Affirmative Action

BY ROBERT E. SEGAL

How to advance the status of minority group persons without penalizing industrious and hard-working members of America's majority constitutes a challenge the Supreme Court says it will tackle anew in the next few months.

Affirmative Action is the name of the puzzle.

In three memorable efforts, the Court has tried to find an equitable way through the complex of competing interests. Lawyers, businessmen, and leaders of civil rights groups are still studying the rulings in the Bakke, Weber, and Fullilove cases for guidance. This term, the Court will be occupied with Minnick v. California Department of Corrections.

In the new case (Minnick), two white male correction officers are challenging the California prison system devised to increase the number of minorities and women among prison employees. The plaintiffs had sought promotion only to find themselves blocked by the Affirmative Action guidelines. The learned jurists will have to do considerable head scratching this time around.

And while the Court is moving towards a decision, it is worth noting that some black leaders who have been the staunchest supporters of Affirmative Action and have benefitted perhaps more than members of other groups, seem now to be having second thoughts. For they find that Affirmative Action constitutes a push up the ladder for Hispanics, Chicanos, Vietnam War veterans, the handicapped, the aged, and women. Tote up the numbers for these groups, and you will find you are talking about a huge segment of the American populace.

"There is the danger of groups hurting one another by needless competition," Eleanor Norton, director of the Federal Equal Employment Opportunity Commission, observed recently. And another civil rights official put it this way: "The major problem is that many of the black activists have no understanding of the problems of sexism, and many women's groups have no understanding of racism."

In another important development, six of the nine Supreme Court justices have given a strong boost to the principle of Affirmative Action. Congress, these judges said in effect, is entitled to earmark 10% of a $4 billion public works program for some of the business units that are controlled at least 50% by a number of minority groups. This means that Congress can be aware of skin color and can put federal money to work to help compensate for acts of discrimination against blacks.

Take color into consideration when it is government money that is being put into construction? Well, maybe; but Justice Potter Stewart has dissented vigorously. He has reasoned that the government itself is now practicing discrimination by favoring blacks. "The color of a person's skin and the country of his origin," he has declared, "are immutable facts that bear no relation to ability, disadvantage, moral culpability or any other characteristics of constitutionally - permissible interest to government."

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Here let it be said that no group in America has struggled more conscientiously with the Affirmative Action dilemma than the National Jewish Community Relations Advisory Council. That body has consistently stressed the imperative to base these programs on individual need. And the NJCRAC has raised constant warning flags against the establishment of quotas. Bitter experience in European countries where the quota concept was born and sadistically practices against Jews has been a never - to - be - forgotten ordeal.

"We regard quotas as inconsistent with principles of equality," the NJCRAC position paper states. And it concludes that the application of quotas will prove in the long run "harmful to all, including those groups some individual members of which may benefit from specific quotas under specific circumstances at specific times."