched giggle and his eyes gleamed boyishly, I noticed that he unself-consciously revealed linear dry cracks in his skin above his scrunched down socks. Higginbotham clearly was not a man enamored with appearances of power and intimidation. He was intent upon a mission.

As his administrative assistant, I had the privilege of gleaning insights from him as we sorted through business. One evening in November of 1998, the Judge and I talked briefly about the encroaching Presidential impeachment hearings. We discussed the irony of many adulterous Congressmen scrutinizing the President's fidelity. I offered a quasi-Derridian statement that justice cannot be rendered on earth because the people instituting it are always unjust. Without pausing, the Judge leaned forward and raised his eyebrows: "Then they are not seeking justice." The spirit of his words silenced me. The Judge was keenly aware of human proclivity to violate and suppress one another. Yet he focused unswervingly on the ideal of justice for "the weak, the poor, and the dispossessed." Neither cynicism nor weariness could seduce him.

Professor Evelyn Brooks Higginbotham recently helped me to understand Judge Higginbotham's unswerving pursuit of justice. She said, "Justice wasn't an abstraction for him. It was part of his immediate history and his family's history." He was raised in segregated Trenton, New Jersey during the 1930s by diligent and loving parents: his father was a factory worker and his mother, a domestic worker. The only two books the family owned were a Bible and a dictionary that the Judge's mother had retrieved from the trash of a house that she cleaned. Judge Higginbotham's father trained white immigrants at his factory and repeatedly watched as they were given managerial positions that a racist system would not permit him to hold. Despite the hopelessness of his situation, Mr. Higginbotham never missed a day of work in his life. And Judge Higginbotham considered his mother to be one of the most intelligent people whom he had ever met, even though she had only a seventh grade education. "They believed that if he worked hard, their son would do better," recalled Professor Higginbotham.

As we know, he did do better. After graduating from Antioch College and Yale Law School, in 1962 Higginbotham became the youngest person appointed to the

**Outreach Coordinator, Educational Netcasting Foundation. Ms. Sellers worked as Judge Higginbotham's assistant from May 1998 until the time of his passing.*

Federal Trade Commission and the first African American appointed to any federal agency. He was just 34. In 1977, President Jimmy Carter appointed him to the Court of Appeals for the Third Circuit, where he served as Chief Judge from 1990 to 1993. One of Higginbotham's authoritative books on race and the American legal process, *In the Matter of Color*, received the American Bar Association's Civil Gavel Award, among many other accolades. The second volume, *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process*, was called "a carefully researched and impressively documented book" on American law and racial segregation by the *New York Times*. He wrote more than 50 articles in major scholarly journals. In addition, the Judge participated in such historic endeavors as counseling President Nelson Mandela on the formation of the South African constitution and judicial system in 1994 and mediating the first elections in which blacks could vote in South Africa.

His accolades are staggering, including more than seventy honorary degrees, the NAACP's Spingarn Medal, and the Presidential Medal of Freedom—the highest honor accorded to any civilian in the United States. Yet, even while he fraternized with dignitaries and presidents, Judge Higginbotham continued to identify with those in our society who often go unnoticed—an identification that enabled him to maintain the humility requisite to pursuing justice.

Karen Higginbotham and Professor Higginbotham recall that the Judge delighted in introducing his four children to every janitor in the courthouse where he adjudicated cases. According to Professor Higginbotham, "He would say to the children, 'I want you to meet Mr. So and So. I couldn't work if it weren't for Mr. So and So. He runs this place.' And he really meant to say to [the janitors]: You are special, and I recognize how you make my life and my job easier. . . . He saw people not in the stations that they held, but he just saw them as human beings who were worthy of dignity." Judge Higginbotham was even known to write letters of encouragement to the children of the janitorial staff.

At the Judge's memorial service at Paul Weiss Rifkin Wharton & Garrison, one of the cleaning workers stopped Professor Higginbotham and Karen Higginbotham to offer words of appreciation for the Judge in broken English. "He called me his friend," she smiled.

Indeed, even when the Judge rebuffed me for some egregious error made in executing my responsibilities, I found that I was able to return to my office with my head raised high. The Judge would merely say something like, "I find that it works well if . . . you let me know immediately when the President's office calls." As in the *President of the United States*. Then he would add, "But we'll work it out." After some repetition, his statement seemed to mean: "I believe that you are capable of excellence and desire to improve yourself. I will provide a space for you to excel."

Far from condescending to me, janitors, or even his own parents, the Judge's attitude of thankfulness toward family, friends, and colleagues was exemplary. He was acutely aware of his indebtedness to others for any opportunity that enabled

him to succeed. Professor Higginbotham explains that, despite the Judge's academic achievement from an early age, he "didn't have the resources that his classmates had. Over the summer, his classmates were going to law firms to work, while the Judge worked as a waiter, in construction, and at the factory."

Yet even upon attaining eminence and privilege, the Judge always displayed gratitude to his colleagues whatever their station. He treated his able secretary, Carol Derby, as if he could not function without her (which was likely) and had his research assistants publicly acknowledged at his own funeral.

But it is difficult to imagine that the Judge really needed the majority of us. Instead, I suspect that he allowed us to make ourselves useful while he nurtured us and infused us with his passionate vision of human flourishing.

For decades Judge Higginbotham urged those of us with resources, however grand or meager, to extend help and hope to those in need. In a 1998 speech on the Underground Railroad, he pointed out that there are still Americans who "wear shackles of illiteracy, a grossly inadequate education, and a lack of training that is necessary to get a job. They may never truly attain liberty, within its broadest meaning. For them, reality diminishes hope and optimism." Higginbotham, ever a realistic idealist, warned that liberating others is a difficult venture that demands sensitivity to those who are different and willingness to act with compassion beyond our sphere of comfort and our cadre of friends. But, as he concluded in the same speech, "If the history of the Underground Railroad teaches us anything, it teaches us that we, human beings, are capable of this vision and self-sacrifice."

If the life of Judge Higginbotham teaches us anything, it is that this vision and self-sacrifice are born of humility, perseverance, and hope.

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PROMISES KEPT

F. MICHAEL HIGGINBOTHAM*

INTRODUCTION

In 1993, after retiring at age 65 from the federal bench where he had served for 29 years, Judge A. Leon Higginbotham, Jr. declared that he was now free to return to civil rights advocacy—an arena from which he had been absent for three decades. Before his 1962 appointment by President John F. Kennedy to the Federal Trade Commission, Higginbotham served as president of the Philadelphia Branch of the National Association for the Advancement of Colored People (NAACP). During his service there, Higginbotham was involved with issues concerning the desegregation of public schools and public accommodations, employment discrimination legislation, and voting rights. Now, some 32 years later, he could once again enter the political arena and focus on the cause that had been so important to him throughout his professional career—racial equality.

ISSUES OF RACIAL EQUALITY

One of the first issues Higginbotham focused upon was affirmative action in higher education. He believed that the reduction in affirmative action not only was causing an increase in racial inequity, but was also threatening the limited racial diversity that had been achieved in higher education since the 1954 *Brown* decision. In a powerful editorial entitled “No More Time For Foolishness,”¹ Higginbotham criticized the *Hopwood v. University of Texas* decision invalidating an affirmative action program at the University of Texas Law School. Higginbotham believed that this decision was based more on politically conservative ideology than on any constitutional or jurisprudential basis. He explained:

The story of how today, in 1997, there is just one African-American student out of a total of 268 in the first year class of the University of California at Berkeley, School of Law, and four out of a total of 468 at the University of Texas Law School, is not just one story, but several. First and foremost, it is the story of two specific cases: *Sweatt v. Painter*, which desegregated the University of Texas Law School, and *Hopwood v. University of Texas*, which is about to “re-segregate” it. But, more importantly, it is also the story of how former Presidents Ronald Reagan and George Bush sowed the federal courts of this nation with their seeds of very conservative judges, and how African Americans are now reaping the bitter harvest of their policies.²

* Professor of Law, University of Baltimore and New York University. Professor Higginbotham acknowledges and thanks Martha Kahlert for her administrative support on this article.

1. A. Leon Higginbotham, Jr., “No More Time For Foolishness: A Personal Perspective on Race and the American Legal Process” (November 15, 1997). Memorandum on file with the Author.
2. A. Leon Higginbotham, Jr., *No More Time for Foolishness*, 7.

In 1980, Ronald Reagan won a decisive victory in the Presidential election.³ His conservative platform included opposition to affirmative action,⁴ and he pledged to appoint judges whose conservative political views would help to change the direction of the Supreme Court.⁵ One of those appointments was Anthony Kennedy,⁶ who replaced Lewis Powell as an associate justice of the Supreme Court. The impact of Powell's appointment on affirmative action was immediately felt in the *City of Richmond v. Croson*⁷ decision. For the first time, five justices agreed on a standard of review for affirmative action and the circumstances that would satisfy it.⁸ In *Croson*, these conservative justices concluded that the race-based affirmative action program in question should be subject to strict scrutiny.⁹ They also agreed that while remedying the present effects of identified discrimination would be a compelling government interest justifying remedial race classification through affirmative action, general societal discrimination would not.¹⁰ This agreement was particularly harmful since a good deal of racial inequity is caused by general societal discrimination. This narrow interpretation was solidified by the appointment of Clarence Thomas,¹¹ another conservative opposed to affirmative action, who replaced the Court's most staunch supporter of affirmative action, Thurgood Marshall.

The Reagan administration politicized the lower federal courts just as it did the Supreme Court. Almost all appointments to the federal bench were conservatives opposed to affirmative action.¹² As a consequence, litigants in support of affirmative action programs faced an uphill battle before the lower federal courts,

3. Rhodes Cook, "Reagan Buries Carter in a Landslide," *Congressional Quarterly* (Nov. 8, 1980): 3296-3299.

4. See Republican Platform 1980, in *National Party Platforms of 1980*, 176, 182 (Donald B. Johnson ed., 1982).

5. See Douglas W. Kmiec, *Judicial Selection and the Pursuit of Justice: The Unsettled Relationship between Law and Morality*, 39 *Cath. U. L. Rev.* 1, 7 (1989).

6. *Ibid.*, 31.

7. 488 U.S. 469 (1989).

8. *Ibid.* Justice Byron White, a moderate, who joined the plurality opinion in *Bakke*, 438 U.S. 265, which invalidated an affirmative action program created by the University of California at Davis but where the justices could not agree on the appropriate standard of review, joined the majority in *Croson*, 488 U.S. 469. Since Justice White also joined the majority in *Metro Broadcasting*, 497 U.S. 547, where the Court applied an intermediate level scrutiny and upheld an affirmative action program created by the Federal Communications Commission, one could conclude that he endorsed a lower standard of review for federally mandated affirmative action programs but not for similar programs mandated by state or local governments.

9. *Ibid.*, 493-98.

10. *Ibid.*, 496-97.

11. See Christopher E. Smith & Thomas R. Hensley, *Unfulfilled Aspirations: The Court Packing Efforts of Presidents Reagan and Bush*, 57 *Alb. L. Rev.* 1111, 1121 (1994).

12. *Ibid.*, 1117.

as well as in the Supreme Court. Moreover, because the Courts of Appeals are effectively the courts of last resort for more than 99 percent of federal litigants,¹³ the politicization of the lower federal courts has had the most devastating impact of all. Higginbotham believed that this continued judicial politicization posed a serious threat to the limited racial diversity in higher education.

Higginbotham was also concerned with the lack of racial diversity in judicial appointments. He believed that racial diversity was important not only because of the positive influence that diverse experience has on judges' final interpretations of the law, but also because of the influence that such diversity would have on how the courts are perceived. In an eye-opening 1992 editorial entitled "The Case of the Missing Black Judges,"¹⁴ Higginbotham examined the impact and meaning of the judicial appointments of Presidents Reagan and Bush, concluding that their desire to create a more "conservative" Federal court system resulted in few judicial appointments of African-Americans. He explained:

. . . [To t]he extent that the appointment of judges is a barometer of a President's feelings about placing historically excluded groups in positions of power, Jimmy Carter showed that he had complete confidence in African-Americans.

President Reagan apparently felt otherwise and President Bush apparently does, too. On taking office, they both asserted that they wanted a far more "conservative" Federal court system. In that, they have succeeded admirably. But in the process they have turned the Courts of Appeals into what Judge Stephen Reinhardt of the Court of Appeals for the Ninth Circuit has called it "a symbol of white power."

In eight years of office, out of a total of 83 appellate appointments, Ronald Reagan found only one African-American whom he deemed worthy of appointment, Lawrence W. Pierce. President Bush's record is just as abysmal. Of his 32 appointments to the Courts of Appeals, he also has been able to locate only one African-American he considered qualified to serve: Justice Clarence Thomas. . . .

By 1993, six of the 10 African-Americans sitting on the Courts of Appeals will be eligible for retirement. As the African-American judges appointed by President Carter have retired, Presidents Reagan and Bush have replaced them largely with white judges in their 30s and early 40s.

. . . I am forced to conclude that the record of appointments of African-Americans to the Courts of Appeals during the past 12 years demonstrates that, by intentional presidential action, African-American judges have been turned into an endangered species, soon to become extinct.¹⁵

13. Ibid.

14. A. Leon Higginbotham, Jr., "The Case of the Missing Black Judges," *New York Times*, Wednesday, July 29, 1992, sec. A15.

15. Ibid.

Shortly after publication of this editorial, President George Bush was defeated by Bill Clinton, whose judicial appointments were much more racially diverse than his immediate predecessors. In seven years, Clinton appointed 56 African-American judges out of a total of 338, including five to the Courts of Appeals.¹⁶ Thanks to a concerted effort to reverse political conservatism in the courts, it seems that President Clinton was able to solve “the case of the missing black judges.”

A third issue, perhaps the most disturbing of all to Higginbotham, was racism in the criminal justice system. He spoke out against racial bias in prosecution, jury selection, judicial decision making, and media reporting. In an article entitled “The O.J. Simpson Trial: Who Was Improperly Playing The Race Card?”¹⁷ Higginbotham discussed the implications of Officer Mark Fuhrman’s false denial of previous racist statements. Higginbotham explained:

The case of *The People v. Orenthal James Simpson* has come to be seen by many as a metaphor for the seemingly intractable problems of race in America. Yet, for all of the incalculable hours of media attention and endless public comment by both observers and trial participants, many of the “lessons” drawn from the trial by commentators and a large segment of the public were deceptive. The most blatantly deceptive of these lessons is what now has become the conventional wisdom that in using detective Mark Fuhrman’s racism as a test of his credibility, the Simpson defense team had *improperly and unjustifiably* “played the race card.” That conclusion is false. Rather than establishing that the defense strategy was improper or unethical, when carefully analyzed, many of the critiques of the defense team’s strategies reveal far more the latent and explicit biases of the commentators and the duality of standards the public still uses to judge African-American criminal defendants and African-American lawyers. . . .

Perhaps the most deceptive statement of all was uttered with a purported neutrality when Andy Rooney, the famed *60 Minutes* correspondent, declared that “[t]he [Simpson] acquittal was the worst thing that’s happened to race relations in 40 years.” Worse than what? One wanted to ask Mr. Rooney: Worse than the bombing of the 16th Street Baptist Church in Birmingham, and the killing of four schoolchildren in 1963? Worse than the slaying of Medgar Evers in 1963, of James Chaney, Andrew Goodman, and Michael Schwerner in 1964, of Jimmie Lee Jackson, Reverend James Reeb, and Viola Gregg Liuzzo in 1965, or of dozens of other civil rights martyrs in the 1960s? Worse even than the assassination of Martin Luther King?¹⁸

16. See Sheldon Goldren and Elliot Slotnick, “Clinton’s Second Term Judiciary.” *Judicature* 82, no. 6 (May-June 1999): 280.

17. See Article, “The O.J. Simpson Trial: Who Was Improperly ‘Playing The Race Card?’”, by A. Leon Higginbotham, Jr., Aderson Bellgarde Francois, and Linda Y. Yueh, in *Birth of a Nationhood*, ed. Toni Morrison (Random House, Pantheon Books: New York 1997), 31–56.

18. *Ibid.*, 31–32, 35.

In his 1996 award-winning book, *Shades of Freedom*,¹⁹ Higginbotham provided a more in-depth analysis of racism in the criminal justice system. The book began by cleverly listing several notorious examples of recent situations in which African-Americans were wrongly accused of perpetrating heinous crimes. The six examples were characterized by two interesting features: first, the truth about the cases was brought to the attention of most Americans through the mass media;²⁰ secondly, each case involved a white person accusing an anonymous and non-existent black person of committing the crime.²¹

Particularly noteworthy was the 1994 accusation by Susan Smith who claimed that an "armed black man perpetrated a car jacking, kidnapped her children from the vehicle, and left her injured on the side of the road."²² It was later discovered, after weeks of network news coverage on the abduction and the search for the alleged black perpetrator, that the story was a total fabrication. Smith was later arrested, tried, and convicted of the murder of her own children.²³

Another shocking example offered by Higginbotham was the case of Charles Stuart who claimed that his pregnant wife had been assaulted in her vehicle and killed by a black man attempting to steal her cash and jewelry. Mrs. Stuart, who died from a gunshot wound to the abdomen, was in fact killed in an elaborate scheme devised by Mr. Stewart and his brother to collect life insurance benefits.²⁴ Judge Higginbotham reasoned that these examples of false accusation confirmed the widespread presence of racial discrimination in the judicial system.

CONCLUSION

As he traveled from town to town, auditorium to auditorium, classroom to classroom, and hearing to hearing, one could visibly see the joy and excitement Higginbotham experienced after his return to civil rights advocacy. In all of his speeches, he continued to spread the message that while much had been accomplished through advocacy, even more remained to be done. Higginbotham often

19. A. Leon Higginbotham, Jr., *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process* (Oxford University Press: New York 1996).

20. African Americans have long complained that media coverage of events where they are involved is biased against them. Long time journalist Carl Rowan has written that during the period immediately after World War II, "[t]he white daily newspapers carried almost nothing about Blacks except for an item about someone stealing a chicken or being accused of rape or robbery." Carl T. Rowan, *Breaking Barriers, A Memoir* 65 (1991).

21. The perception that there is a lack of fairness for Blacks in the criminal justice system has also been a pervasive problem. Even the Supreme Court has acknowledged that racial discrimination "remains a fact of life, in the administration of justice. . . ." *Rose v. Mitchell*, 443 U.S., 545, 558-59 (1979).

22. *Shades*, xxvi n. 17.

23. See, Tom Morganthau, "Condemned to Life," *Newsweek*, Aug. 7, 1995, p.19.

24. *Shades*, xxvi.

concluded his remarks by fondly quoting the poet Robert Frost, "But I have promises to keep, and miles to go before I sleep."²⁵

Though the journey to racial equality continues, one of its pilots has gone to sleep. While he lived, Judge A. Leon Higginbotham, Jr. steered a steady course over sometimes costly and always difficult terrain. When it came to creating racial equality, no job was too tough, no task was too long, no obstacle was too high, and, most importantly, no promise went unkept.

25. See Robert Frost, "Stopping By The Woods On A Snowy Evening," *Collected Works of Robert Frost* (1980).

IN THE LONG RUN: CAREER PATTERNS AND CULTURAL VALUES IN THE LOW-WAGE LABOR FORCE¹

KATHERINE NEWMAN*

INTRODUCTION

Among the “front burner” questions for researchers in the post-welfare age, few are more important than the career trajectories of workers who start out in low-wage jobs.² Whether we are talking about the working poor who were firmly lodged in the labor market when welfare reform descended; those who move off the rolls of their own accord and into poorly paid jobs; or those who reach their time limits and are pushed into the marketplace, the question of who among them “gets stuck” and who “moves up” from the bottom of the occupational structure is critical. If welfare reform merely succeeds in exchanging one kind of poverty for another, a better life may elude millions of poor families. If, on the other hand, movement into the labor market is the first step on the way to a future of significantly higher earnings, we may witness significant, durable improvement in the poverty picture.

For many former welfare recipients and low-wage workers, the less appetizing of these outcomes is the most likely.³ They will spend years in working poverty, even if they are employed year-round and full-time (which is less likely at this end of the labor market, where part-time and part-year work are more plentiful).⁴ For others, however, job experience—even at the low end—will permit the accumulation of experience, skills, references, enhanced social networks, and education that position workers to move up into something better.⁵

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1. The research upon which this article was based was supported by a generous grant from the Russell Sage Foundation.
2. LaDonna Pavetti and Gregory Acs, “Moving Up, Moving Out or Going Nowhere? A Study of the Employment Patterns of Young Women” (Washington, D.C.: The Urban Institute, 1997).
3. Gary Burtless, “Employment Prospects of Welfare Recipients,” in *The Work Alternative: Welfare Reform and the Realities of the Job Market*, ed. Demetra Smith Nightingale and Robert H. Haveman (Washington, DC: The Urban Institute, 1995).
4. Rebecca Blank, “Labor Market Dynamics and Women’s Part-time Work in the United States,” *Focus* 20, (Winter 1998–1999): 37–40.
5. Tricia Gladden and Christopher Taber, “Wage Progression Among Less Skilled Workers” (paper written for the conference “Labor Markets and Less Skilled Workers,” sponsored by the Joint Center for Policy Research, 1999).

What makes the difference? Which factors help to push a low-wage worker above the poverty line over the long haul? The research summarized here began with this question in the context of a larger study of the working poor in one industry and in one big city ghetto: the fast food industry in Harlem, New York.⁶ As originally conceived, the project was not longitudinal and did not focus on the question of the long-term careers of these workers. Instead, it focused on one point in time (1993–95), examining the work and family lives of 200 workers—the entire universe of workers in four Harlem “Burger Barn” restaurants—and 93 job seekers who had been turned away from the same establishments.⁷ Having observed these workers—at varying levels of intensity—over 18 months, many questions about their long-term futures remained. Most had made efforts to find better jobs but few had succeeded. Among those who had experienced upward mobility, two patterns became evident from this rather thin database. One small group of people had been elevated off the entry level of the shop floor and had been promoted into management. They were long-time workers who attracted the positive attention of management which, in turn, was in an expansionist mode. As the owners opened new restaurants, they created vacancies for entry-level management and chose to recruit off the shop floor to fill them.

Another, equally small group, had found their way to jobs that made use of skills they used their low-wage earnings to acquire. For example, a young Haitian immigrant had used his salary to pay for a certification course in air conditioning and refrigeration. After three years of working at Burger Barn to pay for this training, he finished and within three months had found a job in his new field for \$12 per hour. His entry into the higher-skill end of the service sector was made possible by the willingness of his aunt and uncle to let him live with them without charge, which freed his earnings to pay for trade school.

These two patterns were the only forms of occupational mobility visible in 18 months and they were exemplified by only a handful of people. However, 18 months is far too short a time to reach any meaningful conclusions. For a sizeable proportion of these inner-city workers and job seekers, the future was a long way off (and potentially more promising than their original circumstances might have suggested) because they were still in high school or community college. Hence, four years after the first intake survey, the present project set out to find out what happened to a random sample of both employed and rejected applicants from this cluster of central Harlem fast food restaurants. Here I present a preliminary answer to this question along the following lines: (1) a brief account of what the extant literature tells us about the long-term career pathways of low-wage workers; (2) a discussion of the statistical comparisons for the whole sample at Time 1 (1993–4) and Time 2 (1997–98) in terms of their employment

6. Katherine Newman, *No Shame in My Game: The Working Poor in the Inner City* (New York: Knopf/Russell Sage, 1999).

7. For a detailed comparison of these two groups, see Newman, chapter eight.

experience, occupational mobility, and household formation, illustrated by ethnographic examples; and (3) a lengthy discussion of the qualitative data on changes over time in their perceptions of employment opportunities, the beliefs concerning consequences of welfare reform, success and failure, views of the role of race in job competition, and expectations for the future.

THE KNOWN AND THE UNKNOWN

The literature on career patterns among low-wage workers is sparse. What work we have was stimulated by the desire of researchers to forecast the likely labor market outcomes of welfare recipients reaching their time limits. This research mainly examines the experience of poorly educated, minority women by using data from the National Longitudinal Study of Youth (NLSY), the Panel Study of Income Dynamics (PSID), or studies that examine the fate of job training program graduates. The assumption in most of this research is that welfare recipients with these background characteristics do not differ in any important ways from non-recipients who are in these longitudinal data sets; hence, the experience of the latter is a fair proxy for the likely future of the former. Since this article is not about welfare recipients *per se*, the legitimacy of this assumption is not my concern. For my purposes, the findings stand as the best account we have thus far of the long-term prospects of low-wage workers who were not embedded in Aid to Families with Dependent Children (AFDC).

The first relevant question is whether there is enough work to accommodate the number of low-skilled entrants to the labor market. At this moment, tightening labor markets all around the country suggest that there is room at the inn; certainly the public perception is that anyone who really wants a job can find one. Yet, according to Lambert's review of the literature, "low-skilled, lower wage jobs are in fact scarce when compared to the number of workers seeking them. For example, Kleppner and Theodore's 1997 study, estimates that in Illinois, there are at least 25 job seekers for every job that pays at least poverty wages and 74 workers for every job that pays at least 150 percent of the poverty line."⁸ In the central Harlem businesses that were the subject of this research, the ratio of applicants to available jobs at the entry level was 14 to 1.⁹ The introduction of thousands of former welfare recipients into this end of the labor market is not likely to improve matters.

Under these competitive conditions, who is likely to succeed in finding work? The literature informs us that the answer depends on the educational/skill levels of job seekers. The most severe employment problems affect those with the most limited skills—only 17 percent of extremely low-skilled workers (as compared to

8. Susan Lambert, "Lower-wage Workers and the New Realities of Work and Family," in *Annals of the American Academy of Political and Social Science* 562 (Thousand Oaks: Sage Publications, 1999).

9. Newman, *No Shame in My Game*.

40 percent of moderately low-skilled workers) make an immediate transition from school to steady employment.¹⁰ Rosenberg notes that low levels of human capital (education, skills, and training) led to poor career positions for male workers in low-income urban areas.¹¹ Moreover, unemployment is a more serious problem for less educated workers: between 1991 and 1995, over half of the individuals in their 30s who were high school dropouts had experienced at least one period of unemployment. In contrast, only a quarter of college graduates of the same age had ever been unemployed during this period.

Career Tracks

Perhaps the most important question that can be asked about low-skill/low-wage workers is not whether they are able to find a job at all, but rather what kinds of jobs they can secure and what kinds of career paths they follow. In this regard, discussions often center on the distinction between "good" jobs and "bad" jobs. Generally speaking, good jobs are thought to be those with high wages, job security, and opportunities for advancement. Bad jobs, in contrast, are marked by low wages, high turnover, poor working conditions, and little, if any, chance for promotion.¹² Some researchers concerned with the ability of former welfare recipients to support themselves and their children have defined good jobs more specifically. For example, Pavetti and Acs argue that a good job is one that pays at least \$8 per hour for a minimum of 35 hours a week.¹³

Examining the employment patterns of young women, ages 18 to 27, in the NLSY, Pavetti and Acs report that while good jobs are relatively common for this group (roughly three-quarters have spent time in a "good" job), the likelihood that an individual gets a good job and is able to sustain it varies considerably among certain subgroups of women. In particular, less than half of women without a high school degree are ever in a good job during this time period, and only 17 percent are working primarily in a good job by the age of 26 to 27. In contrast, nearly 90 percent of women with some post-secondary schooling have had a good job at some point, and 61 percent work primarily in a good job by the time they are 27. Similarly, women with children are less likely than their childless peers to have

10. See LaDonna Pavetti, "Against the Odds: Steady Improvement Among Low Skill Women" (Washington, DC: The Urban Institute, 1997); Burtless, "Employment Prospects of Welfare Recipients."

11. Sam Rosenberg, "Male Occupational Standing and the Dual Labor Market," *Industrial Relations* 19 (1980).

12. Nan Maxwell, "Occupational Differences in the Determination of U.S. Workers' Earnings: Both the Human Capital and the Structured Labor Market Hypotheses are Useful in Analysis," *The American Journal of Economics and Sociology* 46 (1987).

13. Pavetti and Acs, "Moving Up, Moving Out or Going Nowhere? A Study of the Employment Patterns of Young Women."

had a good job (58 percent versus 85 percent), or to be working primarily in a good job by their late 20's (25 percent versus 60 percent).¹⁴

Does skill improvement make a difference? Rosenberg's study of low-wage male workers suggests not.¹⁵ While differences in human capital did seem to account for initial career positions, they could not explain upward mobility. Maxwell notes that while workers in the primary labor market (characterized by high wages, job security, and mobility) were rewarded for accumulating additional human capital, the same could not be said for those in the secondary labor market, where there was little compensation for improving one's human capital.¹⁶ In fact, other studies have suggested that what is really important in determining who will sustain a job over the long term is the quality of the initial job taken.¹⁷

The irregular nature of low-wage careers appears to be part of the problem. Studies of low-skilled workers (principally high school dropouts) enrolled in employment training programs suggests that the vast majority move from one low-end service job to a second one in little time. Between 40 and 68 percent left their low-wage jobs within six months and the majority had changed jobs within two years. Yet, universal agreement on these points is lacking. Connolly and Gottschalk's analysis of data from the Survey of Income and Program Participation (SIPP) indicates that low-wage workers are as unlikely to leave their "dead-end" jobs as high-wage workers are to leave their well paid positions.¹⁸

14. The picture for women who have ever received welfare is even bleaker, as only 13 percent were working primarily in a good job by the time they were 27. Thus, Pavetti and Acs conclude that "it is common for young women to make the transition from bad jobs to good jobs and to eventually work steadily in good jobs. However, this is far less the case for women who share the characteristics of women who ever turn to the welfare system for support." (According to LaDonna Pavetti, in "Welfare Reform: An Opportunity to Improve the Lives of Poor Women—But Not a Guarantee," even if welfare recipients were to follow the same employment patterns as women who had never been dependent on the welfare system, their lower skill levels would result in fewer than one-quarter making the move to a good job by their late 20s.) In "How Much More Can Welfare Mothers Work?" Pavetti argues that while "any previous work experience increases the stability of a woman's current employment and the likelihood that she will move from a bad to a good job, the quality of the job matters. Time spent in bad jobs reduces employment stability—women who have worked in bad jobs are more likely to lose employment altogether or to move from a good job to a bad job."

15. Rosenberg, "Male Occupational Standing and the Dual Labor Market."

16. Maxwell, "Occupational Differences in the Determination of U.S. Workers' Earnings."

17. Maria Cancian and Daniel Meyer, "Work after Welfare: Work Effort, Occupation and Economic Well-being" (unpublished manuscript, 1998).

18. Helen Connolly and Peter Gottschalke, "Early Labor Market Experience—Dead-end Jobs or Stepping Stones for Less Skilled Workers?" (unpublished manuscript, early draft, 1999).

Despite these conflicting emphases, there appears to be agreement on the larger point at hand: low-wage jobs do not seem to be a stepping stone to better paying jobs. Even with additional training, progress seems unlikely. As Schneider reveals, two-thirds of individuals who left a low-wage service job for a training program returned to a similar position. After a second program, the results remained the same. If anything, these individuals seemed not to be on a "job track," but rather on a "training track."¹⁹

Holzer and LaLonde provide the most comprehensive middle ground within the debates over patterns of job change and stability among low-wage workers.²⁰ They offer several conclusions:

- (a) early employment instability contributes somewhat to the low levels of employment (and earnings growth) observed among high school dropouts, especially among females;
- (b) these problems are, to some extent, associated with the poor cognitive skills of these workers rather than with their weaker educational attainments *per se*;
- (c) the characteristics of the jobs to which less-educated workers have access—including starting wages, occupations, and industries—seem to affect their turnover rates independently of workers' personality traits;
- (d) tenure in both current and previous jobs appears to have important effects on the stability of current employment spells for all skill groups;
- (e) employment instability declines with age and/or general labor market experience, even for the less-educated;
- (f) the employment stability we observe among female dropouts also appears to be correlated with childbearing and, to a lesser extent, marital status.

SHOW THEM THE MONEY

According to most recent studies, the average low-wage worker can expect to make less than \$6 per hour for an entry-level job. Regenstein et al.'s survey of employers revealed that most paid \$5.50 per hour for a typical entry-level position.²¹ Other studies have found that when women leave welfare for work, they

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19. Jo Anne Schneider, "Social Networks, Career, and Training Paths for Participants in Education and Training Programs" (a technical report prepared for the Philadelphia Private Industry Council, 1997). In "Job Change and Job Stability Among Less-Skilled Young Workers," however, Harry Holzer and Robert LaLonde present more equivocal results concerning the effectiveness of training programs, citing examples of particular programs that did—and did not—appear to have effects on the mobility and wages of low-wage workers.
 20. Harry Holzer and Robert LaLonde, "Job Change and Job Stability among Less-Skilled Young Workers" (Institute for Research on Poverty: Discussion Paper no. 1191-99, 1999).
 21. Marsha Regenstein, Jack Meyer, and Jennifer Dickemer Hicks, "Job Prospects for Welfare Recipients: Employers Speak Out," *New Federalism: Issues and Options for States*, no. A-25 in series (Washington, DC: The Urban Institute, 1998).

usually take jobs that pay between \$5 and \$6 per hour.²² Michigan employers interviewed by Holzer (1999) noted that the typical hourly wage for the jobs they would be likely to offer welfare recipients was \$6.59.²³ In any case, the wages are far below the magic \$8 per hour that experts have deemed characteristic of a "good" job and that welfare recipients have identified as necessary to cover the costs associated with full-time employment.²⁴

Over time, wages for low-skilled men and women have become less unequal. However, it appears that this is not a function of increased labor market success for women, but rather the result of falling real wages for low-skilled men. As Waldfogel and Mayer note, while absolute wages for low-skilled workers of both genders have fallen from 1971 to 1997, the ratio of female to male wages has increased from .65 at the beginning of the period to .76 at the end.²⁵ This change, Blank explains, can be attributed to the drastic reduction in real wages of the least educated males.²⁶ From 1979 to 1993, she reports, male high school dropouts saw a 22.5 percent reduction in wages, while females with the same education credentials suffered only a 6.3 percent decrease.

Does the situation improve over time? The existing research suggests that most low-skilled workers not only start out in low-paying jobs, but also fail to see much growth over the course of their career path. Burtless reviewed 12 years of earnings for women who received welfare in 1979 and concluded that "they experienced very little wage growth during the period, moving from an hourly wage of \$6.07 to only \$6.72."²⁷ By contrast, the wages of women not receiving welfare at the start of the period rose substantially from a baseline of \$6.07 to over \$10 per hour (as quoted in Strawn and Echols, 1999)."

While acknowledging that welfare recipients fail to see much wage growth, questions remain about whether this is due to less work experience on their part or to lower returns to that experience. To get at this question, Corcoran and Loeb examined how wages grew with experience for a sample of women from the

22. See James Ricco, Daniel Friedlander, and Stephen Freedman, "GAIN: Benefits, Costs, and Three-Year Impacts of a Welfare-to-Work Program" (New York: Manpower Demonstration Research Corporation, 1994); LaDonna Pavetti, Pamela Holcomb and Amy-Ellen Duke, "Increasing Participation in Work and Work-Related Activities: Lessons from Five State Welfare Reform Demonstration Projects" (Washington, DC: The Urban Institute, 1995).

23. Harry Holzer, "Will Employers Hire Welfare Recipients?" *Focus* 20 (Spring 1999): 26-30.

24. Kathryn Edin, "The Myths of Dependence and Self-Sufficiency: Women, Welfare and Low-Wage Work," *Focus* 17 (Spring 1995): 9.

25. Jane Waldfogel and Susan Mayer, "Differences between Men and Women in the Low-Wage Labor Market," *Focus* 20 (Winter 1999): 11-16.

26. Rebecca Blank, *It Takes a Nation* (New York: Russell Sage Foundation, 1997).

27. Gary Burtless, "Welfare Recipients' Job Skills and Employment Prospects," *The Future of the Children* 7 (Spring 1997).

NLSY.²⁸ Their basic finding—that there was no significant difference between the wage growth of full-time workers who had received welfare and those who had never been on welfare before (both are roughly six percent per year)—suggests that full-time work experience should pay off for former welfare recipients. They did note, however, that “wage growth is slower for women who have children. With each additional child, a woman’s wages decline by approximately 4 percent.” Waldfogel and Mayer’s analysis of NLSY data reveals a similar story: “Among low-skilled women, the presence of additional children has a substantial and negative effect on wages, above and beyond its effect on work experience and job tenure.”²⁹

The assumption that early labor market experience can be a “stepping stone” to higher wages has been called into question by Connolly and Gottschalk.³⁰ Countering positive evidence from welfare-to-work experiments, the researchers argue that,

gains in earnings of the experimentals were primarily the result of increased hours not increased wages and the benefits of almost all these programs did not continue after the fifth year. The earnings gains of experimentals over controls during the first three years largely reflected a shorter time to obtain the initial job, not better future outcomes for people who obtained these jobs.

In their own analysis of SIPP data, Connolly and Gottschalk find

. . . little evidence for the assumption that low-wage jobs are the first step to higher wages. Among high school dropouts wage growth within jobs is not significantly different from zero. It is therefore inappropriate to extrapolate from the experiences of workers with more education, who do gain from wage growth on the job.

Additional findings from Gladden and Taber paint a different picture. Using data from the NLSY and the Current Population Survey (CPS), they report that “the return to experience for high school dropouts is almost exactly the same as the return for high school graduates and also does not differ across individuals from different family backgrounds.” Nevertheless, they concede that “work experience is not the magic bullet. Low-skill workers will not have huge gains from work experience [and] there is no reason to believe that forcing them to work will lead to a noticeable effect on the poverty rate.” Finally, Gladden and Taber note that there appears to be a positive return to some mobility among low-skill workers, as “high school dropouts who change jobs once a year experience on average

28. Mary Corcoran and Susanna Loeb, “Will Wages Grow with Experience for Welfare Mothers?” *Focus* 20 (Spring 1999): 20–21.

29. Waldfogel and Mayer, “Differences between Men and Women in the Low-Wage Labor Market.”

30. Connolly and Gottschalk, “Early Labor Market Experience—Dead-end Jobs or Stepping Stones for Less Skilled Workers?”

3.4 percent higher wage growth in those years.” (Additional growth is not seen with a second move within the same year or with involuntary job changes.)³¹

As this review suggests, the prospects for occupational mobility and earnings growth over time for low-skilled workers seem rather dim. Arguments persist over the causes of this pattern. Some of them include: low human capital and declining demand for low-skilled workers; high worker turnover and inconsistent work experience; the part-time, no-benefit nature of low-wage jobs; and low returns for work experience. But there is a reasonable consensus, that whatever the causes, workers at the bottom of the occupational structure who lack education are, for the most part, destined to remain there. It should be noted that most of these studies draw upon data collected during periods of higher unemployment rates than those we see at present. The most comprehensive studies we have now tend to cut off the longitudinal portrait around 1993, when labor market conditions were noticeably weaker than they have been in the past two or three years. This may be at least part of the explanation for my findings, which present a somewhat more optimistic picture of the long-run careers of low-wage workers.

BEFORE AND AFTER

To examine the question of career trajectories among low-wage workers, I began with a sample drawn randomly from among the workers and the unsuccessful applicants of four Harlem “Burger Barn” restaurants in 1993–94. These jobs certainly qualify as “bad” jobs; they are typically low-wage, part-time positions,³² which offer no health benefits, retirement contributions, or sick leave (or sick pay). Moreover, these bad jobs were located in the middle of one of New York’s poorest ghettos, where (in 1993 when this research began) unemployment was over 18 percent, public assistance was a mainstay in nearly 30 percent of the households, and the poverty rate exceeded 40 percent. By 1997, when the follow up study was conducted, unemployment in Manhattan was running at 7.8 percent (still well above the national average) while Central Harlem unemployment was approximately 17.5 percent.³³ If ever there were a challenging place from whence to launch a career for a low-wage worker, this was arguably it.

31. Gladden and Taber, “Wage Progression Among Less Skilled Workers.”

32. The minimum wage was \$4.25 per hour at the time the study began, moving up to \$5.15 per hour by the time of the follow-up interviews.

33. The New York State Department of Labor arrived at the Central Harlem figure by using the 1990 Census data to calculate the ratio of Manhattan unemployment to Central unemployment. Then they used the 1997 in conjunction with the 1990 ratio to estimate what the unemployment rate for Central Harlem is. Hence this figure assumes that the ratio of Manhattan unemployment to Central Harlem unemployment hasn’t changed since 1990. The legitimacy of this assumption cannot be assessed until we have better data from the census in 2000. (New York State Dept. of Labor, Research and Statistics Division Title: Census Share Rates.)

A random sample of 186 persons (93 hired and 93 rejected applicants) was contacted, with the hope of yielding a follow-up sample of 120. In the end, 103 respondents participated in the follow-up study, for an overall response rate of 55 percent (60 percent of the hired applicants and 51 percent of the rejected applicants). Only three individuals refused to participate; the remainder could not be located. As Table 1 suggests, the respondents in the follow up study were largely representative of those in the original study.³⁴

Table 1 : Sample Comparisons between T₁ and T₂

	Hired Applicants		Rejected Applicants	
	T ₁	T ₂	T ₁	T ₂
<i>Race</i>				
African American	109 (54%)	26 (46%)	81 (87%)	44 (94%)
Dominican	47 (23%)	13 (23%)	2 (2%)	1 (2%)
Other Latino	31 (15%)**	17 (30%)	8 (9%)	2 (4%)
Other	14 (7%)**	0 (0%)	2 (2%)	0 (0%)
<i>Sex</i>				
Female	106 (53%)	35 (63%)	49 (53%)	29 (62%)
Male	95 (47%)	21 (38%)	44 (47%)	18 (32%)
<i>Highest Degree Completed at T₁</i>				
Did not finish high-school	95 (47%)	30 (54%)	63 (68%)	32 (68%)
High-School diploma	70 (35%)	20 (36%)	18 (19%)	8 (17%)
GED	9 (4%)	1 (2%)	2 (2%)	1 (2%)
Some college/No degree	21 (10%)	4 (7%)	8 (9%)	6 (13%)
Jobtrain/Tech/Vocational degree	1 (1%)	0 (0%)	0 (0%)	0 (0%)
• Associates Degree	0 (0%)	0 (0%)	0 (0%)	0 (0%)
• BA/BS	4 (2%)	1 (2%)	1 (1%)	0 (0%)
• Beyond BA/BS	1 (1%)	0 (0%)	1 (1%)	0 (0%)
<i>Independent household at T₁</i>				
Yes	96 (48%)	26 (46%)	33 (35%)	11 (23%)
No	105 (52%)	30 (54%)	60 (65%)	36 (77%)
Total in Sample	201	56	93	47

** $p \leq .01$

34. In particular, the follow up under-represents individuals in the "other race" category (primarily Africans and West Indians) and slightly over represents "other Latinos" (mainly Puerto Rican and South Americans). In all other respects—race, gender, education, and household status at T₁—the follow up sample was representative of the original study participants.

I shall shortly describe some of the roads taken—some toward upward mobility and some toward stagnation—of the follow-up participants. Before doing so, however, it may be useful to compare these two groups—the “hires” and the “rejects”—to understand what happened to them over the four-year period. In a broad sense, both are doing substantially better than they were at the first point of contact. Both have acquired more education; a majority of the rejected applicants are working; and in both groups there has been a substantial movement toward independent living. However, the rates of change differ, indicating that the hires and rejects were not simply the same people caught at different moments in their employment history; instead, they were qualitatively different to begin with.

Table 2: Hires vs. Rejects at T₁ and T₂

Status at T ₂	Hires at T ₁	Rejects at T ₁
Percent employed	82%	53%
Educational attainment	82% completed GED (46% at T ₁) 27% have some college (7% at T ₁) 23% job training/voc-ed (0% at T ₁)	67% completed GED, (33% at T ₁) 32% have some college (13% at T ₁) 4% job training/voc-ed (0% at T ₁)
Living independent of natal family	68% (46% at T ₁)	45% (23% at T ₁)
Mean number of workers in household	1.79	1.28
Mean number of AFDC recipients in household	0.32	0.72

There is clearly a difference between the hires and the rejects in terms of who was working at T₂. Those who were employed at the beginning of the study were far more likely to be working at the follow-up point.³⁵

Significant improvement on the educational/training front is visible for both groups, a consequence only in part of aging.³⁶ Sixty percent of the sample was over 21 at T₁ and therefore already beyond the age when one might expect significant investment in education, especially for low-wage workers. Hence, the continued educational advance of both the hires and the rejects is impressive for what it suggests about attachment to schooling of these inner-city residents. Nonetheless, the hires have cleared the high school/GED barrier in larger numbers and have received more training than have the rejects.

35. Neither gender nor race is a significant predictor of this outcome.

36. Forty percent of the sample was in the age group for which educational advancement might be considered normative (less than 21 at T₁).

I had speculated that these low-wage workers would face difficulties in forming independent households and that they would be forced to remain among their natal families because their income would be insufficient to permit graduation to adult status as expressed in independent living.³⁷ As Table 3 illustrates,

Table 3: Independent Household Status at T₂ by Age

	Row Pct	20-22	23-24	25-28	29+	
	Col Pct					Row
	Tot Pct					
Living w/ parent		9	15	14	6	44
		20.5	34.1	31.8	13.6	42.7
		81.8	50.0	51.9	17.1	
		8.7	14.6	13.6	5.8	
Independent		2	15	13	29	59
		3.4	25.4	22.0	49.2	57.3
		18.2	50.0	48.1	82.9	
		1.9	14.6	12.6	28.2	
	Column	11	30	27	35	103
	Total	10.7	29.1	26.2	34.0	100.0

over the long run these workers are moving out. However, a comparison between this small sample of Harlem workers and job seekers with national data on children living at home shows a striking delay in "breaking away." In 1998, approximately 11 percent of the nation's adult children between the ages of 25 and 34 lived with one or more of their parents.³⁸ Thirty-two percent of the sample in the over-25 age-group was still living with a parent at T₂. Hence while age does matter—leading to an increase in the proportion of low-wage workers who leave home—either the process takes longer to unfold among these inner-city residents or people are returning to the parental nest in far greater proportion than others of

37. Newman, *No Shame in My Game*, 29.

38. Source: US. Bureau of the Census, Table Ad-1, "Young Adults Living at Home: 1960 to Present." www.census.gov/population/socdemo/ms-la/tabad-1.txt (released Jan. 7, 1999).

their age.³⁹ For researchers concerned with developmental processes in adulthood, this pattern should ring some alarm bells. My own ethnographic work showed that rising tension and conflict accompanies prolonged adolescence of this kind. Parents seek to retain their authority over their children who are well past the age when the culture "expects" them to be autonomous adults, leading to tension that is reflected in arguments over money, social behavior, partners, and child-rearing styles. Workers in their 20s who have children of their own, but still living in their (mainly) mothers' households are particularly plagued by this enforced adolescence since it interferes with their ability to establish their own parental authority.⁴⁰

Table 2 also shows the continuation of marked differences in the household characteristics of the hires and rejects. Those who were working in 1993 presently live with more workers in the household and considerably fewer AFDC recipients. Both of these differences are statistically significant ($p < .01$), suggesting that apart from other characteristics that differentiate individuals who have greater or lesser work experience, there are marked differences in the households they inhabit.

It is difficult to discern whether those who had more successful employment outcomes already possessed better networks, providing some evidence for a causal argument that advantages accrue to job seekers and workers who have the right connections, or whether networks change with work status and are therefore an outcome. The complexities are particularly hard to sort out when dealing with friends or neighbors whom the respondent regards as a member of his or her network. Yet, there is reason to believe that a respondent's household composition is antecedent to work status. People may shift the composition of their friendship networks or the neighborhoods where they live as a result of their work status. They are less likely to change the composition of their households or families. For this reason, we examined both the employment characteristics of the households and the AFDC receipt of their members. The hires and rejects diverge on these measures: Those who were working at T_1 presently live with a larger number of workers than do the rejects and are considerably less likely to be in a household with AFDC income.

One noteworthy finding of the original study was that job seekers living far away from the firms where they applied for jobs were more likely to be hired than those who lived nearby. As a consequence, the hires were traveling relatively long distances to work. This pattern has continued, and possibly intensified, four years

39. It should also be noted that the proportion of adult males 25–34 who live with their parents has been growing over time. The 1960, 1970, and 1980 censuses showed that nine to eleven percent of the men in this age group lived at home. By 1998, the figure was up to 15 percent. However, the census does not permit a disaggregation of college students from those who might be termed "ILYA's" (incompletely launched young adults), non-students aged 25 to 34 who live at home. Certainly some of this increase over thirty years is attributable to increased rates of college attendance.

40. The very same arrangement also guarantees these parents with critical resources including housing and childcare they might not otherwise be able to afford.

later. The percent of hires that travel more than ten miles to work has tripled in the intervening time period. Thirty-six percent of the hires now travel more than five miles to work.⁴¹ While five miles is nothing in a suburban environment, it is a considerable distance in a densely packed environment like New York City. This finding suggests that job search activities continue to take workers and would-be workers far from the neighborhoods where they live and that, for both groups, success comes more easily outside their immediate residential area.

Given what we know about the problems of combining child-minding and low-wage work, it is not surprising to learn that the majority of women who have had a child in the four years between our interviews were not working at T₂. Sixty-four percent of the women who gave birth were out of the labor market. Fathering a child had no statistical impact on the work status of the men in our sample. However, as I will explain shortly, there is some evidence from the fieldwork to suggest that new fathers who live with their partners change their labor market behavior to accommodate new family demands, regardless of legal marital status. They leave school for work or redouble their efforts to find better or second jobs when the women in their lives become mothers.

PATHWAYS

Most of the respondents who were hires at T₁ were low-wage earners in "bad" jobs. Some had been on the job for a long period of time, while others were relative newcomers, but the jobs that formed the catchment for the study were all fairly close to the minimum wage. Hence at T₁ the median wage of all those who were working was \$4.37 per hour (1993 dollars). Four years later, the median wage of those people who were working had increased substantially to \$7.24 per hour (1993 dollars). This improvement reflects the improvement in the labor market in the 1990s, the increase in the minimum wage, the benefits of steady work experience, and human capital improvements among our subjects. The pattern contrasts with studies cited in the first section of this article, which found negligible wage increases over time for populations like this one, but most of those studies used cut-offs in the early 1990s, before the current economic expansion was fully realized.

The original purpose of my follow-up study was to understand the prospects of "graduation" from the low-wage labor market. The analysis presented in the section above only tells us how the hires and rejects differed from one another along a set of employment and educational dimensions. Mean wages can be distorting in such a small sample since a small number of high earners can push the means up and give the false impression that all is well. Most of all, a comparison

41. The rejects in this study were turned away from Burger Barn over a five-month period in 1995. We interviewed them approximately one year after they were rejected. By that time, 27 percent were working. Among these "working rejects," an even more pronounced pattern of distance commuting was evident at T₂. Seventy-six percent of them were commuting more than five miles to the job.

of the hires and rejects does not tell us who followed a pathway out of this part of the labor market, who is stuck, and how they differ. Given the small size of the sample, this study can only be considered a down payment on understanding these issues, but the findings are of interest because they give us some sense of the trajectory of the low-wage labor force in an inner-city labor market that—compared to the national average—is still high on unemployment. Table 4 displays the results of this analysis.

Table 4: T₂ Wage “Destinations” of T₁ Wage Groups (1993 Dollars)

		T ₂ hourly wages					
T ₁ wages	Unempl.	1997 minimum wage ⁴²	\$4.26– 5.25	\$5.26– 6.50	\$6.51– 9.99	\$10+	Total
Unempl.	20 57.1%	2 5.7%	3 8.6%	4 11.4%	5 26.3%	1 2.9%	35 100%
1993 min. wage	8 26.7%	3 10.0%	4 13.3%	5 16.7%	7 23.3%	3 10.0%	30 100%
\$4.26–5.25	2 15.4%	1 7.7%	1 7.7%	3 23.1%	3 23.1%	3 23.1%	13 100%
\$5.26–6.50	2 20.0%		1 10.0%	2 20.0%	4 40.0%	1 10.0%	10 100%
\$6.51–9.99						9 100.0%	9 100%
\$10+	1 25%		1 25%			2 50.0%	4 100%
Total	33	6	10	14	19	19	101

The data presented here suggests that many of the people in this study have done well over the four years between the first and second interviews, though there are pockets of stagnation and wage loss. Overall, 16 percent of these workers are worse off and 28 percent have remained close to their prior real wages. Yet, 56 percent have clearly moved up, earning higher wages.

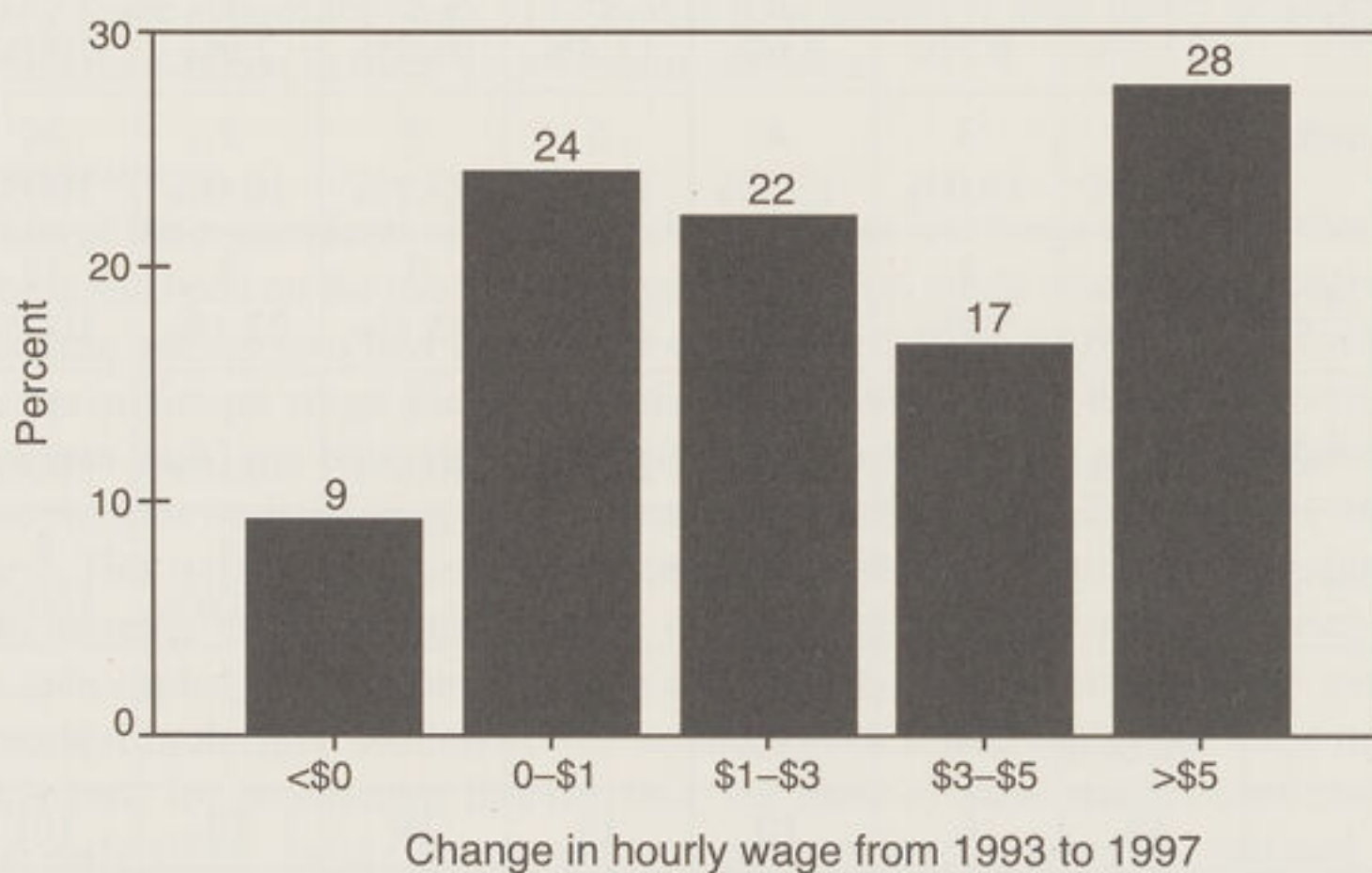
In dissecting the wage experience of these inner-city workers, it is helpful to look at the origins and destinations of different wage groups. Hence, among those who were unemployed at T₁, over half were once again without work in 1997–98.

42. In 1997–98, the minimum wage was \$5.15 per hour. It is presented here in 1993 constant dollars.

However, the remaining 43 percent had found work by the time of the follow-up, and almost 50 percent of them were above the minimum wage.

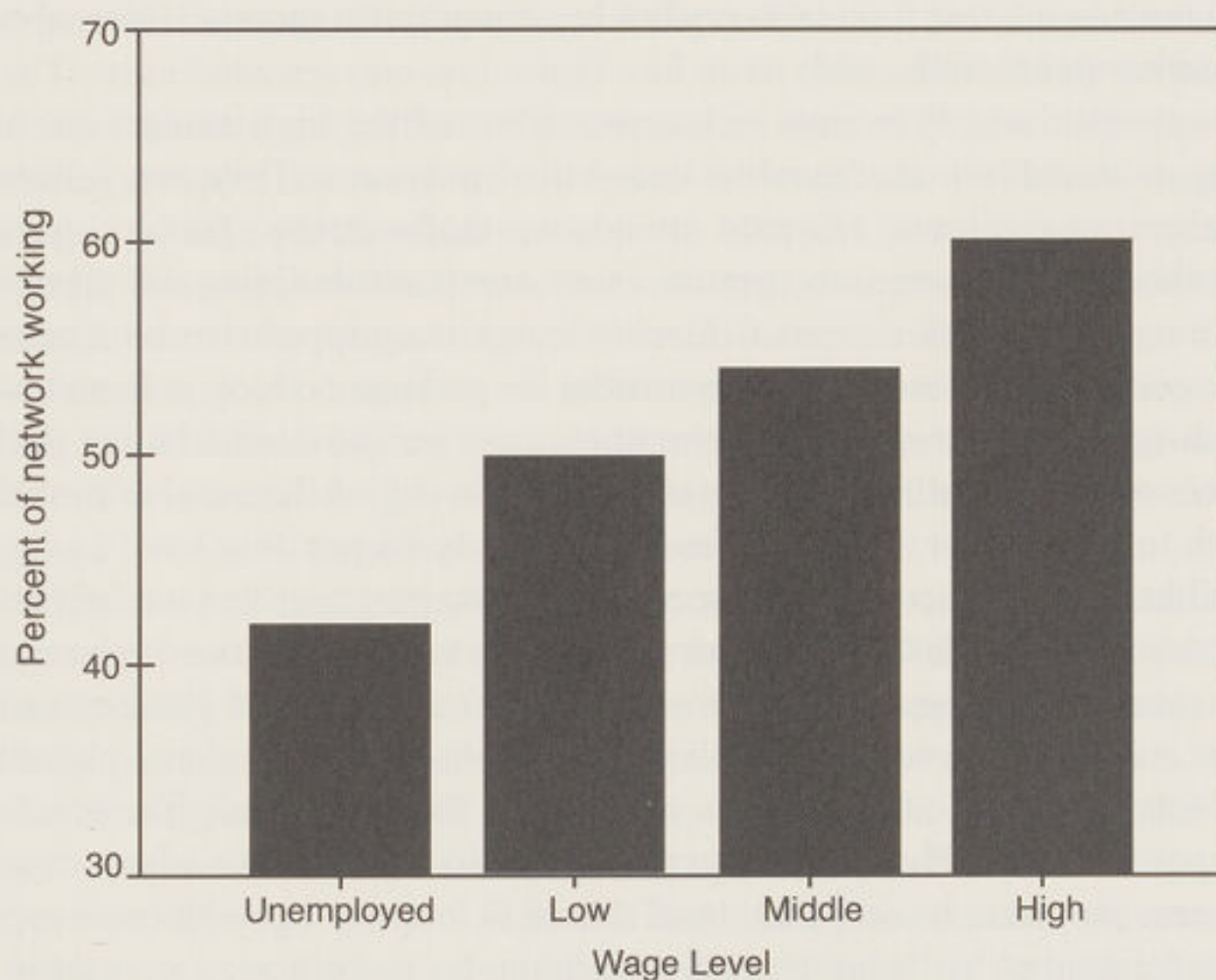
Among those who were at the minimum wage in 1993, more than one-fourth were unemployed by the follow-up. Among the rest, however, wage increases were the rule of the day. Indeed, over one-third of this group had added more than two dollars in real wages over this period. For the middle earners, the picture is mixed. About 26 percent have lost ground and 13 percent are stuck at approximately the same real wage. But 61 percent of this group have made real gains, and 17 percent rose out of the category of the working poor since they now earn in excess of \$10 per hour. Finally, among the small number of people who were earning relatively good wages in 1993 (over \$6.50 per hour), the overwhelming majority are now in the \$10+ category. Wage gains for those who were working at both points in time are represented graphically in the figure below:

Figure 1. Wage change Among the Employed



This success exceeds expectations based on the predictions of the literature reviewed in section one of this article. The majority of the sample consisted of low-educated workers or job seekers among whom less than one-half had completed high school, even though about ninety percent were beyond high school age at T_1 . Hence, one might have expected very few to do this well.

What kinds of jobs do the high earners have now? The modal job category among those earning more than \$10 per hour was a store manager at Burger Barn, reflecting the importance of internal promotion for low-wage workers in this industry. Twenty percent of the high earners are now managers in the firm where we originally found them (though not necessarily in the same establishment). The fast food business is known for its practice of recruiting management off the shop

Figure 2. Steady Job Holders by Earning Category

floor.⁴³ Moreover, inner-city communities are still considered growth areas for this industry, which has largely saturated more affluent communities and now turns both to poor neighborhoods and overseas locations for its growth. This finding suggests that bad jobs are not all created equal. Low-wage jobs in growth industries may offer a more positive trajectory for entry-level workers. Growth industries that sport internal job ladders leading from the bottom to middle management are even more desirable. It is not clear that these success stories would have enjoyed this good fortune if these conditions had not existed.

Some ethnographic illustrations may help to make the point. When I first met Latoya,⁴⁴ she was an entry-level worker in a Harlem Burger Barn who had been on the job for about one year. A divorced mother of four, she lived (off and on) with the father of two of her children. (Her ex-husband was in jail for drug offenses.) She was promoted to a swing manager position (which paid approximately \$.50 more per hour than the entry level) about a year later. Four years after the beginning of this research project, Latoya had become a salaried store manager, earning nearly \$12.50 per hour and was engaged to marry her common law partner. This opportunity came to Latoya because the owner of the restaurant where she

43. Newman, *No Shame in My Game*.

44. All names have been changed to conceal the identities of the study participants, as required by the provisions of the human subjects approval process and the grantmakers.

started acquired two new restaurants and began promoting his shift managers up the vacancy chain. Before this new chance came Latoya's way, she had applied for other jobs outside the fast food industry but had found little success. Internal promotion was her ticket in the end.

This was not the only avenue to success. Most of the high earners are now working in jobs that are medium- to low-skilled positions. They are, however, largely unionized positions. Hospital attendants, mail carriers, janitors, payroll clerks for the city, and unionized porters in an apartment building are all represented among the success stories. Collective bargaining appears to be a critical part of the picture. A porter who is responsible for garbage collection in an apartment building and who keeps the boiler running may well be deemed more skilled than someone who runs a french fry station, but this skill differential is probably not enough to account for a wage difference of nearly \$8 per hour.

Reynaldo was ensconced in a summer job flipping burgers when we first interviewed him in 1993, but left a month later to go back to a continuation high school, which he completed at the age of twenty. He had a variety of odd jobs thereafter, working as a cashier in a toy store, doing under-the-table electrical and plumbing repair (which he learned at his father's side) in the Dominican neighborhoods of the far upper west side. He spent some time in junior college, but when his girlfriend became pregnant, he dropped out of school to look for a good job to support the family. A friend of his father recommended him for a position as a porter in an east side apartment building, a job he had held for about a year when we found him in the follow-up study. Reynaldo was now living with the mother of his child, earning \$14 per hour with full benefits, and anticipating his partner's return to work as a cashier. Together they were making good money. His example suggests that unionized opportunities matter in shaping the mobility prospects of low-skilled workers. His job is essentially a manual labor position, but because it falls under collective bargaining, the position is well paid and rich in benefits.⁴⁵

Belinda, a thirty-year-old African American woman exemplifies a related pattern. She too has been the beneficiary of a unionized job, but gained access to it by investing in additional education and job training. Belinda started out in Burger Barn when she was a part-time student at a community college; her earnings paid for her college expenses. She dropped out of that school, later enrolled in Long Island University for a short time, and dropped out again. During this period, she applied for several jobs as an operating room technician and a data analyst at one of the city's major hospitals, but did not get either position. Eventually, she found a job as a nurse's aide, a position that paid \$14 per hour. Even though she did not complete the schooling she began, her course work in health science did position her for a job at the bottom of the hospital hierarchy in a union shop.

45. On this note, we will want to pay attention to the future of municipal unions, particularly as workfare proceeds apace. If union jobs are replaced in large numbers by non-union workers either through contracting out or through workfare substitution, this mobility pathway may become harder to access.

Two of the three illustrative cases in this section suggest that household formation and marital or cohabitation behavior may be affected by good fortune in employment. Echoing observations in Edin and Lein, I found that the high earners at T₂ were between one-and-a-half and three times more likely to be residing with their spouses or partners than were low earners.⁴⁶ The majority of these cohabiting couples are not formally married, though the fieldwork suggests that marriages do take place, often many years after the couples have begun to live together.⁴⁷ This suggests that researchers interested in poor households may have over-emphasized the importance of formal marriage. Resources are shared in these families; joint decisions on labor force participation are common. Child bearing and child-rearing are tasks undertaken as a unit, and the relationships are durable. The average length of time the high and middle earning worker in our study had lived with a partner was over four years.

Differences in the composition of the social networks of each of the earner groups are clear in the follow-up data as well. We asked each respondent in the follow-up study to provide information on forms of support or information they routinely receive from the following 16 individuals: five good friends, five relatives, five neighbors, and their partner or spouse. We also asked them to answer a variety of questions about the kind of support or information they routinely receive from these 16 people. Figure 2 displays a clear pattern: the more steady job holders in a respondent's network, the higher his or her earning category.

Other measures of network characteristics suggest the advantages that accrued to the high earners. Seventy-one percent of their network partners have either a high school diploma or a GED, compared to 52 percent of the low-wage earners (with the other groups arrayed in between).⁴⁸ This data suggests a significant relationship between the educational credentials of one's network partners and both employment status and earnings of the respondents.

High earners also have more workers in their households, though their co-residents tend to be in less prestigious occupations. Only 13 percent of the high earners live with someone who "outranks" them on standard scores of occupational prestige. By contrast, the employed family members of the middle- and low-wage earners tend to have more prestigious jobs than our respondents.⁴⁹

46. Indeed, half of the high earners live with their partners, compared to 18 percent of the middle wage earners, 15 percent of the low-wage earners, and 38 percent of the unemployed, a pattern that was statistically significant ($p < .05$).

47. Kathryn Edin and Laura Lein, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* (New York: Russell Sage Foundation, 1997).

48. As noted earlier, one cannot know from this data whether these contacts preceded or followed the job mobility the high earners experienced between the time we first interviewed them and the follow up as we lack these network measures at T₁.

49. The family members of high earners are employed in occupations with significantly higher prestige scores than those of the low earners. The average prestige scores for the close relatives of high earners is 56.8.

Respondents' estimations of the value of these contacts for providing information on job openings shows that low-wage earners cite the highest proportion of "good sources" of job information among their network members. Forty percent of their partners had referred them to jobs, while middle and high earners defined only 28 percent of their contacts as good sources of job information. Three potential explanations for this pattern seem plausible. First, high status workers who are the "top of the heap" amongst their contacts have little reason to turn to these less well-situated people for referrals. They have little to gain from them, though high wage workers may now serve as important conduits of information for others. Second, the middle and low-wage earners were doing more job hunting throughout the follow-up period and may have exercised their ties more frequently. Finally, the heavier reliance of the low earners on their network partners may indicate that they are more dependent upon their "strong ties" than higher earners. This observation would be in keeping with Granovetter's (1983) classic observation that strong ties are less advantageous than weak ties.

Twenty-seven percent of those who were working at the point of the follow up were in the middle-wage category, earning between \$5.50 and \$9.99 per hour (1997 dollars). A majority of these workers were working at T₁, but a much higher proportion (43 percent) were among the rejects at that point compared to the now high-wage group. They were the youngest of the five outcome groups, with an average age of 23.85 at the point of the follow up. A higher proportion of them were women than were the high flyers. These workers were fast food swing managers, salespersons, stock clerks, secretaries, telemarketers, bookkeepers, and laborers. These are the kinds of jobs that the entry level workers I studied in 1993–95 aspired to move up to, since on the whole these jobs were regarded as cleaner (less greasy) and less stigmatized. A large group of them have been able to do just that, though the wage increases that have accrued to them as a result have not been substantial, since they cluster at the lower end of this middle-wage range.

Tonia, a 25-year-old born in Belize (but now self-identified as an African American), has lived in the United States for ten years. Her aunt, who works as a secretary, holds the lease on the apartment where Tonia and her two children—ages three and five—have lived for the past several years. She began working at Burger Barn for \$4.75 per hour five years ago and has now been promoted to a first assistant manager position which pays \$7.50 per hour. Since our first interview, Tonia has only applied for one other job. Hence, she makes do with her salary, food stamps, some alimony payments, AFDC for her children, and the cost-sharing she has worked out with her aunt.

Janine, a 21-year-old Dominican, is also an assistant manager at Burger Barn. She has been working there since August of 1994 (when the minimum wage was \$4.25) and now earns \$5.50 per hour. She has held down three other jobs in the four years since our first interview—in a supermarket, a rival burger chain, and a real estate office. None of those jobs paid as well as the one she holds now. Because she did not finish high school, Janine has not been well positioned to do better than this.

Sixteen percent of the people in this study are holding low-wage jobs (defined here as less than \$1.00 per hour above the minimum wage). Roughly equal numbers of them were rejects and hires at T₁. The majority (77 percent) are women, and almost 80 percent are African Americans. They work as kitchen staff, cashiers, security guards, housekeepers, and teacher's aide interns (which in New York City schools is more of a custodial function than an instructional position, and is, in some schools, a workfare placement). These are essentially entry-level jobs for which the qualifications are minimal. This group experienced little or no wage mobility or occupational upgrading, but they have largely been employed on a steady basis over the four-year period.

Florida is a case in point. She is 28 years old, a mother of five, three of whom live with her (while the other two live with their grandparents on her ex-husband's side). She is a high school dropout who was working at Burger Barn four years ago, but quit when she suffered a burn on the job. Thereafter, she had a few office temp jobs, but as of our follow-up was working as a security guard for \$5 per hour. Between these earnings, AFDC, and food stamps, Florida is barely making it. She claims to have applied for about one hundred jobs since she was last interviewed and can reel off a large number of places where she put in applications.

The unemployed in the follow up were far more likely to have started out as rejects than any of the other groups. Sixty percent of them were not working four years earlier. A slim majority of the unemployed at T₂ were women, but men accounted for 45 percent. With a mean age of 25, they were among the older people in the follow-up study. This is a group in trouble: they have been only episodically employed during the four years and are now well into their 20s (or older) without much of a track record on which to rely.

Calvin is a good illustration of this pattern. When we first interviewed him, Calvin was a 16-year-old who was rejected for a position at Burger Barn, one of many places he applied for work during the summer of his junior year of high school. By the time of our follow up, Calvin finished high school and attended a junior college for a little while. He did not like it, though, so he quit. He has held four short term jobs as a temp worker in various offices, earning between \$4.75 and \$5.25 per hour, but by the time of our follow-up was 20 years old, unemployed, and living with his mother.

Francine is an older, female, more problematic version of this pattern. She was a reject from Burger Barn in 1995 and is presently unemployed and living with her boyfriend, who works as a messenger. She has been on AFDC since 1994 and, unlike Calvin, has neither worked nor gone to school during this period. She applied for a number of jobs in the year immediately preceding our follow up, but was not hired. She manages on food stamps, AFDC, and money from other family members.

Unemployment Spells

The experiences of the different earner groups have diverged in terms of wages, occupational mobility, and training and education; they have also branched out in

terms of employment stability. In the four years since the baseline, 50 percent of the sample had at least one spell of unemployment. But the higher the earning category, the less likely the respondent was to experience unemployment. High- and middle-wage earners who were out of work at any point during the four year period spent far less time unemployed than any of the earner categories. Hence, not only did they earn more when they worked, they worked more continuously than the low earners or the unemployed. Only six percent of the high earners experienced any unemployment; three times that many low-wage workers had at least one spell of unemployment. Although this comparison is instructive, I should point out that more than 80 percent of the low-wage workers were employed continuously, but are still at the bottom of the earnings heap.

Cultural Perspectives

The respondents in this study were either low-wage workers or job seekers looking for entry-level, minimum wage jobs when they were first interviewed. In the meantime, some have seen a fair amount of good fortune, others are treading water, and still others are bumping along the bottom of the occupational structure with a fair amount of unemployment. What difference, if any, have these divergent experiences made in the way they look at the world? Labor markets have tightened—not as much in Harlem as elsewhere, but even in Harlem the lines of job seekers are somewhat shorter than they were in 1993. Welfare reform has become the law of the land, a change that has had an impact on members of their families, neighbors, and friends. Have the changes in the economic/policy landscape, coupled with the changes that have occurred in these individual lives, made a difference in their understanding of the opportunity structure, of future prospects, or of the role of race in determining life chances?

Open-ended interviews conducted during the first wave and the four-year follow up suggest considerable stability in respondents' understandings of the economic universe within which they live and the role of personal responsibility in determining the outcomes they have experienced thus far. The respondents in our sample are older now and have been in the labor market for quite a few years. They have come to realize that it is much harder to find a high-paying job than they thought it would be when we first interviewed them several years ago, particularly the younger respondents. For example, respondents who were in high school when we last interviewed them believed that after graduating from high school or acquiring their GED, they would automatically find a well-paid job that would enable them to support themselves and live on their own. Many have come to the unexpected revelation that these diplomas are not enough to secure a high-paying office job. Nonetheless, most believe that continued effort is required and that whatever the future may hold, it is largely theirs to either make or break.

Who Makes It?

Some people say that anyone who wants to make it in this city or in America can do it. All they have to do is try or work hard. Other people take the

opposite point of view and say that they have many obstacles against them from the beginning. This is a very general question, but what do you think? Can anyone make it? Why or why not?

This question, asked in the first round of interviews as well as four years later, was intended to give respondents a chance to think out loud about two polar opposite perspectives on opportunity. The responses were particularly instructive for the way they echo mainstream values of individuality, perseverance, and the belief (which many social scientists would dispute) that "making it" is a function of personal effort rather than luck, connections, or advantageous identities (race, class background, or education).

The majority of our respondents continue to believe that anyone can make it if that person tries hard, stays focused, and perseveres. Everyone has obstacles that may impede his or her success, but the key is to overcome them and to keep trying. Even people in our sample who are not doing well, who are unemployed, or who have been in prison feel that anyone can make it. The respondents still subscribe to the dominant ideology that there is an open opportunity structure, regardless of limits they experience personally. Some of the respondents acknowledge that their race or gender may be disadvantageous in the labor market initially, but argue that it is up to the individual to prove other people wrong. Their view of who succeeds and who fails is extremely individualistic.

Toni is a West Indian immigrant who currently works full time as a cashier for a major toy store, where she earns \$5.75 per hour (placing her at the bottom of our "middle earner" category). Toni never finished high school, but she is currently enrolled in a program designed to lead her through the GED exam and onto an Associates Degree. She has had three other jobs in the past four years, all cashiering. She has also had a brief internship in a law firm, an experience that sparked a desire to pursue a career in the law some day. When asked four years ago whether anyone could make it in New York, she argued that race and gender would pose problems for her, but that she had what it takes to overcome these barriers. Toni, 1993:

My Momma will tell you, 'If you want something real hard try for it.' And she knows I want to be a lawyer. She says I have things are against me right now: I'm black and I'm female. It's gonna be hard for me. But if I try I can make it. I could be a lawyer. But I have those two things against me. They are gonna try their damndest to stop me. So from my point of view, I see where people coming from when they say [anyone can make it]. My mother tell me that all the time, and I understand why she's telling me.

Four years later, when asked the same question, Toni acknowledges that there may be some obstacles against Blacks who are trying to make it, but she also feels that Blacks have a tendency to blame and criticize everyone else for their failures instead of trying to improve their own situation. She believes that Blacks should work harder for themselves if they want to get ahead and even refers to Blacks as "lazy." Though there are strikes against her, they present obstacles she must

surmount. But Toni does not believe this attitude is universally embraced in her own community. She generalizes from the question (intended to focus on labor market prospects) to a broader critique of the behavior of some people in the black community, whom she feels are losing out through apathy, self-pity, and lack of personal responsibility.

A lot of people say Blacks got a lot of obstacles ahead. . . . I have a lot of obstacles ahead of me because I'm black and I'm a female. But that doesn't make it right that I could say that, and then not try to work harder to get to where I want to get. I feel that a lot of black people are lazy, because if they hear people say this, they should want to work harder to get where they want to go. . . . They want to stay home and they want to criticize people, and you can't criticize people if you're not doing anything about it. Like, a lot of people got mad. They said, "Oh, Dinkins lost." But a lot of people were sitting home on their stoops. They weren't voting. So how can you expect the man to win if you're not out there? So now they get what's coming to them. Whatever Pataki and Giuliani do to us, we deserve it. Because if we would have all pulled together, and all got out there, something would have changed for us.

Toni's views on this point have changed very little in the course of the four years. If anything, they have hardened or expanded beyond what she tells herself about obstacles and opportunity in her own life to what she thinks is problematic about her own community. Though her own trajectory has, thus far, not borne enormous fruit, she does not think of the jobs she has held as indicative of her real future. For that, she is going to school, with a view toward better things over the horizon.

John was rejected from Burger Barn in wave one, but in the intervening four years has become one of the high flyers. A 27-year-old black man working as an assistant teacher in a kindergarten class, John now lives in North Carolina with his girlfriend, a telemarketer. He has had six jobs in the intervening four years, the most recent one of which he has held for eight months. He started at \$6.50 per hour and has been given steady raises until he now makes \$10 per hour, a salary he supplements with telemarketing. He has done quite well for himself, a trajectory that seems to have confirmed the view he began with four years ago that personal determination is key to the pursuit of opportunity, regardless of obstacles. John, 1994:

People say that because of your skin color, they look at you differently because that's the way they were raised. . . . When you have that kind of attitude, that's the first thing you gonna say [about a job prospect]. You know, when I go there, I'm looking at it like, 'Yo, I want to get a job. I'm gonna do what I gotta do to get it.' I'm not even thinking about my skin color; I'm thinking about making money. As far as them people, you know, [who say] you can't make it because you're black, that's just an excuse. You know, like I got some friends, they won't even work at [Burger Barn] 'cause they say they're too good for it. You know what I'm saying? But if I had to have a job and I

wanted to work, I'd work my butt off for [Burger Barn] . . .

Four years later, John still maintains that it is "baloney" that people judge you by your skin color or the neighborhood you come from. He argues that black people tend to attribute their failure to racism but it has nothing to do with racism: they fail because their priorities are not in order. They would rather spend their last dollar paying for designer clothes than saving to pay for their education or something more meaningful.

All right. This is a broad statement. I think certain people have their priorities mixed up. And when I say "people," I'll say black people, white people, Spanish people and, you know, let's just say other races, are just different. I think the problem with black people and why they continue to say that we're being considered racist or whatever, as far as getting jobs, I think it's because they'd rather go out and buy, you know. Okay, let's take this, for example. White kids go to college and they wear the same thing every day. And then a black person will be like, "Are they a bum? They look nasty. Why they wear the same thing every day?" But see, they have their priorities straight. They're going to school to get a degree and get out. And then they're getting the good job. And then you've got some black people that, you know, they spend their last dollar—knowing they can't afford it—and they'll go buy Tommy Hilfiger and Guess and you know, they want to look pretty. And then, you know, they're not doing nothing in school. It's just priorities are not straight. That's just the way I feel.

Although the majority of the respondents feel that anyone can "make it" if they try, there were a few who did not subscribe to this ideology. These respondents believe that race and gender bias make it very difficult for everyone to have an equal shot. This is particularly evident to people like Lauren, a 21-year-old African American student who also receives AFDC and food stamps for her two-year-old daughter. Lauren was rejected by Burger Barn four years earlier, but has both graduated from high school and held down a number of jobs in the interim, mainly for summer youth programs (as a payroll clerk). At the time of the follow up, she was among the low-wage workers, earning \$4.75 as a bookkeeper, but she was also attending a community college, which she funded through government loans.

Lauren thinks that she will probably do all right when she has finally finished school, but she does not believe men her age are managing. Indeed, she believes that black men face a stacked deck. It is hard for them to get hired, she says, because there are so many negative stereotypes they have to combat, even if they have a great deal of work experience. Employers will always favor white males over Blacks, regardless of how much knowledge and experience black male candidates may have.

Black males, it's really hard for them to make it in society. Because . . . I don't know. I see a lot of negativity towards black men when they go look for jobs. You know, I could give you a good example. They look at you from the outside. Let's say a guy comes in. He has dreadlocks. He's dressed up. Let a

Caucasian guy come in. He's nicely cut, but the black guy has a lot of experience. They're not going to really look at the black guy, because they're going to look at his outside, they're not going to be looking to his experience, because they're like, "Well, we can't have him representing our company, looking like that." I think it's really hard on black men. Not just that. But so much is expected from them.

Personal success—whether in education or the labor market—does not necessarily lead to support for the mainstream proposition that personal effort is all that is needed to succeed. Adam is one of the most successful respondents in our sample. Indeed, he comes from a family of success stories. His father worked for the sanitation department. Growing up in Brooklyn, he was surrounded by people with "city jobs": bus drivers, school teachers, and park service workers. Adam was a 29-year-old African American and single parent, a high school dropout and a rejected applicant from Burger Barn four years before. Although he didn't get that job, he was working two jobs by the time we caught up with him a year after that rejection and was raising a daughter in Harlem. He is now a truck driver for an overnight package delivery firm, earning \$38,000 per year (about \$19 per hour), a job he had held for more than 3 years by the time of the follow-up interview. He certainly thinks of himself as a success story, but as he has become more experienced in the work world, he has become less sure that the windows of opportunity are open for everyone. In 1994, when first interviewed, he had a mixed opinion on this issue. According to him, ". . . some areas and jobs . . . may discriminate against you because of your color, but there's some places, some big businesses that I see that I go into and it looks like they don't care. You're an individual, they treat you like an individual."

Four years later, Adam has become a bit more skeptical, even though he is doing quite well. He thinks minorities are at a marked disadvantage when they have to compete with Whites:

No [I don't believe anyone can make it]. . . . That's a universe there. You can't say that. Color, first of all, is an obstacle. Income, another obstacle, because it be black, not just black, minority. If you're a minority, or if you're black, Puerto Rican, whatever, it's very hard to get a job. A lot of employees (*sic*) going to, even if you have the benefits, if the white person wants it too, even if they're less qualified, they're going to hire them. Standard procedures. Even though they got these procedures going out there saying, "affirmative action" and all this. "We don't do [biased hiring] like that." They do.

WELFARE REFORM

The context of job hunting and occupational mobility changed during the four-year hiatus in our contact with the sample. In 1993–94 when the study began, AFDC was accessible and a regular feature of the economic landscape among the families and neighbors of most of my informants. It was, however, rarely an

acceptable alternative to work in the minds of either the hires or the rejects, all of whom, after all, were in the labor force. Indeed, they were quite negatively disposed toward welfare, even when it was a critical underpinning of their own household's survival. Many of the working mothers relied on a welfare recipient (usually in their own families) to provide low-cost child-care, which made it possible for them to remain on the job. Nonetheless, the hires were very critical of welfare dependency, arguing that they should not have to lose money out of their paychecks in the form of taxes to support people who were not willing to do what they themselves were doing. And the rejected applicants insisted that they were looking for work precisely because they did not believe welfare was a legitimate alternative, even if it became a necessary evil from time to time.

This consensus has strengthened over the four years of this study. To the basic argument that work is dignity, respondents have added observations that stress the importance of "getting on the escalator," of at least having a place in the work world as a stepping stone to something better. A low-paying job, they argue, is far better than relying on public support. First, a job gives you independence so that you do not have to rely on the welfare system. Second, when you have a job, at least you have a chance for upward mobility. A low-paying job can be a stepping stone to other opportunities, either within the same company or with another company. The respondents in our sample are highly critical of welfare recipients who refuse to take minimum wage jobs because they feel that higher wages come with time and a high-paying job should not be expected at the outset.

The majority of the respondents feel that the welfare changes are long overdue, saying that it is time that welfare recipients stop being lazy and start to work for the money that they receive from the government. In their eyes, there are too many people who are physically capable of working yet rely on the welfare system to support themselves. These people are abusing the system. Most adamant are the respondents who work and are doing well. They have very little sympathy for welfare recipients and are generally disdainful of their lifestyle and lack of initiative.

Despite this resentment toward welfare recipients, the respondents seem to make some distinctions. One distinction they make is between *those who really need it* (such as the physically disabled or very elderly) and *those who just abuse the system*. The respondents understand that there are some people who are physically handicapped and therefore cannot work, and they feel that these people have every right to receive help from the government. However, people who are physically capable and choose to sit at home, watch television, and not even try to find a job are those they disdain.

The respondents also make another distinction: *long-time recipients* and *those who need welfare for a short period* to tide them over in emergency situations. Long-time recipients are "lazy" and have become dependent on the system. Short-timers may need the help because they find themselves temporarily unemployed. Interestingly, even those who are on welfare or have been on welfare are extremely critical of those who have seemingly become dependent on the system.

Toni, who works despite health problems, feels that the new welfare changes are a good thing because people should work:

I think you can put some people to work. Let me rephrase it. People that's staying home, watching T.V. I have a sickness. I can go to work. Right? There's nothing wrong with them. They stay home watching T.V., just waiting for a check, they can work for their check. Just like I can work for mine. On the other hand, some people have disabilities real bad. They can't go to work, so they have to stay home and wait for their check. So on the other hand, it's a pro and a con to everything. On the other hand, they have to stay home. They have to work. But as far as I look at it, you know, welfare can pay for the child, the babysitter. So if welfare can pay for a babysitter, why not go to work? I don't see anything wrong with it.

Even though Silena has been on welfare for two-and-a-half years, she thinks it is a good idea to push people off the welfare rolls to work:

It's good because then you find people that have been on welfare for ten and 15 years that haven't never had a job. All they rely on is the welfare, and they constantly keep having kids and kids to get more money. I mean, me personally, I've been on welfare for like a good two-and-a-half years. They sent everybody these letters. By the year 2001 or 2000 all of that's going to be [over] . . . if you've been on welfare for more than five or six years. Some business like that. But in a way, it's not kind of good, because the regular people that's been working is getting pushed out they jobs by the people on welfare. Then the people that's working, they're not getting nothing but their welfare check. I think that's a gyp. You have to be there for a good six months and if the boss or the employer likes you, then they'll hire you and you'll get the regular salary and no more welfare. There's a lot of ins and outs to that. It's kind of good because people are getting skills that they should have been getting. But then it's kind of bad in another way.

Karen was among the pool of applicants rejected from Burger Barn in 1993. Four years later, she is twenty, an intermittent college student and an intermittent worker who has been employed as a day-care assistant, a Christmas season salesperson, a college work-study student, and an office worker for a temporary agency. She lives with an unemployed mother and three other siblings. Apart from her earnings, the household subsists on AFDC, food stamps, and SSI. She believes that people on welfare do nothing more than wait for their checks and have more babies, like her mother. Karen admits that she was embarrassed because other mothers would pick up their children wearing work suits having just come from their jobs, while Karen's mother was unemployed:

I know a lot of people who just sit on it. They don't ever get a job. Like my mother. I used to hate that waiting [for welfare checks]. Time I get this, I have to wait for the first and the 15th or whatever. Then the mentality they get is . . . 'I'm not going to work. All I got to do is have babies and sit down.' Nobody

wants to work for themselves and that's not good for the kids because they want to work. I know I do. You're in school, everybody else mother coming in with suits. Because they work. How come my mother couldn't work? That's all I kept thinking. I want my child to be able to look up to me.

Furthermore, Karen is bitter about her mother's alcoholism, which influences her opinions about welfare in general:

She was drinking too . . . a lot. I don't like welfare. I mean, maybe it'll help those for the time being, who doesn't have enough [for now] but you don't have to sit on it. Because so many programs, like the college I'm going to, two-year college. I'm planning to go to four. I'm going to get the two-year out of the way, get my life situated. Move out of my mother house, and then I'm going to continue. You can do that. You have 18 more programs, and being that the person is on welfare, they let you go to school free. So don't abuse it, get off welfare, you can get a job and get a life. Right. People don't see it that way. They see it that they just sit on welfare, sit on welfare, have more kids.

Adam, one of the most successful rejected applicants in our sample, is very disdainful of welfare recipients because of his perception that there are so many able-bodied people who do not really want to work:

I love [welfare reform]. I'm against a lot of people, like I told you before. I see some people on welfare just sitting back doing nothing. Able bodies that can work and just always claim there's no work. But of course there's no work if you want to get up 12 o'clock, one o'clock in the afternoon and then say, "I want to look for a job." Put in one or two applications then, a week, not a day. In a week. And then say there's no jobs. You got to get up early. You got to move. I see people, girls just have babies, just to get on welfare. There's a lot of laziness out there. And welfare's not what it was about years ago.

In other discussion, Adam dwelt on the unfairness of racial prejudice in the hiring process, but here he rails against the welfare system and identifies this issue, among others, as a primary reason for his conservative politics. His mother was once on welfare after his father left her, but she eventually got off welfare and worked in a hospital. That is how the system is supposed to work.

Welfare was a support system to help you get up off your feet, and you know, the income wasn't correct. And correcting and supporting your family, like, that's what food stamps were for, if you don't make enough income, but just to pay the bills, but you don't have enough to put food on the table. Apply for food stamps. People took that to the extreme. Now they're finding a lot of loopholes now to get more money, to get money this way and keep it longer. So with the five-year limitation, I'm liking it. Like I say before, I'm a Republican, I'm a businessman. I don't want my tax money going out there paying for someone else's kid, and I'm paying for my own children. If you're going to use welfare for a backboard, and I have no problem with it, because my mother did it.

Tyandra points to her cousin as an example of how the welfare changes have positively affected people's lives: When her cousin was on welfare, she would sit at home and sleep into in the afternoon. The welfare offices placed her in a skills training program, and Tyandra's cousin now works full-time in a pharmacy.

I think the difference they made was a positive difference, because she was just sitting home doing nothing. Like she still goes to school, but she was just, she was sitting home doing nothing, just sleeping to like two, three o'clock in the afternoon. . . . Her kids was running around everywhere, but she would sleep and she would hang out at night. To me it made her more responsible, because now she puts her kids in bed by ten, because it's the summer. She's home in bed by like ten-thirty, eleven. She gets up, she goes to work. Because they told her, if she doesn't find a job, they're going to cut her off. So they helped her. They put her in this training class to help her skills a little more. And they helped her, and she got this job at a pharmacy. And it pays her real good. She works like five days a week, forty hours. And she makes enough money now, so I believe they still help. . . . Welfare's still helping her a little bit, but after a certain amount, like after a money (*sic*), or something they're going to cut her off. But she's happy where she's at. She's motivated to work. She's motivated to finish school now. Because before, she was like, "I don't even feel like doing this. I don't feel like staying in school." Now she wants to stay in school, she's working hard, she gets up, she's on time to work. She has fun. She comes home, tells us about her day, how great a day she had. And she likes it. I don't see a problem with that, because I think it motivated her to be positive and responsible now, because before she was irresponsible, especially with two kids. But now she's more responsible, and I just like that about her.

In 1993, Toni argued that, "It's better to have a job than to have nothing. If you have nothing, you have nothing. If you have a job, you have a little bit of something in your pocket. Aid? Well, I don't know about that. I wonder how they live. . . ." Four years later, Toni is more convinced that even a minimum wage job is better than being on welfare. She is critical of single teenage mothers who go on welfare and never gain any job experience, which in turn makes it more difficult for them to find a job later on:

It doesn't matter how little the job pay. Well, I'm not saying, under minimum wage. Minimum wage I guess is \$5.25 now. I'm not saying find a job under minimum wage. It doesn't matter if there is a McDonald's job. At least you have your dignity. You have a job. You're accruing [social security] for when you get older. Some of those jobs have benefits. You can get those things, but that's yours. And you can work to a high position in that job, so that you can be paid more, so that you can get more. . . . If you have kids, it's okay to be on welfare? I don't think so.

I mean, any young teenagers that think it's okay to be on welfare, how long you going to be on welfare waiting for a high-pay job to come? And then

you're on welfare so long you don't have any experience. How will you expect them to hire them? Like my friend's mother, she's been on welfare for 22 years. Now she wants to get a job. You know what? There ain't nobody hiring her.

Falasha, a young woman who lost both parents and is now responsible for her younger siblings, echoes the same "escalator" perspective: At least with work, there is a possibility of advancement, but with public assistance, you are not going anywhere.

I think if you have a job that's something coming in every week, and it goes back to budgeting your money right, and if you do well at a job you'll eventually go higher; that's how I feel. I don't understand when people say they're looking for a job but they won't go into a fast food restaurant, that they're only \$4.25 and they're qualified to get paid more than \$4.25. Well, you're the one that needs a job; how bad do you need it? You can't be picky. It's like, how can you say that I'm not going to take a job because it only pays minimum wage, but yet you're still on public assistance? That means you need a job. You need some kind of income coming in.

But what if that public assistance is paying more than that job? Is it still better to have a job than to be on the public assistance?

Yes, I feel that way, yeah.

Why do you feel that way?

Because you're working for your money and you can always go up the ladder if you have a job: you don't necessarily have to stay where you're at. But public assistance is just you're going to get the money; you're living off a check every two weeks.

Silena, one of the rejected applicants four years earlier, knows whereof she speaks. She has been a welfare recipient and a low-wage worker for most of the period. At T_1 , she had been on welfare for about 18 months, but also had "little jobs on the side." She distinguished herself from other AFDC recipients who did not work, but she recognized that her labor market success had not been sufficient for her to cut all ties to public assistance:

I ain't gonna lie; like with [Burger Barn] it should be more pay than what they give you because you do work a lot, you understand? Especially like when the kids go back to school, if I was to go apply for a job when the kids go back to school, and I go work for [Burger Barn], I bet you will work more, because them kids won't be working. So it's more work on us, you understand. Then a lot of people do stay on welfare because it's easy money. You do nothing but sit around all the time and get this money. And I hear a lot of women say, because of the kids, they get more money. I've been on welfare for maybe about a year-and-a-half, and I don't like it.

Not long after this interview, Silena found a job as a receptionist that paid \$7 per hour—the most she had ever earned—and she went off of public assistance. Pregnancy has since put an end to that opportunity. Silena is now 25 years old, living in her own apartment with a 17-month-old daughter. It is unclear where her older child is now, but she receives a modest \$132 per month AFDC and \$200 in food stamps in order to care for her youngest and works as a cashier in a local supermarket, earning \$5 per hour. For Silena, the dilemma of work and welfare surfaces because the public assistance she receives isn't enough to get by. She has to work to pay for the necessities she would otherwise be unable to afford. But she also works because she does not want to be dependent on the father of her child who, she hints, has abusive tendencies.

I need the extra money. . . . It's rough. The holidays is coming around. Her father's not there to help me now. My parents don't help me. My brother, he has his own child. You understand? So how am I supposed to survive? The welfare, all I get is \$66 every two weeks, plus the food stamps. The food stamps. I get \$200 a month. What am I supposed to get with \$66? Mind you, I got to buy Pampers. I need my little personal necessities. Sanitary napkins, soap . . . \$66 is nothing. And I'm really not going to be depending on no man too much neither, because every time they do something for you, they throw it up in your face. Depends on, you know, the situation. You get the little knuckleheads that act real crazy. You know.

Although the large majority of the respondents view the welfare changes positively, there is a minority that feel differently. They view welfare reform as unfair because recipients are required to do degrading, manual labor for little pay. They argue that if the government wants welfare recipients to work, then recipients should be provided permanent jobs that pay decent wages. Welfare reform has translated into a cheaper, more exploitable labor force. The respondents who are more skeptical about reform tend to be those who have been on the receiving end of policy change or are close to someone who has been impacted by changes in the welfare system.

For example, Cassandra feels that the welfare changes are not designed to help welfare recipients get off welfare but are merely designed to force people to work for a small workfare check. Even though she is critical of welfare recipients who do not work at all, Cassandra is one of the few respondents who points out that not all of the people on welfare are simply lazy:

I think the whole program sucks. I think that's just an excuse for Pataki to not issue the funds that they've been issued for years. Now, granted there are people that are on welfare that are sheer laziness, that are capable and should be working. I have a few associates who just kick back. I think it's disgusting. I think that if you can work, you should work. This way your children will have something positive to see coming from you so as they're growing, they'll know, "Okay, if I want certain things out of life, this is what I have to do to

get it." But I don't think that they're really trying to help these people do a damn thing, because if you're going to hire me to clean the streets, at least give me a base salary. You know what I'm saying? Don't have me working for something that I sit on my ass for years to collect. You know, give me a salary, because if you give me a salary, this will make me want to get up every day to go and do this. So when I come home tired from work, I can feel good about being tired from work. You know. 'Oh, I got my hands dirty.' You know what I'm saying? It's okay, because I can buy the soap at the end of the week. You know, I just think they need to just pay these people. You know, because everybody that's on welfare, is not on welfare because of laziness or lack of education. It's a lot of things that happen in people's lives, where they have to go there. You know what I'm saying? And if you're going to say, "Okay, I'm here to help you." Help me. You know? Help me.

George—a 24-year-old, unemployed black man who has held five low-wage jobs in the last four years—feels that although the welfare system needs reform, the changes that have been made so far are unfair. The government, he complains, is making welfare recipients do jobs that regular working people refuse to do and paying these welfare recipients very little for their work:

If they can put people to work, they might as well pay them a regular salary. I mean, why make them work one day in the pits, because I've known people who have experienced the work and the work is very, very degrading work. And they pay them pennies for it. It's almost like the city's using the people to do harder work, to clean up what the people who have these professional positions don't clean. I think it needs to be changed, but the way they're going about it, I think, is wrong.

Florida—a 28-year-old security guard who earns \$5 per hour and receives AFDC and food stamps—believes the changes in the welfare system are humiliating. Moreover, workfare jobs do not lead to permanent positions, as advertised:

[Welfare reform] sucks. I'm sorry, but it does, because what they do is they make you work for what little money that they giving you. It's like you work four hours here every single day for what little money they giving you. The whole thirty days you working except Saturday and Sunday for four hours for what little money they want to give you and it's not worth it. It's not worth it at all. My sister was on it and she got laid off by transit and she was working for twenty dollars a week. She said, "No, I'm going back to work. Whether my arms are messed up or not I'll do something, but I can't do this." And for two years, she kept going to the doctor, getting doctor notices, and she wasn't doing it. They had her in her neighborhood picking up paper—it's humiliating personally because people know when you're doing it. 'Cause I did it for six months and I worked in a job for youth for six months with the accounting so I picked up, you know, learning how to do the records and the books and stuff like that. But after the six months, they tell you, "Well maybe you'll

get a position with this company if something open (*sic*)." Nothing opened. After that I still didn't have a job, still was on public assistance. I worked for the money they was giving me. So that doesn't help. I mean, if they put you somewhere and they train you and they give you a job and they just slowly take the public assistance away from you, as long as the position they give you is permanent, that would work. But that working for that public assistance money: no. There's ways to get out of everything.

Angela was working at Burger Barn in 1993 while going to high school. Raised by her grandparents, who have both died since our initial interview, Angela received her diploma and began attending Bronx Community College with the support of the welfare system. She has had four jobs since she was first interviewed, never earning more than \$7 per hour. Her thoughts on welfare reform are colored by her own experience: she must now work for her benefits, which will delay the completion of college. She realizes she is working for less than minimum wage in a job that might have gone to someone who would earn a regular wage:

I think that they have good intentions, but it's not really going to work, because they're sending people out to work for their checks, but you're working for approximately \$170 every two weeks. And that's not enough for anyone to live. And these jobs are jobs that regular people, that pay decent money in regular working hours. But instead of you getting paid, the money that they would normally pay someone for doing that position, they're going to give you your check from public assistance, which really doesn't amount to anything. Like in the summertime, they have people picking up the garbage and stuff all along the highways.

I mean, I understand that they're trying to get, instead of having people just sit on their butts all day and not do anything. But there are a lot of people who are doing things, but they're screwing in the process. Like when I was trying, when I was on public assistance, I was trying to enroll in college and, like, because at one point, they were helping you to get into school. They're like, "Well, you have to work this job, and I don't care if you go to school or not. You have to schedule your school hours around my job." And that's like backwards to me. I'm trying to get an education so I don't have to be on this, and instead of you helping me so that I don't have to be on it, you're hindering me. So now, it's going to take me longer. Instead of maybe finishing school in two years, it'll take me four, because I had to go work this program and do this and do that. And it's not, the money is not even worth it, you know. . . . They don't help you out when you need them. . . . My own assumption is that they act like this on purpose, so that people won't want to come back.

Lauren, now a 21-year-old student with a two-year-old daughter, relies on AFDC and food stamps as well as a series of jobs that pay below \$4.75 per hour. She also has her doubts about welfare reform. She distinguishes between long-term recipients who have made no effort to better themselves (and are therefore

appropriate targets for reform efforts) and people (like herself) who are trying to extract themselves from dependency:

I applaud it for people who are abusing the system and staying home and having kids just for the check. But for people who's going to school trying to make something of themselves, why should they interfere with that? Once there was a time where if you go to school, okay, you could go to school, get your degree or whatever. But now they're trying to take us out of school to make us work for checks. And I don't think that's fair. Not if we're trying to better ourselves. We're not at home. We're trying to get an education and get jobs. And not just that, but if you want to continue onto a four year school, you can't do that. They want you to work for your check after your two years is up. I don't see what the advantage of that is if we're trying to better ourselves. It's like they don't want us to be above them. It's like everybody got to be at a certain standard. But I'm receiving public assistance. By the time my two years is up in college, I'm going on. If they cut me off, they're going to have to cut me off, and I'll have to get a good job, whatever. But I'm not going to let them stop me. I'm going to get my education.

IMMIGRANT COMPETITORS

Four years after our initial contact, it is clear to the respondents in all earnings categories that they still face a labor market where employers can be choosy. Although unemployment has fallen in New York, there is still a surplus of job seekers for low- and moderately-skilled jobs, particularly in the areas of the city where they live. Immigrant labor is particularly desirable from the employer's perspective, setting up competition along the lines of race or national origin. Ironically, it was the workers rather than the rejected applicants who were most aware of the distinctions employers drew between immigrants and the native born, for they had been on the job long enough to see how the recruitment of new workers favored immigrants. Rejected applicants were more likely to see fault lines that separate native-born racial groups, particularly Blacks versus Latinos.

Immigrants themselves felt their advantage was warranted because they thought they were the harder-working labor force. Native-born workers acknowledged the diligence of these newcomers, but also resented the fact that employers did not take seriously the recommendations of their friends or family members. They were not above invoking a nationalist frame of reference either: foreigners taking "our jobs," milking the system for public benefits while "we" are abused in welfare offices.

Four years later, the legitimacy of employer preferences for immigrants has been, if anything, reinforced. The more experience they get in the work world, the more these workers understand—even if they do not entirely condone—the desire employers have to hire people who will get the job done without resistance and with a degree of gratitude for the minimum wage. Indeed, the overwhelming response among the follow-up informants was that employers favor immigrants

because they do work harder and they are willing to work for less than native-born workers. Our respondents note that immigrants generally work harder because they have a different frame of reference from the native-born who are socialized to expect better wages and better working conditions than newly arrived immigrants. Many immigrants are also undocumented and are therefore vulnerable to exploitation, unlike native-born Americans who know their rights. Some of our respondents even claim that if they were charged with hiring, they would hire immigrants over native-born Americans.

In 1994, Adam—the successful black truck driver for an overnight delivery firm—emphasized the role of skill and experience in employer preferences. When asked why employers hire the people they choose, he did not mention immigrants at all:

Most employers are looking for experience. Even the ones that are not looking for experience, they're more or less looking for stabilization, family background, what type of person you are, character. . . . Most jobs I've applied for, that's all that really counts.

By 1998, Adam has learned that immigrant status matters as well and for reasons he finds perfectly plausible:

A lot of people do prefer the immigrants, for one thing, because the immigrants don't make that much. So when they come over here, and they find out they're making five dollars an hour, they work very hard, because that's something they didn't have. You look at a lot of these immigrants that are coming out here and open up their own businesses: they work together. And they're looking at the money. It's not what they was making over there, whatever country they're coming from. So a lot more to them (*sic*). To the people that's still over in their country, these people are millionaires. These people are the high and mighty, even though they're just common, just like me and you. And a lot of employers like that. This person is going to come out and give me 350 percent compared to a black or a white person here, who's going to give me 100 or 50 percent . . . These people really want to work, just to bring their family over here to do anything.

Adam asserts that too much is free for the asking in this society. Unlike native-born Americans who are individualistic, immigrants are willing to live and work together in order to help each other succeed:

Americans are relaxing—system, society. Like I told you, like even with the welfare, I can sit back and collect. I don't have to work hard. I don't have to help my next person. See, these immigrants, they come out, they help each other. They have three or four families in one apartment to help them along the way, until they all succeed to get out on their own. And see us, as Americans, "No, I got to be out on my own. I don't need your help." The prize too doggone good, and that's not color structure. That's everyone in America. We

got too much coming to us too free. And we lay back. "I ain't got to do anything." Even the poor American. "I can sit on welfare." See. That's why I'm against it. Help, there's not enough self-help, especially our kind. Our kind have more of the self-help, I would appreciate it. I try to show them out there, help one another.

Courtney, an African American who was working for Burger Barn to save money for college during the first round of interviews, has continued to hold down part-time, middle-wage jobs as she continues through school. She lives with her unemployed mother and is therefore the sole earner in the household. As she has moved up the educational ladder, her patience with excuses for failure has grown shorter. Courtney is pushing hard to make it through school and feels that others could do so if they wanted success badly enough. She feels that native-born Americans, both black and white, complain about why they do not have jobs and are jealous of immigrants:

A lot of people that, say, were born in the United States say, "Well, these people from other countries come here, and they set up businesses and make money off us black folk or us white folk. And we have the color of skin. The color of our skin is our obstacle." You know, it's hard to get a job and white people say affirmative action prevents us from getting a job. . . . I mean, that could be true too, to a certain degree. But there's also the jealousy thing that, you know, that they're jealous of what the immigrants have because they planned. It's steady planning, and sticking . . .

Courtney has had to be a steady planner to get ahead. She believes she has this quality in common with immigrants, and it does not surprise her that they are getting ahead on the strength of sheer perseverance.

Cassandra also acknowledges that immigrants work harder than native-born Americans because they come from very poor countries and are not accustomed to the standard of living in the United States. She allows that if she were to hire someone, she would prefer hiring an immigrant because an immigrant would do more for her business than any native-born worker could:

People from other countries that are, like, real, real poor will work. They will work for nothing. And they will work their asses off, 24 hours a day if need be. So if I had business, I would hire Tommy from Brazil before I hired Suzy from the Bronx, because I know that he's going to work for me. He's going to take that extra mile. He's going to be assertive. He's going to assist. He's going to come to work on time. He's not going to cause me any problems once he gets there. Now Suzy's accustomed to New York City. She's accustomed to the world, so she's going to call out sometimes with a hundred excuses, or she's going to be late. Or she's going to have an attitude if I ask her to assist. So I would hire somebody from across the water faster than I would hire somebody from America, yes. Because they will work.

What about the pay? What about when people say, well, people hire them only because they can pay next to nothing?

Because they'll accept it. Because they've never had anything. See, when you never had nothing, then somebody gives you something, you are so grateful, because you're not used to nothing.

Tyandra agrees that immigrants work harder, and suggests that they don't take anything for granted because they are unaccustomed to having a safety net:

They have lazy or whatever in every race of people. But I'm saying, from my point of view, I'm not saying they work more but from every other country, too, there is the survival of the fittest. If you don't work, you don't eat. So when other people come over here, they are ready, they're not used to the things we have, like welfare and stuff like that. So they automatically going to work. Whereas we, you know, in America, take it for granted. Some, you know, there's Americans that like to work. But I'm saying, since we had it, we take it for granted.

Whereas these workers see immigrant preferences among employers as reasonable (albeit a damning commentary on American culture), Toni believes it is an unreasonable example of exploitation. Once these immigrants become "real Americans" who "know their rights," they will not permit themselves to be taken advantage of. For the moment, they are targets for unscrupulous employers who know they can get away with exploitation that no fully integrated citizen would accept:

[Immigrants are favored] because they can take advantage of them more. Immigrants don't know much about their rights when they get over here. We do, so we tend not to let anybody run over us, over here. But immigrants don't know much. They just want a job so they can support their family. What they probably wasn't doing in their country, or they probably wasn't making enough money in they country so they come over here, and two dollars may be a lot to them. Three dollars might be a lot to them. Over there, they was probably getting a dollar fifty. We don't know.

Most of our respondents marvel at the mobility immigrants seem to achieve once they land on American shores and wonder why their own communities do not fare as well. In her 1994 interview, Florida emphasized how hard it is for immigrants to find work, especially those that do not speak English. She noted that without the language ability, these workers are lost when they seek work. By the time of the follow-up study, she was clearly impressed with the advances many immigrants have made, mobility that has left people like her in the dust. Indeed, when the passage of time has brought little material improvement in their lives, our respondents seem particularly aware that others are moving up on the escalator while they are stuck at the bottom. One might imagine this would engender resentment. Instead, it seems to inspire critique of the faults of their own communities:

You got a lot of foreigners here. And they seem to get all the jobs or they come and they build stores or their food stands or whatever it is. They seem to be able to take what it is that we take for granted and make it work for them. And we can't do that. And so we say there ain't no jobs out there. Some of us don't want to look.

The immigrants in our sample fully subscribe to the ideology that they are superior to native-born Americans who do not take advantage of the opportunities that are before them. Antonia claims that native-born Americans who are not doing well are not trying hard enough, because there are plenty of opportunities available to them. Immigrants have many disadvantages, such as a language barrier, yet they persevere and succeed:

People born here, if they have not reached a high position already, is because they have not wanted, because there is plenty of opportunities here.... We, the immigrants who come from a place where we have finished school, are at a disadvantage because those credentials are no good here. We lack the language. But our desire to work and plans to go back, that we are going to build our houses and things like that, then we put in a lot of effort, and show willingness to work.

PROSPECTS FOR THE FUTURE

The first round of interviews with both the successful "hires" and the unsuccessful "rejects" revealed a high degree of optimism, coupled with an orientation toward planning. This was more than talk. Even then, both the workers and the job seekers were active in looking for entry-level work and opportunities for advancement. Even those who had little beyond a low-wage job to show for their efforts, valued that status, particularly in comparison to the non-workers in their households and among their friends. The follow-up study was developed in part to determine whether that same positive orientation would hold four years later, even in cases where there was still only modest (or no) success.

In the 1997–98 interviews, we asked respondents what they expected to be doing five years in the future. Most imagine a future in which they will have a "good paying job" and perhaps own their own house or apartment. Those who are in college or who aspire to go to college see themselves finished with higher education and therefore in line for a good job that will make use of their degrees. They hope to move to better neighborhoods and, in some instances, to get out of the city altogether. In general, they continue to believe this future is within their grasp. For the 30 percent who are now in the high earning category and for the students who are moving ahead with higher education, this is perhaps not very surprising. However, these goals are equally alive among those who are middle- and even low-wage earners. They also see themselves moving ahead, though perhaps not at the pace they had hoped.

Tyandra—a high school graduate, but college dropout who is currently earning \$5 per hour and living at home—expects that she will land a full-time job,

finish the last two years of college, and get her own apartment. At the age of 20, with none of these pieces in place, she is chafing at her dependent status and hopes it will not last too long. A good job is key to her plans, but so is "getting married [and] having a house." Children, she thinks, can wait.

Cassandra, who at 33 lives with her boyfriend and her 12-year-old son from a prior relationship, earns \$8 per hour working as an operator for a long distance company. She knows this is a good job and hence is determined to hold onto it. For Cassandra, marriage is a key to a stable future, because with two incomes she may be able to afford a house. She imagines the house will be in North Carolina where her mother and siblings live and where her boyfriend might work for a freight company. She has also begun to think about college for her son and possibly a return to school herself since her "raising days of [her] son will be pretty much over" and she will have more freedom. At \$8 per hour, many of these ambitions must be regarded as distant hopes. But she still has them and thinks of them as attainable.

In this, Cassandra is very much like Tamara, who expects she will "be working with a good-paying job, a very good-paying job; living in a house, hopefully, with a job in a church, and a car." Or Toni—a 20-year-old West Indian currently living with her mom and four siblings, working for \$5.75 per hour—who sees herself in five years having graduated from college with "a nice management job." Or Antonia who, at 26, is still living with her mother and earning \$7 per hour after five years at Burger Barn. Antonia wants "to have my own children. . . . I want a husband . . . and a house, a business in [the Dominican Republic]." These low-wage workers have not become astounding success stories in the years between the first interview and the follow up. Yet, they still see themselves as moving toward a set of goals, not as stagnating in the face of impossible obstacles.

The women in our sample who do not have children realize that doing so would slow down their chances for upward mobility. They know that if they were to have children, it would be more difficult for them to finish school or to find a good-paying job. Even those who have children admit that finding a good-paying job would have been easier were they not burdened with child-care responsibilities. Hence, when asked what would stand in the way of realizing their ambitions, most of the female respondents noted that getting pregnant would be a huge blow. As Toni put the matter:

The only problem I [would] have is getting pregnant, and I pray, I hope I don't. That's the problem for a lot of youth. I ain't gonna get pregnant. No. I'm very smart when it comes to that. All my cousins, all my nieces, they all pregnant. They all have kids. I'm the only one without kids. And they always say, I say they jinx me, because they always say, 'Oh, we can't wait for you to have yours.' So I can be a part of you all? I don't want to be in that clique.

Toni has to work at separating herself in a normative sense from these friends and relatives. Staying away from childbearing is key to this plan. In this she

resembles most of the other women in the follow-up study, especially those who have already had a child and now know what an impediment this can be in the pursuit of upward mobility.

One should not conclude that all of these women have decided never to have children. It would be more accurate to say that they want to avoid having children outside of marriage. Like many middle-class women, these respondents are also thinking about how they can combine a good family life with employment. Key to their vision is the prospect of getting married, followed by raising children in a decent home. Those who have steady boyfriends—who are often the fathers of their children—hope to marry and, by combining incomes, afford a more comfortable home. As Cassandra, the long distance company operator, puts it:

In five years time I would be married in my house, still working for [the same firm]. My job will help me get where I want to go financially. You know, along with my boyfriend's income.

Among those who have already become parents, what the future holds for their children is at least as important as what they foresee for themselves. Cassandra expects to see her son having graduated from high school and on his way to college:

My son is in seventh grade now. I see he'll be out of high school. I'm not going to put him in the service because I don't think black men should be in the service. So he'll either go to college or he'll get out. So that's pretty much his choice. Either you go to college or you pack your bags and you decide what you want to do after that, because I don't tolerate laziness. I don't even allow that word in my house. I just believe in striving, because I came from the street. Literally. And if I can do it, you can do it.

Adam, a divorced father who has now remarried, wants to spend more time with his daughter from his first marriage, who is now eight. He has plans for his son, now 15 months old:

We already started looking for private schools to put him in. Public schools is good. Don't give me nothing wrong with that, but they just overcrowded right now, and I really want my son to have an education. . . . Hopefully in five years, he'll be a computer whiz kid.

Having made something of themselves, these workers can now imagine a better future for their children. For recent immigrants like Antonia, the plan involves taking the family she imagines having back to the Dominican Republic where she could stretch the dollars she earns into a more comfortable retirement.

How close reality will come to the futures so many of our respondents envision is hard to forecast. About one-fifth of them are no longer among the working poor. Those who are on track with higher education will probably follow in the footsteps of these success stories. For the rest, the future is harder to predict. If the

labor market remains tight, they will be more likely to remain employed and over time their earnings will probably increase. But they have a long way to go to achieve the level of economic security they imagine. For the 16 percent of the sample that is in the low-wage group, combined with the 33 percent who were unemployed at T₂ and only episodically employed in the previous four years, one imagines the future will be bleak.

Given the divergence of experience, the stability of our respondents' views of opportunity and personal responsibility is notable. While, one might expect that those who have done well would see the world through positive lenses and argue that everyone is the master of his or her own destiny, it is testimony to the power of mainstream values that even those who have had less positive trajectories generally subscribe to the views they held when I first interviewed them four years earlier. Virtually all of them agree that whatever obstacles they face—ranging from those they have had a hand in creating, like poor educational track records, to those bequeathed to them by a society that still erects racial barriers—are theirs to surmount. They are insistent about holding others to a standard of personal conduct and condemn not only those who fail, but those who seek to offload accountability for failure onto anyone else: the white world, other racial minorities, management, welfare agencies, or powerful people in the city. The durability of these views is impressive for the way in which it displays the power of mainstream, middle-class morals. Conservative thought infuses the lives of the working poor and their fellow job seekers in the inner city.

The literature reviewed in the first part of this article presented a very dismal estimate of employment in good jobs and earnings growth for workers with the characteristics this population possessed at the beginning of our study. While it is true that only a minority of the participants in this study have broken free of low-wage jobs, they are a sizeable minority. Another sizeable group has moved into middle-earning positions which, though not spectacularly better than where we first found them, are no longer at the minimum wage. Many of the sample have acquired more education, but take longer to reach the zenith of their human capital on this score than is typically the case among more middle-class populations.

The group that is unemployed or still locked into low-wage jobs is in the most trouble. They are not trivial in size, but the proportion is smaller than one might have expected given that the study was situated in the middle of a very poor ghetto community. Now well over 25 years old, most of this group is unlikely to acquire much more education. While no one in this study had been out of the labor force for their entire adult lives, this particular group has had a more sporadic job history—with more unemployment spells for a longer duration—than any of the others. They are more likely to be living with people on welfare or to be on AFDC themselves, and have fewer network contacts with steady jobs. This is the group that looks most like the problem cases LaDonna Pavetti and others foresee developing among long-term welfare recipients who are facing time limits.

However, for the working poor who have been in the labor market fairly consistently (even at a low-wage level), the prospects for mobility are better than

would have been expected. This is testimony to the benefits of tighter labor markets, even though New York has not experienced the dramatic declines in unemployment that other cities have enjoyed. And for most of these workers—the high flyers and low riders alike—expectations remain positive and a sense of personal responsibility for their fate strong, even in the face of recognized inequalities along the lines of race and gender.

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WHEN A STUMBLE IS NOT A FALL: RECOVERING FROM EMPLOYMENT SETBACKS IN THE WELFARE TO WORK TRANSITION*

CELESTE M. WATKINS**

INTRODUCTION

In the wake of welfare reform, policy makers, scholars, and welfare department administrators have announced a 44 percent decline in welfare caseloads nationally.¹ Welfare reform has been declared a success by many, while others highlight the dearth of information about women and their families after they leave the public assistance rolls. Are these women riding the waves of policy reform and a booming economy by actively and consistently participating in the labor market? Discourse among scholars as well as social service providers who work with welfare recipients suggests that in light of persistently low unemployment, the ability of many welfare recipients to find work is not the problem that many expected it to be. The true challenge involves the capacity of welfare recipients to retain jobs. Scholars and service providers point to a myriad of problems that poor women experience surviving in low-wage jobs from childcare constraints to difficulties meeting expenses. The findings are sobering: most long-term welfare recipients who report finding work lose those jobs within six months.

Much of the literature on the welfare to work transition identifies job stability, rather than finding employment, as the highest hurdle. Yet, the literature usually stops with the observation that long-term welfare recipients tend to lose the

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1. The 1996 Personal Responsibility & Work Opportunity Reconciliation Act ended federal entitlements to low-income families and provided block grants to states to create, within limits, their own welfare policies. While each state has a different policy, work requirements and time limits have become key aspects of every state's policy. The U.S. Department of Health & Human Services Administration for Children & Families reports that as of June 1999, 44% fewer recipients and 43% fewer families receive Temporary Assistance for Needy Families (TANF) than in August 1996 (www.acf.dhhs.gov/news/welfare).

jobs they find. This article takes the analysis beyond this point and looks at the women's experiences after they encounter setbacks. It shows how, more than a year after the first set of interviews, many of the women in this study have recovered from their earlier setbacks and have been able to maintain steady employment for longer periods of time. The challenges that they face continue to threaten their economic stability. However, they develop strategies to manage family and work simultaneously for longer periods of time. This article makes the case that the transition from welfare to work is a phenomenon marked by gradual changes, struggles, missteps, crises, and often successes. Indeed, for many the process of welfare to work will prove more successful in the long run than in the short run.

PREVIOUS RESEARCH

Long before welfare reform was enacted, recipients leaving the rolls experienced high rates of recidivism. Harris (1996) found that repeat welfare dependency is quite prevalent, as 42 percent of women returned to welfare within two years of leaving. Earle (1998) found that the average job duration for welfare recipients was almost six months shorter than among non-recipients. Pavetti (1993), Corcoran (1998), Harris (1993), Hershey and Pavetti (1997), Oliner (1995), and Berg et al. (1991) all point to similar findings and suggest that unsuccessful experiences in the labor market often result in returns to welfare. They, along with Danzinger et al. (1999) and Edin et al. (1999), highlight many of the barriers to work that welfare-reliant mothers face, such as work-family conflicts, personal health problems, health problems among their children, and limited education and job skills. Although currently welfare-reliant mothers attempt to make the transition to permanent work with the benefit of a tight labor market, they generally find the most work opportunity in the service sector.² Berg, Olson, & Conrad (1991) point out that work in the service industry is "generally at the extreme ends of the labor market, either high-paying professional jobs or low-wage often part-time positions."³ Entry-level positions, Berg et al. (1991) observe, not only offer little financial reward to employees, but are often part-time and/or have work schedules that vary weekly. These low-wage jobs are often the only ones for which poorly educated, single mothers qualify.

But if in fact the climate of the low-wage labor market is showing gradual signs of improvement, as suggested by the 1996 increase in minimum wage and the expansion of the Earned Income Tax Credit (EITC), how are welfare recipients faring? If welfare recipients manage to secure work, largely in the low-wage service industry, but are losing these jobs, as the conventional wisdom suggests, what happens after they experience these setbacks? In the context of time limits,

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2. Labor force statistics from the Current Population Survey indicate a 4.9% unemployment rate nationally in 1997, a 4.5% unemployment rate in 1998, and a 4.2% unemployment rate in 1999 (<http://stats.bls.gov>).
 3. L. Berg, L. Olson, and A. Conrad, "Causes & Implications of Rapid Job Loss among Participants in a Welfare-to-Work Program" (paper presented at the Annual Research Conference of the Association for Public Policy & Management, 1991): 8-9.

how do they recover from unsuccessful employment experiences, and what strategies do the women develop over time to better balance dual roles as mothers and labor market participants?

METHODOLOGY

Beginning in the summer of 1997, I conducted in-depth, semi-structured individual interviews with fourteen welfare-reliant mothers for this descriptive, exploratory study. All of these respondents were receiving welfare benefits from the Massachusetts Department of Transitional Assistance (DTA) and were enrolled in a Job Readiness Training (JRT) Program administered by a New England social service agency. The sixteen-day JRT Program taught job search skills and provided motivational style self-efficacy training to welfare recipients. Participants were alerted to the JRT program via a flyer, a DTA caseworker, or a solicitation by the program's recruitment director. I divided the interviews into three main stages. In the first stage, I interviewed study participants halfway through the JRT program. In the second stage, approximately six to eight months after program completion, I conducted first follow-up interviews. Finally, 20–22 months after program completion I conducted final follow-up interviews. Between these interviews, I often conducted brief phone interviews with respondents. Conducting periodic interviews over time allowed me to chart the fluctuations in the employment statuses of respondents.

During initial interviews, I asked respondents about their employment histories, their experiences with the welfare system, their impressions of the JRT program, and their expectations for what would happen after they graduated, conducted a job search, and began working. During both follow-up interviews, I posed questions about their experiences with the job search process and their employment situations after they left the program.

Characteristics of the Sample

All respondents in this study are women. They range in age from 19 to 40, with 29 being the mean age. One interviewee is Puerto Rican and the others are African-American. Eight of the women in the sample had been on public assistance for at least six years. Interviewees had between one and six children, with an average of 2.4. Only two of the fourteen women had ever been married: one respondent was separated from her husband, and the married respondent's husband was incarcerated. Ten respondents reported currently living only with their children. Two respondents reported living with children and a boyfriend and two reported living with their children and other family members.

All but one of the respondents had a high school diploma or General Equivalency Diploma (GED), a requirement for JRT program admission until September 1997.⁴ Four respondents had attended community college at some point and three

4. The respondent without the GED was admitted because, at the time of application to the program, she was awaiting the results of her exam.

respondents had attended four-year institutions. However, no respondent had completed the requirements for a degree by the beginning of data collection. While all of the respondents had worked in the past, very few of the women had been employed in the same job for more than one year. The women cited childcare issues, transportation problems, and difficulties with employers as key reasons for leaving those jobs.

The sample was not randomly selected. Further, as it is comprised of minority women and because educational attainment is relatively high, this sample is not representative of the state's welfare population. Moreover, given the small size of the sample my results are no more than suggestive. Nonetheless, the women did share the demographic characteristics of a substantial part of the welfare populace in terms of age, race, and educational attainment, indicating that they are not extreme cases.⁵

FINDINGS

I. Setbacks and Missteps: Welfare-Reliant Mothers Face the Labor Market

After completing the sixteen-day training on job search skills and motivational style self-efficacy, the respondents conducted independent job searches. Eleven of the fourteen respondents found work within three months of completing the program. The jobs that the women obtained included such service sector positions as receptionists hired out by temporary agencies, retail store customer service representatives, and fast-food workers. The three remaining unemployed respondents continued to look for work.

Yet, six to eight months later, only three respondents were still employed. Two of these three respondents would later leave those positions for reasons similar to the eight respondents who had left their jobs months before. The reasons most cited for leaving jobs—personal and family crises, childcare constraints, and challenges stemming from characteristics of the low-wage labor market—were seldom mutually exclusive.

Crisis Management—Putting Out Fires As a Way of Life

Accumulating personal and family crises led many of the respondents to lose their footing in the work world. Faith, a 31-year-old mother of three children, ages 13, ten and eight, experienced a setback in a personal relationship that affected her attachment to work. After leaving the JRT program, she found work as a receptionist at a hospital. During the six-month follow-up interview, she spoke highly of her experience with the job:

5. For an analysis of the employment transitions of a larger sample of welfare recipients with similar demographic characteristics as the participants of this study, see Pavetti & Acs (1997).

I was supposed to be a temp in that job for three months, but I have been there for almost six months now. I was glad to get something permanent . . . I like the people . . . The hours are regular, 8:30–4:30 five days a week. The kids are home by 3 [o'clock] and stay home alone. But they know what to do, how to act.

A few months later, she took a leave of absence. When she was ready to come back almost three months later, not surprisingly, the position had been filled. Asked why she needed the leave of absence, Faith explained:

I was going through a lot. The person I was seeing at the time had a drug problem. When I first met him, he had been clean for two years, so I had thought that he had the problem under control. But I found out months into our relationship that he was using again. He seemed so together, so when he started again, for some reason drugs were the last thing that came to my mind. I figured it must be this, it must be that. And then once I found out that that's what it was, I didn't know what to do. I didn't want to kick him when he was down and leave instantly. But after a while, he had to go. It got to the point that he had started stealing from my apartment. I had to take some time out because I was taking all those issues to work with me.

Faith's story highlights a scenario rarely discussed in the literature—the role of relationships with intimate partners in the labor market transitions of welfare recipients. While the physical abuse of women across socioeconomic classes is well documented,⁶ little has been written about the effects of situations of emotional upheaval on work, particularly for low-income women. Although she was beginning to build a stable employment history, Faith felt reluctant to leave her boyfriend when his drug problem surfaced. However, she could not wall off the resulting emotional stress in order to protect her footing in the work world.

Childcare emerged as one of the most significant barriers to maintaining a job. For example, Lydia, a mother of a two-year-old boy, found a job shortly after completing the JRT program at a residential facility for troubled youth. A few months later, schedule changes created a crisis:

It didn't work out because three months into the job they decided they wanted to change my start time to 7 A.M. The place was 30 minutes away and no day care place close to me or that job is open at 6 A.M. So I told them I couldn't do it and told them the times I could work. They said, "this is what we need. That's it." I asked them to write me a note and I'd go back on welfare.

6. Please see Ronet Bachman, *Violence Against Women: A National Crime Victimization Survey*. (Washington, DC: US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1994), Ruth Brandwein's (ed). *Battered Women, Children, & Welfare Reform: The Ties That Bind* (Thousand Oaks, CA: Sage Publications, 1999), for further discussion.

Caught between an employer mandate and childcare options that did not accommodate her work schedule, Lydia's work situation was less than optimal. None of the respondents in the sample reported enlisting the help of a neighbor for day care, and few turned to family and friends when they needed day care.

The same dilemmas effectively prevented several of the JRT participants from finding work in the first place. Darla, a mother of two boys, ages eight and 11, explained:

I started looking for a job after I left the program while my kids were still in school. When school ended for the summer, I couldn't find reliable childcare. The few people that I trusted enough to watch the kids let me down. I didn't want to make interview appointments that I may not be able to keep and develop a reputation for being unreliable. . . . I want to get my day care situation straightened out first. I found this free camp from 12-4 [o'clock] every afternoon but I have to volunteer there every Thursday. It gives me time to interview, but if I got offered a job, it wouldn't let me work full-time. I may have to just wait until I get this straightened out.

Most of the jobs for which the women qualified had rigid work schedules with little flexibility. When confronted with obstacles, the women saw work and family as conflicting choices rather than entities that they could integrate. Not surprisingly, they often chose family over work.⁷

For those who did try to balance both work and family, problems often affected work performance. Tamera, a mother of two boys, ages three and eight, illustrates this tension as she describes the situation when her oldest son, diagnosed with Attention Deficit Disorder (ADD), was having behavioral problems at school:

When you're not focused, you mess up things [at work]. Problems can cause that. . . . Once I'm focused, I can do a great job. I know that I can. . . . Family issues can cause me to lose my focus. My son, that was taking my focus away. They [school principal and teachers] would call me at work and tell me something that was going on. . . . Why do they have to call me at work? Wait till I get home and I can deal with it. . . . That affects my performance for the rest of the day because I'm worried. I'm wondering what he's doing. Then I start thinking to myself, "maybe it's something that I'm not doing right." You start thinking everything, blaming yourself, blaming everything. Your mind is just going. And you have to have your mind at the job.

7. For further discussion of work-family tradeoffs, see K. Edin, E. Scott, A. London, & J. Mazelis, "My Children Come First: Welfare-Reliant Women's Post-TANF Views of Work-Family Tradeoffs, Neighborhoods, & Marriage" (paper presented at the Northwestern University/University of Chicago Joint Center for Poverty Research Conference "For Better or Worse: State Welfare Reform & the Well-Being of Low Income Families & Children," Washington, D.C., September 16-17, 1999).

Eventually, absenteeism and tardiness became a problem for Tamera, and she began to doubt the wisdom of working in light of her son's diagnosis. Her child's teacher wanted her to be available to come and get her son whenever he became too much of a distraction for the other children. Increasingly, the teacher and principal called Tamera at work to take her son home or talk to him over the phone to calm him down. Her feelings of helplessness escalated as she saw her work and her children as conflicting commitments. "I only have one time to be their mother," she explained. "I can always get another job. My son needed me. He has ADD, he needs his mother at home." Tamera became increasingly overwhelmed and depressed by the challenges that faced her. In a clear example of a mother making what she describes as a work versus family choice, Tamera resolved to leave her position at the bank. With the prevalence of childhood disabilities and chronic illness among welfare families, mothers making similar decisions are not uncommon.⁸

Negotiating the Low-Wage Labor Market

In addition to family strains, structural constraints inherent in the low-wage labor market presented serious obstacles for the women in the sample. Many of the women who found work faced common features of service sector employment such as low wages,⁹ part-time hours, erratic schedules, no benefits, limited opportunities for advancement, and rigidly organized work. Tamera, the mother whose son was diagnosed with ADD, was called a JRT Program "success story" when she got her teller position at the bank. Before the problems with her son had escalated, I conducted a phone interview with her during her first few months in the job. She explained the trouble she was having making ends meet because the part-time job generated too little income:

Even though I'm this JRT [Program] "success story," I am having hells in my life. Just because I have a job don't mean my life is beautiful and perfect. I'm

8. Please see M. Meyers, A. Lukemeyer, & T. Smeeding, "The Cost of Caring: Childhood Disability and Poor Families." *Social Service Review*, 72(2): 209-233; SJ Heymann, "Inequalities in the Workplace: The Conditions Low-Income Parents Face" (paper presented at the Harvard Multidisciplinary Inequality & Social Policy Seminar, Cambridge, Massachusetts, November 16, 1998) and SJ Heymann & A. Earle, "The Impact of Welfare Reform on Parents' Ability to Care for Their Children's Health." *American Journal of Public Health*, 89(4): 502-505.

9. The particulars on how to make work pay are still being flushed out in policy debates. There have been some changes, however. Along with the change in welfare policy in 1996 came an increase in minimum wage to \$5.15 per hour and a significant expansion of the EITC. Still, some have questioned whether the expansion will provide enough money to working mothers to make ends meet and handle the additional expenses associated with working, such as medical coverage (assuming that it is not supplied by the employer), appropriate work attire, transportation, and possibly child care (see Jencks 1997).

still having toils and problems. They [DTA] were trying to cut me off completely even though they weren't supposed to do that because I am part-time. I don't want their money, they can keep their money. It's just the food stamps I need to help out a little bit. But they're cutting everything. Then my rent went up to \$400. So I'm paying rent, childcare, all this on a part time salary. I'm just here working and trying to take care of life issues too and it's hard.

Tamera qualified as a "success" because she had found employment, but she hardly felt triumphant. The reduction in her TANF benefits, her rent subsidy, and her food stamps made survival difficult even with her new job.¹⁰

Others had limited education and skills that made finding full-time work difficult. Deborah, a 34-year-old mother of 16- and 13-year-old children, had just found out at the time of our first follow-up interview that she had failed the GED test for the third time. She described her job search process after leaving the JRT program as "very hard":

I've been on over fifty interviews. On the last one, the woman complimented me on my interviewing skills. I think that it's my education that's the problem. [English is my second language and] I can't seem to pass this [GED] test. No one has specifically told me, but I just know it's education. That's always a tense moment in the interview. I'm working part-time now, making \$6.40 per hour, no benefits yet. It's a nice job and I like it, but I want full-time work. I'm just tired of interviewing. If I don't find anything I guess that it's ok because the museum [where she was working as a gift shop cashier] is supposed to make my job full-time in about six months. I want to be open for that.

Even in the low-skilled end of the labor market, employers still look for higher levels of human capital than many long-time welfare recipients possess. Often employers expect a GED as a minimum standard. For those who lack the credential, job hunting can prove to be frustrating.

Through the respondents' stories, we see the chain of events that make job retention a challenge for mothers leaving public assistance. For some, it was a difficulty maintaining footing in the workforce due to the accumulation of personal and family crises. For others, it was a difficulty finding affordable, reliable, and most importantly, flexible childcare. Still others had trouble finding work that provided the necessary wages and benefits to support their families. In the next section, I explore how these women responded to their employment setbacks.

II. Recoveries and Continual Challenges: The Development of Tools for Survival in the Labor Market

Almost two years after respondents completed the JRT program and began looking for work, they continue to stumble in the long road to self-sufficiency. Nevertheless, after the initial setbacks and challenges that caused most to lose their first

10. For further discussion of household economies in single parent families, see Edin & Lein (1997a, 1997b).

jobs, the respondents reported an improved capacity to regroup and to find jobs that were permanent. My results are suggestive because of sample attrition. Eleven of the fourteen women were located for second follow-up interviews, almost two years beyond the end of their enrollment in the JRT program. All but two of the eleven women were working, even though some were working only part-time and still collecting some TANF benefits. With a healthy economy behind them, most of the women found jobs that provided living wages and managed to pull together the personal resources to stay in their current positions for longer periods of time. The analysis turns to a discussion of the strategies that the women have employed in their second or third jobs after initial setbacks in the labor market.

Learning from Experience

Lydia, who had left the position at the residential facility due to conflicts between scheduling and child care, enrolled in a program offered by the welfare office that helped her with her résumé and provided job leads. About a month after leaving the first job at the facility, Lydia found a job working for a federal agency. She has been working there for almost a year and seven months. She was able to stay with this job because her earlier experience taught her what to look for in a work situation:

A family friendly employer. After working at that residential facility, I realized that I had to find a family friendly employer. When I interviewed, that's what I asked about. It used to be that the money was the most important thing. No one wanted the government job because the job started at \$7.45 per hour. But you had full benefits and they told me within a year, you'd have two promotions . . . and my employers have been family friendly. Everyone in there has children or is pregnant. So they understand. You get full benefits. . . . I had a kidney infection but I didn't have a lot of leave time. They have this thing called the leave bank where you can borrow 200 hours of leave. I borrowed 80 hours and I still got my check every two weeks. When I came back to work, I just went right back to my job.

From the job at the residential facility, Lydia realized that finding a job that would provide minimal conflict between scheduling and childcare would be critical for her success. In addition, Lydia spoke highly of the opportunities to improve her skills and the overall work environment that the new job provided:

Every year you get a grade that pushes you up. They give courses on Lotus and Windows that I've done. . . . And you can switch departments. You just gotta look for openings with your qualifications and you can do it. . . . I got an award at my job a few months ago. They give you \$50 on the spot. . . . And I'm glad that my co-workers and bosses are cool. . . . They gave me all this stuff when it was my birthday.

Critical to Lydia's employment retention was the realization that while wages are important, they are not the only ingredients for success. In fact, a "family friendly" work environment that provides small perks, acknowledges good work, and provides opportunities to both improve her skills and build positive relationships with co-workers are just as important. Indeed, those re-entering the labor market after a prolonged absence often overlook these benefits. However, in Lydia's case, they contributed to her staying with this job for a longer period of time.

Faith, the mother of three children who had worked as a hospital receptionist and left the position due to a personal crisis, continued to experience fluctuation in her employment situation:

I was working at this department store at night so I could stay open for a day job. I only stayed a month . . . They [the supervisors] kill you. They had me on the register. I was doing that and customer service. At the end of the [shift], once you've cleaned your station, they want you to go out and help the sales reps put the stuff back on the racks and clean up each area. We were there until 11, 11:30 at night. The store closed at 9. The buses stopped running through there at 10. . . . Luckily, I had a friend working nearby until midnight. I would go over there and wait and get a ride home. I had to let that go after a while. That was too late to be coming home. The kids would be alone until like one o'clock in the morning.

After quitting the job at the department store, Faith continued to look for work and eventually found a permanent, full-time position:

Luckily I had money in the bank so we lived off of that for about a month and a half. And then I got with this temp agency. They got me a job working customer service at a health care company . . . I recently became a permanent employee. I don't like it there though. . . . It's customer service and I don't like being tied to the phone. But I needed a day job. That department store job showed me that.

Through Faith's setbacks in the labor market, she learned that it was not enough to simply have a job; the working conditions were critical. While her first job as a hospital receptionist provided advantages, such as co-workers that she liked and consistent hours that allowed her to come home shortly after her children, the difficulty in her personal life resulted in her losing that position and being forced to start over. Eager to find any job, Faith took the department store position where the hours were not consistent, resulting in her children staying unsupervised for longer periods. After that job did not work, Faith resolved to be more mindful of the kind of employment setting that would suit her and her family best. With the benefit of a tight labor market, Faith found a job with consistent daytime hours and an improved overall job situation. While not her ideal job, it enabled her to manage her life more successfully.

Deborah, the respondent who reported having been on over fifty interviews and working part-time at the museum, also had a much different story at the two-year follow-up point. Shortly after the first follow-up interview, Deborah quit her job at the museum because of difficulties with her employer. Her boss had chastised her in front of other workers and customers. "She yelled at me in front of everyone," she reported. "I was so embarrassed." After this setback, Deborah went back on TANF for a month and then got a job as a photographer at a department store. She has worked there for nine months. Seven months into the job, she became a manager, making \$7 per hour and sales commission. She also receives benefits in the form of medical care, vacation time, and sick leave. Deborah described her re-entry into the labor market:

That woman at the museum made me feel bad. But I knew that I didn't want to stay down for long . . . [I wanted to] strive for what I really wanted. I was always interested in photography. . . . [I thought] about what I really wanted to do and what I really could do . . . I wanted to get off of welfare. I was ready. You have to be ready to want to make that effort to achieve something. When that woman made me feel bad, I knew that I had to leave. I was worried all the time anyway at that job. I was working only weekends. I didn't think that I was going to make it. I knew I had to leave.

Deborah's statements suggest that the combination of her difficult relationship with her first employer, her increasing level of motivation, and her desire for more money and benefits fueled her move from one job to another. The challenges from her first job served to shape the kind of experience that she was looking for in her next job.

Essential to the respondents' recoveries was an ability to see opportunities that could potentially lead to advancement. Marisa, the mother of a three year old girl, spent the months right after completing the JRT program hopping from one temporary job assignment to another:

It became clear to me that none of these jobs was gonna lead to anything. I was constantly dealing with a new set of people with new stuff I had to do. None of it was interesting. I thought that it would be a good idea to, when I interview, look for stuff that may lead to something.

With a limited work history, but a high school diploma, Marisa reported having difficulty finding jobs for which she qualified that met her criterion. She kept doing temporary jobs, but finally found an agency that emphasized temporary-to-permanent opportunities. She was placed on a long-term assignment in a health care firm. Six months into the assignment, the firm hired her as a full time employee. It seems that after doing several temporary jobs, it became clear that finding jobs that "lead to something" was a higher priority for Marisa. She remarked:

I do medical billing. It's alright. I like it and it's helpful because I want to work in computers. That job will get me started . . . The wages are good. When I

was a temp [in this job], I was making less. Six months later, now I'm making \$10.25. In terms of benefits, they come with everything. And I'm learning stuff that I can use later . . . I'm making it.

Many of the women learned from the setbacks and used those lessons to find better job prospects and to improve their abilities to marshal the resources that they would need to be successful. There was an improved understanding of the factors that were necessary for them to survive in employment positions. They reported that while money retained its importance, finding work with benefits became a higher priority. Also, not simply finding a job, but finding a job situation that would improve one's chances of retaining employment became key. Features such as consistent daytime hours, family friendly employers, opportunities for advancement and skill improvement, and living wages and benefits became sought after job characteristics. Thus, although some of the respondents returned to welfare in the short-term and others engaged in "job-hopping," stumbles in the job market did not always mean falls that encouraged extended returns to the welfare system.

The Continual Challenges of the Single Working Mother

While they were better equipped to respond to obstacles than they were during their first jobs, the respondents still faced considerable challenges. Negotiating the conflicts between work and single motherhood with limited resources remained a formidable task. For example, during the final interviews, respondents cited continuing difficulties with finding time to spend with children, locating secondary post school-day child care, and developing healthy relationships with supervisors. One interviewee who works as a receptionist during the week and in a department store on weekends explained this tension:

My kids said that I don't spend enough time with them so I stopped working Sundays. That's their day because I'm working long hours the other days. With my house chores, it's so hard for me to juggle it all because I'm always so tired. I come home and cook and make sure their homework is together but it's just hard.

The majority of the women in this study reported this tension between work and family commitments. This tension is an experience that all mothers face entering the labor market. However, for welfare recipients transitioning back into the work force, this balancing act can be unfamiliar and more difficult. They generally lack the resources that middle and upper class mothers use to absorb the costs associated with work. Working one day less a week means a significant difference in take-home pay for the hourly worker. Cars and other conveniences are scarce or unavailable. Moreover, when friends and family members cannot help with child-care, surrogate care providers with flexible hours are often not accessible. Meeting household expectations often requires the respondents to re-negotiate their roles as mothers in light of additional demands made on them by their jobs.

Above all, available and affordable daytime childcare was a common denominator that allowed the women to stay in the labor market. In addition, after-school programs were important, and when such programs were not available, older children were drafted to care for their siblings. However, these solutions often proved patchy. Developing a reliable back-up childcare system was not a simple matter as Lydia explained:

I don't have any back-up day care. I don't have anyone who can take my son who is reliable. So if he gets sick and can't go to day care, I'll stay home. But so far, my employers have been family friendly.

The lack of "secondary" day care options for these families is often overlooked in the literature on the welfare-to-work transition. Nevertheless, it can be vital in insuring that mothers report to work consistently. Luckily, Lydia's employer permits an extensive number of days that she can take off for those situations. For her, childcare problems do not become crises. Yet, for others, when children got sick and could not go to a day care center or had behavioral problems in school as Tamera's son did, finding a backup person to cover working hours proved problematic. Beverly, a mother of a four-month old baby and children, ages two, nine, and 12, explained:

The two-year old had a fever the other night. I just had to pray that he'd get over it and feel good enough to go to day care by the next morning. I can't afford to take time off. I don't have a lot of days [off] and we need the money. . . . I keep to myself in this neighborhood so I'm not cool enough with anybody to have them watch him.

Another major challenge involved communicating needs to an employer and creating a strategy for responding when those needs were not met. Even when employers were perceived to be reasonable by the respondents, there was still a certain degree of difficulty communicating with them. Marisa, who found a permanent job in medical billing, described this tension:

The only problem I really have is talking to people higher up than me. This supervisor, I won't talk to her. I get so nervous. She's open with me and everything and she and my other boss, who I get along with, are cool. So I know that she's alright. But when she tells me something it goes in one ear and out the other 'cause I'm nervous. And then I don't want to ask her again because I feel like I should know. I don't want her to think that I don't understand. I know I shouldn't feel like that but I do. . . . Those little things like that get to you.

Anxiety in the face of supervisory authority is a problem for many women coming back into the work world after a prolonged absence. Throughout this investigation, there were numerous examples of respondents having difficulty communicating needs to employers or avoiding addressing problems altogether in an effort to dodge conflict. Few of the respondents reported bargaining or negotiating with employers to meet both work and family responsibilities. For example, whenever

Marisa's daughter fell sick and could not go to day care, Marisa reported feeling comfortable asking for time off from one supervisor, but not the other. Avoiding a supervisor could result in jeopardizing her good standing at her job.

The employer-employee tension experienced by low-income women as they re-enter the labor force also results from unaccommodating employers (see Newman 1999). In this investigation, several respondents reported having trouble negotiating a difficult work environment when employers seemed unsympathetic. Darla, who earlier reported problems finding summer child care for her two sons, moved from one temporary job assignment to another the few months after graduating from the program. Like Marisa, Darla did a long-term temporary job at a hospital that became permanent. She has been employed there for a year and four months, making \$9.50 per hour. However, Darla reported a constant tension with her employer:

I had been sick a lot. I had a tumor in my head that they had to take out. Then I had cancer in my uterus. It was a really rough time for me. My job was trying to get rid of me because of all the time I was taking off. . . . My boss tries to nickpick every little thing. My follow-up doctor appointments are very important. My supervisor has been like, "if you leave now, I'm going to have to write you up." I'm like, "but I told you earlier that I had to go to an appointment." She don't care. I was having complications one day with one of the surgeries . . . I was sweating with a fever, not feeling good at all. I called my doctor and he said to come in right away. I told my boss and she said she was going to write me up. I said, "well I'll just stay and go to the emergency room after work." Then she huffed and was like, "well if you have to leave, then go."

Darla's experience differs radically from Lydia's experience working for the government, where she could borrow hours from the leave bank when she was sick. Like Lydia, serious illness derailed Darla's ability to show up consistently for work and probably affected her ability to perform her job. However, Darla's employer is not as accommodating as Lydia's. Darla reported being unclear about what her options, if any, were, particularly considering the issues around her health. She explained:

Right now I want to get out of my job. I don't have anyone to talk to about it. I don't know my rights. People have told me that I could sue because she's trying to write me up for medical leave and I had my yearly evaluation and a lot of it was about me being sick and being out. I told her I don't think that's fair, but I don't know my rights. I don't know where to go. . . . When I'm out because of my illnesses, she would say stuff like, "You're really putting a hurt on the department. I'm going to have to write you up." I felt so bad. I started crying. And then I was mad at myself for getting so upset that I would cry in front of her. Sometimes I just want to quit. But then I know I have to take care of my boys.

Darla is learning how to work through her crises with her health and her boss while maintaining her footing in the work world. She is developing her dual role as mother and economic provider because she knows that she must support her children. Knowing that she cannot return to public assistance for an extended period of time, Darla has to manage a hostile work environment to ensure that her problems do not escalate and jeopardize her ability to support her family. However, the situation, rife with employer-employee tension, remains precarious.

III. Stumbling in the Long Run

What about the women who were interviewed who were not working during the final round of data collection? Not all welfare recipients obtain jobs or engage in a learning process after setbacks that fuel improved employment situations. What explains the difficulty some encounter in recovering from a setback? Andrea, a mother of four children, has worked only short-term temporary jobs since data collection began. Still taking classes towards her associate's degree, she explained her apprehension about living on low wages and her frustration with not being able to find a better paying position:

Well, I'm looking for office work, like clerical work. I'm trying to wait until I get my degree so I can find a good job. I don't want to be stuck working at McDonald's or something. If I can't get anything that's gonna make me some money, I'd rather not go. I don't want to work somewhere where I'm barely gonna be able to make it. . . . When I interview, they tell me stuff like, I haven't worked in so many years. I don't have enough experience. They say I don't qualify for the jobs I want because I haven't worked in so long. My youngest daughter is about to be eight. So it's been that long since I've had like a full time permanent job. . . . It's hard to find something when you don't have recent work experience. The welfare office wants me to go and work at these jobs paying minimum wage. And then say I go and get the job and start working for these minimum wages, I get cut off [of public assistance] and I can barely take care of my kids. Making 5 something per hour. I can't take care of four kids with that. I'd just be working to pay somebody to watch my kids when I'm not there.

The EITC does supplement the income of low-income families but requires workers to spend time at a particular job generating income before the credit is distributed the following year. Employees can use the credit to reduce their social security and payroll taxes every month. However, it is uncertain whether single mothers know of this policy when they weigh their employment options in light of major expenses associated with working such as childcare. When asked, Andrea reported that she was not familiar with the EITC. Clearly, she recognizes that the short term solution of getting a low-wage job will not move her out of poverty and pursuing her education is a more viable solution.

Also, many mothers do not know how to marshal childcare that may be available in their communities. Andrea, a mother of four children, ages seven, nine,

ten, and 12, reported difficulty finding either after-school programs for all of the children or a job that will pay enough to allow her to pay for baby-sitters and child care for them. She reports having used up her DTA supplied childcare vouchers the past few years that she has been in school:

You can't go to work and then rush home to catch the kids when they come off the bus. Like me, if I work I'd have to be there at 9 o'clock. My kids get on the bus at 8:30. I may not be able to get there until 9:30. I work a couple hours and then it's time for me to come home because they're home by 2 o'clock. Then I'm in school at night. If I work far away, then I can work only a few hours and you know they barely got any jobs in this neighborhood. I want to get child care but they won't let me get it because they said that I used it all up since I've been in school. . . . I have to finish school. . . . Otherwise, I'll be stuck forever. Some people on welfare ain't trying to do nothing. I'm trying. They told me in January I got 24 months. I'm going to finish school so that I can get a good job. Otherwise, I'll be working some minimum wage job for someone to watch my kids. Nothing will be going into my pocket.

Andrea's story, one of multiple pulls and conflicts, is probably not unusual. With Massachusetts' "Work First" policy, Andrea's school attendance conflicted with the policy goal of getting her to work immediately. Caught between the probability of finding only low-wage work, given her employment history, and the need for enough money to support her family, she saw school as the best way to improve her earning potential. Hence, she chose to stay out of the labor market and bet on the long run.

Employment expectations also remain a key piece of the puzzle. Many of the respondents had high hopes about the types of jobs for which they would qualify and the wages that they would command. However, most of those expectations remain unrealized. Over time, the long run success stories adjusted their goals. Those that did not adjust stumbled badly.

Deidra, who recently earned a bachelors degree in political science from a local college, had clear expectations about what would happen after she completed the JRT program. She reported during an initial interview that she wanted to make between \$9–10 per hour, but no less than \$8. She spent the next two years job- and program-hopping. Still not employed at the time of the final round of data collection, Deidra explained:

After I left the JRT program, I went to this temp to perm agency. They found me three jobs. They know I can't do data entry but this lady hired me for it anyway, waste of time. I couldn't do it so they said, "don't come back." Then I got hired at this place to be a receptionist. I got laid off because the boss's sister needed the job. Then I was working in a mental hospital. They had me doing hospital and kitchen stuff. They wanted me to work from 10 A.M.–7 P.M. The first day was my training. They worked me like a slave. I had to mop the floor, do the dishes, take the food up to the patients, my first day. They were

supposed to be training me but they had me working the first day. Next day, I was doing housekeeping from 7 A.M.–3 P.M. But then the guy wanted me to stay until 7 o'clock at night. I said, "who's gonna watch my daughter? I'm not staying for nobody." I told him he could take this job and shove it. I'm not staying for nobody. I'm not doing slave work like that. They weren't paying me enough for all the stuff they had me doing. Then at the temp agency, they said I was staying there for too long. I said fine and I left. From there, I've been doing this job link program at the welfare office.

Two issues seem to be key here. First, high employment expectations left Deidra feeling that the latest job at the hospital was beneath her, especially because she had a bachelors degree. She took offense at what she perceived as her employer's lack of respect for her time. Second, while Deidra had the education necessary to qualify for a better job, she had a limited understanding of workplace norms and had great difficulty dealing productively with her employers and co-workers. She did not respond to the criticism of a JRT staff member who pointed out that Deidra's defensive demeanor and way of speaking to her employers may make it difficult for her to retain a job or secure the kind of work for which she felt she qualified. Understanding workplace norms, such as the importance of getting along with supervisors, doing some tasks that are not in one's job description, and building workplace credibility are crucial for employment success.¹¹ Deidra's initial stumbling after completing the program has turned into a fall:

This is just stressful. I'm tired of being on welfare. Luckily, my boyfriend gives me money. But I want a job. It's like, all the experience I got. It's not getting me nowhere. . . . They told me last month I got 24 months left. But I'm going to have a job before then so that don't matter to me. . . . These interviews, I think the problem is that I can't type. And I don't do that well on interviews. They ask you "why should we hire you?" That's a tough question to answer. And I'm not working for hardly no money. . . . I want \$10 per hour. I'll work for eight dollars per hour but not less. . . . I want the job so bad. And I can't get the job. Maybe people have better work history. But I can't figure it out. I dress for success. I go in with a attitude like, "I'm going to get this job." But then it doesn't work out.

To Deidra, the problem lies with her typing skills and her difficulty answering certain interview questions. However, with a limited understanding of workplace norms and relatively high expectations, she may have continued difficulty recovering from her job market setbacks.

11. Danzinger et al. 1999, discuss the limitations of examining only human capital measures in welfare-to-work analyses rather than other potential barriers less easily measured such as the understanding of workplace norms.

CONCLUSION

Through this article, we saw that women transitioning off welfare are engaged in a process that involves developing and balancing the multiple roles of mother, economic provider, and labor market participant. Such a development involves, to various degrees, setbacks, lessons learned, successes, and continual challenges. We saw examples of how welfare-reliant mothers overcame initial setbacks in the labor market and how they learned, through difficult experiences, to respond to problems that they were not prepared to confront immediately after completing the JRT program. Many spent the months after graduating from the program managing family crises with limited resources, while trying to re-enter the labor market. Many of the women viewed work and family as competing options. Therefore, they were rarely easy to combine. In addition, the respondents had difficulty determining the most effective solutions to some of their problems in order to balance work and family. Consequently, their stories reflect dashed hopes and challenges. Problems with childcare, relationships, and meeting expenses affect people of all income levels, but the accumulated burdens of this group of disadvantaged workers are high. With fewer resources at their disposal than most middle and upper class individuals, the women had difficulty avoiding professional derailment when numerous problems surfaced.

Yet, this article also presents stories of survival and constant re-negotiation of roles as mothers, providers, and employees. While they still encounter numerous obstacles, many developed the capacity to marshal resources and to work through challenges that enabled them to maintain jobs for longer periods of time. First, after experiencing setbacks in the labor market, the women proactively looked for jobs that would improve their chances of balancing work and family successfully. While wages were still important, the respondents began to look specifically for jobs with advantages such as daytime hours, benefits, consistent work schedules, and opportunities for advancement and human capital improvements. Finding "family friendly" employers became key. Second, the respondents developed their abilities to solve problems. During the final round of data collection, respondents reported fewer incidents of problems in their personal lives building up to the point that they lost their footing in the work world. Third, they learned how to juggle work and family better. Enlisting older children to assist with childcare, or finding safe, affordable, and nearby childcare improved their chances of staying on the job.¹² What becomes clear is that a certain level of proactivity and motivation is required of the mothers if they are going to compete successfully in the labor market. However, high motivation on the part of welfare recipients does not constitute the only ingredient for success. A complex web of resources and skills must be in place for low-income single mothers to attain success in the labor market. Developing this web is a process, and many of the women are in the early stages.

12. We have no way of measuring, however, how respondents' work-facilitating choices are affecting their children.

Equally important, the study suggests that external factors play just as large a role as the women's skills at solving problems, spotting potential opportunities, knowing how to find the right kind of job situation, and juggling family responsibilities. The women were operating with the benefit of a tight labor market. None of the women had minimum wage jobs. When the job market is not as favorable to workers, employers may not retain those employees requiring more attention and desiring higher wages and more flexibility. Organizing work so that parents can stay home with sick children is not always feasible. Some jobs are inherently flexible, others are not. However, employers can put some interventions in place. Creating environments that invite communication between employees and supervisors appears to be a critical determinant of success. In addition, policy makers must encourage and reward employers for making long-term investments in low-income women striving for self-sufficiency. Mentioned earlier, institutionalized benefits such as flextime, employee leave banks, and child care services help. In tight labor markets, perks such as these challenge employers to compete on "family friendliness," which benefits all workers, regardless of socioeconomic status.

In addition, the backdrop of welfare reform created a situation whereby finding and keeping a job was rewarded more than it had been in the past. Respondents were re-entering the labor market after the increase in minimum wage and the expansion of the EITC. Also, the availability of safe and affordable childcare was an essential ingredient for the women's stability, and many had used vouchers supplied by the welfare department to subsidize it.

These results suggest recommendations for further research and policy development. In light of welfare reform, policy makers are just beginning to understand fully the needs of recipients and how policy can begin to respond. With persistently weak labor force attachment, many of the women seemed to have great difficulty initially finding the stability necessary to perform successfully in the labor force. If this study's respondents, most of whom had relatively high educational attainment and were quite motivated, face difficulties in the welfare-to-work transition, we can expect those with less education and motivation to have even greater difficulties. However, structural supports can increase the chances of a successful transition. As we saw in Andrea's story, current policy does not address the difficulties in finding available and accessible childcare for all welfare-reliant mothers. In addition, longer-term human capital investments are not supported by the current policy. By providing child care assistance, supporting human capital investments, and continuing to develop interventions to make work pay by increasing the minimum wage and expanding further the EITC, government can make significant strides to help welfare-reliant mothers transition into the permanent labor force.

Balancing work and family is a skill that is only cultivated over time. Mothers with weak labor force attachment, arguably, have had fewer opportunities that encourage them to develop this skill. The challenge for welfare-to-work service

providers, employers, public policy, and the women themselves is to create an environment to cultivate and develop this essential skill.

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NO EQUAL JUSTICE: HOW THE CRIMINAL JUSTICE SYSTEM USES INEQUALITY

DAVID COLE*

The most telling image from the most widely and closely watched criminal trial of our lifetime is itself an image of people watching television. On one half of the screen black law students at Howard Law School cheer as they watch the live coverage of a Los Angeles jury acquitting O.J. Simpson of the double murder of his ex-wife and her friend. On the other half of the screen, white students at George Washington University Law School sit shocked in silence as they watch the same scene. That split-screen image captured in a moment the division between white and black Americans on the question of O.J. Simpson's guilt. And that division in turn reflects an even deeper divide on the issue of the fairness and legitimacy of American criminal justice.

Before, during, and after the trial, about three-quarters of black citizens maintained that Simpson was not guilty, while an equal fraction of white citizens deemed him guilty. More people paid attention to this trial than any other in world history, but neither the DNA evidence nor the dubious reliability of Los Angeles detective Mark Fuhrman altered either group's views on guilt or innocence.

In some respects, the racially divided response to the verdict was understandable. For many black citizens, the acquittal was a sign of hope, or at least payback. For much of our history, the mere allegation that a black man had murdered two white people would have been sufficient grounds for his lynching. Until very recently, the jury rendering judgment on O.J. Simpson would likely have been all white; Simpson's jury, by contrast, consisted of nine blacks, two whites, and a Hispanic. The prosecution was poisoned by the racism of the central witness, Detective Mark Fuhrman, who had, among other things, called blacks "niggers" on tape and then lied about it on the stand. To many blacks, the jury's "not guilty" verdict demonstrated that the system is not always rigged against the black defendant, and that was worth cheering.

The white law students' shock was also understandable. The evidence against Simpson was overwhelming. Simpson's blood had been found at the scene of the murders. The victims' blood had been found in Simpson's white Bronco and on a sock in Simpson's bedroom. A glove found at Simpson's home had, as prosecutor Marcia Clark put it in her closing argument to the jury, "all of the evidence on it: Ron Goldman, fibres from his shirt; Ron Goldman's hair; Nicole's hair; the

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defendant's blood; Ron Goldman's blood; Nicole's blood; and the Bronco fibre."¹ The defense's suggestion that the Los Angeles Police Department somehow planted all of this evidence ran directly contrary to their simultaneous (and quite effective) demonstration of the LAPD's "keystone cops" incompetence.

To many whites, it appeared that a predominantly black jury had voted for one of their own, and had simply ignored the overwhelming evidence that Simpson was a brutal double murderer.

AN ATYPICAL CASE

But there is a deep irony in these reactions. Simpson, of course, was atypical in every way. The very factors that played to his advantage at trial generally work to the disadvantage of the vast majority of black defendants. Simpson had virtually unlimited resources, a jury that identified with him along racial grounds, and celebrity status. Most black defendants, by contrast, cannot afford any attorney, much less a "dream team." Predominantly or exclusively white juries usually decide their fate. And most black defendants find that their image is linked in America's mind not with celebrity, but with criminality.

At the same time, the features that worked to Simpson's advantage, and that occasioned such outrage among whites, generally benefit whites. Whites have a disproportionate share of the wealth in our society, and are more likely to be able to buy a good defense. White defendants generally face juries composed of members of their own race; and a white person's face is not stereotypically associated with crime. Thus, what dismayed whites in Simpson's case is precisely what generally works to their advantage, while what blacks cheered is what most often works to their disadvantage.

Had Simpson been poor and unknown, as most black (and white) criminal defendants are, everything would have been different. The case would have garnered no national attention. Simpson would have been represented by an overworked and underpaid public defender who would not have been able to afford experts to examine and challenge the government's evidence. No one would have conducted polls on the case, and the trial would not have been televised. In all likelihood, Simpson would have been convicted in short order, without serious testing of the evidence against him or the methods by which it was obtained. Whites would have expressed no outrage that a poor black defendant had been convicted, and blacks would have had nothing to cheer about. That, not *California v. O.J. Simpson*, is the reality in American courtrooms today.

In other words, it took an atypical case—one in which minority race and lower socioeconomic class did not coincide, the defense outperformed the prosecution, and the jury was predominantly black—for white people to pay attention to the role that race and class play in criminal justice. Yet the issues of race and class are present in every criminal case, and in the vast majority of cases they play

1. Jeffrey Toubin, "A Horrible Human Event," *The New Yorker*, Oct. 23, 1995, 46.

out no more fairly. Of course, they generally work in the opposite direction: the prosecution outspends and outperforms the defense, the jury is predominantly white, and the defendant is poor and a member of a racial minority. In an odd way, then, the Simpson case brought to the foreground issues that lurk beneath the entire system of criminal justice. The system's legitimacy turns on equality before the law, but the system's reality could not be further from that ideal. As Justice Hugo Black wrote over 40 years ago: "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." He might well have added, "or the color of his skin." Where race and class affect outcomes, we cannot maintain that the criminal law is just.

RACE AND CLASS

In fact, race and class disparity are greater in the criminal justice system than in virtually any other sector of American life. The vast majority of those behind bars are poor; 40 percent of state prisoners can't read; and 67 percent of prison inmates did not have full-time employment when they were arrested. The per capita incarceration rate among blacks is seven times that among whites. African Americans make up about 12 percent of the general population, but more than half of the prison population. They serve longer sentences, have higher arrest and conviction rates, face higher bail amounts, and are more often the victims of police use of deadly force than white citizens.

In 1995, one in three young black men between the ages of 20 and 29 was imprisoned or on parole or probation. If incarceration rates continue their current trends, one in four young black males born today will serve time in prison during his lifetime (meaning that he will be convicted and sentenced to more than one year of incarceration). Nationally, for every one black man who graduates from college, 100 are arrested.²

DEPENDING ON DISPARITIES

Some portion of these disparities reflects differences in offending rates, but that is not the only explanation. While our criminal justice system is explicitly based on the premise and promise of equality before the law, the administration of criminal law—whether by the officer on the beat, the legislature, or the Supreme Court—is in fact predicated on the exploitation of inequality. My claim is not simply that we have ignored inequality's effects within the criminal justice system, nor that we have tried but failed to achieve equality there. Rather, I contend that our criminal justice system *affirmatively depends on inequality*. Absent race and class disparities, the privileged among us could not enjoy as much constitutional protection of our liberties as we do; and without those disparities, we could not afford the policy of mass incarceration that we have pursued over the past two decades.

2. Ibid.

White Americans are not likely to want to believe this claim. The principle that all are equal before the law is perhaps the most basic in American law; it is that maxim, after all, that stands etched atop the Supreme Court's magnificent edifice. The two most well-known Supreme Court decisions on criminal justice stand for equality before the law, and that is why they are so well known. In *Gideon v. Wainwright*, the Court in 1963 held that states must provide a lawyer at state expense to all defendants charged with a serious crime who cannot afford to hire their own lawyer. The story became a best-selling book and an award-winning motion picture. Three years later, in *Miranda v. Arizona*, the Court required the police to provide poor suspects with an attorney at state expense and to inform all suspects of their rights before questioning them in custody. In these landmark decisions, the Court sought to ameliorate societal inequalities—both among suspects and between suspects and the state—that undermined the criminal justice system's promise of equality. As the Court stated in *Miranda*, “[w]hile authorities are not required to relieve the accused of his poverty, they have the obligation not to take advantage of indigence in the administration of justice.”

The prominence of these decisions, however, is misleading. They were both decided by the Supreme Court under Chief Justice Earl Warren, at a time when the Court was solidly liberal and strongly committed to racial and economic equality. At virtually every juncture since *Gideon* and *Miranda*, the Supreme Court has undercut the principle of equality reflected in those decisions, and has itself “take[n] advantage of indigence in the administration of justice.”

Today, those decisions stand out as anomalies. *Gideon* is a symbol of equality unrealized in practice: poor defendants are nominally entitled to the assistance of counsel at trial, but the Supreme Court has failed to demand that the assistance be meaningful. Lawyers who have slept through testimony or appeared in court drunk have nonetheless been deemed to have provided their indigent clients “effective assistance of counsel.” And today's Court has so diluted *Miranda* that the decision has had little effect on actual police interrogation practices.

The exploitation of inequality in criminal justice is driven by the need to balance two fundamental and competing interests: the protection of constitutional rights, and the protection of law-abiding citizens from crime.

Virtually all constitutional protections in criminal justice have a cost: they make the identification and prosecution of suspected criminals more difficult. Without a constitutional requirement that police have probable cause and a warrant before they conduct searches, for example, police officers would be far more effective in rooting out and stopping crime. Without jury trials, criminal justice administration would be much more efficient. But if police could enter our homes whenever they pleased, we would live in a police state, with no meaningful privacy protection. And absent jury trials, the community would have little check on overzealous prosecutors. Much of the public and academic debate about criminal justice focuses on where we should draw the line between law enforcement interests and constitutional protections.

Liberals tend to argue for more rights-protective rules, while conservatives tend to advocate rules that give law enforcement more leeway. But both sides agree, at least in principle, that the line should be drawn in the same place for everyone.

In fact, however, we have repeatedly mediated the tension not by picking one point on the continuum, but in effect by picking two points—one for the more privileged and educated, the other for the poor and less educated. For example, the Supreme Court has ruled that the Fourth Amendment bars police from searching luggage, purses, or wallets without a warrant that is based on probable cause to believe evidence of crime will be found. At the same time, however, the Court permits police officers to approach any citizen—without any basis for suspicion—and request “consent” to search. The officer need not inform the suspect that he has a right to say no. This tactic, not surprisingly, is popular among the police, and is disproportionately targeted at young black men, who are less likely to assert their right to say no. In this way, the privacy of the privileged is guaranteed, but the police still get their evidence, and society does not have to pay the cost in increased crime of extending to everyone the right to privacy that the privileged enjoy. This pattern is repeated throughout the criminal justice system: the Court affirms a constitutional right, but in a manner that effectively protects the right only for the privileged few, while as a practical matter denying the right to those who are less privileged. By exploiting society’s “background” inequality, the Court sidesteps the difficult question of how much constitutional protection we could afford if we were willing to ensure that it was enjoyed equally by all people.

EXPLOITING INEQUALITY

The Supreme Court is not alone in exploiting inequality in this way. If there is a common theme in criminal justice policy in America, it is that we consistently seek to avoid difficult trade-offs by exploiting inequality. Politicians impose the most serious criminal sanctions on conduct in which they and their constituents are least likely to engage. Thus, a predominantly white Congress has mandated prison sentences for the possession and distribution of crack cocaine one hundred times more severe than the penalties for powder cocaine. African Americans comprise more than 90 percent of those found guilty of crack cocaine crimes, but only 20 percent of those found guilty of powder cocaine crimes. By contrast, when white youth began smoking marijuana in large numbers in the 1960s and 1970s, state legislatures responded by reducing penalties and in some states effectively decriminalizing marijuana possession. More broadly, it is unimaginable that our country’s heavy reliance on incarceration would be tolerated if the black/white incarceration rates were reversed, and Whites were incarcerated at seven times the rate that Blacks are. The white majority can “afford” the costs associated with mass incarceration because the incarcerated mass is disproportionately nonwhite.

Similarly, police officers routinely use methods of investigation and interrogation against members of racial minorities and the poor that would be deemed unac-

ceptable if applied to more privileged members of the community. "Consent" searches, pretextual traffic stops, and "quality of life" policing are all disproportionately used against racial minorities. Courts assign attorneys to defend the poor in capital murder trials who the wealthy would not hire to represent them in traffic court. And jury commissioners and lawyers have long engaged in discriminatory practices that result in disproportionately white juries. These double standards are not, of course, explicit; on the face of it, the criminal law is color-blind and class-blind. In a sense, this only makes the problem worse. The rhetoric of the criminal justice system sends the message that our society carefully protects everyone's constitutional rights, but in practice the rules assure that law enforcement prerogatives will generally prevail over the rights of minorities and the poor. By affording criminal suspects substantial constitutional protections in theory, the Supreme Court validates the results of the criminal justice system as fair. That formal fairness obscures the systemic concerns that ought to be raised by the fact that the prison population is overwhelmingly poor and disproportionately black.

TWO SYSTEMS OF JUSTICE

This is not to suggest that the disproportionate results of the criminal justice system are wholly attributable to racism, or that the double standards are intentionally designed to harm members of minority groups and the poor. Intent and motive are notoriously hard to fathom, particularly where there are multiple actors and decision makers. In fact, I think it more likely that the double standards have developed because they are convenient mechanisms for avoiding hard questions about competing interests, and it is human nature to avoid hard questions. Whatever the reasons, we have established two separate systems of criminal justice: one for the privileged and another for the less privileged. Some of the distinctions are based on race, others on class, but in no true sense can it be said that all are equal before the criminal law. But precisely because much of the disparity does not stem from explicit and intentional discrimination, a "color-blind" set of rules is insufficient to respond to the problem. The disparities are built into the very structure and doctrine of our criminal justice system, and unless and until we acknowledge and remedy them, we will have "no equal justice."

Equality in criminal justice does not necessarily mean more rights for the criminally accused. Indeed, were we to commit ourselves to equality, the substantive scope of constitutional protections accorded to the accused might well be reduced, not expanded. If we had to pay full cost, in law enforcement terms, for the constitutional rights we now claim to protect, the scope of those rights would probably be cut back for all. At least we would then strike the balance between law enforcement and constitutional rights honestly.

It requires little argument to maintain that as a moral matter we must take Justice Black's dictate about equal justice much more seriously if we are to remain true to the first principle of criminal justice. We should do it because it is the right thing to do. But there are also strong pragmatic reasons for responding to inequal-

ity in criminal justice, because a criminal justice system based on double standards both fuels racial enmity and actually encourages crime.

The racially polarized reactions to the Simpson case reflected a deep and longstanding racial divide on issues of criminal justice: blacks are consistently more skeptical of the criminal justice system than whites. A long history of racially discriminatory practices in criminal law enforcement has much to do with this skepticism, but it is not just a matter of history: the double standards we rely upon today reinforce black alienation and distrust. Because criminal law governs the most serious sanctions that a society can impose on its members, inequity in its administration has especially corrosive consequences. Perceptions of race and class disparities in the criminal justice system are at the core of the race and class divisions in our society.

INCREASING THE COST OF CRIME

The perception and reality of double standards also contribute to crime itself by eroding the legitimacy of the criminal law and undermining a cohesive sense of community. As any wise ruler knows (and many ineffective despots learn), the most effective way to govern is not through brute force or terror, but by fostering broad social acceptance of one's policies. Studies have found that people obey the law not because they fear formal punishment—the risk of actually being apprehended and punished is infinitesimal for all crimes other than murder—but because they and their peers have accepted and internalized the rules, and because they do not want to let their community down. The rules will be accepted, and community pressure to conform will be effective, only to the extent that “the community” believes that the rules are just and that the authority behind them is legitimate. Thus, the double standards that govern the criminal justice system actually *increase* the costs of crime.

When significant sectors of a community view the system as unjust, law enforcement is compromised in two ways. First, people feel less willing to cooperate with the system, whether by offering leads to police officers, testifying as witnesses for the prosecution, or entering guilty verdicts as jurors. Second, and more importantly, people are more likely to commit crimes, precisely because the laws forbidding such behavior have lost much of their moral force. When the law loses its moral force, the only deterrents that remain are the strong-arm methods of conviction and imprisonment. We should not be surprised, then, that the United States has the second highest incarceration rate of all developed nations. And it should be no wonder that black America, which has been most victimized by the inequalities built into the criminal justice system, is simultaneously most plagued by crime and most skeptical of criminal law enforcement.

WHAT IS TO BE DONE?

The first step, of course, is to recognize the scope of the problem. Although African Americans are generally skeptical of the criminal justice system's fair-

ness, that skepticism is not shared by the white majority, nor apparently by the courts. Until now, the courts and legislatures have been extremely reluctant even to allow the issue of inequality in criminal justice to be aired, and have instead impermissibly exploited the inequality to make the hard choices of criminal justice seem easier. A realistic response to crime depends upon a candid assessment of the uses of inequality in criminal justice.

The second step is to eliminate the double standards. This turns out to be rather straightforward in some instances, but difficult if not impossible in others. We could certainly require, for example, that police officers seeking consent to search inform citizens that they have the right to say no. However, wealthy defendants will always be able to outspend poor defendants; not everyone can have Johnny Cochran defend him. Even an *attempt* to limit such disparities would be a reversal of the current approach, however, which now affirmatively exploits them. Such reforms are necessary if the criminal justice system is to regain the legitimacy so critical to effective law enforcement.

Restoring legitimacy through adjusting the rules that govern criminal law enforcement will not be nearly enough. The double standards have also had a devastating impact on black communities, particularly poor, inner-city communities. The racial divide fostered and furthered by inequality in criminal justice has contributed to a spiral of crime and decay in the inner city, corroding the sense of community that, together with legitimacy, encourages compliance with the criminal law. Therefore, we cannot limit ourselves to restoring the criminal law's legitimacy, but must also seek to restore the communities that have been simultaneously ravaged by crime and the criminal justice system. To accomplish this we must both reinforce and support community-building organizations in the inner cities and change the way we respond to crime itself.

REBUILDING COMMUNITIES

These remedies go hand in hand. In order to adopt a more effective approach to criminal punishment, we must rebuild communities. In order to rebuild the communities, we must forgo our reliance on mass incarceration—a policy that has robbed inner-city communities of whole generations of young men. We respond to crime today in a self-defeating way by stigmatizing criminals, cutting them off from the community, and fostering criminal subcultures that encourage further criminal behavior. In doing so, we undermine one of the most important deterrents to crime: a sense of belonging to a law-abiding community. By the same token, to the extent that we reinforce divisions between individuals and communities, and between the law-enforcing and law-breaking communities, we encourage continuing criminal behavior. If we are to reduce criminal recidivism, we must adopt measures that seek to reintegrate offenders into the community, and that reinforce social ties within and across communities.

This is an ambitious agenda. But unless all Americans begin to see the problem of inequality in criminal justice as their own, and unless we take responsible measures to respond to it, America's crime problem and racial divide will only get worse.³

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3. David C. Lewen, *America's Addiction to Prisons*, 20 *Fordham Urb. L.J.* 641, 646 (1993). Michael Tonry, *Malign Neglect—Race, Crime and Punishment in America* 4 (1995). The average sentence imposed on black offenders sentenced to incarceration in U.S. district courts in 1992 was 84.1 months, while the average sentence for white offenders was 56.8 months. Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics—1995*, 474 (Table 5.25). Although they are only 12 percent of the population, blacks make up 31.3 percent of those arrested. *Ibid.*, 408 (Table 4.10). Among convicted offenders, 80 percent of black defendants and 75 percent of whites are sentenced to incarceration. *Ibid.*, 471 (Table 5.22). See also Ian Ayres and Joel Waldfoegel, *A Market Test for Race Discrimination in Bail Setting*, 46 *Stan. L. Rev.* 987 (1994) (finding that judges impose higher bail amounts on black defendants); Marc Mauer and Tracy Huling, *The Sentencing Project, Young Black Americans and the Criminal Justice System: Five Years Later* (Oct. 1995), 1. Henry Louis Gates, Jr., *The Charmer*, *The New Yorker*, April 29/May 6, 1996, 116; David B. Mustard, *Racial, Ethnic and Gender Disparities in Sentencing: Evidence from the US Federal Courts*, Univ. of Georgia Economics Working Paper 97-458 (finding that even under federal sentencing guidelines, and controlling for offense level and criminal history, blacks receive sentences six months longer on average than whites).

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THE RELATIONSHIP BETWEEN RACE AND MENTAL HEALTH TREATMENT

SHARON PARSONS, WILLIAM PAYNE, RON VOGEL, AND DAMIEN EJIGIRI*

INTRODUCTION

The Deep South, until recent times, was the hub of racial inequality. Although the "Whites Only" signs have disappeared, there is good reason to suspect that a preference for Whites remains. It is logical that the long-standing practice of racial discrimination and using race as a factor in the distribution of public services would persist in institutions even after the elimination of legally sanctioned inequality. However, institutional biases are difficult to prove. As a result, few studies have empirically tested racial differences or bias in the distribution of public resources.

Using statewide data of clients served by the Louisiana Office of Mental Health, this study investigates racial differences in mental health treatment while controlling for income,¹ in one Deep South state. This research is significant because few studies have focused completely on the public sector, analyzing both the race of the client and the race of the treating psychiatrist together.²

This study on the influence of race in mental health treatment has several related objectives. As a primary objective, this research seeks to determine if the race of either the client or the psychiatrist makes a difference in mental health treatment decisions.

- Does the race of the psychiatrist influence treatment decisions? Are black psychiatrists just as likely as white psychiatrists to over-diagnose schizophrenia among African Americans?
- Does the race of the client matter in treatment decisions? Is there an equitable distribution of mental health treatment between different racial groups?

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1. In many respects, the Louisiana Office of Mental Health is the service of last resort in mental health treatment. This Office serves a very chronically disabled population with very limited financial resources. Therefore, the clients served by OMF are generally homogenous in terms of income. For example, according to Louisiana Office of Mental Health data (dated June 30, 1995), 91.3percent of their clients earned less than \$15,000 (household income). Those that reported household incomes above \$15,000 represented only 3,143 persons out of the total cases of 35,925.
2. See T. Hu, L. Snowden, J. Jerrell and T. Nguyen, "Ethnic Populations in Public Mental Health: Services and Level of Use." *American Journal of Public Health*, 8 (1991): 1429-1434.

As a secondary objective, this study examines mental health diagnoses, by race, for clients served by the Louisiana Office of Mental Health:

- Are African Americans in the public mental health system in Louisiana disproportionately diagnosed with schizophrenia? Do the state statistics mirror the national data?

REVIEW OF THE LITERATURE

Prevalence of Mental Health Disorders and Factors Related to Diagnosis

It is estimated that the total prevalence rate for mental and addictive disorders is 28.1 percent for the adult American population.³ The Epidemiologic Catchment Area program, sponsored by the National Institute for Mental Health, estimated that major depression or other affective disorders are found in approximately four to seven percent of the population. Schizophrenia was reported for 0.6 to 1.2 percent of Americans.⁴ Of the population with mental disorders, those with schizophrenia represent only 4.9 percent of that population.⁵

Prevalence rates vary by gender, age and race. The most frequent diagnosis for men ages 18 to 64 is alcohol abuse, with severe cognitive impairment becoming the most prominent diagnosis for men over 65. While phobias are the most common diagnosis reported for women, drug abuse is the second most prevalent problem for younger women and major depression is more often cited by women ages 24 to 44.⁶

Nationally, African Americans are disproportionately diagnosed with schizophrenia and under-diagnosed with affective disorders.⁷ African Americans are 63 percent less likely to be diagnosed with depression and 35 percent less likely to report a substance-abuse problem.⁸ Racial and gender disparities exist not only in diagnosis and treatment but in the use of mental health services, as well.⁹

3. See A. Kovner, Jonas's *Health Care Delivery in the United States* (5th ed.) (New York: Springer Publishing, 1995) for further discussion.

4. See S. Williams and P. Torrens, *Introduction to Health Services*. (Albany, NY: Delmar, 1998) for further discussion.

5. See G. Pickett and J. Hanlon, *Public Health Administration and Practice*. (St. Louis: Times Mirror/Mosby Publishing, 1990) for further discussion.

6. See Williams and Torrens.

7. See B. Jones and B. Gray, "Problems in Diagnosing Schizophrenia and Affective Disorders among Blacks." *Hospital and Community Psychiatry*. 37.1: 61-66.

8. Please see The Epidemiology of Mental Illness. <http://pharminfo.com/pubs/msb/epi-men.html>. Reprinted from, *Medical Sciences Bulletin*. (1994, February). Pharmaceutical Information Associates, Ltd., for further discussion.

9. See J. Wade, "Institutional Racism: An Analysis of the Mental Health System." *American Journal of Orthopsychiatry*, 63: 536-543., B. Singer's *Racial Factors in Psychiatric Intervention*. (San Francisco, CA: R and E Research Associates, 1977) and J. Hamilton and M. Jensvoid's "Sex and Gender as Critical Variables in Feminist Psychopharmacology Research and Pharmacotherapy." *Women and Therapy*, 16: 9, for a more detailed discussion.

Schizophrenia is the most common admission diagnosis in public mental health facilities while affective disorders is the most common diagnosis in private psychiatric hospitals.¹⁰ Public mental health facilities also serve a disproportionate number of African Americans. In Louisiana, African Americans comprise approximately 31 percent of the population but constitute more than 50 percent of the persons served by the Louisiana Office of Mental Health. Nationally, minorities have a higher admission rate to state-operated inpatient services and are generally over-represented in state-operated mental health facilities.¹¹ African Americans are more likely to be admitted with a primary diagnosis of schizophrenia than are Whites and less likely to be admitted for alcohol-related disorders.¹² Because of these national statistics, we would expect to find that African Americans in the public mental health system in Louisiana will be over-represented among those diagnosed with schizophrenia.

The over-representation of African American in the public mental health system is logically related to the over-representation of this group among those in poverty. The mission of the Louisiana Office of Mental Health is to serve the indigent, and African Americans represent approximately 60 percent of Louisianans living in poverty. While the over-representation of African Americans in the public system can be more easily rationalized, the prevalence statistics are more difficult to explain.

Why are African Americans disproportionately diagnosed with schizophrenia? Why do African Americans accessing psychiatric treatment have a significantly higher risk of being labeled schizophrenic than their white counterparts?¹³ The answer lies, at least in part, in the fact that mental health treatment decisions may be influenced by a number of factors, for example gender, ethnicity, and race (including both the race of the client and the race of the psychiatrist), that are subjective and independent of the presenting symptoms. Although Glass and Vergare, in *Diagnosis and Treatment of Psychiatric Disorders: A History of Progress*, note that there have been marked improvements in the reliability of psychiatric diagnoses, Pickett and Hanlon consider psychological diagnosis to still be in a relatively primitive state. As a result, according to Pickett and Hanlon, there is little useful information about the prevalence of mental disorders by race or ethnic group.

We assume that institutional biases, in psychiatric education and/or in mental health systems, contribute to the disproportionate diagnosis. In fact, preconceptions about race may distort the psychiatric treatment process at every stage, including the criteria for patient acceptance, availability of facilities, form and length of therapy, the patient-therapist relationship, therapeutic goals, and judgment about

10. See Williams and Torrens.

11. See L. Snowden and F. Cheung's "Community Mental Health and Ethnic Minority Populations," *Community Mental Health Journal* 26: 277-289, for further discussion.

12. See Pickett and Hanlon.

13. See Jones and Gray.

outcomes.¹⁴ Such biases would be more evident in the diagnosis of schizophrenia because, of all diagnoses, it is the most likely to reflect political and social influences. The diagnosis of schizophrenia, in particular, may be indicative of society's negativism toward African Americans.¹⁵

It is certainly not surprising that public institutions (as well as private organizations) reflect the prevailing societal attitudes or that these institutions would be used as a tool to assure conformity with political/social dogma. As an early example, the first study of mental illness among African Americans appeared in the 1840 Census. The Census reported data showing that the rate of mental illness among "free Negroes" in the North was significantly higher than for Blacks living in the South. These data were used to "prove" southern arguments that African Americans lacked the mental attributes to live as free men.¹⁶ As a current example of the discriminatory use of mental health assessment, Chung, Mahler, and Kakuma (1996) found that African Americans with high socioeconomic status, regardless of previous diagnosis, were more likely to be tested for the use of alcohol or drugs through urine screens and were more likely to receive a diagnosis of alcohol or substance abuse disorders than comparable Whites, despite similar rates of positive urine screens in the two racial groups.

Our assumption about institutional bias is based primarily on the current diagnostic practices and the criticism of these practices by the literature. African Americans are more often misdiagnosed than are white clients. Too frequently, African American patients showing symptoms of psychosis with mood changes are diagnosed as schizophrenic, without other diagnoses being considered. This results, in particular, in a consistent pattern of over-diagnosis of schizophrenia and an under-diagnosis of affective disorders among African Americans.

14. See A. Thomas and S. Sillen, *Racism and Psychiatry*. (New York: Citadel Press, 1972) for further discussion.

15. If institutional biases exist, there may be a tendency to value clients based upon racial group membership. Therefore, more care may be taken in the diagnosis (or re-diagnosis) of white clients, or African American may be systematically labeled with "harsher" diagnoses. Although all mental illnesses can be devastating, schizophrenia is one of the most harshest or disheartening diagnosis in terms of prognosis and treatment. If the over-diagnosis of schizophrenia is the result of a negative image of African American, then such diagnostic practices may be punitive and/or may be the result of preconceptions about the relative worth of African American in the economic sector. Pickett and Hanlon (1990) state that disorders have different values as public health problems. While depression is a cost in terms of lost productivity ("major cause of academic and work related problems"), schizophrenia is a problem "in terms of the services required and the cost of providing those services," 460.

16. See D. Williams's "The Epidemiology of Mental Illness in Afro-Americans." *Hospitals and Community Psychiatry*, 37:42-49 for further discussion.

Various studies have shown that African Americans have been misdiagnosed with schizophrenia rather than organic brain syndrome related to alcohol abuse,¹⁷ or manic-depressive disorders.¹⁸ One study, which controlled for age, sex, and social class, found that white patients were diagnosed more often as depressed and African Americans as schizophrenic, even though the clinical features of depression were similar for both samples.¹⁹ Other research in the last two decades has found no evidence to support the claim that African Americans have manic-depressive illnesses less frequently than Whites. In fact, some studies have reported higher rates of manic-depressive illnesses among African Americans and low-income groups than among Whites and higher income groups.²⁰

Plainly, the research indicates that the diagnosis of African Americans is often racially prejudiced, statistically biased, and based upon stereotypes that African Americans rarely suffer from depression or bi-polar disorders and that such disorders are upper- and middle-class illnesses.²¹ That may be because many psychiatrists do not regard the psyches of African Americans as being as complex as those of Whites.²² Therefore, the same symptoms that would be labeled as schizophrenia among African Americans would be diagnosed as an emotional or affective disorder among Whites.

If biases exist in psychiatric education or mental health systems, then we would expect that the race of the psychiatrist will not matter. In other words, black psychiatrists will be just as likely as white psychiatrists to over-diagnose black clients with schizophrenia. The literature on this subject is inconclusive. Some suggest that race does matter. For example, Pickett and Hanlon note that white

17. See C. Bell, J. Thompson, and D. Lewis's *Misdiagnosis of Alcohol Related Organic Brain Syndromes: Implications for Treatment of Black Alcoholics*. (New York: Hawthorn Press, 1985) for further discussion.

18. See C. Bell and H. Mehta, "The Misdiagnosis of Black Patients with Manic-depressive Illness." *Journal of the National Medical Association*, 72 (1979): 141-145.; B. Jones, B. Gray, and E. Parson, "Manic-depressive Illness Among Poor Urban Blacks." *American Journal of Psychiatry*, 185 (1981): 654-657.; S. Mukherjee, S. Shukla, and J. Woodle, "Misdiagnosis of Schizophrenia in Bipolar Patients: A Multiethnic Comparison." *American Journal of Psychiatry*, 140 (1983, December): 1571-1574, for a detailed discussion.

19. See A. Raskin, T. Crook, and K. "Herman's Psychiatric History and Symptom Difference in Black and White Depressed Inpatients." *Journal of Consulting and Clinical Psychology*, 43: 73-80., for further discussion.

20. See B. Jones and B. Gray.

21. Ibid.

22. See G. Gardner, (1990, April). "Working with Persons from African-American Backgrounds" (a paper presented at the Cross-Cultural Psychotherapy Conference, Hahnemann University, Philadelphia; J. Spurlock, 1985). "Assessment and Therapeutic Intervention of Black Children." *Journal of the American Academy of Child Psychiatry*, 24: 168-174; Solomon, A. "Clinical Diagnosis among Diverse Populations: A Multicultural Perspective." *Families in Society*, 73, (1992): 371-377, for detailed discussion.

professionals have difficulty defining and identifying mental disorders in "people unlike themselves."²³ Jones adds that white therapists are more likely to rate their black clients as severely psychologically impaired than would black therapist.²⁴

Alternately, Mukherjee, Shukla and Woodle report in a study of misdiagnosis of schizophrenia in bipolar patients that of the 18 misdiagnosed black patients, eight had at some time been treated by black psychiatrists. Similarly, Hispanic patients were not protected from misdiagnosis by having a Hispanic or Spanish-speaking psychiatrist. This may be due to the fact that even when both patient and clinician come from similar cultural, social or ethnic backgrounds, the largely subjective matter of the data collected by clinical impression could be a constant source of error. Furthermore, oftentimes black professionals are supervised by Whites during their training, and the majority of their patients are white. Thus, a white perspective is being taught and the problem of accurately diagnosing white patients is minimized for them.

If institutional biases exist, we expect not only that black clients would be disproportionately diagnosed with schizophrenia but that white clients will receive more services, regardless of diagnosis. We base this hypothesis on the historically entrenched habit of using race as a factor in the distribution of other public resources. If race could influence the distribution of roads, sewers and so forth in the South in last half of this century,²⁵ then other public services could be subject to racial considerations.

In the past, few studies examined equity in the distribution of public services. In the 1970s and 1980s, those who raised questions about race and equity were tagged as "liberals" and "critics of urban life." Lower levels of satisfaction with and trust in government services among African Americans, post Civil Rights era, were dismissed as: not necessarily an indication of inequity or inequality; a function of income or racial concentrations; or understandable given the three centuries of government-sanctioned racism.²⁶

There is a small but growing body of literature which examines issues of race, equity and health services. These few studies suggest that inequities do indeed exist in the system of health care which cannot be explained or readily dismissed

23. Pickett and Hanlon, 462.

24. See E. Jones's "Psychotherapists Impressions of Treatment Outcomes as a Function of Race." *Journal of Clinical Psychology*, 38: 722-731, for further discussion.

25. See W. Johnson's *Public Administration: Policy, Politics, and Practice*. (Guilford, CT: Dushkin Publishing, 1992); and H. Walton's. (Ed). *Black Politics and Black Political Behavior: A Linkage Analysis*. (Westport, CT: Praeger Press, 1994) for a detailed discussion.

26. See H. Schuman and B. Gruenberg's. "Dissatisfaction with City services: Is Race an Important Factor?" *People and Politics in Urban Society*, 6 (1972): 369-395.; and S. Howell and D. Fagan's. "Race and Trust in Government: Testing the Political Reality Theory Model." *Public Opinion Quarterly*, 52 (1988): 343-350, for detailed discussion.

as simply as a function of income. Interestingly, as more studies uncover racial disparities in the treatment of a variety of diseases, often controlling for income, common explanations have been "doctors may be assuming that Blacks are poor," and "the results may be more indicative of the 'overtreatment' of Whites than the undertreatment of Blacks."

If our hypothesis about inequities in the Louisiana mental health system is correct, the implications are obvious. Texts on government and public administration, codes of ethics for public servants, and professional associations resonate the "regime values" of public service. Two of these highly related values, justice and fairness, place a responsibility upon government to be the guardian of the "level playing field."

Further, although this study only examines the distribution of the quantity of services, if we find that African Americans receive less than comparable Whites, it would be reasonable to suspect that racial differences might also exist in the quality of services. Providing less for African Americans can only result in further disadvantage for this group and would perpetuate the view that government acts in a manner of "benign neglect" toward African Americans.²⁷

If we also find that African Americans are disproportionately diagnosed with schizophrenia, the implications are equally obvious, and the potential impact is tremendous. Despite the current theories that attempt to explain the differences in diagnosis (which still focus primarily on poverty, poor accessibility, and genetics), the literature clearly demonstrates that African Americans are two to five times more likely to be misdiagnosed as schizophrenic. Therefore, the only conclusion that can be drawn from this information is that the disproportionate diagnosis of schizophrenia among African Americans is created, in large part, by a misdiagnosis of that population.

Any mental health patient, family member, clinician and those in mental health research vividly know the problems associated with misdiagnosis. Each mental illness is treated with a different type of medication and the drugs used to treat schizophrenia have unfortunate side effects. And, as Annie Murphy Paul (1999) points out, patients with a schizophrenia diagnosis are more stigmatized, have difficulty gaining employment and housing, and often receive substandard medical care for other illnesses. Individuals misdiagnosed with schizophrenia and treated with the wrong medication may get sicker, be more at risk for suicide, and may be tougher to treat when appropriately diagnosed. If any other disease, for example cancer, was subject to this high rate of misdiagnosis there would be a public outcry.

METHODOLOGY

A statewide database of the entire adult mental health recipient population was

27. See S. Parsons, W. Simmons, F. Shinhoster, F. and I. Kilburn's. (1999). "A test of the Grapevine: An Empirical Examination of Conspiracy theories Among African Americans." *Sociological Spectrum*, 19 (1999): 201-222., for further discussion.

used to examine diagnoses and treatment. The data set of recipients represents both inpatient clients in the acute psychiatric units and outpatient clients served by the state community mental health centers. The two primary data sets from the Louisiana Office of Mental Health Management Information System and the Louisiana Patient Information Program provided: diagnostic information, race, length of stay, services provided by category per client and psychiatrist performing the clinical assessments.

The most current client data available for FY 1994–95 were used to examine client characteristics, services and clinicians. To analyze the influence of the race of the psychiatrist, the race of all psychiatrists who are permanently, currently employed by the Louisiana Office of Mental Health was identified through the personnel reporting system. The race of the psychiatrist performing the most recent clinical was then added as a variable in a regression analysis. All other data were managed and presented by the use of simple statistics and cross-tabulation analysis.

LIMITATIONS

One limitation is the data itself. The data systems were cumbersome and difficult to manage. Limitations in the data systems prevented an analysis of multiple years. However, the numbers of clients—outpatient and inpatient—are high. And in terms of the number of services examined, more than 200,000 cases are included.

This research investigates the equitable distribution of mental health services. That analysis is based upon a simple count, by client using race and diagnosis. However, quantity is not the equivalent of quality. Therefore, we cannot offer any conclusions about the relationship between race and the quality of services.

Last, few psychiatrists were used in the analysis of the race of the psychiatrist and diagnosis. Although only 30 psychiatrists were included in this part of the analysis, the data encompasses almost 10,000 clients. Much of public mental health diagnosis and treatment is performed by private contractors. Last, we are noting that although the number of psychiatrists is small, they still handle enormous caseloads and the analysis of these 30 represents 10,000 cases, which is not a small number.

ANALYSIS

In this research, we first examine differences in diagnosis according to the race of the consumer in the community system and in-patient admissions. Then we examine differences in diagnosis by the race of psychiatrist controlling for race of the consumer. Last, we analyze the effect of race on length of stay in out-patient treatment and quantity of outpatient services controlling for diagnosis.

DIAGNOSES

Table 1 presents the breakdown by race of schizophrenia and major affective disorders for recipients of clinical services in the Louisiana Office of Mental Health during 1994–1995. During this period, African Americans represented 50.3 percent of the total population served in the community system; however, they account for

63 percent of those diagnosed as schizophrenic and 37.7 percent of those diagnosed with a major affective disorder. On the other hand, Whites, who comprise 49 percent of the population served in the community system, account for 36 percent of those diagnosed with schizophrenia and 61.5 percent of those diagnosed with a major affective disorder. As witnessed in the chi-square analysis, there is a significant correlation ($p < .0001$) between the race of the consumer and the diagnosis of the Louisiana mental health system. In other words, the race of the consumer appears to be linked to the diagnosis.

**Table 1. Louisiana Office of Mental Health
Diagnosis by Race (1994-1995)**

Diagnosis	African American	White	Other
Schizophrenia	35.06%	20.83%	28.47%
Major Affective	20.52%	34.32%	31.60%
All Other	44.42%	44.85%	39.93%
TOTAL	100%	100%	100%
	(n=23,338)	(n=22,707)	(n=288)
$X^2=2,686.62$			
df=24			
pr=.0000			

INPATIENT ADMISSIONS

Prior research of inpatient admissions has found that the rate of diagnosis of schizophrenia was almost twice as great among African Americans as for Whites, yet this pattern was almost exactly reversed in regard to major affective disorders. Our data (Table 2) is consistent with this finding. We find that of the Louisiana Office of Mental Health acute psychiatric unit admissions for schizophrenia, 67.66 percent were African American, while only 31.46 percent were white. Conversely, of the admissions for major affective disorders, only 35.39 percent were African American, while 53.59 percent were white.

Table 2. Acute Psychiatric Unit Admission By Diagnosis (1994-95)

Diagnosis	African American	White	Other
Schizophrenia n=1917	67.66%	31.46%	0.88%
Major Affective Disorder n=1198	35.39%	63.77%	0.84%
All Other n=1560	45.51%	53.59%	0.90%

RACE OF THE PSYCHIATRIST

Previous research has asserted that one possible cause of the racial disparity in diagnoses is the cultural differences between black patients and white psychiatrists. Adebimpe (1981) asserts that as the sociocultural distance between the patient and the clinician increases, the rapport needed for a thorough evaluation decreases. To examine the question of whether the race of the clinician affected the diagnosis, a comparison of the race of the recipient and the race of the psychiatrist was conducted. The psychiatrists selected were those in the permanent employ of the Louisiana Office of Mental Health.²⁸ Thirty psychiatrists with a combined caseload of 9,898 patients were included in this research. Each psychiatrist's caseload was determined to be those cases in which that psychiatrist had performed the most recent clinical assessment. Thus, the cases represent the active patients of each of the psychiatrists. The percentage of schizophrenic and major affective disorder diagnoses is virtually identical to that of the entire population of patients within the Louisiana public mental health system.

Table 3. Effect of Race of Physician and Diagnosis of Other Patients on African Americans Diagnosed with Schizophrenia

Independent Variables	Coefficient
	(Standard Error in Parentheses)
Constant	5.40 (14.83)
African Americans Diagnosed with Affective Disorder	3.59* (0.51)
Whites Diagnosed with Affective Disorder	-.74** (0.31)
Whites Diagnosed with Schizophrenia	.83* (0.18)
African American Psychiatrist	1.68 (17.91)
White Psychiatrist	-6.43 (12.58)

n=30
r²=.778
* denotes significance at p<.05 level
** denotes significance at p<.01 level

The results of the multiple regression analysis are presented in Table 3. The dependent variable is those African American patients diagnosed with schizophrenia. The independent variables are the race of the psychiatrist and the diagnosis of other patients. The findings of our analysis point to several causal factors that would induce African Americans being diagnosed with schizophrenia. The first factor is the number of African Americans being diagnosed with a major

28. The total caseload of the psychiatrists included in the analysis (those in classified or unclassified positions) represent 21 percent of the total recipient population.

affective disorder. In other words, the number of African Americans in a caseload of a psychiatrist with a major affective disorder has a positive relationship to the number of African Americans with a schizophrenic diagnosis. This implies that the larger the number of African Americans in a physician's caseload, the more likely that African Americans will be diagnosed with schizophrenia. For every African American diagnosed with a major affective disorder, we can predict that psychiatrist will diagnose 3.59 African Americans with schizophrenia.

The second factor associated with a schizophrenic diagnosis in African Americans is the number of Whites in the caseload with a schizophrenic diagnosis. Analyzing this variable, the overall size of the caseload influences the schizophrenic diagnosis. In other words, psychiatrists who have a larger number of Whites diagnosed with schizophrenia will also tend to have a larger number of African American diagnosed with the same disease. A third factor shown to be associated with a schizophrenic diagnosis among African Americans is white patients with diagnoses of major affective disorders. The negative coefficient indicates that for those physicians who have less of a tendency to diagnose Whites with a major affective disorder they have a greater likelihood of diagnosing African Americans with schizophrenia.

The overriding implication of this aspect of our analysis is that some psychiatrists are predisposed to make a diagnosis of schizophrenia. An analysis of African Americans diagnosed with major affective disorders produces similar findings. The number of African Americans with a schizophrenic diagnosis is positively related to the number of African Americans with a major affective disorder. Other contributing factors include the number of white consumers with a major affective disorder and white clients with schizophrenia. In this case also, the race of the psychologist was the least influential factor in the diagnostic decision.

OUTPATIENT LENGTH OF STAY

We were interested in also determining whether there was any racial differential in outpatient treatment length of stay. Length of stay is important because longer time spent in mental health treatment settings have been typically associated with better outcomes.

Our examination of the data, contained in Table 4, reveals that African American comprised 62.6 percent of those individuals who remained in treatment for more than 10 years, while Whites were only 37.3 percent of this cohort. At the opposite end of treatment length, of those who only remained in outpatient treatment for less than 6 months, African Americans constituted 48.2 percent and Whites, 51.2 percent. A close look at Table 4 reveals that more evident racial disparities are at the extremes—those lengths of stay of either less than six months or longer than 10 years. Why do African Americans tend to remain in treatment longer than Whites? Perhaps the diagnostic decisions already discussed might be one reason.

QUANTITY OF OUTPATIENT SERVICES

Aside from length of stay, another clinical decision that may be affected by the

Table 4. Length of Treatment by Race

Length of Treatment	African American	White	Other	TOTAL
Less than 6 months	48.25	51.18	0.56	n = 1776
6 months to 1 year	51.26	48.06	0.68	n = 1469
1 to 2 years	53.98	45.60	0.42	n = 2638
3 to 5 years	51.39	47.87	0.74	n = 4598
6 to 10 years	54.46	45.08	46.00	n = 4168
10 or more years	62.61	37.20	18.00	n = 4,333
TOTAL	54.68	44.83	48.00	100.00%
	n = 10,380	n = 8,510	n = 92	n = 18,982

$X^2 = 177.2$ $p < .001$

race of the consumer is the quantity of services made available. We might expect that since the majority of clients are African Americans and since they remain in treatment for a longer period of time, they would also receive the lion's share of the services. We find instead that African Americans receive only 41.49 percent of outpatient services, while Whites receive 57.33 percent. Also, of all the services offered, we find that African Americans receive less than expected compared to their white counterparts in virtually all categories (see Table 5).²⁹

For those diagnosed with schizophrenia, of the 18 different categories of services available to consumers, we find that African Americans are underserved compared to Whites in 15 of them. Although African Americans make up 63.37 percent of those diagnosed compared to Whites with this illness, they only received 56.9 percent of services. Only for art therapy, court group, and psychosocial evaluation, did African Americans receive more than what we would expect if the services were assigned without regard to race. The t-score for services for those labeled schizophrenic was -2.31. For those diagnosed with major affective disorders, the case is even more emphatic. Although African Americans made up 38.06 percent of those diagnosed with major affective disorders they received only 31.77 percent of services. Only in the category of music therapy did African Americans receive a greater share of services than if they were assigned

29. In total, there were 511,533 services for all diagnostic categories provided within that time frame. For the purpose of the analysis, other races and services for clients with diagnosis other than schizophrenia and major affective disorders were excluded from the analysis. (Included in the analysis: n = 107,243 for services for blacks and whites with a schizophrenia diagnosis; n = 99,166 for services for blacks and whites with a major affective disorder diagnosis.)

Table 5. Services Received (in Percentage) by African Americans as Compared to Whites

	Schizophrenia		Major Affective Disorder	
	Percentage	(n)	Percentage	(n)
Art Therapy	70.79%	(n = 558)	32.26%	(n = 465)
Collateral Counseling	57.26%	(n = 1963)	28.72%	(n = 2176)
Couple Counseling	38.10%	(n = 21)	16%	(n = 25)
Court Group	86.67%	(n = 15)	0.00%	(n = 1)
Family Counseling	55.06%	(n = 1769)	28.73%	(n = 1810)
Group Counseling	56.38%	(n = 15266)	33.49%	(n = 15056)
Group Screening	56.38%	(n = 94)	21.57%	(n = 153)
Individual Screening	55.88%	(n = 29412)	33.49%	(n = 30451)
Medical Evaluation	54.04%	(n = 1497)	24.87%	(n = 1677)
Medical Injection	60.32%	(n = 13600)	31.83%	(n = 6425)
Medical Management	56.49%	(n = 31504)	30.58%	(n = 30097)
Music Therapy	51.98%	(n = 404)	46.46%	(n = 551)
Occupational Therapy	27.81%	(n = 151)	0.00%	(n = 102)
Other Evaluation	58.42%	(n = 303)	33.06%	(n = 248)
Psychiatric Evaluation	58.13%	(n = 3002)	34.05%	(n = 3515)
Psychological Evaluation	64.61%	(n = 178)	25.67%	(n = 187)
Psychosocial Evaluation	59.80%	(n = 1428)	32.85%	(n = 1848)
Recreation Therapy	56.08%	(n = 6150)	37.03%	(n = 4467)

df = 17

t (schizophrenia) = -2.310*

t (major affective disorders) = -3.96**

* significant at <.05

**significant at <.001

1. Of those Whites and African Americans diagnosed with schizophrenia, African Americans comprise 63.37 percent. Of those Whites and African Americans diagnosed with major affective disorders, African Americans comprise 38.06 percent.

by chance. The t-score for services received for this diagnosis was -3.96 .

CONCLUSIONS AND RECOMMENDATIONS

This study investigated race and treatment in one public mental health system. First, diagnosis was examined. Not surprisingly, the race of the client was linked to diagnosis. African American clients served by the Louisiana Office of Mental Health were disproportionately diagnosed as schizophrenic and under-represented among those with an affective disorder in both inpatient and outpatient settings.

Next, the influence of the race of the psychiatrist on treatment decisions was tested. The dependent variable used was African American clients diagnosed with schizophrenia. This hypothesis was not rejected. The race of the psychiatrist was relatively unimportant to the diagnosis of African Americans with schizophrenia. What did contribute to the rate of diagnosis was interesting—larger numbers of African American clients in psychiatrists' caseloads influence the decision to diagnose African Americans with schizophrenia. According to the analysis, for every African American diagnosed with an affective disorder, psychiatrists will fill a diagnostic "quota" of 3.5 African Americans with schizophrenia. Also, some psychiatrists appear predisposed to diagnose their clients as schizophrenic. If they have a larger number of Whites with schizophrenia, they will also tend to have a larger number of African Americans diagnosed with schizophrenia. If their caseload includes fewer Whites with affective disorders, these psychiatrists have a greater likelihood of diagnosing African Americans with schizophrenia.

Last, we expected the race of the client to matter in treatment decisions. Lacking data to assess the quality of care, we tested the hypothesis by a count of the services provided, by diagnosis and race. Even though they stayed in treatment longer than Whites, African Americans received fewer services than white clients almost across the board.

The results of this study lend credence to the concern about institutional prejudice in mental health diagnosis and treatment. We confirmed not only that race was associated with diagnosis—that does not logically mean that everyone with that diagnosis has that illness because of misdiagnosis, but that inequities based upon race exist in the distribution of public resources. This uneven playing field is probably the most provocative finding of this study. Each public mental health system must be open to the same type of self-examination undertaken by the Louisiana Office of Mental Health. If public mental health systems truly want to pursue the objective of providing sufficient and appropriate mental health services, they must become sensitive to the problem of racial bias³⁰ in diagnosis and treatment and be aware that institutional biases may exist in their own systems.

Second, mental health professionals must consider it important to analytically investigate the issue. Each organization should generate reports examining race and treatment on a system-wide and individual clinician basis. This necessitates that

30. Gender biases must also be investigated. The fact that clinical disorders may present differently in women than men is well known but often unheeded.

public mental health systems invest in management information systems that are user-friendly and readily provide this type of critical data. Physicians in other health care settings are provided with reports on utilization and patient care and this should become a standard practice in public mental health systems as well. Psychiatrists should be made aware of their own patterns of diagnosis and treatment.

Third, mental health organizations must strategically address the problem of institutional prejudice. The implication of not confronting the problem is quite clear. Misdiagnosis translates into inappropriate treatment and, thus, unresponsiveness to the treatment. Even if a small percentage of the client base is misdiagnosed, the economic and human cost would still be massive.

One recommended strategy for addressing this problem is to provide cultural training. Diversity training should be emphasized for those in psychology, nursing, social work, psychiatry and administration. Cultural sensitivity training should promote an awareness of the unique circumstances and experiences of African Americans and other minorities. This suggestion is based in part on the observations of psychiatrists in key administrative positions within the Louisiana Office of Mental Health. Supporting this recommendation is the Takeuchi (1995)³¹ finding that programs conducting treatment in a culturally sensitive manner and using culturally appropriate treatment styles were more successful in strengthening clients' commitment to treatment.

Although the results did not indicate that the race of the psychiatrist matters in treatment decisions, there is strong agreement that increasing the presence of minority professionals, clinical and administrative, is essential. Involvement of racial and ethnic minorities in program planning is also important.

Apparently there is much more to be learned about race and treatment. In particular, a more extensive review of the influence of the race of the psychiatrist is warranted due to the small number of black psychiatrists included in this study. We also recommend that future research be devoted to investigating issues not analyzed in present study, including: rediagnosis, referral sources, psychopharmacology, utilization rates, appropriateness of treatment and quality of care. More research is needed not only to understand the extent that prejudice permeates treatment decisions, but also to pinpoint the most problematic issues.

Our research suggests that remedies to public health problems focusing strictly on socioeconomic, biology, lifestyle, the environment, or even the organization of health services, will not necessarily "fix" the problem in mental health diagnoses and the distribution of mental health services. An alternative public

31. D. Takeuchi et al. "Return Rates and Outcomes from Ethnicity - Specific Mental Health Programs in Los Angeles." *American Journal of Public Health* 85 (May, 1995): 638-643.

health model is needed. A model that, in the words of Robert Hummer (1996)³² at Louisiana State University, guides data collection and research efforts beyond the usual factors and, more importantly, includes multiple forms of racism as crucial sociological determinants of health and mortality differentials. Joel Weissman, a researcher at Harvard University Medical School, suggests that such a model should encompass patient factors such as lack of knowledge and cultural barriers. But, more importantly, the model must consider the powerful influence of provider biases and stereotypes in gate keeping accessibility to both the quality and quantity of health services.

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32. Robert Hummer. "Black-White Differences in Health and Morality: A Review and Conceptual Model." *The Sociological Quarterly* 37(1) (Winter, 1996): 105-126.

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THE BRIDGE OVER THE RACIAL DIVIDE: COALITION POLITICS AND THE PURSUIT OF POLICIES TO HELP ORDINARY FAMILIES

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I

Fifty years ago, the social scientist Robert Lynd wrote in his now classic book, *Knowledge for What?*, these words:

Either the social sciences know more than do the “hardheaded” businessman, the “practical” politician and administrator, and the other *de facto* leaders of culture as to what the findings of research mean, as to the options the institutional system presents, as to what human personalities want, why they want them, and how desirable changes can be effected, or the vast current industry of social science is an empty façade.¹

Lynn believed that social scientists should draw upon their theoretical and empirical knowledge to suggest “what ought to be done” to address a social problem or to point out how desirable changes can be brought about. I strongly agree. And this article, based on my new book *The Bridge Over the Racial Divide: Rising Inequality and Coalition Politics*, reflects this orientation—the use of social science knowledge to suggest a strategy for combating a growing social problem.

My basic argument is that economic inequality has increased significantly in the last three decades, as reflected in the growing wage and income disparities, and we need a progressive, multiracial political coalition to combat it. A large, strong and organized political constituency is essential for the development and implementation of policies that will blunt the impact of the rising inequality and ease the burdens of ordinary families. But as long as middle- and lower-class groups are fragmented along racial lines, they will fail to see how their combined efforts could promote policies that reflect their interests. Put another way, a vision of American society that highlights racial differences rather than commonalities makes it difficult for us to see the need or appreciate the potential for mutual political support across racial lines. Sadly, in the absence of such a broad-based coalition, America could develop what the Harvard economist Richard B. Freeman calls a two-tiered society. He argued two years ago that American ideals of political “classlessness” and shared citizenship are threatened by falling or stagnating

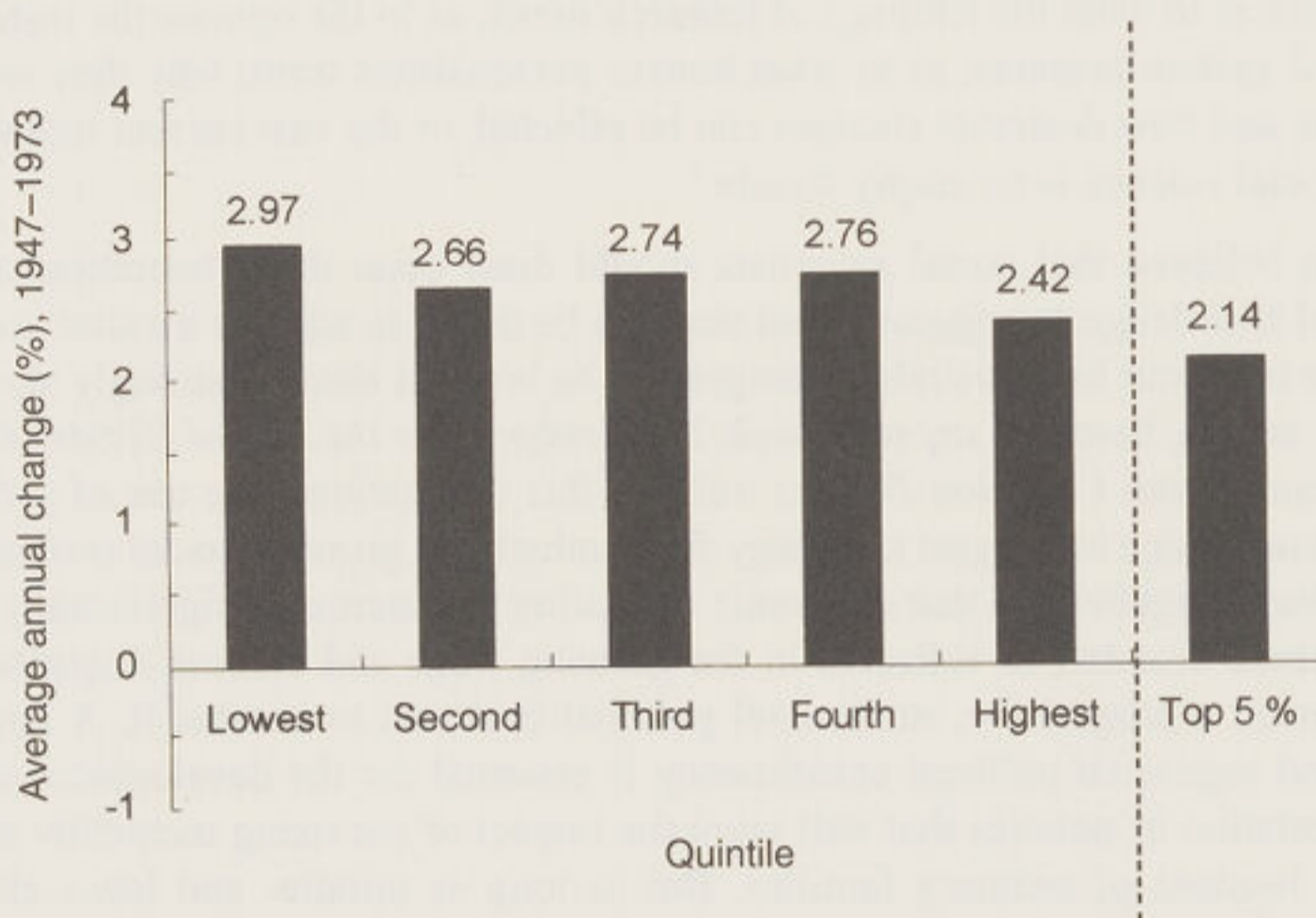
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1. Robert S. Lynd, *Knowledge for What: The Place of Social Science in American Culture*, (Princeton: Princeton University Press, 1939).

incomes and rising inequality. This could eventually create a society in which “the successful upper and upper-middle classes live lives fundamentally different from the working classes and the poor.”²

In the decades immediately after World War II, all income groups experienced economic advancement, including the poor. A rising tide did indeed lift all boats. In fact, as shown in the top graph of Figure 1, between 1947 and 1973 the lowest quintile in family income experienced the highest growth in annual real income, which meant that the poor were becoming less poor not only in relative terms but in absolute terms as well.

Figure 1. Real Average Family Income Growth by Quintile, 1947–1973 and 1974–1997.



Sources: Figures for 1947–1973 are from Historical Statistics of the United States: Colonial Times to 1970 and Money Income of Households, Families, and Persons in the United States, 1992. Figures for 1974–1997 are from the Current Population Survey, March 1997. Annual change is calculated using 1997 CPI-U adjusted dollars.

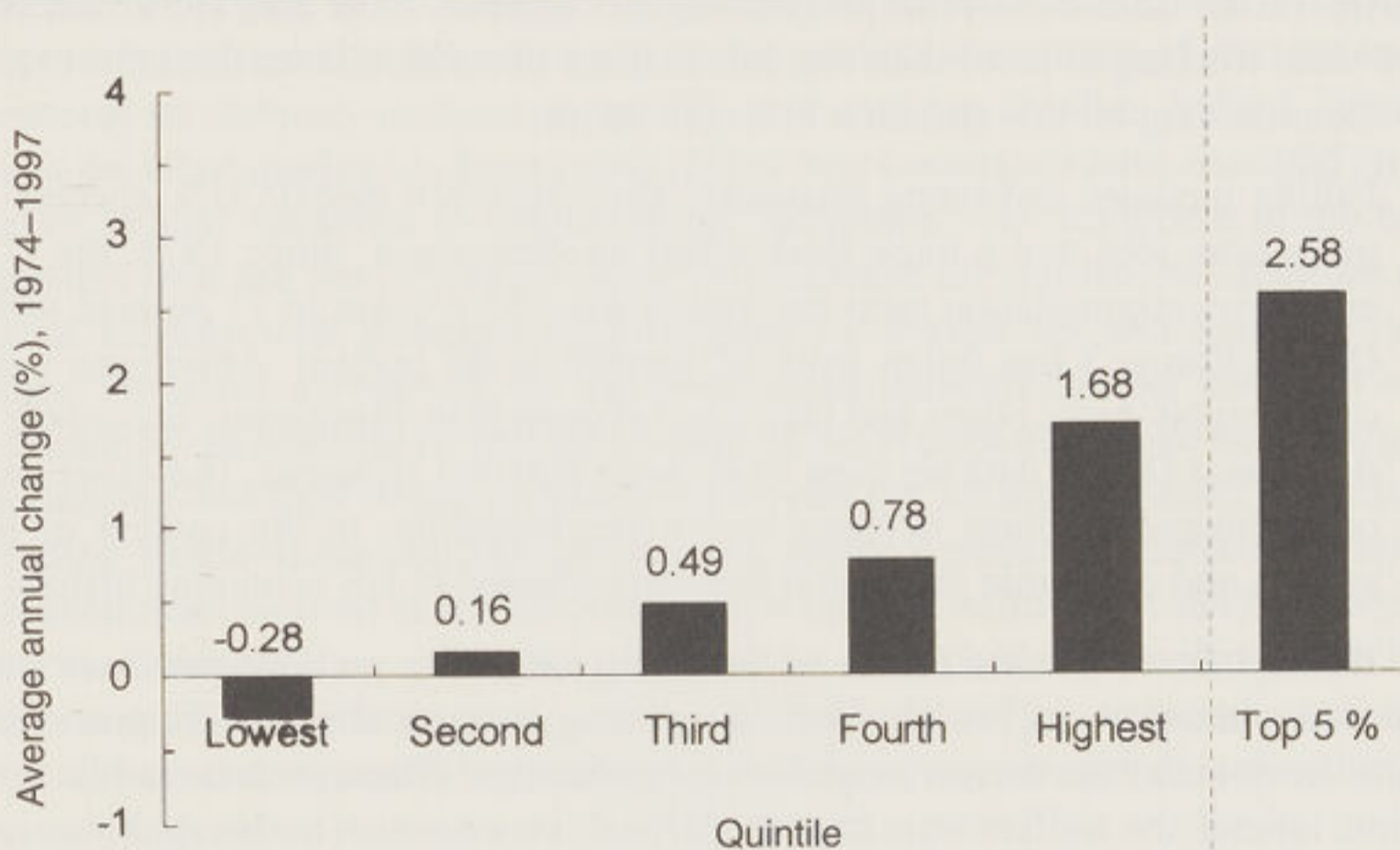
This pattern changed, however, in the early 1970s. Growth slowed and the distribution of inflation-adjusted income started to become more unequal. Whereas average family income gains from 1974 to 1997 continued for the higher quintiles, especially the top fifth, including the top 5 percent whose income gains even exceeded those of the earlier period, the lowest quintile experienced annual

2. Richard B. Freeman, *The New Inequality: Creating Solutions for Poor America*, (Boston: Beacon Press, 1999), 4.

declines in income during this period, and the second lowest experienced stagnating incomes.

Data on individual wages from 1974 to 1996, based on deciles instead of quintiles (see Figure 2), show a pattern in which the bottom of the distribution fell even more. In general, the real wages of those at the top continued to climb from 1974 to 1996, while those below the 8th decile cutoff, the overwhelming majority of workers, declined steadily.

Figure 2. Wage Growth for All Workers, 1974–1996



Source: Jared Bernstein and Lawrence Mishel, 1997.

From 1979 to 1997, the median wage for Americans overall, after adjustments are made for inflation, dipped 10 percent, and the hardest hit were workers without a college degree—a category that represents three-quarters of the labor force. For example, male high school graduates with five years of work experience lost an average of almost 30 percent in real wages during this period. If the economic trends in place before 1973 had continued, the annual income of a young male high school graduate as of 1997 would be \$33,000; instead his actual income in 1997 was \$13,000.³ Many families were unwilling to accept the lower living standard that their real income implied. Women therefore flooded the labor market, many out of choice, but a sizable percentage out of necessity. And household debt

3. Jeff Faux, "You Are Not Alone," in *The New Majority*, ed. Stanley Greenberg and Theda Skocpol (New Haven: Yale University Press, 1997).

increased from 59 percent of disposable income in 1973 to a whopping 95 percent in 1997.⁴

Thus the downward trend in wages during the past two decades has lowered the incomes of the least well-off citizens. Working-class Americans felt economically pinched, barely able to maintain current standards of living even on two incomes. Seven and a half million workers held two or more jobs in 1996, an increase of 65 percent since 1980.⁵ National data on the explanation respondents give for holding more than one job reveal that “‘economic hardship,’ the need to meet regular expenses or pay off debts,” was the primary reason. Indeed, three-fourths of the additional multiple jobholders between 1979 and 1989 said that they were working at more than one job because of economic hardship.⁶

Commenting on this situation Freeman states:

Falling incomes and rising inequality have occurred despite U.S. success in generating jobs and a huge work effort by Americans. Since 1974, the U.S. employment/population ratio has grown from 65 percent to 71 percent while OECD Europe's has fallen from 65 percent to 60 percent. Americans work considerably more hours and take less vacation than Europeans; according to the newest OECD data we even work more than the Japanese. The experience of prolonged earnings declines and rising inequality in the context of job growth and economic expansion is unprecedented in US economic history.⁷

History shows that the trends of the rising inequality are associated not only with economic changes, but also with the eroding strength of what MIT economist Frank Levy calls “the nation's equalizing institutions.” These include public education, unions, the welfare state broadly defined, international trade regulation and other political structures that respond to market outcomes and insure that ordinary families benefit from economic growth. As Levy points out “we cannot legislate the rate of productivity growth and we cannot legislate the economy's level of skill bias in technological change and trade. That is why equalizing institutions are important.”⁸ There are now signs that this rising inequality has slowed in the last three years due to the continued strong economic recovery in the U.S. and may have entered a period of remission and remain in remission as long as the economy remains strong. Real wage growth has been quite impressive since 1997, especially for low-wage workers. For example, except for male workers at the ninetieth per-

4. Henry R. Richmond, *Program Design: The American Land Institute* (Unpublished manuscript, 1997).

5. Sylvia Ann Hewlett and Cornel West. *The War Against the Parents*. (New York: Houghton Mifflin, 1998).

6. Lawrence Mishel and Jared Bernstein, *The State of Working America, 1992–1993, Economic Policy Institute Series* (Armonk, N.Y.: M. E. Sharpe, 1993).

7. R. Freeman, 1999, 8–9.

8. Frank Levy, *The New Dollars and Dreams: American Incomes and Economic Change* (New York: Russell Sage, 1998).

centile of the wage distribution, those at the thirtieth percentile and below experienced the highest percentage hourly wage increase from 1996 to 1998 (ranging from 4.7 to 6.4 percent). Given the impressive economic growth, sustained tight labor markets, and the incredible recent increase in the rate of productivity growth, the most optimistic scenario is that we are entering a period that could resemble the period from 1947 to 1973, when a rising tide did indeed lift all boats.

As we shall see, however, what is unique about the period from 1947 to 1973 is that both macro-economic policies and social policies contributed to the broadly equal pattern of family economic progress. But, our national economic and social policies have changed significantly since then. Accordingly, it will be important to determine how current policies mediate the impact of changes in the economy on ordinary families, especially poor working families. Indeed, inequality in the labor market has been rising just as new constraints have emerged on the use of federal resources to combat social inequities. The retirement of the baby boomers over the next 20 to 30 years will increase the burden on Medicare and social security with powerful consequences for overall tax and spending decisions. Programs earmarked for the poor could undergo sharper cuts and even elimination. In addition to new time limits on the receipt of welfare benefits, public housing and food stamp programs have been cut for impoverished Americans. Eroding public-sector support for the poor seems destined to increase pressures for economic survival in the low-wage labor market. Millions of the jobless poor now receiving welfare assistance are slated to enter the labor market where they will compete with the working poor for available jobs. But, as stated previously, even substantial segments of the middle class have experienced a decline in their living standards.

Changes in the American family structure also have increased the need for social and family support among all racial groups. One quarter of all families and six of every ten black families today are lone-parent families, and most of these lone parents are never-married mothers.⁹ Today, one-half of all marriages end in divorce and only one-half of divorced fathers make the payments that they owe by law in support of their children. If current trends continue, one half of the children in the United States will experience at least part of their childhood in a lone-parent family.¹⁰ "Families with multiple earners rise toward the top of the family income distribution, while families with just one earner fall toward the bottom," states economist James K. Galbraith, adding that "as the number of single-headed households rises, so too will inequality. This pattern is compounded in the real world by the grim fact that single-headed households also comprise, to a large

9. U. S. Bureau of the Census, *Current Population Reports*, series P-20 (1997).

10. Kristin Luker, *Dubious Conceptions: The Politics of Teenage Pregnancy* (Cambridge: Harvard University Press, 1996).

extent, those with the most unstable employment experiences at the lowest hourly wages."¹¹

These changes in family structure work have been accompanied by significant changes in work and family responsibilities. Since the 1940s the proportion of women in the labor force has increased, especially since 1970 when women's rates of labor force participation began to accelerate. In 1950 only one-third of high-school educated women were employed, today two-thirds are working. More than half of women with young children are also working, which is twice as many as two decades ago. And most working women do all of their family's housework in spite of their employment outside the home.¹²

Added to these burdens, women have taken on increasing responsibility for the care of older relatives. "In the past decade, such caregiving has increased threefold," states Stanley Greenberg, "almost three-quarters of those caring for the elderly are women, two-thirds of whom work outside the home. This is why ordinary Americans are starting to demand a serious debate about social and family support, even as the country's elite are pressing ahead with a long-term bipartisan agenda centered on deficit reduction, entitlement reform, and free trade."¹³ Indeed, many of the government's actions and policies exacerbate rather than alleviate the economic stresses of ordinary families. For example, monetary policies that elevate real interest rates and lead to increased unemployment rates, trade policies that place low-skilled labor in the United States in greater competition with low-skilled labor around the world, tax policies that favor the more wealthy families at the expense of ordinary families, as well as congressional inaction on or opposition to programs such as public investment and national health insurance.

As economist Galbraith reminds us, what is unique about the 1950s and 1960s, the period covered in the top graph, is that both macro-economic policies and social policies contributed to the economic gains experienced by all families. In this earlier period productivity growth and economic growth were relatively high. However, low-wage workers also benefited from a wider range of protections, including steady increases in the minimum wage, a strong union movement that resulted in higher wages and wage increases, and more non-wage benefits for ordinary workers. Moreover, the government pursued policies of full employment and fairly steady economic growth, and took quick steps to prevent or end recessions. Throughout the 1960s these policies were accompanied by explicit wage-price guidelines.¹⁴

11. James K. Galbraith, *Created Unequal: The Crisis in American Pay*, (New York: The Free Press, 1998), 12.

12. In fact, three-quarters of working women do all or most of the family's housework. Stanley B. Greenberg, "Popularizing Progressive Politics," *The New Majority*, edited by Stanley B. Greenberg and Theda Skocpol, (New Haven: Yale University Press) 1997.

13. *Ibid.*, 292

14. James K. Galbraith, *Created Unequal: The Crisis in American Pay* (New York: The Free Press, 1998).

Beginning in the early 1970s things moved in a different direction. The employment expansion of the 1980s accommodated many new workers, but only with real wage decline for low-wage workers. The union movement began its downward spiral, wage-price guidelines were dropped, and macroeconomic policy retreated from its quest for high rates of economic growth, tight labor markets, and price stability. Monetary policy, which in the earlier period was shaped by the broader objectives of macroeconomic policy, became more independent and dominant, and focused on defeating inflation above all else.¹⁵

Moreover, under the "Reagan experiment" the tax structure became even more regressive, featuring an increase in social security taxes, on top of regressive taxes on wages. As a result post-tax inequality "increase by even more than market inequality."¹⁶ Furthermore, congressional resistance to raises in the minimum wage over the past two decades threatened the economic security of disadvantaged families.

There have been recent government efforts to ease the burdens of vulnerable families such as the expansions of the earned income tax credit (EITC) in 1986, 1990, and 1993 and the Family and Medical Leave Act of 1993 (FMLA). The EITC is a wage subsidy for the working poor and its expansions reflected a recognition, even under the Bush and Reagan administrations, of the erosion of wages for low-paid work and the weakening of other policies to help the working poor, such as the minimum wage. The FMLA was designed to partially alleviate the conflicts involving family and work experienced by a growing number of Americans. Under the FMLA, workers are allowed to take up to 12 weeks of unpaid leave for the birth or adoption of a child and for illness, including the illness of a spouse or parent. However, even these modest proposals have been hotly debated in Congress. The traditional bipartisan support for the EITC has begun to erode in the Republican controlled Congress, so much so that the Senate passed a budget resolution in 1995 that assumed cuts in the EITC by roughly 21 billion over 7 years. And the FMLA was initially vetoed by President Bush.¹⁷

15. Ibid.

16. Sheldon Danziger and Peter Gottschalk, introduction to *Urban Tides: Rising Inequality in America*, ed. Sheldon Danziger and Peter Gottschalk (New York: Russell Sage Foundation, 1993).

17. Francine D. Blau, Marianne A. Ferber and Anne E. Winkler pointed out in this connection that opponents of the FMLA "tended to ignore or minimize the potential benefits of leaves for employers and were particularly concerned about the cost imposed on them, since they continue to pay for health insurance for workers on leave and must bear the costs of training replacement workers. Pay for replacement workers, however, is not an added cost because workers on leave do not draw a paycheck. Moreover, there are benefits. . . . Family leave lowers the cost of turnover, which can be quite substantial when training and moving expenses are considered. Also, it may enhance workers' commitment to the firm and hence their productivity. In fact, a recent study found that providing such unpaid leaves to employees is less expensive for employers than

Finally, the fate of the working poor is hardly considered when the Federal Reserve Board, worried about the possibility of rising inflation, raises interest rates to slow down the economy. The discussion of how to control inflation involves mainly the intellectual and financial elites. But, given the fact that high productivity is keeping inflation in check, at least there is a healthy debate over the Federal Reserve Board's dogged decision to continue raising interest rates. How great it would be if organizations representing ordinary Americans were also involved in this debate, and in other policy decisions that significantly impact their lives.

Unfortunately the masses of American citizens are not sufficiently organized to pressure national public officials to consider seriously the interests of ordinary citizens when issues affecting their lives are debated or up for adoption. That is why I argue in *The Bridge Over the Racial Divide: Rising Inequality and Coalition Politics*, that what we need is a progressive multiracial political coalition that could generate an earnest national debate on government's current social and economic policies, and prompt public officials to consider seriously the effects of their action or inaction on a broad range of issues that impact vulnerable families. More generally, I see the need for a national multiracial political coalition with a broad-based agenda to strengthen our equalizing institutions.

II

When I speak of a multiracial coalition, I am not calling for the formation of a third political party, nor am I referring to a coalition that would be officially aligned with either of the major political parties. Indeed, my idea is that the coalition would be officially nonpartisan. Its purpose would be to put pressure, including voting pressure, on both Democratic and Republican leaders to embrace policies that reflect the interests of ordinary families. It is true that measures to fight inequality would likely draw more support from Democrats than from Republicans. But if the coalition is perceived to be in a position both to reward and to punish political leaders, members of both parties are likely to take special notice of its activities.

The foundation of the coalition would be organizations committed to fighting social inequality, including grassroots community organizations, civil rights groups, women's rights groups, labor unions, senior citizens organizations, and religious organizations—broadly representative of the various racial and ethnic

ing workers who are forced to resign because such leaves are not available. This suggest that the cost of providing short, unpaid family leave is not likely to be unduly onerous for business. International evidence also indicates that, at least thus far, parental leave has not caused the severe problems for firms that had been anticipated by some critics." Francine D. Blau, Marianne A. Ferber and Anne E. Winkler, *The Economics of Women, Men, and Work, Third Edition*, (NJ: Prentice Hall, 1998) 315.

groups and all organized in interconnected local, regional and national networks. Leaders of each of the national networks would constitute a coordinating or executive group empowered to represent the interests of the coalition and act on its behalf. Given the potential number and type of groups involved, this coalition could represent a very large constituency. But whatever the main features of the coalition, a case has to be made for why the idea of a national multiracial political coalition should be seriously considered. And that is the real purpose of my book, *The Bridge Over the Racial Divide*.

I am fully aware that in light of the racial friction that has marred intergroup interaction in urban America, the formation of a multiracial reform coalition presents a challenge. Beginning with the riots in Los Angeles in 1992 and culminating in the 1995 O. J. Simpson murder trial, media attention to racial matters has highlighted those factors that divide the U.S. As one observer, on the eve of the Simpson verdict, put it: "When O. J. gets off, the whites will riot the way we whites do: leave the cities, go to Idaho or Oregon or Arizona, vote for Gingrich . . . and punish the blacks by closing the day-care programs and cutting off their Medicaid."¹⁸

Although it is important to acknowledge the racial divisions in America so they can be meaningfully addressed, the incessant attention given to these gaps has obscured the fact that black, white, Latino, Asian and American Indians share many concerns and have important norms, values and aspirations in common. Take the issue of values, for example. An analysis of the responses to questions that were variously asked in the national surveys reveals only marginal racial differences in core values pertaining to work, education, the family, religion, law enforcement, and civic duty. In a 1993 survey, 95 percent of whites and 92 percent of blacks felt that hard work in life outcomes is either important or very important, and 97 percent of blacks and 88 percent of whites supported the view that being self-sufficient was either very important or one of the most important things in life.¹⁹ Also consider the perception of problems. Questions about whether problems pertaining to public schools, jobs, affordable housing, families, and

18. Quoted in Frank Rich, "The L.A. Shock Treatment," *New York Times*, October 4, 1995.

19. Findings from the General Surveys of the National Opinion Research Center of the University of Chicago. Considering the prevailing stereotypes, the findings on self sufficiency are counter intuitive. Although there is a nine percent racial gap, an overwhelming majority of respondents from both races strongly supported the idea of self sufficiency. The only other finding that should be mentioned pertains to views on the importance of being married. Whereas 43 percent of the black respondents felt that being married was very important or one of the most important things in life, 53 percent of the white respondents felt this way.

health care were getting worse or harder for the people with whom the respondents identify elicited considerable agreement across racial and ethnic groups.²⁰ Furthermore, consider views on major policy issues. Except for affirmative action and abortion, there are no notable differences across racial and ethnic groups on reported strong preferences for Congressional action—with overwhelming support for issues such as balancing the budget and changing the welfare system, less enthusiasm for cutting personal income taxes and reforming Medicare, and even less for business tax breaks.²¹ Finally, there is considerable convergence in views across racial and ethnic groups with regard to policy preferences for solving particular problems, including education, crime, gang violence, and drugs.²²

Of course, this consensus does not always reflect progressive values and goals, especially when economic anxiety makes people more receptive to simplistic messages that deflect attention away from the real and complex sources of their problems. These messages increase resentment and often result in public support for mean-spirited initiatives. Candidates for public office and elected officials advance arguments that hinge on the apprehensions of families, including arguments that associate the drop in their living standards with programs for minorities, immigrants, and the welfare poor.

During periods of economic duress it is vitally important therefore that leaders channel citizens' frustrations in more positive or constructive directions. In the first half of 1990s, as the country was staggering from the effects of the 1990–92 recession, just the opposite frequently occurred. The poisonous rhetoric of highly visible spokespersons (such as Pat Buchanan, Louis Farrakhan, Al Sharpton, David Duke, Rush Limbaugh, California Governor Pete Wilson, as well as former House Speaker Newt Gingrich and several other House members who framed the 1994 Personal Responsibility Act) channeled frustrations in ways that divided groups in America. Instead of associating citizens' problems with economic and political changes, these divisive messages pitted race against race and citizens against immigrants.

A multiracial coalition, by contrast, would craft progressive political messages that resonate with broad segments of the public. Such a coalition ought to emphasize the benefits it would bring to all groups who are struggling economically in America, not just poor minorities. It should convey the idea that changes in the global economy have enhanced economic inequality and, as seen during the first half of the 1990s, heightened antagonisms between different racial and ethnic groups, and that although these groups are seen as social adversaries, they are

20. Jennifer Hochschild and Reuel Rogers, "Race Relations in a Diversifying Nation," in *New Directions: African Americans in a Diversifying Nation* (edited by James Jackson), forthcoming.

21. Ibid.

22. Ibid.

potential allies in a reform coalition.

Social psychological research on interdependence reveals that when people believe that they need each other they relinquish their initial prejudices and stereotypes and join programs that foster mutual interaction and cooperation. Moreover, when people from different racial and ethnic groups do get along, their perceptions about and behavior toward each other undergo change. Under such circumstances, not only are efforts made by the participants in the research experiment to behave in ways that do not disrupt the interaction, but they also make an effort to express consistent and similar attitudes and opinions about issues that confront and concern them.

These conclusions are based on a report written by the social psychologists David Johnson, Roger Johnson, and Geoffrey Maruyama which reviewed and analyzed 98 experimental studies of goal interdependence and interpersonal attraction.²³ The report revealed that the research literature supports the idea that interpersonal attraction among different racial and ethnic groups is enhanced by cooperative experiences. The authors emphasized that one reason for enhanced cooperation is that "within cooperative situations participants benefit from encouraging others to achieve whereas in competitive situations participants benefit from obstructing others' efforts to achieve."²⁴

Accordingly, promotive interaction is greater within situations that are cooperative than in those that are competitive. The research reported considerably more interaction across ethnic line in cooperative situations, and more cross-ethnic helping in such situations as well. In addition, the research indicated that cooperative situations enhance social perspective taking, that is, "the ability to understand how a situation appears to another person and how that person is reacting cognitively and emotionally to it."²⁵ Finally, the research revealed that within cooperative situations "participants seemed to have a differentiated view of collaborators and tended to minimize perceived differences in ability and view all collaborators as being equally worthwhile, regardless of their performance level or ability."²⁶

This research suggests the need for effective leadership to develop and articulate an ideological vision that not only highlights common interest, norms, values, aspirations, and goals, but also helps individuals and groups appreciate the

23. D. W. Johnson, R. Johnson and G. Maruyama, "Goal Interdependence and Interpersonal Attraction in Heterogeneous Classrooms: A Meta-Analysis. In *Groups in Contact: The Psychology of Desegregation*, edited by N. Miller & M. B. Brewer, (FL: Academic Press 1984) 187-212. Also see, Susan T. Fiske, "Stereotyping, Prejudice, and Discrimination," in D. T. Gilbert, S. T. Fiske, & G. Lindzey, (Eds.) *The Handbook of Social Psychology*, 4th ed. (New York: McGraw Hill, 1998).

24. *Ibid.*, 199

25. *Ibid.*, 200

26. *Ibid.*, 202

importance of interracial cooperation to achieve and sustain them. Visionary group leaders, especially those who head strong community organizations, are essential for articulating and communicating such an inclusive vision, as well as for developing and sustaining the coalition.

People often assume that America's history of racial divisions makes it unlikely that conditions of perceived interdependence could be generated and lead to the development of a national multiracial coalition. However, there are cases from contemporary America that cast doubt on such pessimism. Indeed, multiracial grassroots community organizations whose institutions, actions and belief systems exemplify the very conditions of perceived interdependence do in fact exist. Some have coalesced around campaigns for "living wage" ordinances in a number of cities, involving multiracial coalitions of local labor leaders, community-based organizations, religious leaders and student groups.

The living wage movement is an example of what can happen when local leaders forge coalitions to rally behind an issue that concerns all races, in this case economic justice. Whether living wage campaigns will expand to embrace other issues of economic and social justice remains to be seen. If they do, they might take note of the experiences of a longer standing and very effective multiracial political organization at the local level—namely the national community organization networks of the Industrial Areas Foundation (IAF), located in more than sixty communities from California to Massachusetts. The IAF was founded more than fifty years ago by Saul Alinsky, in conjunction with his efforts to organize the residents of poor and working class neighborhoods in Chicago. Alinsky envisioned the IAF as a team of professional organizers who could identify committed individuals, assemble them for group action, and instruct them in effective methods of community improvement. Through this method, the IAF could help individuals organize into potentially powerful coalitions.

To achieve their success, IAF professional organizers have worked within faith-based organizations to identify experienced leaders and to assemble them into nonsectarian coalitions devoted to community development. An important feature of the IAF approach is that even though the members of the coalition are drawn from faith communities, the IAF assembly constitutes an independent organization that is not tied to the participants' respective churches. IAF organizations are known by many names, such as the Greater Boston Interfaith Organization (GBIO), Tying Nashville Together (TNT), East Brooklyn Churches (EBC), Baltimoreans United in Leadership Development (BUILD), Valley Organizations Community Efforts (VOICE) in Los Angeles County, and Communities Organized for Public Service (COPS) in San Antonio. Each organization reflects the distinctive needs of its communities, because the agenda of each is determined by its leaders and members, not by the IAF.

As Mark Warren has pointed out, the "IAF does take up many 'issues of race,' like poor schools, neighborhood neglect, health care shortages and lack of economic opportunity. But it frames these issues in nonracial terms, emphasizing the interest of the whole community in addressing them. It practices a local version of universalistic public policy, developing programs potentially open to all but with special benefit to low-income, minority communities."²⁷

The IAF has been successful in building an effective multiracial coalition by presenting issues in nonracial terms, but would such a strategy be viable in the long run for a national multiracial coalition? For the most part, if the coalition is trying to build support for a mass-based economic agenda, a race-neutral strategy does make sense. Why? Because the goal is to attract wide segments of the population with messages that resonate across racial groups. As the political scientists Jennifer Hochschild and Reuel Rogers point out: "Both survey and case study evidence suggests that the more a multiracial coalition focuses on issues of racial and ethnic equality per se, the less stable it will be and the more likely it will be to fragment into competitive factions. Conversely, the same evidence shows that the more a multiracial coalition focuses on issues that are not ostensibly about race, and that have the potential to involve a wide range of people of all identities, the greater its chance of persistence and success."²⁸

There is some debate, however, over whether the race-neutral strategy is the best way to engage minority communities in political activities. Lani Guinier and Gerald Torres, for instance, contend that the most effective way to achieve this is to organize them first around issues that are race-specific.²⁹ Yet whether or not racial issues are the point of entry for people of color, a national multiracial coalition must nonetheless emphasize concerns that unite its diverse constituency. This does not mean that such a coalition must steer clear of all issues of race; the challenge is framing them in such a way that does not divide the membership. For African Americans, to take one example, the issue of affirmative action as national policy is seen as crucial for addressing American racial injustice, so it would seem essential for a multiracial coalition to address it. Yet the case for affirmative action must be made in a way that minimizes its racially divisive tendencies. By shifting emphasis from numerical guidelines or quotas to opportunity-under a new, flexible system that might be called affirmative opportunity-applicants with racial disadvantages could be evaluated according to their potential to succeed as well as those without these disadvantages.

The leaders of the multiracial coalition could therefore associate affirmative

27. Mark R. Warren, "Creating a Multi-Racial Democratic Community: Case Study of the Texas Industrial Areas Foundation," (paper prepared for the conference on Social Networks and Urban Poverty, Russell Sage Foundation, New York, New York, March 1-2, 1996).

28. Hochschild and Rogers, *op. Cit.*

29. Lani Guinier and Gerald Torres, "Critical Race Theory Revisited," Second of three Nathan I. Huggins Lectures, Harvard University, (Cambridge, Massachusetts, April 20, 1999).

action with the notion of flexible merit-based criteria of evaluation to enlarge the pool of qualified candidates. In other words they could implant the idea of using flexible, merit-based criteria to identify candidates who have real merit or potential to succeed, not those who are unqualified or lack the potential. In this connection, if you compare a youngster from the Boston inner-city neighborhood of Roxbury who displays the traits of perseverance, motivation, creativity, interpersonal skills, reliability, and leadership qualities and a youngster from white suburbia who has a higher SAT score but does not possess these traits, the chances are good that the Roxbury youngster will experience a higher level of college achievement.

There needs to be flexible criteria of evaluation to, in the words of Susan Sturm and Lani Guinier, "improve the capacity of institutions to find people who are creative, adaptive, reliable, and committed, rather than just good at test taking."³⁰ With the use of language such as "affirmative opportunity," the leaders of the coalition could also challenge many of the false assumptions concerning affirmative action, including assumptions about preferential treatment so often emphasized by conservative critics. In short, by adopting and highlighting language that embodies procedural fairness and equal opportunity, we increase public support for affirmative action programs and thereby make those programs acceptable as a vital part of a progressive multiracial coalition's agenda to reduce inequality in the American economy.

III

Considering the success of the IAF and other multiracial community coalitions at the local level, is it really possible to build such a coalition at the national level? I think it is possible, especially now.

A sustained upward trend in the American economy has begun to improve conditions for many people as the new millennium dawns. Ordinary Americans are still economically anxious and continue to be worried about their future, but public opinion polls reveal they are more satisfied today than they were in 1994, when the Republicans took over Congress, and in 1995, when conservative political leaders perceived that their pronouncements about the adverse effects of affirmative action, welfare, and immigration would resonate with the general population. Indeed, since 1996 the frequency and intensity of these messages have noticeably decreased. We can thank continued improvement in the economy for that. Social tensions have lessened and people are in a more positive mood.

Now is the time for proponents of multiracial coalitions to build on this shift in the public's mood. In so doing it will become increasingly clear that discussions emphasizing common solutions to commonly shared problems promote a sense of unity, regardless of the different degrees of severity in the problems afflicting dif-

30. Susan Sturm and Lani Guinier, "The Future of Affirmative Action: Reclaiming the Innovative Ideal," *California Law Review*, Volume 84, Number 4, July 1996, 957.

ferent groups. Such messages bring races together, not apart, and are especially important during periods of racial tension. And I am happy to report that the kind of national multi-racial coalition that I envisioned in *The Bridge Over the Racial Divide* is currently being formed. I recently met with the representatives of this coalition. They pointed that during the past year many of the leading community organizing networks and grassroots organizations in the United States have been meeting to organize a national campaign for jobs and income to reshape our country's priorities. In a "call to action," the mission statement of the National Campaign for Jobs and Income begins with these words:

Our organizations represent poor and middle-class people and people of all colors in urban, suburban, and rural areas. We are deeply disturbed by the profound disconnect between what the media and most politicians have to say about problems of entrenched poverty and income inequality in our country and what we know to be true [based on] our work and the experiences of our constituencies in communities across the nation. Our organizations are proposing to join with each other and to join with others across lines that have historically divided us to craft and implement a national campaign for jobs, income and economic justice . . . and change our nation's priorities.

The participants in the National Campaign for Jobs and Income have thus far planned coordinated local activities and conducted systematic outreach to a wide range of organizations representing their national constituency. The campaign was publicly launched in early May of this year in Chicago at a meeting involving upwards of 1000 leaders of grassroots organizations.

Because the problems of the new social inequality (the gap between the expanding have-nots and the haves) are growing more severe, a vision that acknowledges racially distinct problems and the need for remedies like affirmative action, but at the same time emphasizes the importance of transracial solutions to shared problems, is more important now than ever. The leaders of the National Campaign for Jobs and Income have such a vision, which should be developed, shared, and promoted by all progressive leaders in this country, but especially by political leaders. A new democratic vision must reject the commonly held view that race is so divisive that whites, blacks, Latinos, Asians, and American Indians cannot work together in a common cause. Those articulating the new vision must realize that if a political message is tailored to a white audience, people of color draw back, just as whites draw back when a message is tailored to racial minority audiences. The challenge is to find issues and programs that concern the families of all racial and ethnic groups, so that individuals in these groups can honestly perceive mutual interests and join in a multiracial coalition to move America forward.

The lessening of the social tensions that have come with recent improvements in the economy allows us room to discuss our country's future. I feel that the needs of ordinary, working Americans can best be met by multiracial, broad-based coali-

tions. Although elites invariably have a say in the leadership of the nation, the voice of the people can be lessened by fragmenting the masses into competing, divisive race-based groups.

In *The Bridge Over the Racial Divide*, I call upon the American people and especially the leaders of the poor, the working classes, the displaced and the marginalized, the downsized and the deskilled to discuss in vocabularies that unite all racial groups, the true task before us.

POLICE BRUTALITY AS A MAJOR EVERYDAY THREAT: NOTES FROM AN ANGRY YOUNG PROFESSOR

JUDSON L. JEFFRIES*

*Show me a black man who isn't angry and
I'll show you a nigger who needs a psychiatrist.*

—James Baldwin,
The Fire Next Time.

*There's never been a case where a black
officer shot and killed a white person by error.
These things don't happen to white people.*

—Alphonso Pinkney,
The Myth of Black Progress.

On the evening of August 4, 1999, I sat at my desk reading the Purdue University Exponent as the fatigue from a day that began at 6:00 A.M. was forcing my eyelids shut. I had nearly finished the school newspaper when suddenly my eyes became fixated on a headline that read, "Slain Player's Family Files Suit." As a sports enthusiast, I read on anxiously and, admittedly, very nervously. My heart seemed to pound harder and faster with each word read. When I got to the second paragraph it read: "Demetrius DuBose, previously of the Tampa Bay Buccaneers and former All-American and co-captain of the Notre Dame football team, was shot several times by two white San Diego police officers on July 24, after he allegedly charged at them with nunchaku sticks, a martial arts weapon he had allegedly taken from one of the officers."¹

"Oh my God," I blurted out in disbelief. "I don't believe this," I uttered as I arose from my desk in disgust. As I paced back and forth I began to experience a myriad of emotions. I was stunned and angry. Stunned because of what I assumed to be a senseless killing and eventual cover-up; angry because DuBose had been shot on July 24 and here I was just learning of his death nearly two weeks later.

It was reported that the officers were investigating a burglary in the athlete's neighborhood when they came upon the Notre Dame graduate and began to question him. The DuBose family said that DuBose was calm and cooperated with the officer's investigation until they began to "intimidate, harass," and subsequently handcuff him. What happened in the ensuing melee is still somewhat murky. What is clear is that two San Diego police officers fired several shots into the young

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1. Tony Perry, "Police Shooting Was Justified, D.A. Finds," *The Los Angeles Times*, 2 November 1999, sec. A3.

man's body.² Said District Attorney Paul Pfingst: "The officers really didn't have a choice, they had to shoot."³ The officers claimed they feared for their lives. Ironically, the same justification was given by two Los Angeles police officers exactly twenty years ago when they embarked on Eula Love's house in response to a complaint about an unpaid utility bill and ended up killing her. The officers claimed that Love too had charged at them, with knife in hand.⁴ What else would an officer say after killing someone?

Abiola Sinclair of the *New York Amsterdam News* writes that many police officers are taught how to lie by senior officers. Common lies include, "He went for my gun;" "He resisted arrest;" and "I found this weapon on him."⁵ A case in point occurred in the early 1970s when John Brabham, a college student, was murdered by William Walker, a white policeman.⁶ The student ran a traffic light in Brooklyn. He stopped the car, ran, and was pursued by the officer. Walker claimed that he ordered the youth to "freeze," an order that was ignored according to the officer. Walker said he noticed a pistol in the young man's hand and, because of this observation, fired twice—killing Brabham. A pistol was found near the body. Later testimony by fellow officers indicated that Walker had done what is so widely practiced in major cities throughout the United States. He had planted the pistol beside the youth's body in order to make it appear that the young man had a weapon.

In New York, officers charged with brutality or excessive force are given ample time to prepare solid alibis. The little-known clause called the "48-hour rule" has been part of the police officer "bill of rights" portion of the Patrolmen's Benevolent Association contract since 1969.⁷ Under this provision, an officer under investigation, whether by the New York Police Department or any other investigating agency, is not required to cooperate for 48 hours. In effect, this rule affords an officer temporary immunity from interrogation that no civilian would

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2. The fact that young black males are more likely to meet a violent death than their white counterparts is well known, so well known that the numbers have reached epidemic proportions without much fanfare. Apparently this grim reality was not lost on young DuBose. While filling out a questionnaire for the 1990 Notre Dame media guide, he gave a somber yet rather prophetic response. Asked to complete the phrase, "When I'm 35, I want to be . . .," the sophomore student-athlete wrote simply, "alive."
 3. Tony Perry, "Police Shooting Was Justified, D.A. Finds."
 4. Hubert G. Locke, "The Color of Law and the Issue of Color: Race and the Abuse of Police Power," *Police Violence: Understanding and Controlling Police Abuse of Force*, eds. William A. Geller and Hans Toch (New Haven, CT: Yale University, 1996), 129–150.
 5. Abiola Sinclair, "Visual Impact vs. the Status Quo," *The New York Amsterdam News*, 30 March 1991, 28.
 6. Alphonso Pinkney, *The Myth of Black Progress* (New York: Cambridge University Press, 1984), 77.
 7. Anthony M. Thompson, "When Being Probed, Cops Get Another 48 Hours," *The City Sun*, March 27–April 2 1991, p.7.

have under similar circumstances. Suffice it to say, this rule hinders investigations of cases involving excessive force, especially those cases in which civilians die under bizarre circumstances.

Not surprisingly, in DuBose's case, officers said he resisted arrest and appeared to be under the influence of alcohol or other drugs. Now where have I heard that before? San Diego City Councilman George Stevens said some passersby saw DuBose bending over when he was shot, while others said he was shot in the back as he turned away from the officers.⁸ To make matters worse, according to a lawyer for the family, after shooting DuBose the officers stood over his body for more than ten minutes before an ambulance was called. An autopsy report revealed that DuBose was shot 12 times. When asked to explain how a young man of DuBose's stature could end up being killed in this manner the San Diego police chief called it an aberration.⁹

American history is replete with examples of racially motivated violence, and some may argue that police brutality is its most primal expression. In a society where some white men feel resentful of compensatory programs like affirmative action and are threatened by increasing immigration from both Africa and the Caribbean, some white men feel compelled to recapture and reassert their power and dominance over black men, especially young black men, in the way that their grandfathers and forefathers did not too long ago. Professor Carlyle V. Thompson at Medgar Evers College writes, "[T]hese Whites, with their unlimited capacity for cruelty, fervently long for the past where all Blacks whether enslaved or free, had to submit to their will or be beaten, tortured, mutilated, and killed."¹⁰ Moreover, I contend that, in the U.S. white masculinity has often been socially, culturally, and psychologically defined as the beating, lynching, torturing, and killing of the "big black buck," actions that allow some white men to temporarily shed their feelings of insecurity and inadequacy. In the minds of the two San Diego police officers, DuBose, an NFL linebacker, represented that big black buck.

It is the contention of this author that what happened to DuBose was not an isolated occurrence but rather one example in the continuation of a long, ignominious, brutal, racist past. Indeed, police handling of black people is just a manifestation of attempts to keep blacks in their place and perpetuate institutional racism. This behavior reflects both Bobby Wright's view of the psychopathic behavior of white people and the value of black life. In the stories, examples and reflections that follow, the biggest lesson is to begin to devise a plan to obtain greater control of the factors that impact black life.

8. Tony Perry, "Police Shooting Was Justified, D.A. Finds."

9. Ibid.

10. Carlyle V. Thompson, "White Police Penetrating, Probing, and Playing in the Black Man's Ass: The Sadistic Sodomizing of Abner Louima." *Warpland* (Winter 1999): 159-185.

KEEPING BLACKS IN THEIR PLACE

For generations the formal, officially approved role of police, both in the Southern "slave" and often in the Northern "free" states, was that of oppressor keeping slaves in their place, capturing and returning runaways to their owners and, later, enforcing Jim Crow segregation laws.¹¹ In fact, the early role of many Southern police in the "slave patrols" formally included inflicting corporal punishment on offenders (runaways or disobedient slaves) without prior judicial process. It seems little has changed.

As a resident of Los Angeles for several years, I have experienced police harassment on several occasions. During a two-year period (1992–1994), I was detained and questioned a total of seven times. I recall one night near the corner of 30th Street and Figueroa Avenue around 10:00 P.M., a police cruiser with spotlight shining drove onto the sidewalk thus blocking my path. I immediately raised my hands in full view. With the spot light pointed toward my face the two white officers leapt from the vehicle, one with nightstick in hand, the other standing by the car with his service revolver pointed at me. As the nightstick-wielding officer made his way toward me I informed him that I was a USC student. When the officer noticed the University of Southern California identification card that I was strategically holding in my hand he turned to the gun brandishing officer and yelled out, "Is this the guy?" Focusing to get a good look at my face the officer replied, "No that's not him." The nightstick-wielding officer then retreated back to the car and the two sped off. I am convinced that the only thing that saved me that night was that seemingly fluorescent gold and crimson identification card.

On another night that same year, I was exhausted from studying all evening and decided to take a short break. As I stood in front of a donut shop, three police cruisers drove by slowly with the officer in the lead car leering at me for some odd reason. As the squad cars drove past and exited the parking lot I breathed a sigh of relief. When the light turned green the officers made a right turn giving the impression they were headed toward the Los Angeles Coliseum. Then, all of a sudden, the officers made another right turn back into the parking lot where I was standing. As the lead car approached I remember saying to myself, "What do you want now?" As the lead car drove toward me the driver rolled down his window and asked curiously, "What are you doing?" No "Good evening." No "Nice night tonight isn't it?" No nothing. I replied, "Getting a breath of fresh air." He then shot back, "Well move along." Apparently, I did not disperse as quickly as this officer would have liked, because within seconds the door swung open and the officer jumped out, whereupon he barked, "I thought I told you to move along." The officer then ordered me to put my hands behind my head, lock my fingers and spread my legs. He then frisked me rather intrusively and asked triumphantly, "What gang do you belong to?" I ignored him. By this time a small crowd had formed a

11. William Murphy and B. Wood, *Slavery in Colonial Georgia* (Athens: University of Georgia Press, 1984).

considerable distance away. Among those assembled was a USC athlete whom I had been tutoring as part of my responsibilities as an academic mentor in the athletic department. Upon seeing this officer attempt to manhandle me in an obvious effort to humiliate and degrade me, the athlete shouted to the officers, "That's my mentor at USC." After the officer found my ID card, looking bemused he then said sarcastically to another officer, "Check to see if there are any warrants out on this guy." When the report came back clean, the officer returned my belongings and ordered me to go home before he arrested me for loitering. That night I decided to go to the police station and file a complaint. Not surprisingly, nothing ever came of it.

The irony of this second incident is that the harassing officer was black. At a very young age I had been told by older black men that there are some black officers who would treat other Blacks just as harshly, if not more harshly, as a white officer when that black officer is in the presence of a white colleague. Here, it is possible that the black officer overcompensates for being black as a way of seeking acceptance from his white colleagues. In addition, by acting in a way that he thinks Whites would want him to behave, the black officer is under the false impression that by being accepted he gains access to white power and privilege. Although the number of black police officers and black mayors has doubled since 1972, it is unclear whether these increases will result in more equitable treatment of Blacks by law enforcement.

Despite America's storied racist past, before the graphic 1991 videotape of the Rodney King beating most Whites believed or feigned to believe that police harassment of Blacks was not a pressing social ill. For them, instances like these are aberrations rather than any established habitual pattern of behavior on the part of law enforcement. For many years those Whites who were aware of police brutality argued that it was a problem experienced by a small segment of the population—the black poor. Suffice it to say, incidents of excessive force against track star Al Joyner, Hall of Fame baseball player Joe Morgan, Dwight (Doc) Gooden, and former Los Angeles Laker Jamal Wilkes weaken this argument.¹² Even if it were a problem that affected only poor Blacks, that would not make it any less despicable. The fact is that police brutality transcends class when the victim is Black.

As irony would have it, the 28-year-old millionaire and Notre Dame graduate, Demetrius DuBose, is detained and questioned about a burglary in his own neighborhood. What follows is an unfathomable cold-blooded killing at the hands of the police that conjures up images of James Chaney. "Nigger, how dare you question our authority," is what probably ran through the minds of those officers when DuBose refused to genuflect. If that was the case, this type of behavior coincides with what Richard Sykes and John Clark have termed "deference exchange."¹³ They

12. *Independent Commission on the Los Angeles Police Department*. 1991. Report of the Independent Commission on the Los Angeles Police Department, Los Angeles, CA.

13. Richard E. Sykes and John P. Clark, "A Theory of Deference Exchange in Police-Civilian Encounters." *American Journal of Sociology* 81 (1975): 584–600.

argue that police expect acknowledgment by the citizen and that police-citizen interactions are governed by an asymmetrical status norm whereby the police officer is the boss and the private citizen who is being questioned is the subordinate. The authors contend that those individuals who reject this norm are more likely to be the victims of excessive force than those who adhere to this tacit understanding. This is particularly true when Blacks are the ones in question. John Roberts speaks to this point when he writes that the punishment of Blacks by the law in the late nineteenth century had as a primary function in the "breaking" of recalcitrant "bad niggers"—individuals who refused to submit to white authority and control.¹⁴

Political scientist Richard Hofstadter suggests, there has been a prevailing pattern of American violence that is concerned with the utilization of violence for maintenance of the American political social order.¹⁵ There are approximately 23 million Blacks in this country. The powers-that-be know that they must keep these 23 million Blacks apprehensive and intimidated. The thought of 23 million revolutionary-minded Blacks is more terrifying to the establishment than any band of long-haired, right-wing militia groups scattered about the country. One way the establishment has been able to keep Blacks reticent is by making examples of those who refuse to accept their second-class citizenship. Police brutality has replaced lynching as the method for keeping so-called uppity and disobedient Blacks in their place.

This was the case with *Move* fifteen years ago. On Mother's Day in 1985, Philadelphia police attempted to evict *Move*—a black back-to-nature, socially conscious outfit—from a house in West Philadelphia. *Move* refused to leave and allegedly threatened the police with guns.¹⁶ The police surrounded the house and attempted to force *Move* out with high-pressure water hoses. After several hours of spraying and 750,000 tons of water failed to do the job, police conducted an air raid. Using a helicopter, they dropped an incendiary device composed of TOVEX mining explosive on the roof of the house.¹⁷ The blaze that followed killed seven *Move* members and four of their children and leveled a city block, destroying sixty homes and leaving 240 people homeless.¹⁸ On CBS's *Face the Nation*, Daryl Gates told a national audience that approving the bombing had made Philadelphia's Mayor Wilson Goode a "hero" who "should run for national office" because he had shown "some of the finest leadership I've ever seen from a politician."¹⁹

14. John W. Roberts, *From Trickster to Badman: The Black Folk Hero in Slavery and Freedom* (Pennsylvania: University of Pennsylvania Press, 1989).

15. Richard Hofstadter, "Reflections on Violence in America," in *American Violence*, eds. Richard Hofstadter and Michael Wallace (New York: Random House, 1970), 3–43.

16. Lee May, "LA's Chief Gates Praises Philadelphia Police, Mayor: Goode Releases *Move*'s Written Threat," *The Los Angeles Times* 20 May 1985: part 1, p.4.

17. Jerome Skolnick and James Fyfe.

18. "Move House is Bombed: Blaze Involves 60 Homes," *The Philadelphia Inquirer*, 14 May 1985: sec. A1.

19. Lee May, "LA's Chief Gates Praises Philadelphia Police."

UNFETTERED DISCRETION AND INSTITUTIONAL RACISM

The murder of hundreds of black people each year by the police illustrates that institutional racism is the order of the day. The cases of Edward Lawson and Amadou Diallo are just two brutal examples.

The Lawson Case

The San Diego Police Department's propensity for harassing Blacks did not begin with DuBose. The department was first thrust into the national spotlight for its actions in relation to the Edward Lawson case in the mid 1970s. Between March, 1975 and January, 1977, Edward Lawson was arrested fifteen times by San Diego police.²⁰ He was prosecuted twice, and convicted once. The second charge was dismissed. Lawson supposedly fit the stereotype of a burglar. Tall and black, with an athletic build, Lawson could have been taken for a guard or small forward for a college basketball team, except for one thing: Lawson had let his hair grow out naturally into long, coiled "dreadlocks" long before it became fashionable.

When Lawson took long walks at night in white San Diego neighborhoods, he would often be stopped by police, who would ask for his identification. In some neighborhoods, any black person who is not a female domestic worker is viewed with heightened suspicion. On several occasions, Lawson refused to identify himself on grounds that there was no reason to stop him because he was engaged in no criminal activity and was not planning to commit a crime. Nevertheless, he was subjected to numerous arrests. Lawson sued to have the California statute requiring that persons provide "credible and reliable" identification to police declared unconstitutional. Lawson won his case and later collected substantial civil damages from the City of San Diego. Justice Sandra Day O'Connor found that the statute Lawson had challenged was too broad and vested police with "virtually complete discretion . . . to determine whether the suspect has satisfied the statute."²¹

In reality, the legal rules stemming from cases like Lawson's have an effect on only a small part of the normative climate of policing. Even after the Lawson case, police were not prohibited from asking a citizen for identification, only from arresting him if he failed to comply.²²

The Diallo Case

Seven months before DuBose's untimely death, four members of the New York City police department shot and killed Amadou Diallo. Four plain-clothes officers shot the 24-year-old West African 19 times, while he stood in the vestibule of his apartment building. The officers were allegedly looking for a rapist when they spotted Diallo. Police claimed Diallo was standing in the doorway "peering up

20. Jerome H. Skolnick and James F. Fyfe, *Above the Law: Police and the Use of Excessive Force* (New York: The Free Press, 1993).

21. *Ibid.*

22. *Ibid.*

and down the block," making him look suspicious.²³ According to the officers, as they approached the building, Diallo stepped back inside as though like he did not want to be seen. When Diallo reached into his pocket the officers fired a total of 41 shots, "riddling him with 19 bullets, splitting his heart, severing his spine and killing him."²⁴ What the police believed to be a gun turned out to be a wallet.



That African Americans are the least satisfied (of all racial groups) with police performance is not surprising. One of the major crises facing Blacks today is that of police brutality, or more specifically, police murder. Although the role of race in police use of excessive force may be empirically indeterminate to many researchers, for African American residents, the relationship is more straightforward.²⁵ Incidents of terror and violence perpetrated by law enforcement officials against people of color, particularly Blacks, have become almost commonplace. Investigations of police departments in Los Angeles, San Francisco, New York, Chicago, Philadelphia, Baltimore, Houston, and other cities reveal that racism and brutality are widespread and often tolerated by department commanders.²⁶ An investigative report by Amnesty International revealed that between 1993 and 1996, 75 percent of the people shot or killed by police were minorities or people living in low-income neighborhoods.²⁷

Former Los Angeles detective Don Jackson was so convinced of the frequency with which black men meet with police harassment that he courageously set out to obtain visual evidence of this on his own. Jackson found more evidence than he bargained for. A white Long Beach cop smashed his head through a plate glass window, then charged him with resisting arrest and damaging property.²⁸ In Bob Herbert's essay "A Cop's View" one incident in particular conveys the police's pervasive abuse of power: "In one of the [drug] raids an innocent man was

23. Howard Chua-Eoan, "Black and Blue," *Time*, 6 March 2000, pp. 24-28.

24. David Dante Troutt, "Unreasonable and the Black Profile," *The Los Angeles Times*, 5 March 2000, sec. M6.

25. Sandra Browning, Cullen Lee, Francis T. Legun Cao, Renee Ropache and Thomas J. Stevenson, "Race and Getting Hassled by the Police: A Research Note." *Police Studies* 17 (1994): 1-11. M.R. Gottfredson and D.M. Gottfredson, *Decision-Making in Criminal Justice* (New York: Plenum Press, 1988). William Wilbanks, *The Myth of a Racist Criminal Justice System* (Monterey, CA: Brooks/Cole).

26. Michael Parenti, *Democracy for the Few* (New York: St. Martin's Press, 1995), 134.

27. "Shielded from Justice." *Amnesty International, Human Rights Watch* 1998. (Reports on police misconduct, civil liability, policy, citizen review, and monies paid in civil suits in Atlanta, Boston, Chicago, Detroit, Indianapolis, Los Angeles, Minneapolis, New Orleans, New York, Philadelphia, Portland, Providence, San Francisco, and Washington, D.C., June 1998).

28. Bill Turque, Linda Buckely and Lynda Wright, "Brutality on the Beat," *Newsweek*, 25 March 1991, p.32.

dragged handcuffed and naked from his apartment and put through several hours of grotesque humiliation before being released. It turned out to be the wrong apartment."²⁹

Indeed, from 1986 to 1991 the Department of Justice received nearly 8,000 complaints each year concerning criminal civil rights violations by police officers.³⁰ It should be noted that this number represents only a fraction of the actual police abuse cases. "For every complaint that's filed, there's at least five or more that aren't," says attorney Geraldine Green, former president of the Los Angeles Civil Service Commission.³¹ District Attorney John L. Burris speaks of police brutality in this manner: "In nearly every city police force I studied, I found examples of the same unchecked brutality. Often it takes a widely publicized case before an officer with a history of violence is noted."³² Such was the case in New Orleans. In that city, a police officer known in the black community as "Robocop" because of his cold demeanor and heavy-handed abuse, was finally stopped when he was caught on tape ordering the murder of a black woman who had filed a brutality complaint against him. Records showed that in a period of five years, this officer was the subject of more than twenty complaints, most involving brutality and physical intimidation. An officer in the department was quoted as saying, "He's got an Internal Affairs jacket as thick as a telephone book, but supervisors have swept his dirt under the rug for so long that it's coming back to haunt them."³³

Police departments routinely fail to eliminate "problem" officers before they do serious harm. Ted Briseno, one of the four officers indicted in the 1991 Rodney King beating, had been suspended without pay for two months in 1987 after he kicked and struck a handcuffed man. Likewise, officers Larry Nevers and Walter Bodzyn had a history of complaints against them for acts of brutality before they were charged in the 1992 beating of Malice Green in Detroit.³⁴ There is an element of denial involved in the failure to identify and eliminate brutal cops from departments. Whenever a highly publicized case occurs, police departments and city governments scramble to get the message out that it is an isolated incident. In August 1997, after Abner Louima was tortured and sodomized with a toilet

29. Bob Herbert, "A Cop's View," *The New York Times*, 18 March 1998, p.17.

30. United States Congress House Committee on the Judiciary Subcommittee on Civil and Constitutional Rights. 1991. Police brutality hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, One Hundred Second Congress, first session, March 20 and April 17. (Washington: U.S. G.P.O, 1992).

31. Bill Turque, Linda Buckley and Lynda Wright, "Brutality on the Beat," *Newsweek*, 25 March 1991, p.32.

32. John L. Burris, *Blue vs. Black: Let's End the Conflict Between Cops and Minorities* (New York: St. Martin Press, 1999), 77.

33. *Ibid.*

34. Doron Levin, "Detroit Punishes Officers in Man's Death," *The New York Times*, 7 November 1992, p. 6y.

plunger inside a Brooklyn police station, Mayor Rudolph Giuliani and Police Commissioner Howard Safir immediately held a press conference to condemn the officers involved and to order a full-scale investigation. However, they refused to give any credence to claims that the precinct itself was a haven for rogue cops, and the commissioner went so far as to say that this was an isolated incident, an aberration.³⁵ From 1990 to 1994, 89 percent of those who died while in the custody of the New York City Police Department were African American or Latino.³⁶

African Americans are targets of police violence. Some, like Abner Louima, Timmie Sinclair, and Rodney King, live to tell of their experiences. Others like Demetrius DuBose, Amadou Diallo, Robert Russ, Lebert Folkes, Johnny Gammage, and Malice Green were not as fortunate. In October 1995, Gammage was pulled over while driving his cousin's Jaguar through a predominantly white Pittsburgh suburb, only to be beaten and choked to death after allegedly attacking five white police officers.³⁷ The following year Lebert Folkes, while parked in front of his house was pulled from behind the wheel of a car, mistakenly reported to be stolen, and shot in the face at point blank range.³⁸ Some argue unconvincingly that excessive police force against Blacks is not motivated by racial animus. The fact that one New York City police officer shouted, "Stupid nigger, I'm going to teach you how to respect cops," while he beat and sodomized Abner Louima suggests that such a belief deserves much rethinking.³⁹

EXPLAINING POLICE BRUTALITY

A most telling study of police behavior in the 1960s by Paul Takagi revealed that 51 percent of the people killed by police were black even though Blacks made up less than ten percent of the population.⁴⁰ Another study of the use of fatal force by police conducted in the 1970s revealed that Blacks were seven times more likely to be killed by the police than Whites.⁴¹ Yet another study conducted in the 1980s found that Blacks were nine times more likely than Whites to be killed by police.⁴² Considering these statistics, it is not surprising that during a march in protest of the Diallo verdict one black man in a display of perverse prophecy raised his infant son in the air and shouted, "Shoot him now, you may as well shoot him now!"⁴³

35. Bob Hebert, "A Cop's View,"; Bob Hebert, "The Big Chill," *The New York Times*, 31 May 1998, p.17.

36. John L. Burris, *Blue vs. Black*, 70.

37. "Sheilded from Justice."

38. Ibid.

39. Carlyle Thompson, "White Police Penetrating, Probing, and Playing in the Black Man's Ass," 160.

40. Paul Takagi, "A Garrison State in 'Democratic' society." *Crime and Social Justice* 1 (1974): 29.

41. See Alphonso Pinkney, *The Myth of Black Progress*.

42. Jill Nelson, "A Special Report on Police Brutality: The Blacks and the Blues," *Essence* 16 1985, pp. 91-156.

43. See David Dante Troutt, *Unreasonableness and the Black Profile*.

This increase in barbarism may be explained in part by making use of Bobby Wright's clinical analysis of white men. Wright, a black psychologist, states that in their relationship with the black race many Whites behave as psychopaths.⁴⁴ Wright defines a psychopath as "one who is constantly in conflict with others, unable to experience guilt, completely selfish and callous and has total disregard for the rights of others."⁴⁵ This was never more evident than when three white youths in Jasper, Texas tied James Byrd Jr. to the back of a pick-up truck and dragged him until his head was severed from his body.

In his analysis of Whites, Wright focuses on evidence of behavioral traits, which he believes, proves his contentions and merits consideration by Blacks. He argues that crucial to understanding the psychopathic personality is its "almost complete absence of ethical or moral development and an almost total disregard for appropriate patterns of behavior."⁴⁶ Simply put, psychopaths are unable to distinguish right from wrong. This is reflected in the fact that Whites have "historically oppressed and killed black people all in the name of their God, Jesus . . . and with the sanction of the church."⁴⁷ The activities of the Ku Klux Klan and the White Citizens Council—both white Christian organizations—and the Pope blessing Italian planes and pilots on their way to bomb Ethiopia without provocation are examples that the Church has sometimes sanctioned violence against Blacks.

Second, Wright maintains that psychopaths are also defined by the lack of "concern or commitment except to their own interest" and become indignant, angry, and bitter when they are exposed or summoned to account for their actions.⁴⁸ This could be seen in an interview with Robert Volpe after his son, Officer Justin A. Volpe, confessed to ramming a wooden stick into the rectum of Abner Louima. In the interview, Robert Volpe claimed that what had happened to his son was "nothing less than an American tragedy." With "American" often being defined as "White," this statement suggests that when white male privilege and authority come under question by people of color, a tragedy has inevitably ensued.⁴⁹

Third, Wright asserts that the "psychopath is usually sexually inadequate."⁵⁰ Historically, many white psychopaths attempt to achieve sexual gratification by such methods as raping black woman and castrating black men. In *White Man's Burden: Historical Origins of Racism in the United States*, Winthrop D. Jordan says that during the 17th and 18th centuries, from Quaker Pennsylvania to the

44. Bobby E. Wright, *The Psychopathic Racial Personality*. (Chicago: Third World Press, 1975), 3.

45. *Ibid.*, 5.

46. *ibid.*

47. *Ibid.*, 6.

48. *Ibid.*, 7.

49. Carlyle V. Thompson, "White Police Penetrating, Probing, and Playing in the Black Man's Ass," 160.

50. See Bobby E. Wright, *The Psychopathic Racial Personality*.

Carolinas, colonial authorities sanctioned castration as a form of lawful punishment for black male offenses.⁵¹

Being violently sodomized is one of the most emasculating and psychologically harmful acts for a heterosexual male to endure. Furthermore, this sexual assault suggests, to use Wright's words, an act of menticide, which he defines as the "deliberate and systematic destruction of a group's mind with the ultimate objective being the extirpation of the group," and a desire to murder the spirit and soul of an individual.⁵² Hence, Volpe's boasts to other members of his precinct that he "broke a man" and "took a man down" suggests that he may not have been unaware of the far reaching impact of this violent transgression.⁵³

Fourth, according to Wright, the psychopath also has a marked "inability to accept blame."⁵⁴ Many Whites have never accepted blame for Blacks' condition, even though it is clearly, to a large degree, the result of white oppression. Not surprisingly, then, few officers plead guilty to charges of brutality when hauled in a court of law even when video footage clearly show them guilty of such. Instead, Blacks are held responsible. In the minds of many police officers, Blacks cause these situations to get out of hand by provoking officers, being combative, resisting arrest, obstructing justice, or simply running away. Based on Wright's work, attempts to sensitize and rehabilitate these psychopaths fail because of their inability to feel guilty. Moreover, Whites have difficulty learning from the past, which helps to explain why many police officers still continue to engage in acts of brutality after the Rodney King affair even though three of the four officers involved were convicted and sentenced to jail.

Finally, according to Wright, psychopaths reject authority and discipline. Even when their own laws are the authority, they reject them if doing so is in their interest. An example of this took place in May 1967 when the California State Legislature passed a bill that made it illegal for individuals to carry guns in residential and incorporated areas as a way of neutralizing the Black Panther Party's efforts to monitor the Bay Area police. A more recent example could be seen when 4,000 police officers participated in an unruly demonstration at City Hall in New York city five months after the Rodney King verdict. Officers protested the proposal by Mayor David Dinkins to create an independent civilian agency to investigate police misconduct. Although they had taken an oath to enforce the law, many of them blocked the entrance to City Hall and marched on the Brooklyn Bridge tying up traffic for an hour. Showing absolutely no respect for the Mayor,

51. See Winthrop D. Jordan, *The White Man's Burden: Historical Origins of Racism in the United States* (New York: Oxford University Press, 1974).

52. *Ibid.*, 9.

53. Carlyle V. Thompson, "White Police Penetrating, Probing and Playing in the Black Man's Ass," 161.

54. See Bobby E. Wright, *The Psychopathic Racial Personality*.

they yelled, "The Mayor's on Crack."⁵⁵ Racially derogatory remarks by some of the officers also filled the air. Such behavior reflected the hostile feelings and lack of respect that many white law enforcement officials have towards black Americans regardless of their station in life.

VALUE OF BLACK LIFE

Many years ago Vernon Johns, the militant southern Baptist preacher who pastored Dexter Avenue Baptist Church before giving way to Dr. Martin Luther King, Jr. offered a sermon titled, "It's Safe to Murder Negroes."⁵⁶ This statement still holds true. Why? As Johns put it, "because black folk stand idly by and allow it to happen."⁵⁷ Moreover, because the justice system usually administers little more than a "slap on the wrist" by way of punishment for crimes committed against Blacks. This is particularly true when the perpetrator is non-black. For example, in 1991, Soon Ja Du, a Korean shopkeeper, was given five years probation by a white judge for fatally shooting Latasha Harlins, an unarmed black fifteen-year-old girl, as she was walking out the door. This extremely light sentence was handed down despite the fact that the shooting was captured on video and Soon Ja Du was found guilty of manslaughter.⁵⁸

As far as police use of excessive force is concerned, it should be noted that it is unusual for police officers to be charged with murder in cases involving beating deaths.⁵⁹ I assert that this is especially true when the officer is white and the victim is black. For example, on Thanksgiving Day, 1976, Robert Torsney, a white police officer in Brooklyn, shot and killed a fifteen-year-old black child. Torsney was tried and acquitted because a psychiatrist claimed he suffered from some rare form of epilepsy.⁶⁰ The case unfolded in the following manner.

- Thanksgiving Day, 1976: Robert Torsney fired a fatal shot into the head of fifteen-year-old Randolph Evans. Torsney claimed he was shooting in self-defense; He alleged that the boy had a gun. The other officers with him denied that the youth had a gun.
- November 30, 1976: An Assistant District Attorney called the killing "totally unprovoked, unjustifiable, and intentional."⁶¹ Torsney was indicted for first-degree murder.

55. James McKinley, "Offers Stage Huge Protest At City Hall," *The New York Times*, 17 September 1992, secs. B1, B8.

56. See Taylor Branch, *Parting the Waters* (New York: Simon and Schuster, 1988).

57. Ibid.

58. United States Congress House Committee on the Judiciary Subcommittee on Civil and Constitutional Rights. 1991. Police Brutality hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, One Hundred Second Congress, first session, March 20 and April 17.

59. Doron Levin, "Detroit Punishes Officers in Man's Death," *The New York Times*, 7 November 1992, sec. A1.

60. Ibid. See also Alphonso Pinkney, *The Myth of Black Progress*.

61. Ibid.

- November 1977: Witnesses at the trial, including other police officers, testified that the youth had no weapon and that the officer shot him without provocation and seemed calm afterward. However, Dr. Daniel Schwartz, chief of forensic psychiatry at Kings County Hospital, testified that the defendant had suffered a psychotic episode associated with epilepsy. Schwartz diagnosed Torsney as insane.
- November 30, 1977: Torsney was acquitted for reasons of insanity and was sent to a mental hospital because he was "not a danger to himself or others." The judge observed that Torsney did not appear to have been insane at any time during his committal. Torsney's lawyer commenced legal proceedings to obtain for his client a \$15,000 a year police pension on grounds of mental disability.

The inferiority and devaluation of black life is weaved through US history. Philosopher Charles W. Mills speaks to this point when he says that many Whites have entered into a contract where they have agreed not to recognize Blacks as equals.⁶² Indeed, Thomas Jefferson wrote in *Notes on the State of Virginia* that black people are "inferior to the Whites in the endowment both of body and mind."⁶³ Whites view of Blacks as inferior was also made clear in such sacrosanct documents as the Declaration of Independence, in which the phrase "all men are created equal" was understood to exclude Blacks. The point was so obvious that there was no need to insert the word white between "all" and "men." Furthermore, the U.S. Constitution specified (Article 1, Section 2) that for purposes of determining the number of members in the House of Representatives, each slave counted as only three fifths of a person.

Two hundred years later, some Whites continue to buy into this line of thinking. In a more recent comment, former police chief Daryl Gates asserted in 1982 that several Blacks had died as a result of police chokeholds because arteries in the necks of black people "do not open up as fast as they do in normal people."⁶⁴ Incidentally, in Los Angeles, some say the department's strong-arm style began with Daryl Gates who had a contentious relationship with minorities during his tenure as police chief. Said UCLA law professor Henry W. McGee, Jr., "He set the tone of arrogance and disrespect that was read as an invitation to violence by the troops."⁶⁵

That invitation seems to have been approved by juries, as no one was convicted for the deaths of DuBose and Diallo. One notable exception is the Louima case, where the two officers in question faced the possibility of life in prison without parole.

62. See Charles W. Mills, *The Racial Contract* (Ithaca: Cornell University Press, 1997).

63. Thomas Jefferson, *Notes on the State of Virginia*. 1792. ed. William Peden (New York: W.W. Norton, 1982).

64. Ibid. See also Bill Turque et al, "Brutality on the Beat."

65. See Bill Turque, "Brutality on the Beat."

LESSONS TO BE LEARNED

The reality is that the beating and murdering of Blacks by white police officers is not aberrant. Rather, it is the beating and or killing of a white man by a black police officer that is an aberration. The killing of Whites by Blacks has always been morally and juridically singled out as the crime of all crimes, a sharp deviation from the natural order, not merely because of the greater value that Whites place on their lives but because of its deeper meaning as a challenge to the racial order. Needless to say, the penalty for a Black killing a White is more severe than for a White killing a Black or a Black killing a Black. To be sure, Blacks understand this, even black police officers. As a result, black officers may be more careful in their handling of white suspects than black suspects. Hence the reason Whites rarely ever die at the hands of black police officers. As one police officer commented anonymously, "there's never been a case where a black officer killed a white person by error. These things don't happen to white people."⁶⁶ In fact, a black person is more likely to be beaten or killed by a white officer than a white civilian killed by a black officer. Huey P. Newton used to say that the police patrol the black community like a military unit occupies a foreign territory. Indeed a common aspect of many military occupations is the ravaging of communities and torture, beating, and killing of men and the rape and sodomizing of women and children.

What lessons can Blacks learn from these recent nefarious acts of excessive police force? First, racism is and will continue to be a permanent fixture in American social, political, and economic life. Derrick Bell put it best when he said, "Racism lies at the center, not the periphery; in the permanent, not in the fleeting; in the real lives of black and white people, not in the sentimental caverns of the minds."⁶⁷ Second, as Morehouse College Professor Abraham L. Davis has argued, it is reasonable to conclude that racism, indifference, the conspiracy of silence, and the double standard that is applied inside and outside of the courtroom, have sent and will continue to send a signal to many white policemen that brutal acts against Blacks are acceptable.⁶⁸

Third, the presence of Blacks on a jury does not ensure that the aggrieved Black will receive a more judicious outcome than had the jury been all white. The four officers who were acquitted in the death of Amadou Diallo to a large degree owe their good fortune to four black jurors. The fact that those four black jurors concluded that the officers acted reasonably in firing 41 bullets at Diallo flies in the face of every civil rights advocate who fought for the right to sit on a jury believing that black defendants would receive a fairer judicial hearing if black jurors were present. On the conclusion reached by the jury, Rutgers Law Professor

66. See Alphonso Pinkney, *The Myth of Black Progress*.

67. See Derrick Bell, *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1993) for further detail.

68. Abraham L. Davis, "The Rodney King Incident: Isolated Occurrence or a Continuation of a Brutal Past." *Harvard BlackLetter Journal* 10 (Spring, 1993): 67-77.

David Dante Troutt wrote incredulously, "After emptying two semi-automatic weapons into a human body at close range, how was it reasonable to fire nine more times?"⁶⁹ In 1967, when Huey P. Newton was being tried for the alleged murder of a white police officer, he argued that being black did not automatically make an individual his peer.⁷⁰ Blacks could be his peers, but only if they had similar socio-economic factors in common like upbringing, education level, income level, and neighborhood of residence. He argued that middle-class or upper-class Blacks would not qualify as his peers because they had little in common, except that they were black. Hence, for Newton, being black was neither a prerequisite or sufficient condition for being his peer.

Finally, if Wright is correct when he says that some Whites in their relationship with Blacks behave as psychopaths, then the inevitable question is, in the words of Dr. Martin Luther King, Jr., "Where do we go from here?" How do Blacks avoid falling prey to the irrational, erratic, and violent whims of white psychopaths? Some maintain that the remedy is with Blacks themselves. As long as Blacks tolerate these unnecessary and malicious excesses in any form of government, they may expect not only for these encroachments to occur, but for them to increase in number and scope and ferocity. Others suggest that Blacks must come to grips with the fact that the oppressor is waging war against them and respond appropriately.

Responding appropriately might consist of: (1) registering to vote at a significantly higher rate than Whites; (2) turning out to vote at a significantly higher rate than Whites; (3) pushing for recall elections when white politicians are behaving antithetically to Black's concerns; (4) prosecuting white assailants with the same fervor that Whites prosecute black defendants; (5) rendering decisions as jurors that are commensurate with the crime committed against Blacks, irrespective of the judges' instructions; and (6) forming neighborhood watch programs that resemble the aims and objectives of the Black Panther Party, the Deacons for Defense and Justice, the Black Liberation Army, the Nation of Islam, Us and other like minded groups. Frederick Douglass once said, "power concedes nothing without a demand, it never has and it never will." While this list is by no means revolutionary or novel, it is nevertheless the beginnings of a plan of attack that should be given consideration by people of African descent.

69. David Dante Troutt, "Unreasonable and the Black Profile."

70. Reginald Major, *A Panther is a Black Cat* (Morrow, New York, 1974), 198.

SEGUEING TOWARD 70: THE REWARDS AND REGRETS OF A RACE-RELATED LIFE

DERRICK BELL*

On my return from a lecture at a West Coast law school, I received this letter from a law student there.

Hi Professor Bell,

I am a student in the criminal law class you visited last week to discuss the death penalty. It was a pleasure to hear your thoughts. I also attended your lecture and have the following question on affirmative action: I whole-heartedly support the intent behind affirmative action programs, but I think it is the wrong tool for the task. The policy inherently furthers division along racial lines by: 1) undermining the achievements of minorities, and 2) instilling resentment in white men who view affirmative action as unjust. I think a better approach would be to address inequality in schools. I intend on using my law degree to improve the quality of education in urban public school districts. This, I hope, more carefully addresses the problem that affirmative action seeks to solve. By improving education at the elementary school and high school level, I hope to help the largely minority urban school districts provide a more adequate education—one that more closely resembles the education offered in the suburban (and primarily white) school districts. Do you think my ideas are misinformed? I am curious to hear your reaction. Thank you in advance for your response. And thank you for your efforts.

I responded:

No one can disagree with the problems you find with affirmative action, but there is no remedy for racial discrimination that will not upset some Whites. Consider school desegregation. And look what Whites did when Blacks began to vote, for God's sake. And remember, it was white-led institutions that saw affirmative action as a means to make some changes in their admissions and hiring policies that for generations had favored Whites to the total exclusion of people of color. Your plans to work with schools are worthwhile, but don't forget, well-educated blacks face discrimination in the job market, in the work place, and when they seek to rent an apartment or purchase a home. For literally dozens of incidents of this type, see Ellis Cose, *The Rage of a Privileged Class*.¹ It is in the face of these barriers that your work and that of others takes on meaning.

Best wishes,

DB

* Visiting Professor, New York University, Law School.

1. Ellis Cose, *The Rage of a Privileged Class* (1993). See also, Joe R. Feagin and Melvin P. Sikes, *Living with Racism: the Black Middle-class Experience*, Beacon Press, Boston (1994).

Actually, I no longer wish to debate the merits and difficulties of affirmative action programs. Opponents are winning in courts though institutions that wish to maintain diversity are surely able to do so without using racial classification. I agree now with the position Lani Guinier and Susan Sturm take in their article: *The Future of Affirmative Action: Reclaiming the Innovative Ideal*.² They urge that while defending these policies as best we can, we should also begin challenging the admission and hiring policies for which affirmative action has served as a cover. It is simply amazing that unchallenged facts regarding the ineffectiveness of standardized tests to predict either academic performance or success in life are available and, for the most part, ignored. The Guinier and Sturm article provides valuable ammunition for those of us willing to challenge what is seemingly unchallengeable regarding how institutions of higher education choose their students and, to a large extent, their faculty.

The Scholastic Aptitude Test (SAT), the Law School Admissions Test (LSAT), and civil service tests are all used to predict future performance based on existing capacity or ability. After reviewing the outcomes of these tests, the authors conclude that the tests "do not correlate with future performance for most applicants, at least not as a method of ranking those 'most qualified.' These tests and informal criteria making up our 'meritocracy' tell us more about past opportunity than about future accomplishments on the job or in the classroom."³

These inadequacies have been insulated from review because they had gained acceptance prior to the late 1960s. The urban rebellions during that period served as scary reminders that, more than a dozen years after *Brown v. Board of Education* and a half-dozen years after enactment of federal civil rights laws, most corporations, government agencies, and institutions of higher learning remained virtually all-white. Rather than review the policies and practices that, beyond blatant racial exclusion, served to maintain the all-white character of these entities, managers determined to establish "racial preferences" to enable the admission, hiring, and upgrading of a moderate number of white women and people of color.

The "affirmative action" approach served to meet the need to break down the all-male, all-white character of the institutions and as a bonus brought in persons of color who often brought competence and ability, thus enabling them to advance the goals of the institutions. The policies also served to legitimate the anti-affirmative action policies and render the racial or gender preferences as departures from normal, universal, unbiased, and purportedly fair standards for determining merit. Predictably, those Whites who actually missed out on opportunities because of the workings of racial preference policies and the multitudes more all too ready to conclude that their place or position had been given to a black—always

2. Susan Sturm and Lani Guinier, "The Future of Affirmative Action: Reclaiming the Innovative Ideal," 84 *Calif. L. Rev.* (1996): 953.

3. Susan Sturm, Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 *Calif. L. Rev.* (1996): 953, 957.

described as “less qualified”—led to racial resentments that politicians as well as hiring officials were quite willing to exploit.⁴

One can only imagine how many Whites rejected for jobs were told dishonestly: “I am sorry. We really liked your credentials, but government regulations mandate we give the job, for which you are clearly qualified, to a minority person.” In a society in which the essence of whiteness is an entitlement to priority over Blacks for things of value, these programs were certain to lead to major opposition. The only surprise is that they worked for as long as they did and, in many instances, are still working. Neither the courts nor much of the country, though, is able to accept what Sturm and Guinier refer to as “the Stock Affirmative Action Narratives.”

For example, Cheryl Hopwood, the white plaintiff who successfully challenged the University of Texas Law School admissions process,⁵ complained that she was rejected even though she had a higher Texas Index or TI score (a composite of undergraduate grade point and LSAT score) than some black and Mexican-American applicants who were admitted and thus was more deserving of admission than they. In fact, she also scored higher than over 100 white applicants who were admitted, a fact of evidently little concern to either Ms. Hopwood or the courts.⁶ Most likely, Hopwood’s rejection was likely more socio-economic than racial. In accordance with a practice followed by many graduate schools, her application was downgraded because she attended a community college and a state school rather than an elite undergraduate college—the primary feeder schools for post-graduate and professional institutions.⁷

4. This comforting “if I didn’t get it, racial preference must have been the cause” assumption is not limited to blue-collar workers. While a visitor at the Stanford Law School in the Spring of 1986, on at least a half-dozen occasions, a white, first-year student would stop me in the hall and having learned that I taught at Harvard, asked whether there was a really extensive minority admissions program there. When I wondered why they asked, the response was, “well, I applied at Harvard, but did not get in.” Pointing out that Harvard received eight to ten thousand applications for a class of about 500 students did not much ease their sense that but for affirmative action, they would have gained a seat at their first-choice school.

5. 78 F.3d 932 (5th Cir. 1996), cert. denied, *Hopwood v. Texas*, 116 S. Ct. 2580 (1996).

6. *Ibid.*, 961-963.

7. *Ibid.*, 990. This practice, likely followed for far more years than affirmative action, has not been challenged. Nor as Justice Blackmun noted in his *Bakke* opinion: “It is somewhat ironic to have us so deeply disturbed over a program where race is an element of consciousness, and yet to be aware of the fact, as we are, that institutions of higher learning, albeit more on the undergraduate than the graduate level, have given conceded preferences up to a point to those possessed of athletic skills, to the children of alumni, to the affluent who may bestow their largess on the institutions, and to those having connections with celebrities, the famous, and the powerful.” *Regents of the University of California v. Bakke*, 438 U.S. 265, 404 (concurring).

According to the data reviewed by Sturm and Guinier, those wishing to challenge traditional admissions processes either in court or through protests will have some eye-opening information available:

- Aptitude tests like the SAT do not predict performance as measured by first-year grades. The correlation of about .32 to .36 is “lower than the correlation between weight and height.” That is one would have a better chance of predicting a person’s height by looking only at his weight than you would of predicting freshman grades looking only at SAT scores. Similarly, LSAT scores are no better predictors of law school grades.⁸
- High school grades are more predictive of college freshman-year grades than the SAT. Using SAT scores in conjunction with high-school grades provides only a small increase in predictiveness of college completion.⁹
- Standardized tests not only assume a single, uniform way to complete the job excluding those who might perform just as competently in another way, but serve to advantage candidates from higher socio-economic backgrounds and disproportionately screen out women and people of color, as well as those in lower-income brackets. As indicated by a study Sturm and Guinier prepared from raw data provided by the College Entrance Examination Board, the linkage between test performance and parental income is consistent and striking. Within each racial and ethnic group, SAT scores increase with parental income.¹⁰
- Children of high-income parents can afford coaching in test-taking (often at a cost of \$1,000 and above) and in packaging their accomplishments into their applications.¹¹
- When law schools base admission decisions on the LSAT, and the range of other factors that disadvantage minority applicants, the adverse effect on African-American admissions are striking. Refer to the table prepared by William C. Kidder. It includes the last five admission cycles and virtually every ABA law school. The overall sample size is over 350,000 candidates.¹²

8. *Ibid.*, 971.

9. *Ibid.*, 974-975.

10. *Ibid.*, 987-989.

11. *Ibid.*, 991. There are test-preparation schools that cost from \$175 to \$415 per hour. Parents can spend up to \$25,000 for a year of weekly private coaching sessions preparing their children for the SAT. Preparatory schools claim they can improve scores by 400 Points. See Tony Schwartz, “The Test under Stress,” *NY Times*, Jan. 10, 1999. During the summer of 1999, the Princeton Review rented a beach house in the Hamptons for a group of its star coaches so they could tutor students at a rate of \$300 per hour. Jane Gross, “Multiple Choice and Margaritas,” *N.Y. Times*, Sec. B, 1 (Aug. 9, 1999).

12. William C. Kidder, “Portia Denied: Unmasking Gender Bias on the LSAT and its Implications for Diversity in Legal Education,” 12 *Yale J.L. & Feminism* 1 (2000). The author can be reached at Testing for the Public, 1308 Peralta, Berkeley, CA 94702.

In the highly competitive college and graduate admissions process, so many thinly-veiled departures from the standards of fairness and merit are accepted and even defended by numerous Whites for whom they pose an unrecognized but very real burden. And yet policies of racial preference, by any objective terms, perhaps the most justifiable departure of all, are bitterly opposed in the courts, the legislatures, and in the polls. It may be that challenges by civil rights and community groups calling attention to the inaccuracies and unfairnesses of standardized tests will lead to their revision or even abandonment. If so, then it will not be the first time that civil rights campaigns initiated to remedy racial injustices resulted in reforms that worked to the benefit of all—usually, providing more advances for Whites than Blacks.

Given my tardy awareness of the degree to which affirmative action policies benefited the adopting institutions and those selected under them far more than the general, minority community, one might well wonder, not that I left Harvard in protest over what I deemed its inadequate minority hiring policies, but rather why I agreed to join the faculty in the first place and remained for so many years. Commitment and experience, alas, do not confer prophetic power. I have certainly made my share of mistakes—a too long-held belief in racial balance remedies as an effective means of school desegregation being one of them. When I finally recognized the error, my publication of what I then saw as a better path was criticized rather than hailed by many of my civil rights colleagues.¹³

Reluctantly, I also came to see that my individual success and the aid I provided to others were not necessarily a plus for racial progress. Robert Allen gives substance to those concerns in his 1969 book, *Black Awakening In Capitalist America*. There he reminds us that what we deem progress, as measured by the number of Blacks who have moved into management-level positions, is quite similar to developments in colonial Africa and India. The colonizing countries maintained their control by establishing class divisions within the ranks of the indigenous peoples. A few able (and safe) individuals were permitted to move up in the ranks where they served as false symbols of what was possible for the subordinated masses. In this, and less enviable ways, these individuals provided a semblance of legitimacy to the colonial rule that it clearly did not deserve.

Robert Allen applies his colonial analogy to present-day America. He views black America as a domestic colony of white America. Colonial rule, Allen claims, is predicated upon “an alliance between the occupying power and indigenous forces of conservatism and tradition.” Allen finds aspects of this policy in American slavery where slave owners created divisions between field hands and house hands. “Uncle Tom,” is the term used to describe the collaborator torn, with conflicting loyalties, between his people and the slave owners.

13. Derrick Bell, “Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation,” 85 *Yale L J* (1976): 470.

We cannot escape the burden of Allen's analysis, nor should we wish to do so. The oppression that challenges people of color and those with the status as law professionals is not met when we resist the temptation to serve as apologists of the status quo. There is a no less real or potentially less destructive dilemma in Allen's analysis. We view our professional positions as valuable because they offer an opportunity to push the legal system and even the larger society in the direction of racial justice. Our involvement, though, may be having a very different effect than we hope or even recognize. Instead of gaining access to real influence, it is more likely that we are legitimizing a system that relegates us to an ineffectual but decorative fringe.

In ways that none of us is prepared to recognize, we unintentionally can make things worse instead of better for minorities who have been excluded from the programs which have helped us to gain skills and acceptable credentials. Enjoying our positions and the occasional opportunity to do good, we are pointed out to the majority of Blacks who are still without work or trapped in low wage dead-end jobs. We want to serve as models for the disadvantaged, but as scholars, judges and practitioners, we are for many Whites, "living proof that there is no color bar."

After our most militant speeches decrying the continuing evils of racism, there is often the response: "But, Professor Bell, you are black, you must have experienced discrimination, and yet look at all that you have accomplished. Why can't the rest of black people do as you have done?" The question asks why the most disadvantaged Blacks do not equal the success of the most fortunate in a society still filled with racial barriers. While posed as a question (and a stupid one at that), it speaks to the logical hoops the questioner and Lord knows how many others are willing to jump through in order to avoid the reality of our condition and theirs.

I am reminded of the black guy in one of my audiences who said "Professor, you keep on trying, but I'm telling you, black folk can't get free until white folks get smart." It seems a form of passive surrender, but a great deal in my civil rights experience tells me that he may be right. In the spirit of his admonition, I am tempted to run advertisements:

Wanted: A White Leader Able to Free Whites of Racism

Litigation, Legislation, Community Organizing, Protest. All are of value in the seemingly endless campaign against racism. But after forty plus years of involvement in all of these efforts, I have concluded that none is a sufficient vehicle for the future in the seemingly endless effort to rid this country of discrimination based on race and color. That is why I am convinced that we need new leadership, to be more specific, new white leadership in the fight against racism.

There are, of course, many Whites who are believers in, working for and writing about racial equality, but for the most part, they are not well known. We are not likely to see them on the Lehrer News Hour or Meet the Press. And yet, the leaders I seek and that this country needs must be well-known, able to be heard

and equipped with the power or charisma to be taken seriously.

Let me say quickly, emphatically, and somewhat sadly, that a black person cannot fill the leadership role we need. We know from the Rev. Jesse Jackson's runs for the presidency that an articulate Black can gain support across race lines when advocating a range of social needs for those who as Rev. Jackson puts it, "take the early bus." And, had he accepted Republican platform, Colin Powell could have run and might have been elected. One might wonder how a black person could run at the top of a Republican platform that was both insensitive to the needs of the disadvantaged and downright hostile to black aspirations. Given even the appearance of an option such as voting for a Black for President, many Blacks might have abandoned the Democratic Party that, save for appointments of individual Blacks, has abandoned us. The black vote has often been crucial in electing Democratic Party candidates particularly in national elections but often in state and local elections as well. However, Democratic Party leaders are reluctant to acknowledge the importance of the black vote and often go out of their way to distance themselves from issues and individuals associated with black people.

Professor Paul Frymer offers a detailed review of this phenomenon in his book, *Uneasy Alliances: Race and Party Competition in America*.¹⁴ Frymer views Blacks as victims of what he calls "electoral capture" in presidential politics. He explains that the competitive two-party system leads party leaders to de-emphasize black interests in order to create broad-based electoral coalitions. Blacks have no choice but to remain in the Democratic Party because the opposing party does not want the black votes and is asserting positions hostile to Blacks and their interests. In this situation, the party leadership can take Blacks for granted, neglect their interests and even distance itself from black leaders and their issues. This happens, in particular, when the party fears that identification with black issues will cost it the support of moderate and conservative whites or disrupt the party's electoral coalition. No matter that Blacks remain loyal to the party and they have the votes that can—and often do—provide the difference in the election.¹⁵

Once elected, a president who gained office because of black votes, does not entirely ignore Blacks, but the rewards tend to be individualized: judicial, appointments, cabinet, and other high level officers. He does not push for policy changes

14. Paul Frymer, *Uneasy Alliance: Race and Party Competition in America*. (Princeton University Press: New Jersey, 1999).

15. Citing as example the presidential election of 1992, in which the country elected Bill Clinton, the first Democratic Party presidential nominee to gain the White House in 16 years, Frymer traces the Party's move to the right with emphasis on Clinton's call for welfare reform and cutbacks on "excessive" employment benefits, all widely perceived as benefiting "undeserving blacks. This "distancing" also took the form of making no mention of redressing racial injustice in the Party platform and Clinton's openly disrespectful public criticism of Sister Souljah at one of Jesse Jackson's Rainbow Coalition conferences for allegedly advocating black-on-white violence.

of particular value to Blacks, such as draconian drug laws, employment opportunities for the unskilled or under-employed, repeal of the death penalty, and meaningful implementation, funding and enforcement of civil rights laws and legal services programs.¹⁶

For precisely the reason that political parties are fearful of aligning their platforms too closely with black interests, it would be difficult for any Black, despite prestige and celebrity, to address white people effectively on the benefits and costs of their racism. The Black's message will be dismissed as special pleading at best and racial condemnation at worst by probably most Whites in this country.

I admit that, despite the positions President Clinton took (and didn't take) to gain the presidency, I once hoped that he might fill the role. While, at times, I believe his heart is in the right place, his commitment in the area is too easily overturned by the pressures of politics. Let me add that I am not unhappy with Senator Bill Bradley's statements about race as he sought the Democratic nomination for president, but they are not what was needed and not what we are likely to hear from a presidential candidate.

What we need is a white leader able to be heard and courageous enough to deliver a three-point message about race.

1. Race in America is not a black problem, but a white problem,
2. Racism may not be overcome and may be a permanent part of the American social structure, and
3. There is value in struggle in even what is apparently a hopeless cause.

Now, to review each component in turn.

1. **The key to resolution of the racial problem in this country is not people of color but Whites.**

While it is beyond denial that Blacks have borne the heavy burden of "the other" in our society, the barriers posed by race discrimination on black people should not be the focus of the leader's statements. Rather, it should be the cost of that burden to Whites. I don't mean the moral or ethical cost, though those are high. Rather, the wanted white leader will need to review the economic and social disadvantage and lost opportunities that white people have suffered and continue to suffer as a result of the corrosive and pervasive effects of social neglect connected to race.

16. Frymer acknowledges that a party can identify closely with blacks as the Democratic Party did during the civil rights movement of the 1960s. He notes, though, that this was a period when some leaders were moved by ideological principle and there was widespread, public support for eliminating racially segregated public facilities. By the late 1960s, the public enthusiasm for civil rights changed dramatically as did the incentive for party leaders to be inclusive rather than exclusive.

The leader will ask all Whites to consider why the United States, by far the world's richest nation, lags behind any number of less wealthy countries in matters of social welfare, health care, housing, education, child care and protection for the aged. Not just well-off countries in Western Europe, but Canada, even Cuba, are far ahead in protecting all citizens against the destroyers of life: pestilence, poverty, and ignorance. Racial separation is a major part of the answer.

Economist Robert L. Heilbroner pointed out years ago that while the persons who suffer most from social neglect in America are disproportionately black, the merging of the racial issue with that of neglect serves as a rationalization for the policies of inaction that have characterized so much of the American response to need. Programs to improve slums are seen by many as programs to "subsidize" Blacks; proposals to improve prisons are seen as measures to coddle black criminals; and so on. All too often, the fear and resentment of Blacks take precedence over the social problem itself. Unfortunately, the result is that the entire society suffers from the results of a failure to correct social evils, whose ill effects refuse to obey the rules of segregation.

The same pattern can be seen in the inaction on other areas of social policy where this country lags behind much of the world's nations. Someone wrote and U.S.A. Today actually published a letter to the editor urging the country to stop coddling drug dealers. The writer said "Give them a quick trial and if found guilty, execute them."

The white leader I seek will need the courage to ask: what is the source of the fear that manifests itself in the fact that America is the only major country that retains the death penalty and extends it to more crimes at every opportunity—while simultaneously dismantling legal services for the poor, the only means of legal defense for those facing the death penalty?

Similarly, why is it that our Congress can't enact meaningful gun control laws even as we witness a series of horrendous attacks on our schools, businesses, even churches by Whites, including young students armed with an array of lethal weapons, killing scores of innocent, unarmed persons? Could deep-seated racial fears be the real barrier to joining the rest of the civilized world and ending the death penalty and controlling the purchase and possession of guns?

The media response to the massacre of innocent people is significant. In the wake of each mass killing, we get a flood of media pundits psychoanalyzing why such good kids from good homes do such horrible things. Can you imagine if any one, and Lord help us if more than one, of these mass executions of unarmed children and their teachers had been planned and carried out by black kids retaliating for the alienation and rejection they experienced in those schools? There would be no descriptive term too despicable to describe the acts and those responsible for them.

And to cite one further oddity, how was President Clinton able to replace a deeply flawed welfare system with a draconian series of measures with the call to "end welfare as we know it?" The slogan was filled with racist overtones that ignored the fact that most persons on welfare are white and that the real recipients

of government largesse are not the poor but corporations, banks, and other major entities in our economic system?

The white leader this nation needs—though likely does not want—will speak out on these issues. This discussion may lead to an understanding that a major barrier to much-needed social reform is the unacknowledged but very real fear and resentment of Blacks. The fact is that powerful entities in our society are able to utilize this deep-seated fear and resentment to convince a great many of white people to think and act contrary to their best interests.

Fear and resentment of Blacks led many Whites in North Carolina to re-elect Jesse Helms to the Senate over Harvey Gantt and now it is Helms who blocks the appointments of even our most qualified individuals and who would like to pull the country out of the United Nations. Helms is highly conservative not only on racial issues but he also supports economic measures that advantage the rich and burden the lives of most of the Whites who elect him.

And Helms is not alone. The leadership of both the House and Senate, particularly Tom Delay and Trent Lott, hold their powerful positions in substantial part because, like Helms, they have convinced Whites that if elected, they will preserve the racial status quo. Having done so, they can ignore the nation's need for health care, environmental reform, effective schools, and a decent minimum wage. They need not even put on the table the great and growing gap in wealth and income. They can protect the interests able to fill their campaign coffers with millions of dollars in legal—but no less immoral—bribes.

This confusion of race and self-interest is not of recent origin. It goes back to early colonial times. Historian Edmond Morgan explains that plantation owners convinced working-class whites to support slavery even though the workers could never compete with those who could afford slaves.¹⁷ While slavery ended, the economic disadvantage—camouflaged by racial division—continued to work.¹⁸

During the latter half of the nineteenth century, a shared feeling of superiority to Blacks was one of the few things that united a nation of immigrants.¹⁹ This is despite the fact that these immigrants were themselves horribly exploited by the mine and factory owners for whom they toiled long hours under brutal conditions for subsistence wages.

Of course, many of these immigrants were far more recent arrivals than the Blacks they mocked. The black face and racially derogatory minstrel shows of that period helped immigrants acculturate and assimilate by inculcating a nationalism whose common theme was the disparagement and disadvantaging of Blacks. They

17. Slave holders appealed to working class whites, urging that because they were both white, they had to stand together against the threat of slave revolts or escapes. It worked. In their poverty, whites took out their frustrations by hating the slaves rather than their masters who held both black slave and free white in economic bondage.

18. Edmund Morgan, *American Slavery, American Freedom* (1975).

19. See Ken Emerson, *Doo Dah! Stephen Foster and the Rise of American Popular Culture* (Simon & Shuster, 1997) for further detail.

focused on keeping Blacks down rather than uniting across racial lines to resist the exploitation and deprivation that, then as now, does not respect any color line.

As scholar David Roediger has stated, the historic mirrors the present. The ideology of whiteness continues to oppress Whites as well as Blacks. It is employed to make Whites settle for despair in politics and anguish in the daily grind of life. Somehow, they link the facts that a majority of America's population is white and that most power is held by Whites with a sense that, as Whites, they are privileged and entitled to preference over people of color. Over time, these views have solidified into a kind of property right—a property right in whiteness. The law recognizes and protects this property right based on color, like any other property.

This is a nation built on valuing property and the protection of property. That was the chief goal of the framers who gathered in Philadelphia in 1787. Requiring that government recognize individuals as entitled to life, liberty, and property, was a means of protecting property from government incursion. In a nation where property is viewed as a measure of worth, many Whites with relatively little property of a traditional kind, such as money, securities, or land view their whiteness as a property right.²⁰

Professor Cheryl Harris asserts: "The valorization of whiteness as treasured property takes place in a society structured on racial caste. In ways so embedded that it is rarely apparent, the set of assumptions, privileges, and benefits that accompany the status of being white have become a valuable asset that Whites sought to protect. . . . Whites have come to expect and rely on these benefits, and over time these expectations have been affirmed, legitimated, and protected in law."²¹

Professor Harris explains: "The wages of whiteness are available to all Whites regardless of class position, even to those Whites who are without power, money, or influence. Whiteness, the characteristic that distinguishes them from Blacks, serves as compensation even to those who lack material wealth. It is the relative political advantage extended to Whites, rather than actual economic gains, that are crucial to white workers."²²

That political advantage over Blacks, though, requires that Whites not identify with Blacks even on matters that transcend skin color. To give continued

20. See David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class* (1991); Howard Winant, *Racial Conditions: Politics, Theory, Comparisons* (1994); Noel Ignatiev, *How the Irish Became White*, Routledge, New York (1995); Jane Lazarre, *Beyond the Whiteness of Whiteness: Memoir of a White Mother of Black Sons* (Duke University Press 1996); Toni Morrison *Playing in the Dark: Whiteness and the Literary Imagination* (Harvard University Press, 1992); Ian F. Haney Lopez, *White by Law: The Legal Construction of Race* (New York Univ. Press, 1995); Eric J. Sundquist, *To Wake the Nations: Race in the Making of American Literature* (Belknap/Harvard, Cambridge, 1993).

21. Cheryl Harris, "Whiteness as Property," 106 *Harvard Law Review* (1993): 1707, 1713.

22. *Ibid.*, 1759.

meaning to their whiteness, Whites must identify with Whites at the top of the economic pile, not with Blacks with whom—save color—they have so much in common. Politicians and some employers are all too ready to suggest that the understandable job anxieties of Whites are the fault of programs intended to remedy longstanding discrimination against Blacks. And now both the courts and a large part of the citizenry condemn affirmative action programs that, in fact, have been of benefit to far more white women—and white men—than they have to people of color.

That is why the white leader on race must not be sidetracked into the routes most racial discussions generally follow, namely about Blacks, our intelligence, our morality, our entitlement to rights, and all the other issues that usually monopolize American race discussions. Rather, he or she will have to keep the spotlight focused where the discussion belongs, where it should have been all along, on Whites.

This should not be a discussion as to who is or isn't racist. That debate leads to rancor, not reconciliation. As Beverly Tatum points out in her book, *Why Do All the Black Children Sit Together In the Cafeteria?*, racism is a system of advantage based on color that privileges all Whites whether or not they want it.

There are two questions the white leader we need will have to ask the nation's Whites to wrestle with in this first component titled: "Race is Not a Black Problem, But a White Problem."

First, if blackness does not mean subordination, what does it really mean to be white, not as a matter of appropriate respect and pride in cultural heritage, but as a social and economic fact of life in these United States?

Second, will Whites in this country have enough love and respect for one another to remain a stable society without using Blacks as a societal glue?

2. Racism—with all its benefits and burdens for Whites—may not be something that can be overcome and may be a permanent part of the American social structure.

In the area of race among many Whites, optimism usually trumps reality. "These things take time," is a ready response to troubling instances of continued racial discrimination. Others say "Well, the answer is intermarriage so that one day all Americans will be a pleasing shade of year-around tan."

The leadership I seek will understand and be willing to speak plainly about the barriers to moving beyond reliance on an out-group for social stability. Those barriers are monumental in a nation where Whites of widely divergent stations are able to make common cause through their unspoken pact to maintain a system of presumptions and priorities based on race. A system that enables some Blacks of talent and hard work and good fortune to advance but keeps a great many on the bottom. No other aspect of social functioning has retained its viability and its value to general stability from the very beginning of the American experience down to the present day.

Because of this fixation, I agree with Princeton Professor Jennifer Hochschild's assessment that racism is not an anomaly, but rather a crucial component of liberal democracy in this country. The two are historically, even inherently reinforcing or, as she puts it, 'the apparent anomaly is an actual symbiosis'.

Some here may respond that if all of this is true, then it serves as proof of the need not for a charismatic white leader but a truly extraordinary educational campaign. That is, given a true understanding of the evils of racial discrimination, which means being able to feel how it harms Blacks, Whites might find it easy—or easier—to give up racism. Education leads to enlightenment. Enlightenment opens the way for empathy. Empathy foreshadows reform.

But I have the sense that the harm done by the practice of racial discrimination is an open secret everyone has agreed on, however much individuals may deplore it from time to time. It may even be that Whites, at some level of consciousness, recognize that they the oppressors are among the oppressed—but conclude that that's the way it is.

The problem, though, may be more than a form of racial thoughtlessness. Just as I know that all Whites benefit from racism, I know that not all Whites are evil or guilty in any normative sense. Yet, I wonder whether the plight of black people in this country isn't caused by factors more fundamental even than white racism, more essential than good government to a civilized society? While some racial reform can be pressured by financial considerations, disaster, threat, guilt, love, and, yes, even education, there may be a primary barrier to the racial reformation which nullifies all these. I wonder whether in the melding of millions of individuals into a nation, some within it must be sacrificed, killed, or kept in misery so that the rest who share the guilt for this monstrous wrong, can bring out of their guilt those qualities of forbearance and tolerance essential to group survival and growth? And, if so, then who in the legal system plays the more important role? Is it the prosecutors who are the instruments of the sacrifices mandated by a social physics we do not understand, or the defendants whose efforts are destined to fail but who, by those efforts, serve to camouflage the bitter reality of those sacrifices from the society and—alas—from themselves as well?

So, the value of racism in maintaining a stable society may be greater than is generally realized. In addition to providing a comforting sop to the poor, and a convenient scapegoat for politicians, racism also connects all Whites in a knowing but unspoken alliance. The writer, bell hooks, is right when she says that Whites bond on the basis of race, whether that bonding is conscious or not.²³ And as paradoxical as it seems, viewing racism as an amalgam of guilt, responsibility, and power—all of which are generally known but never acknowledged—may explain why educational programs that the leaders I seek may undertake are destined to fail.

You see, the onus of this open but unmentionable secret about racism marks the critical difference between Blacks and Whites in this country—the unbreachable

23. bell hooks, *Feminist Theory from the Margin to the Center*, 54 (1984).

barrier, the essence of why Blacks can never be deemed the orthodox, the standard, the conventional. Indeed, the fact that as victims, we suffer racism's harm, but as a people, we cannot share the responsibility for that harm, may be the crucial component in a definition of what it is to be black in America.

For all the reasons we have been discussing, being black in America means we are ever the outsiders. As outsiders, we are expendable, and must live always at risk of some ultimate betrayal by those who, when it is deemed necessary, will treat such treachery as a patriotic duty.

3. There is value in struggle in what appears a hopeless cause.

In a society where success is worshipped, it will be tough for even the most effective leader to convince this country's Whites that there is value—a real sense of soul salvation—in taking on causes in which victory as generally defined is so remote as to make the term “impossible” sound optimistic. The outstanding white leader I seek may come, but I would hope you here or some of you here would not await his or her arrival. Others have not been waiting. The crusade to diminish race as a basis of privilege and priority is already underway. There are many anti-racist, white groups who are meeting and placing into action plans to reduce the dangers and disadvantages of using whiteness as a measure of worth, a standard of normality. A national network of groups call themselves “Race Traitors.” They reject loyalty to whiteness in favor of loyalty to humanity. Thus, if a white person tells a racist joke or story in a group of Whites, the member of this group would say: “Oh, you must have told that story in front of me because you assume I am white. I am actually black and just look white. And let me tell you why I found that story offensive.”²⁴

Other Whites are both recognizing and rejecting the privileges of whiteness. At each instance of special treatment they ask, “would you have done this were I not white?” Whites, by refusing to accept without question the privileges of whiteness, begin the process of destabilizing that construction which society relies on to preserve the current system of racial subordination. One of my students had an experience that reflects her awareness. She wrote:

On the days when I work, I often take papers down to Manhattan family court. I don't dress up just to drop papers off, so last Wednesday I headed down to the courthouse in jeans and a plaid flannel shirt. I also don't carry identification marking me as the employee of an attorney—identification which would allow me to skip the metal detector and go right into the court house.

While I could make some sort of badge, I never remember to do so. So last Wednesday I was in line waiting to go through the metal detector. I was

24. See *Race Traitor*, Noel Ignatiev and John Garvey eds., (Routledge, 1996); and *Race Traitor*, a journal published in Cambridge, Massachusetts, that “aims to serve as an intellectual center for whites and others seeking to abolish the white race.” Reported on in *Harper's Magazine*, Vol. 290 (Mar.1995): 17.

the only white person in the line, and I was at the very end of the line. I was dressed considerably worse than most of the other people in the line.

Nevertheless, one of the security guards spotted me, left the metal detector, came back to the end of the line and asked me why I was going in. I replied that I worked for the Family Law Center, but didn't have a badge. He smiled and waved me through. My whiteness was my badge, whether I actively asserted it or not.

There are courses and workshops for those Whites who are concerned but not sure they are ready to tackle the existing system. Trained persons can help in understanding and recognizing the stages that social scientists suggest Whites must undergo to rid themselves of a sense of guilt or denial in being white, replacing long-held and often destructive myths with an acceptance of whiteness as an important part of oneself, individuals can ultimately develop a realistically positive view of what it means to be white.²⁵

Why, you may ask, should anyone try to challenge the system of racism which I have said is a permanent component of American life? It is this question that I tried to answer at the close of my book, *Faces at the Bottom of the Well: The Permanence of Racism*. There, I tried to imagine how my enslaved ancestors survived even though they knew that for most of them, there was no escape, no way out. We know that they continued to engage themselves, continued to carve out a humanity in a world where they were deemed no more than chattels who could be worked to the limits of their endurance, beaten, sold, raped, even killed for profit or sport. Nevertheless, they continued to defy the murder of selfhood. Their awful lives were not without meaning despite being imprisoned.

It is a paradoxical source of inspiration, but perhaps those Whites who can admit that we are all imprisoned by the history of racial subordination in America can accept—as slaves had no choice but to accept—our fate. Thus, by acknowledging the power of racism, we do not legitimate it or surrender to it. Rather, we can only de-legitimate it if we can accurately pinpoint it. Racism lies at the center, not the periphery; in the permanent, not in the fleeting; in the real lives of black and white people, not in the sentimental caverns of the mind.

Armed with this knowledge, and with the enlightened, humility-based commitment that it engenders, Whites can—as Blacks must—accept the dilemmas of committed confrontation with evils we cannot end. The need is for both engagement and commitment, both of which connote service. And genuine service requires humility. You must first recognize and acknowledge (at least to yourselves) that your actions are not likely to lead to transcendent change and, may indeed, despite your best efforts, be of more help to the system as it is than to the racial reforms you are trying to bring about.

25. See Beverly Daniel Tatum, *Why Do All the Black Children Sit Together in the Cafeteria* (Basic Books, New York, 1997).

Despite this sobering recognition, in my experience, continued struggle can bring about unexpected benefits and gains that, in themselves, justify continued endeavor. You can recognize miracles you did not plan and value them for what they are rather than always measure their worth by their likely contribution to the traditional goals. As a former white student, Erin Edmonds, from Utah whose insight into race matters was at least the equal of my own, wrote: "It is not a matter of choosing between the pragmatic recognition that racism is permanent no matter what we do, or an idealism based on the long-held dream of attaining a society free of racism. Rather, it is a question of both, and both the recognition of the futility of action—where action is more civil rights strategies destined to fail—and the unalterable conviction that something must be done, that action must be taken."

This is, I believe a more realistic perspective from which to gauge the present and future worth of your race-related activities—including talking about race to a nation whose people from a young age have come to know which is the dominant and which the subordinate race in a society boasting that it offers equality for all.

JUDGE A. LEON HIGGINBOTHAM, JR.'S SEARCH FOR JUDICIAL PLURALISM

NATHANIEL R. JONES*

This occasion, centering on my very distinguished brother and intellectually inspiring leader, helps to turn our deep mourning for his loss into an opportunity for serious reflection. This we do, on the fiftieth anniversary of the racial integration of the federal judiciary with the appointment by President Truman of William H. Hastie to the Third Circuit Court of Appeals. This was the very court that Judge A. Leon Higginbotham, Jr. graced with such force and majesty—and as he did, remained true to the powerful legacy of Judge Hastie.

There is much to learn about Judge Higginbotham's teachings on life, history, and the role that law plays in resolving the great social issues, and much to be imparted to the legal community and, indeed, the civilized world. This Higginbotham memorial lecture is and will be a most appropriate forum for doing so. Judge Higginbotham's judicial opinions, lectures, public written commentary, legislative testimony, books, and other teachings are so voluminous and rich that it is doubtful that this annual lecture will ever be able to fully exhaust an examination of them.¹

One of the lessons I take from the many he taught relates to the nature of race and law, and how they converge to distort the institutions that have historically shaped societal attitudes and practices. Another lesson is the role that courts must play in strengthening the means of enforcing the guarantees against discrimination provided by the Constitution.

The burden of my presentation today will be the latter, for the issue clearly troubled this brilliant scholar and committed jurist. In 1992, he raised his concern in an op-ed article captioned "The Case of the Missing Black Judges"² which was penned for the pages of the *New York Times*. In that article, Judge Higginbotham displayed once again, as he did repeatedly in his lifetime, an uncanny ability to

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1. For example, see A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process, The Colonial Period*. New York: Oxford University Press, 1978; A. Leon Higginbotham, Jr., *Shades of Freedom: Racial Politics and Presumptions of the American Legal Process*. New York: Oxford University Press, 1996; A. Leon Higginbotham, Gregory Clarick, and Marcella David, "Shaw v. Reno: A Mirage of Good Intentions with Devastating Racial Consequences." *Fordham Law Review* 62 (1994), 1593:1657; A. Leon Higginbotham, Jr., "Seeking Pluralism in Judicial Systems: The American Experience and the South African Challenge." *Duke Law Journal* 42 (1993), 1028:1066; A. Leon Higginbotham, Jr., "A Tribute to Justice Thurgood Marshall." *Harvard Law Review* 105 (1991), 55:66.
2. A. Leon Higginbotham, "The Case of the Missing Black Judges." *New York Times* (July 29, 1992), A21.

foresee and draw attention to a looming development unappreciated by the general populace. As a longtime judge, scholar, and realist, he knew that without a racially diverse judiciary the Constitution would remain mere words. The article opened with the following scenario:

Suppose someone wanted to steal back past achievements, rein in present gains and cut off future expectations among African-Americans about participation in the judicial process. That person would have found it difficult to devise a better plan than nominating Clarence Thomas to the Supreme Court while decreasing the number of African-American judges on the Federal bench.³

Judge Higginbotham rejected this form of tradeoff because it struck him as a form of "rope-a-dope" that was certain to derail the efforts to protect constitutional rights of historic victims of discrimination. Thus, his remarkable "An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague."⁴

He then went on in his lawyer-like style to support his case with a recitation of the statistics showing the dramatic decline in the number of African Americans nominated for federal judgeships during the administrations of Presidents Reagan and Bush from those achieved during the administration of President Carter.⁵ Thus alerted, increased numbers of people began to pay closer attention to the various strategies being employed by the Senate majority to slow down the confirmation of judicial nominees of color made by President Clinton. The shocking rejection of Missouri Supreme Court Justice Ronnie White for a District Court Judgeship in a straight party line vote⁶ is but the most recent example of that which Judge Higginbotham warned in his 1992 *New York Times* piece.

What, to me, was extremely foretelling about his warning was the extent to which concerted efforts are being made to control the makeup of courts of appeals through the appointment and confirmation process. Judge Higginbotham noted what President Carter had previously done: "When he became president in 1977, there were only two African-American judges on courts of appeals. In four years in office, he appointed nine, including the first African-American woman, Amalya L. Kearsse."⁷

Unfortunately, President Carter's move in the direction of diversifying the federal court became the target of the Reagan Administration. It was not a stealth policy, for Stephen J. Markman, who functioned as Assistant Attorney General for

3. *Ibid.*

4. A. Leon Higginbotham, Jr., "An Open Letter to Justice Clarence Thomas from a Federal Judicial Colleague." *University of Pennsylvania Law Review* 140 (1992), 1005:1027.

5. Higginbotham, "Missing Black Judges."

6. Charles Babington and Joan Biskupic, "Senate Rejects Judicial Nominee; Clinton Decries 'Disgraceful' Party Vote on Black Jurist." *Washington Post* (Oct. 6, 1999), A1.

7. Higginbotham, "Missing Black Judges."

the Office of Legal Policy, laid out the new policy's purpose with absolute candor.⁸ Markman declared the determination of President Reagan to effect a sea of change in the selection and makeup of the federal judiciary.⁹ The objective, Markman said, was to fill the federal courts with ideologically compatible judges who would exercise "judicial restraint" as opposed to those, who, it was complained, legislate from the bench.¹⁰

Judge Higginbotham responded with alarm. This reaction found support in a 1987 *Columbia Law Review* article, which discussed the subject of appointees to the various courts of appeals. The article noted that the change represented "the most consistent ideological or policy-orientation screening of judicial candidates since the first term of Franklin Roosevelt."¹¹

Also, civil rights lawyers, particularly those who had carried the Charles Houston brief, regarded the shift in the appointment of minority judges to the federal courts to be ominous. It was they who had been successfully litigating cases that overturned *Plessy v. Ferguson* and which led to fundamental legal reforms.¹²

The basis for the "ominous" feeling was the obvious effort by those who had come to control the judicial nomination process to reduce the growing racial pluralism in the court. The justifying language used then was the same as that being used today—eliminating or blocking "judicial activism," rejecting judges who legislate from the bench, selecting only "strict constructionists" and those capable of exercising "judicial restraint." These are among the "sins" ascribed to judges who fashioned and struggled to implement the decrees required to eliminate the "separate-but-equal" vestiges of *Plessy* outlawed in 1954 by the Supreme Court in *Brown v. Board of Education*.¹³ Judge Higginbotham's 1992 article described the Court of Appeals judicial cleansing by "intentional Presidential action" as turning African-American judges into "endangered species, soon to become extinct."¹⁴

While the "extinction" prediction has not yet come to pass, it is clear that now, by "intentional Senatorial action," the brakes have been applied to slow down dramatically the approval of African Americans nominated for courts of appeals and district court seats. The numbers alone tell the story.¹⁵ After his initial appointment,

8. Andrea Neal, "Reagan To Have Lasting Legacy on Courts." *UPI* (Sept. 4, 1988), available in LEXIS, Nexis Library, UPI file.

9. *Ibid.*

10. *Ibid.*

11. Timothy B. Tomasi and Jess A. Velona, "Note, All the President's Men? A Study of Ronald Reagan's Appointments to the U.S. courts of appeals" *Columbia Law Review* 87 (1987), 768.

12. Herman Schwartz, "The Continuing Struggle of Civil Rights on the High Court." *Los Angeles Times* (June 23, 1996), 2.

13. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

14. Higginbotham, "Missing Black Judges."

15. The following figures are taken from Higginbotham, "Missing Black Judges," and Nathaniel R. Jones, "Whither Goest Judicial Nominations, Brown or Plessy?—Advice and Consent Revisited." *SMU Law Review* 46 (1992), 738:739.

Judge Hastie remained the sole African American federal judge until 1961, when President Kennedy appointed Thurgood Marshall to the Second Circuit and Wade H. McCree and James Parson as district judges in Michigan and Illinois. President Johnson's historic appointment of Thurgood Marshall to the Supreme Court was like a shot heard around the world. Presidents Johnson and Nixon made a number of other African American judicial appointments, but it was not until the Carter administration that a significant breakthrough occurred, with 37 of his 258 judges being African American. Progress stalled during the Reagan and Bush years, when only 19 African American judges were appointed over 12 years out of a total of 579 appointments. Finally, although President Clinton has made up considerable lost ground with over 50 appointments over the past eight years, the recent slowdown in appointments¹⁶ and simultaneous increase in tension and rhetoric as we approach a new administration are foreboding signs. Indeed, as recent studies have shown, not only did the 1997–98 Senate take an average of sixty days longer to accept or reject black judicial nominees than it did white ones,¹⁷ but the rejection rate of black nominees (35 percent) was more than twice as high as that for white nominees (14 percent).¹⁸

Why were such trends a subject that Judge Higginbotham deemed important enough to engage so much of his attention and concerns? I attempted to provide an answer in my June *Harvard Law Review* tribute to Judge Higginbotham,¹⁹ with a comment on the reason he vigorously questioned the appropriateness of the National Bar Association Judicial Council's invitation to Justice Thomas to address its 1998 anniversary luncheon in Memphis. Frankly, he considered it an affront to the legacy that Charles Houston, William Hastie, and Thurgood Marshall left to the current generation of lawyers and judges of color. To rebut those who suggested that he was personally motivated, I wrote:

For those who wonder why Judge Higginbotham reacted so strongly, I would note that, having been deeply inside the legal system, he had learned firsthand

16. Studies have shown that recent Congresses have confirmed appointments more slowly than in recent decades. For example, see Sheldon Goldman, "The Judicial Confirmation Crisis and the Clinton Presidency." *Presidential Studies Quarterly* 28 (Oct. 1, 1998), which found that judicial confirmation process during the 105th Congress was markedly slower than previous Congresses.

17. The statistics come from a study by the bipartisan Constitution Project. Jim Abrams, "Nominee's Rejection Infuriates Clinton Senate." *New Orleans Times-Picayune* (Oct. 11, 1999), A2; Pamela Brogan, "Blacks Confirmed as Judges Less Often." *Detroit News*, (Oct. 8, 1999), A9; Ben White, "Deepening Rift Over Judge Vote; Minorities Confirmed at a Lower Rate." *Washington Post* (Oct. 7, 1999), A3. Also see Richard Simon, "California and the West Minorities Denounce Senate on Judges' Politics." *Los Angeles Times* (Oct. 6, 1999), A3.

18. Abrams.

19. Nathaniel R. Jones, "In Memoriam: A. Leon Higginbotham, Jr." *Harvard Law Review* 112 (1999), 1818:1823.

how stereotypes and precepts of black inferiority and white superiority were institutionally formed and judicially enforced with devastating effects on racial minorities and the poor.²⁰

It was this insight that made him push so hard for racial and ethnic diversity on the judicial bench. To him, the presence of what he called "judicial pluralism," reflected by the presence of minorities particularly on the courts of appeals, "made the Federal judiciary far stronger than it otherwise would have been."²¹ He hastened to add, "I do not want to be misunderstood. Pluralism does not mean that only a judge of the same race as a litigant will be able to adjudicate the case fairly. Rather, by creating a plural court, we make sure judges will reflect a broad perspective."²²

It is Judge Higginbotham's advocacy for "judicial pluralism" which I would like to elaborate on further today. In addition to his justifications, I would like to articulate several other reasons that a racially representative federal bench is vital in our current system of justice. First, when one takes a very practical view of how courts operate today—procedurally, that is—the need for racial representativeness is clear. And second, when one recognizes the broader policymaking role that the courts of appeals in particular play in our overall system of government, the need for judicial pluralism is again crystal clear.

First, in looking practically at what federal judges in fact do on the bench, the need for diversity is apparent. The issues that find their way to the courts, the conduct that Congress has made subject to federal regulation through legislative enactments, and the controversies otherwise generated between racial, ethnic, economic and social groups, all require that judges have the broadest possible range of life experiences. For those who regard this proposition of recent invention, they need only review the decision of Justice Henry Billings Brown handed down in 1897 in the separate-but-equal case of *Plessy*. Addressing the contention of Mr. Plessy that racial segregation "stamps the colored race with a badge of inferiority" in violation of the United States Constitution, Justice Brown rejected the proposition.²³ In so doing, he held that "[if] this be so, it is . . . solely because the colored race chooses to put that construction upon it."²⁴ Justice Brown wrote of Plessy's subjectivity apparently unaware of the subjectivity he was bringing to his own conclusion, for it is unlikely that a jurist who was not white and privileged could have come to the conclusion that segregation laws were not enacted to impose an inferior status on African Americans. But his point, and the unintended illustration of his point by his own skewed view of those segregationist policies, is well taken—different perspectives and backgrounds can often bring an equally

20. Jones, p.1820.

21. Higginbotham, "Missing Black Judges."

22. *Ibid.*

23. *Plessy v. Ferguson*, 163 U.S. 537 (1896), 551.

24. *Ibid.*

different interpretation of what might otherwise appear to be a very clear set of facts or circumstances.

If subjective considerations played a role in judges' decisions a century ago, they loom ever larger today. With court dockets increasingly crowded,²⁵ judges are disposing of civil cases in a summary manner without trial. These summary dispositions require judges to make decisions about whether there are genuine issues that are material to the claim and whether justifications for the challenged conduct are valid or pretextual.²⁶ In cases of alleged sexual harassment or racial hostility in the workplace, or those involving housing discrimination or prisoners' rights or other civil rights matters, the judges' own perceptions and states of mind will have an important influence on their resolutions of disputes. Of course, such determinations bring to bear judges' broad range of societal experiences as much, if not more, than their legal knowledge and skill. And on a broad scale, only a diverse set of judges with a diverse set of experiences will succeed in this work. Thus, the effective administration of justice makes it all the more urgent that the judiciary reflect racial, ethnic, and gender diversity.

The second reason to stress the importance of making the federal appellate bench racially representative, as Judge Higginbotham knew, is the broad policy-making role that courts of appeals, in reality, play in shaping and altering our legal and political system. Indeed, he understood that one of the reasons that such a precise ideological micrometer is being used to consider nominees to the federal bench is a recognition among political leaders of the corrective and policy-reforming power wielded by federal courts, and the courts of appeals in particular. That role has come to be called "legislating from the bench."

In that sense, there are numerous examples where the courts of appeals serve as important—if not *the* vital—policy-makers on crucial issues that affect Americans far and wide. By interpreting a law in one way or another, or by assessing a given law or case through the lens of a specific constitutional ideology, one appellate panel can have as much impact as the Supreme Court or, indeed, as the original enactors of a given law or regulation. Given this reality, it can be said that, from both the left and the right, judges do indeed legislate from the bench, whether they recognize it or not. And more often than not, these courts' dispositions are the last word on a particular matter. As you know, the vast majority of cases reviewed in the courts of appeals do not go before the Supreme Court; in

25. Scholars have examined for some time the challenges of federal and state court congestion. For example, see George L. Priest, "Private Litigants and the Court Congestion Problem." *Boston University Law Review* 69 (1989), 527. One scholar has estimated that federal filings trebled from 1960 to 1986, and estimated a four-fold increase from 1996 to 2020. See John Burritt McArthur, "The Strange Case of American Civil Procedure and the Missing Uniform Discovery Time Limits," *Hofstra Law Review* 24 (1996), 868.

26. Federal Review of Civil Procedure, 56(c).

fact, the federal courts of appeals are the final stop for over 98 percent of the cases filed therein.²⁷ Thus, in those cases where a petition for *certiorari* is denied, that denial effectively cements the result of that case into place both within its circuit and, depending upon the issue and the case, perhaps nationwide. Even when the Court does grant *certiorari*, on many occasions it will find convincing the appellate panel's resolution of an issue and essentially affirm the lower panel's reasoning. In these instances too, the appellate panel serves as the instigator of a new interpretation of the law or, indeed, of a new policy as wide and deep in scope as one that might emanate from Congress itself.

I'd like to mention a few examples that show just how strong a policymaking role the appellate courts play in our country. Because my examples touch on issues of race and/or civil rights, about which Judge Higginbotham sensitized us, they also underscore my deeper point—how important it is that the appellate bench be racially representative given this policymaking consequence.

The Fifth Circuit's decision in *Hopwood v. Texas*²⁸ is perhaps the clearest recent illustration of the decisive impact one court of appeals panel can have on the direction of the law nationally. In that decision, the Fifth Circuit struck down the admissions program of the University of Texas law school, which included a racial preference element. Reversing what had been widely regarded as "settled precedent,"²⁹ the Fifth Circuit in *Hopwood* unilaterally declared that Justice Powell's opinion in *Bakke* was not "binding precedent" and that "the purpose of achieving a diverse student body is not a compelling interest under the Fourteenth Amendment."³⁰ This was certainly not an instance of a court applying the law dictated to it by the Supreme Court, by Congress, or by the Constitution. As the dissenters in the Fifth Circuit's denial of a petition for rehearing stated, the decision "goes out of its way to break ground that the Supreme Court itself has been careful to avoid and purports to overrule a Supreme Court decision."³¹

Not only was the decision one of judicial law-making, but it is a decision by a single circuit panel which has profoundly changed the legal status of affirmative action in education nationwide.³² After the Supreme Court's denial of *certiorari* on

27. "Judicial Business of the United States Courts, 1998 Report of the Director," Administrative Office of the United States Courts (1999), 91.

28. *Hopwood v. Texas*, 78 F.3d 932 (1996), cert. denied, 116 S.Ct. 2581 (1996).

29. A. Leon Higginbotham Jr., "Breaking Thurgood Marshall's Promise." *Black Issues in Higher Education*. (Feb. 5, 1998), 20. Judge Higginbotham described the status of Powell's *Bakke* opinion as follows: "Starting in 1978 with *Bakke*, the Supreme Court has consistently maintained that student diversity, when properly devised, is a valid justification for race-based affirmative action."

30. *Hopwood*, p.944.

31. *Hopwood v. Texas*, 84 F.3d 720 (1996), 722 (Politz, J., dissenting).

32. The Fifth Circuit dissenters predicted this as well, stating that the opinion would "literally change the face of public educational institutions throughout Texas, the other states of this circuit, and this nation." *Ibid.*

this decision,³³ many district courts have cited *Hopwood* as authority that diversity is no longer a proper justification for an affirmative action program.³⁴ Circuit courts that have not directly agreed with the *Hopwood* holding on the diversity prong have followed the case's more general trend in striking down racial preferences in education in strong terms.³⁵ As a proponent of *Hopwood* wrote in the *Chronicle of Higher Education*, "taken together, the cases [since *Hopwood*] indicate the collapse of 'diversity' as a viable basis for broad-based racial decision-making in education."³⁶

Legal academics have agreed with the courts that by "declin[ing] to review *Hopwood* with hardly a blink," the Supreme Court effectively permitted the Fifth Circuit to overturn *Bakke*.³⁷ As a consequence, *Hopwood* is not only playing a major role in the current public dialogue on affirmative action in education, but the decision is having a tangible impact on admissions policies of institutions of higher education, as well as on ongoing litigation in Michigan³⁸ and Washington.³⁹

33. *Hopwood v. Texas*, 518 U.S. 1033 (1996).

34. For example, see *Capacchione v. Charlotte-Mecklenburg Schools*, 57 F.Supp.2d 228 (1999), 241 (citing *Hopwood* for the proposition that "only one compelling state interest . . . will justify race-based classifications"); *Honadle v. University of Vermont and State Agricultural College*, 56 F. Supp.2d 419 (1999), 427 (citing *Hopwood* in support of the proposition that "the only compelling interest which a majority of the Supreme Court justices have recognized to date is that of remedying past discrimination"); *Brewer v. The West Irondequoit Central School District*, 32 F. Supp.2d 619 (1999), 627:631 (granting preliminary injunction on school transfer program, and concluding that *Hopwood* casts doubt on Powell's opinion in *Bakke*); *Adarand Constructors Inc. v. Pena*, 965 F. Supp. 1556 (1997), 1570 (citing *Hopwood* for the proposition that diversity is not a compelling interest under the Fourteenth Amendment) (reversed on other grounds); *McLaughlin v. Boston School Committee*, 938 F. Supp. 1001 (1996), 1014:1015 (pointing to *Hopwood's* "flat out rejection" of the diversity justification as an important counterpose to *Bakke* and other Supreme Court precedent); *Back v. Carter*, 933 F. Supp. 738 (1996), 756 (citing *Hopwood* for the proposition that "the desire for diversity or to have minorities is not an interest sufficient to justify governmental race-based actions").

35. See *Wessman v. Gittens*, 160 F.3d 790 (1998) (striking down race-based admissions preferences at Boston Latin High School, although concluding that "we need not speak definitively to [the] vexing question" of whether diversity is a compelling interest); *Eisenberg v. Montgomery County Public Schools*, 197 F.3d 123 (1999) (citing *Hopwood*, and refusing to hold that diversity is a compelling interest).

36. Michael S. Greve, "The Demise of Race-based Admissions Policies." *Chronicle of Higher Education* (Mar. 19, 1999), B6.

37. Courtney A. Hueser-Stubbs, "*Hopwood v. Texas*: Ramifications and Options for University Affirmative Action Programs," *UMKC Law Review* 65 (1996), 144.

38. *Gratz v. Bollinger*, 183 F.R.D. 209 (1998).

39. *Smith v. University of Washington*, 2 F.Supp.2d 1324 (1997).

As one observer stated, after *Hopwood*, "uncertainty is the order of the day."⁴⁰ Another has predicted that at "a minimum it will force every college, every medical school, every law school . . . to review their procedures" for admission.⁴¹ Indeed they have. In the wake of *Hopwood*, the attorneys general of Colorado and Georgia have urged public colleges in their states to dismantle racial preferences.⁴² The decision has sparked institutions of higher education to rethink how they can better defend affirmative action programs from constitutional attack.⁴³ All such discussions ultimately have to take account of Judge Higginbotham's legal and historical scholarship on race to avoid doing violence to basic constitutional requirements. One solution that has been pursued both in Texas and other states has been to accept a blanket percentage of high school applicants,⁴⁴ abandoning any semblance that admissions is an individualized process, and perhaps introducing other potentially negative effects that are not immediately clear.

Indeed, the holding in *Hopwood* occupies such a high stature that one district court expressly treated (mistakenly, of course) the decision as a Supreme Court decision.⁴⁵ Another viewed *Hopwood* as sufficiently weighty to resuscitate the long eschewed plurality opinion in *Bakke*, which had argued that diversity should not be considered a compelling interest.⁴⁶ For all intents and purposes, then, one panel of the Fifth Circuit was able to shape profoundly the nation's approach to affirmative action programs in higher education.

When a handful of appellate panels strike out in a similar direction, and there is no Supreme Court review of those decisions, the impact seen in a case such as *Hopwood* is even more profound. We can see this when we combine *Hopwood* with a recent D.C. Circuit decision importing the *Hopwood* rejection of the diversity rationale into a different context. In *Lutheran Church-Missouri Synod v. Federal Communications Commission*,⁴⁷ the plaintiff mustered a Fifth Amendment challenge to FCC regulations requiring radio stations to adopt an "EEO [Equal Employment Opportunity] program" for the employment of women and minorities.⁴⁸ The EEO program was not the type of affirmative action program with set-aside requirements seen in cases such as *Adarand*, but was a nonremedial

40. Jim Phillips, "Courts Let Hopwood Ruling Stand/Minority Enrollment Expected to Decline." *Austin American-Stateman*. (Jul. 2, 1996), A1.

41. Henry J. Reske, "Law School Affirmative Action in Doubt: 5th Circuit Ruling Strikes Down University of Texas Admission Preferences." *American Bar Association Journal* 82 (May 1996), 36.

42. Michael S. Greve, "Hopwood and Its Consequences." *Pace Law Review* 17 (1996), 2.

43. *Ibid.*

44. *Texas Education Code*, sec. 51.803 (1999).

45. *Kane v. Freeman*, 1997 WL 158315 (1997), *4-*5.

46. *Back v. Carter*, p. 756.

47. 141 F.3d 344 (D.C. Cir. 1998).

48. The challenge came in response to the FCC sanctioning the Church for not properly complying with the relevant regulations.

outreach program that sought to maintain "a positive continuing program of specific practices designed to ensure equal opportunity in every aspect of station employment policy and practice."⁴⁹ This included such activities as a station's disseminating information about its equal opportunity program to job applicants and employees, using minority organizations to supply job referrals when job vacancies became available, and continually assessing its progress in the hiring and promotion of minorities.⁵⁰ Concluding that the program made forbidden "racial classifications," the D.C. court applied strict scrutiny analysis. Judge David Tatel remonstrated that this in itself broke new ground in the law, as "neither the Supreme Court nor any other court [had] ever applied strict scrutiny to programs that require nothing more than recruitment, outreach, self-evaluation, and data collection."⁵¹ Next, the court rejected the FCC's assertion that its interest in diverse programming was a compelling interest, concluding that based on its reading of the Court's precedent, "it is impossible to conclude that the government's interest" in diversity "is a compelling one."⁵² In reaching this conclusion, the Court relied extensively on Justice O'Connor's dissent in *Metro Broadcasting, Inc. v. Federal Communications Commission*,⁵³ even though no Supreme Court case had adopted that aspect of her dissent as binding law.⁵⁴

As in Hopwood, the D.C. Circuit's holding was cemented into place because the FCC chose not to appeal its case to the Supreme Court. Instead, after the decision, the FCC adopted policies in line with the court's decision, clarifying that none of the proposed EEO rules will "create an incentive to hire on the basis of race and gender."⁵⁵ Presumably other agencies will follow suit, heeding the court's implicit and sweeping warning that even programs that merely encourage equal opportunity in the workplace face the prospect of strict scrutiny.⁵⁶ As one D.C. lawyer said in reviewing the case: "The Clinton administration's office of legal

49. *Code of Federal Regulations*, vol. 47, sec. 73.2080(b) (1997).

50. See *Code of Federal Regulations*, vol. 47, sec. 73.2080(a) (1997).

51. *Lutheran-Church Missouri Synod v. FCC*, 154 F.3d 494 (1998), 500 (Tatel, J., dissenting).

52. *Lutheran-Church Missouri Synod*, p. 355.

53. *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d at 355 ("The interest in diversity of viewpoint provides no legitimate, much less important, reason to employ race classifications apart from generalizations impermissibly equating race with thoughts and behavior") (quoting *Metro Broadcasting Inc. v. FCC*, 497 U.S. 547 (1990), 614:615 (O'Connor, J., dissenting)).

54. Of course, *Adarand Constructor Inc. v. Peña*, 515 U.S. 200 (1995) overturned other aspects of *Metro Broadcasting*.

55. U.S. Government Printing Office, "Revision of Broadcast and Cable EEO Rules and Policies," *Federal Register* 63 (1998), 104.

56. Both proponents and opponents of the decision have stressed its sweeping consequences. Zachary A. Zehner, "Lutheran Church-Missouri Synod v. FCC: The End of Judicial Deference to FCC Policymaking in the Affirmative Action Debate." *Administrative Law Review* 51 (1999), 702 (noting that the decision marked a "shift in the

counsel reportedly did a comprehensive review of government affirmative action programs in the wake of *Adarand*. This decision shows that's not going to hold up."⁵⁷ Although the case was decided just one year ago, its holding—with respect to the weakness of the diversity rationale as well as its conclusion that even outreach programs are “racial classifications”—has already begun to occupy a prominent place in the legal horizon as other circuits consider affirmative action programs.⁵⁸ Once again, this decision illustrates how a single court of appeals panel decision has the power to effect policy and law nationwide. Additionally, it shows how working together, several courts of appeals can mount a wider effort in changing previously established doctrine.

Other examples abound of circuit court cases which have had profound impact on national policy. In 1997, the Ninth Circuit upheld California's Proposition 209—which amended the state constitution to bar public entities from granting preferential treatment on the basis of race or gender—in *Coalition for Economic Equity v. Wilson*.⁵⁹ Once again, the Supreme Court denied *certiorari* on the decision,⁶⁰ cementing the Ninth Circuit's decision among the panoply of cases standing in the way of racial preferences. Other states—among them Washington, Alabama, Arizona, New York, Massachusetts, and Missouri—are now following California's lead, proposing similar measures.⁶¹

Moreover, even when the Supreme Court grants *certiorari*, the influence of the court of appeals can be profound. One of the two most important cases involving affirmative action in many years was *City of Richmond v. J.A. Croson Co.*,⁶² a

stance of the federal judiciary, which had previously had shown deference to FCC discretion in its promulgation and enforcement of EEO policies”); Frank W. Lloyd and Janell F. Coles, “D.C. Circuit Overturns F.C.C. Broadcast EEO Rules,” *New York Law Journal*, (May 29, 1998) (speculating that the decision might lead to change in EEO programs for cable broadcasters); David A. Nordquest, “The FCC Gets It Wrong,” *The Washington Times*, (May 5, 1998), A23 (stating that under *Synod*, “not only hiring targets, but most of the techniques of government-mandated affirmative action appear unconstitutional when measured by this important decision”).

57. Marcia Coyle, “Circuit Ruling Imperils Other Affirmative Action,” *National Law Journal*, (Apr. 27, 1998), A10.

58. For example, see *Wessman v. Gittens*, 160 F.3d 790 (1998), 794 (citing *Synod*) in support of the proposition that “attractive labeling cannot alter the fact that any program which induces schools to grant preferences based on race and ethnicity is constitutionally suspect.”); *Schurr v. Resorts International Hotel, Inc.*, 196 F.3d 486 (1999) (relying on *Synod* to conclude that “the challenged goal-based regulations . . . clearly have the practical effect of encouraging (if not outright compelling) discriminatory hiring”), 494; *Lesage v. Texas*, 158 F.3d 213 (1998), 221.

59. *Coalition for Economic Equity v. Wilson*, 122 F.3d 692 (1997).

60. *Coalition for Economic Equity v. Wilson*, 118 S.Ct. 397 (1997).

61. Carla D. Pratt, “In the Wake of Hopwood: An Update on Affirmative Action in the Education Arena,” *Howard Law Journal* 42 (1999), 45, 460:461 and nn. 64:68.

62. *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

1989 decision striking down that city's minority set-aside program under the Fourteenth Amendment. It is important to emphasize, however, what an important role the Fourth Circuit played in that decision, for a panel from that circuit rendered the original decision striking down the program which the Supreme Court affirmed. For instance, the Fourth Circuit and Supreme Court use very similar language and tone in their respective dismissals of Richmond's thirty percent set-aside as arbitrary and overbroad.⁶³ In this way, the circuit courts can play a large role in shaping the ultimate outcome of the most important Supreme Court cases.

This powerful role of the appellate bench in shaping policy nationwide should give lawmakers and the legal community pause when looking at the skewed racial make-up of the courts. Twenty years ago, in his groundbreaking work *Democracy and Distrust*, Professor John Ely wisely emphasized the vital role of the judiciary in assuring representative democracy in reviewing the actions of the legislative branch.⁶⁴ As Professor Ely pointed out, this is particularly important in those instances where majority and minority interests potentially clash—when we have good reason to “distrust” our democracy because the majority interests will trump those of the minority. In the same way, to the extent that courts of appeals act as policy-makers in our system of government, we should be equally concerned that they are broadly representative of diverse viewpoints, backgrounds, and interests. Just as in Professor Ely's model and as Judge Higginbotham warned, this is particularly true in those cases involving issues in which majority and minority interests potentially clash and disposition is often by summary judgment. To borrow from Professor Ely's title, when we have a racially under-representative federal bench shaping laws and policies that impact differently on majority and minority interests, we have greater reason to “distrust” that our federal court system is achieving just results for all its citizens.

Judge Higginbotham had a love affair with language. He believed the poet can capture the spirit of a challenge and give it soul. He loved words and could make them lyrical. In keeping with the theme of Leon Higginbotham and his abiding belief in inclusiveness, I shall sign off with the words of one of his favorite poets, Langston Hughes, and one of his favorite poems, just as he would have done were he here today. I cannot deliver it to you as he would, for only he could do that.

63. Compare *Croson*, 499:505 (concluding that the 30 percent quota “cannot in any realistic sense be tied to any injury suffered by anyone”), with *Croson*, 822 F.2d at 1360-1362 (concluding that “the thirty percent quota was chosen arbitrarily; it was not tied, for example, to a showing that thirty percent of Richmond subcontractors are minority-owned”).

64. John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review*. Cambridge: Harvard University Press, 1980.

*There is a dream in the land
With its back against the wall
By muddled names and strange
Sometimes the dream is called.*

*There are those who claim
This dream is theirs alone—
A sin for which, we know,
They must atone.*

*Unless shared in common
Like sunlight and like air,
The dream will die for lack
Of substance anywhere.*

*The dream knows no frontier or tongue,
The dream no class or race.
The dream can not be kept secure
In any one looked place.*

*This dream today embattled,
With its back against the wall—
To save the dream for one
Our dream of freedom!
It must be saved for All—*

The first part of the book is devoted to a general survey of the history of the United States from the time of the first settlement to the present. It covers the period from the first settlement of the continent by the Spaniards in 1492 to the present day. The author discusses the various stages of the country's development, from the early years of exploration and settlement to the period of the American Revolution and the formation of the United States as a nation.

The second part of the book is devoted to a detailed study of the American Revolution. It begins with the early years of the struggle for independence, and then goes on to discuss the various battles and events that led to the final victory of the Continental Army. The author also discusses the political and social changes that took place during this period, and the impact of the Revolution on the development of the United States as a nation.

The third part of the book is devoted to a study of the American Civil War. It begins with the early years of the struggle for secession, and then goes on to discuss the various battles and events that led to the final victory of the Union. The author also discusses the political and social changes that took place during this period, and the impact of the Civil War on the development of the United States as a nation.

The fourth part of the book is devoted to a study of the American West. It begins with the early years of exploration and settlement, and then goes on to discuss the various events and developments that led to the final settlement of the continent. The author also discusses the political and social changes that took place during this period, and the impact of the West on the development of the United States as a nation.

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