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FOCUS

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After *Croson*: New Directions for Minority Business Set-Asides

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POLITICAL TRENDLETTER®

Perspective

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Bush's Disappointing Civil Rights Veto

President Bush was wrong for vetoing the Civil Rights Act of 1990. The Act is needed to overturn six 1989 Supreme Court rulings that have severely weakened protections from employment discrimination provided by Title VII of the Civil Rights Act of 1964 and other statutes. The Court's rulings place greater burdens on plaintiffs—particularly minorities and women—to prove discrimination, and they reduce access to the courts by making judicial challenges more costly and time consuming. One ruling actually allows on-the-job racial harassment. The Act, which passed both houses of Congress by large bipartisan majorities, would restore civil rights laws and court procedures to their previous status.

For these reasons, the President's veto of the Act, on the grounds that it's a "quota bill," is a grave disappointment. The Act states that it shall not be construed to require quotas in hiring or promotion. Moreover, alternatives to the Civil Rights Act forwarded to the President by administration officials, are unacceptable. One such proposal would permit employers to justify excluding minority or women applicants from jobs simply by claiming "customer preference" or "prior successful experience."

Many black Americans had hoped President Bush had gotten beyond the race-baiting "Willie Horton" style of his 1988 campaign. After eight years of Ronald Reagan's retrogressive civil rights policies, many breathed with relief as George Bush gave signs that his administration would be different. Over the last two years, he sought meetings with black elected officials and civil rights leaders, opening the doors of the White House that Reagan had closed. At the Joint Center's annual dinner in April, the President said that he and his administration accepted the challenge of living up to the highest ideals of the civil rights movement. But in his most significant opportunity so far to back up those words with action, President Bush has failed.

In the present environment, when white supremacist state legislator David Duke of Louisiana comes within six percentage points of being elected to the U.S. Senate,when Japanese government officials openly sling racial insults at black Americans, when Massachusetts gubernatorial candidate John Silber describes the residents of Boston's predominantly black Roxbury community as "a bunch of drug addicts," and when Ku Klux Klanners march on the U.S. Capitol, the White House should be sending a different signal than a civil rights veto. And what message does it send to black and Latino men and women in military uniform, volunteers all, as they prepare in the Persian Gulf for the possibility of lethal combat? Is the President saying to these valiant Americans that guarantees of equal employment opportunity will not be in place when they are ready to reenter the civilian workforce?

The President was poorly served by advisors who refused to negotiate with the Act's supporters and calculated that sacrificing civil rights progress was a small price to pay for right-wing approval. These political considerations will be looked back on as petty when compared to the great historic question with which this country has wrestled since Lincoln signed the Emancipation Proclamation: Is this nation to remain committed to multiracial pluralism, where people of both genders, of all races, and of all religions can have a fair opportunity to participate in the economic, political, and social life of our society? I wish President Bush's answer to that question were, "Yes, we shall go forward with that commitment." Regrettably, his veto indicates that his administration is headed backward. ■



PRESIDENT

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After *Croson*: New Directions for Minority Business Set-Asides

As Lower Courts Continue to Strike Down Set-Asides, Minority Business Advocates Seek Ways to Comply with Judicially Imposed Standards

by Pamela Joshi

During the nearly two years since the U.S. Supreme Court issued its *City of Richmond* v. *J.A.Croson Co.* decision striking down Richmond's minority business set-aside program, lower courts have used the ruling to declare nine programs unconstitutional, while many more cases are pending. Several jurisdictions have voluntarily abandoned their set-aside programs. Despite these setbacks, two set-aside plans have been upheld by courts in Maryland and Washington State. Based on these successes, minority businesses and civil rights organizations are counseling state and local governments to develop new set-aside programs and to restructure existing ones so they meet the standards set down in *Croson*. At a Joint Center conference held last May, government officials, attorneys, scholars, policy analysts, and minority business enterprise advocates considered ways to justify set-aside programs and agreed that a research agenda was needed to deal directly with *Croson* as well as with the broader issues of discrimination in the business sector.

Lower Courts Interpreting *Croson*

In *Croson*, the Supreme Court required that set-aside programs address specifically identified past discrimination and be narrowly tailored to accomplish a specific goal. Since the High Court delivered its decision, lower courts have used this strict scrutiny standard to strike down several set-aside programs. In 15 of the 55 cases involving challenges to set-asides so far, jurisdictions have successfully defended programs from being declared unconstitutional by courts or from being halted by temporary or permanent injunctions, according to the Minority Business Enterprise Legal Defense and Education Fund (MBELDEF) in Washington, D.C. However, lower courts have judged nine programs unconstitutional, including the City of Atlanta, the Florida Department of Transportation, the State of Michigan, and the Philadelphia School Board. And 20 state and local jurisdictions have voluntarily suspended their programs or ended them. (see list of voluntary terminations and suspensions of set-asides on page 4).

According to Barbara Arnwine, director of the Washington, D.C., based Lawyers' Committee for Civil Rights Under Law, some of the unfavorable decisions struck down the programs for not being narrowly tailored to remedy identified past discrimination. Courts have found the factual evidence of discrimination used by jurisdictions to justify their set-aside programs inadequate when it has consisted of either general descriptive statistics or unsubstantiated accounts. Courts have also struck down programs that failed to consider race-neutral alternatives, such as reduced surety bonding requirements or direct state and local government offers of financial assistance to small or disadvantaged firms. Finally, other set-aside programs have been invalidated on technical grounds, such as lack of expiration dates, lack of geographic boundaries, no provisions for periodic review, or the inclusion of ethnic groups without prior evidence that they experienced past discrimination.

Justifying Set-Asides

Arnwine believes the Supreme Court will not render a definitive ruling on set-asides in the near future and therefore encourages jurisdictions to proceed with plans to develop new set-aside programs or to restructure existing ones. Some jurisdictions have been further prompted to go ahead with plans since courts have upheld programs in King County (Washington) and the State of Maryland. Conference participants concluded that jurisdictions should consider the legal standards established in *Croson*, take into account lower court interpretations, and establish a body of evidence that will justify the programs.

Several state and local governments are commissioning fact-finding studies to provide the evidence of discrimination that *Croson* requires. To support these efforts, jurisdictions are collecting data to demonstrate the disparities between the number of qualified minority businesses in a state or local market area and the number that have received contracts with the particular jurisdiction.

Franklin Lee, chief counsel and executive vice president of operations at MBELDEF, has advised several governments on how to conduct disparity studies. He cautions that historical analysis of discrimination should not be relied upon as sole justification for a set-aside program but should be used to illustrate the discriminatory environment.

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Ms. Joshi is a research assistant at the Joint Center.

After Croson

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He recommends using both descriptive statistics and anecdotal evidence to establish a convincing case. Anecdotal evidence can be obtained through confidential written surveys of minority firms, in-depth confidential interviews, and public hearings.

Lee also recommends analyzing the form discrimination takes in order to develop a blueprint for the appropriate remedy. He identifies what he calls the "dirty dozen"—12 forms of discrimination in the marketplace. Among them are price discrimination by suppliers (charging minority firms more than white firms), denial of surety bonds to minorities, bid manipulation (arranging bid requests so that nonminority subcontractors can present more favorable terms than minority subcontractors), and exclusion from the "good old boy" network.

Many researchers recommend that disparity studies include two other types of data. First, there is the data on utilization of minority firms, some of which is derived from a jurisdiction's contracting records. The second type is the number of firms in existence, and can be derived from sources such as the Survey of Minority-Owned Businesses (see "The Growth and Diversification of Black Businesses" in this issue) or from lists of minority businesses that have been certified. These comparative data are necessary since state and local governments are required to narrowly tailor minority contracting goals to the number of available minority firms in the relevant marketplace.

Lee points out that some minority firms have already lost business opportunities when set-aside programs were suspended during disparity studies. No studies have been conducted at all in some jurisdictions, either because they lack the political will to justify set-aside programs or because of the studies' expense. The City of Atlanta and the State of Florida have each spent more than half a million dollars on their studies.

Studies are sometimes inconsistent in objectives and design, because the lower courts have not indicated what quantity or level of detail is needed to justify set-asides. Researchers differ over whether data must be broken down by major industry groups or by industry subgroups. For example, should a researcher look at the construction industry as a whole or at its subgroups, such as highway and street construction?

Bridget Arimond, a lawyer working for the Washington, D.C.-based Joint Project To Preserve Minority Business Opportunity, recommends looking at major industries. She notes that in the *Croson* decision, the Supreme Court looked at the construction industry as a whole and did not agree with the high level of statistical and analytical detail proposed by the 4th Circuit Court of Appeals.

Voluntary Terminations and Suspensions of Set-Aside Programs

Colorado, state program (terminated)

Colorado, City of Denver (reduced goals)

Delaware, City of Wilmington (adoption of voluntary goals)

Delaware, New Castle County (suspended)

Florida, City of Fort Lauderdale (suspended)

Indiana, South Bend (suspended)

Illinois, Greater Chicago Water Reclamation District (numerical goals suspended)

Michigan, Genesee County (set-aside initiatives suspended; voluntary, good faith effort required under contract provision)

Minnesota, City of Minneapolis (terminated)

North Carolina, City of Durham (terminated)

North Carolina, Guilford County (terminated)

New York & New Jersey - Port Authority (mandatory goals removed; all other initiatives remain operational)

Oregon, state program (goals removed, replaced with good faith effort and new race-neutral "Emergent Small Business Program" targeted to economically depressed areas.

Oregon, Portland Public Schools (terminated)

Oregon, Lane County (terminated)

Oregon, Salem County (terminated)

Texas, City of Fort Worth (interim disadvantaged business enterprise policy adopted)

Texas, Houston Housing Authority (voluntary 20 percent goal adopted)

Washington State, City of Yakima (suspension presently being sought)

Wisconsin, City of Milwaukee (disadvantaged business enterprise ordinance enacted)

Source: Minority Business Enterprise Legal Defense and Education Fund

Research and Broader Policy Issues

Many participants in the Joint Center conference indicated that a long-term research agenda is needed to address minority business issues and other issues of discrimination outside the scope of the *Croson* decision. Timothy Bates, chair of the Department of Urban Policy Analysis and Management at the New School for Social Research in New York, recommends further studies be conducted to measure the different aspects of minority business participation in the nation's economy. These studies could examine minority firms' access to markets and entrenched discriminatory practices such as "good old boy" networks.

Another area Bates recommends studying is the category

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POLITICAL TRENDLETTER®

Inside This Issue

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Bush Vetoes Civil Rights Bill

MARTIN LUTHER KING, Jr., once said that justice delayed is justice denied. With President Bush's veto of the 1990 Civil Rights Act, King's aphorism has gained new relevance. Three days after the veto and nine days before Congress adjourned for the year, the Senate failed by one vote to override the veto, thus delaying until the 102nd Congress convenes in January the next opportunity when the measure can be considered again.

Introduced in February by Senator **EDWARD KENNEDY** (D-Mass.) and Congressman **AUGUSTUS HAWKINS** (D-Calif.), the Civil Rights Act was approved by the Senate on July 18 by a vote of 65 to 34 and by the House on August 3 by a vote of 272 to 154. Eleventh-hour efforts by congressional advocates and civil rights leaders to craft a bill acceptable to the White House were to no avail. Nor were pleas for support from influential black Republicans, including Health and Human Services Secretary **LOUIS SULLIVAN**, Office of Personnel Management Director **CONSTANCE NEWMAN**, U.S. Civil Rights Commision Chairman **ARTHUR FLETCHER**, and former transportation secretary **WILLIAM COLEMAN**. In vetoing the measure, Bush charged that it was a "quota bill," a claim the bill's supporters firmly reject. "The temptation to support a bill simply because its title includes the words civil rights is very strong," Bush said. "But when our efforts, however well intentioned, result in quotas, equal opportunity is not advanced but thwarted."

The Congress-approved Act was supported by a broad coalition of civil rights, human rights, religious, labor, and women's organizations, but the business lobby, led by the U.S. Chamber of Commerce and numerous conservative organizations, adamantly opposed it. White House Counsel C. BOYDEN GRAY, played a key role in stonewalling the negotiations with advocates of the Act and encouraged the President to use his veto. Supporters of the bill denounced Bush's action, noting that it places him in the company of ANDREW JOHNSON and RONALD REAGAN as the only presidents ever to veto laws protecting civil rights. JOSEPH LOWERY, president of the Southern Christian Leadership Conference (SCLC), referred to former Ku Klux Klan leader and failed GOP senatorial candidate DAVID DUKE when he said, "The veto is the administration's response to the voices echoing from the bayous of Louisiana. It is a genuflect before the altar of racial bigotry."

BENJAMIN HOOKS, president of the National Association for the Advancement of Colored People (NAACP), said, "We are disappointed, but this is far from being a closed issue. When the new Congress convenes in January, the Civil Rights Act will be back and so will we." **Senator Kennedy has indicated that he will reintroduce the bill, with stronger language, in the next Congress.**

Magazine Offers Tips for Defeating Blacks, Women

One evening during the 1988 Democratic National Convention, veteran ABC journalist **DAVID BRINKLEY** inquired of his colleague **PETER JENNINGS**, "Is it over for the white male politician?" According to the August/September 1990 issue of the political magazine *Campaigns and Elections*, Brinkley's query reflects a concern

among white male politicians that they are losing their grip as the dominant power. In the age of inclusive politics, with the ranks of elected blacks and women having grown significantly over the last two decades, white male control is perceived in some quarters to be in jeopardy.

The magazine features an article entitled, "How to Defeat Women and Blacks." A must-read for anyone suffering from what the article calls "the white man's burden," the non-tongue-in-cheek feature lays out seven strategies that can be used "effectively against women and minority opponents." Contending that black and female candidates tend to cloak themselves in the armor of the underdog, the article suggests tactics for penetrating that armor. It advises white male candidates to: accent the negative predispositions people have about black and female candidates; patronize and be condescending toward opponents at every given opportunity; emphasize macho, middle-class issues; choose controversial targets carefully to avoid backfire; and immediately establish themselves as fair-minded people to avoid perceptions of racism and sexism.

The unsigned article, which appears in the periodical's "Political Adviser" section, also laments the difficulty white candidates have had in running negative campaigns against their minority opponents. It quotes campaign managers, pollsters, and political and media consultants who cite incidents validating their claims that it may be suicidal for a white male to challenge a black or female candidate on certain issues. **For instance, according to the article, to say a female candidate is soft on crime, defense, or foreign affairs may be interpreted as sexist, and to say that a black candidate is soft on crime and a liberal big spender on social programs may be interpreted as racist. "They're unassailable," one campaign official is quoted as saying. "They're ready, no matter what you say, to respond with accusations that you're racist or sexist. It's impossible to attack a woman or black candidate, even if you're right."**

The article's tone is urgent. Its anonymous author seems to believe the white male politician has become a "victim" of inclusive politics and faces extinction unless strategies are implemented to ensure his survival. If the author is indeed thinking along those lines, his views cannot be substantiated by current data. In terms of numbers, women and blacks have certainly made progress. **But calculations from the Joint Center and from Rutgers University's Center for the American Woman and Politics show that out of all elected officials in the country, just 14 percent are women and 1.4 percent are black. In the 101st Congress, black members represent five percent of that 535-member body and the female members of Congress constitute only six percent.**

Selma Update

After eight months of racial strife sparked by the dismissal of Selma's black school superintendent, Dr. NORWARD ROUSSELL, blacks and whites in the community have reached a tentative agreement that both sides hope will bring calm and unity to their school system. The problems began last December when the 11-member school board voted along racial lines (six whites for and five blacks against) to dismiss Roussell, charging that he had a "dictatorial" management style. Many black parents countered that the charge was racially motivated. They pointed out that Roussell had challenged and discarded such practices as an academic tracking system which had kept black students out of college preparatory courses.

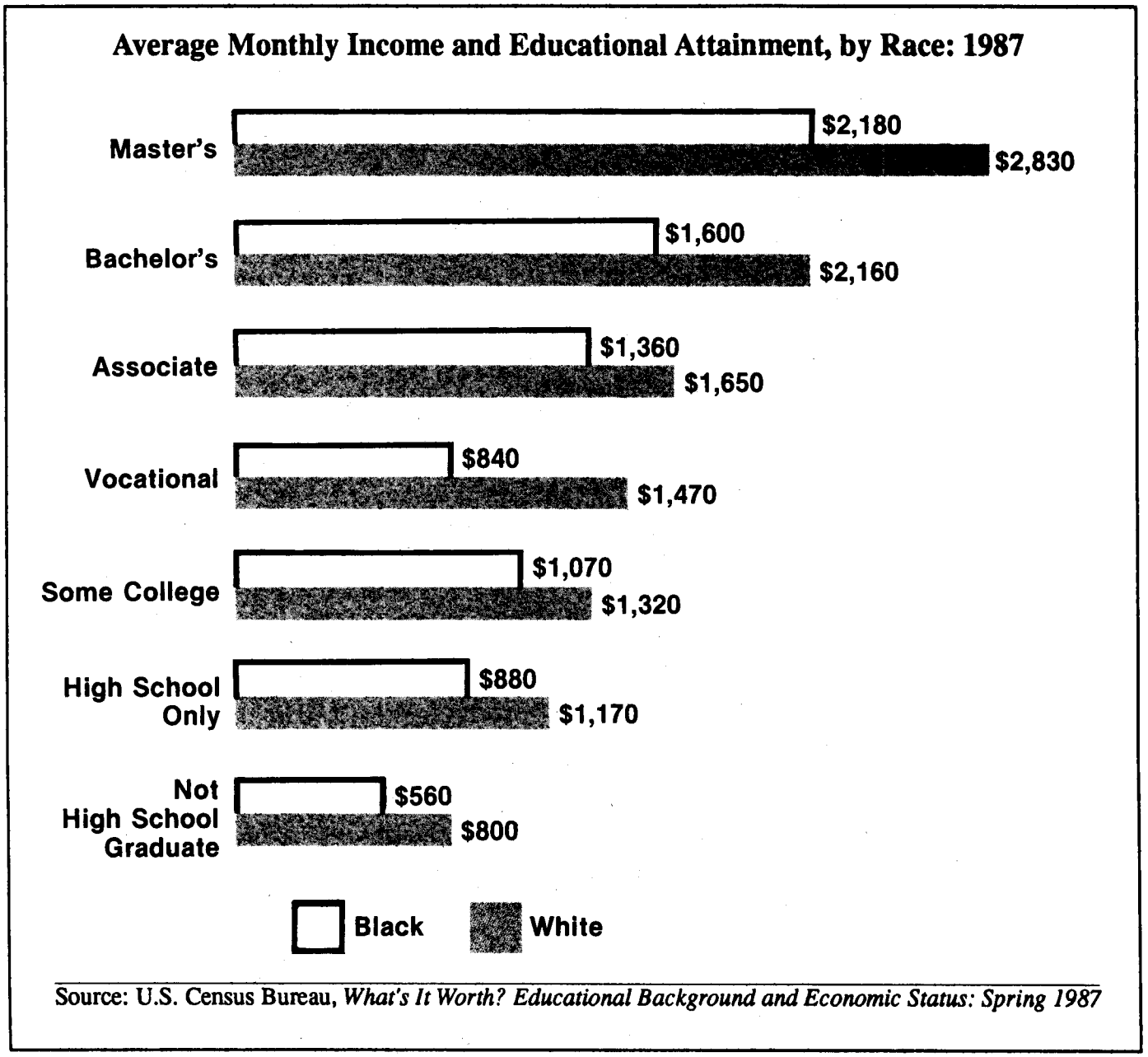
The board's action touched off a five-week student sit-in at Selma High School, a temporary shutdown of the school system, a walk-out by the five black school board members, and, in April, Roussell's resignation. Protests became so volatile that at one point state troopers and the National Guard had to intervene, a chilling reminder of the Selma to Montgomery civil rights march 25 years ago. According to **EDWIN L. MOSS**, Sr., a black member of the city council and one of those credited with bringing the parties to the negotiating table, Roussell's dismissal was the straw that broke the camel's back. "The real problem," says Moss, "is that the school system is 75 to 80 percent black and the board is predominantly white because the white-majority city council appoints the school board members." Blacks make up 57 percent of Selma's population.

The agreement negotiated in August between the school board, the city council, and a parents' organization called B.E.S.T. (Best Educational Support Team), provides for the return of the board's five black members. The board chairmanship and the board majority will alternate between the races every other year, beginning this year with a majority-black body. The agreement will come into effect only if the lawsuits filed during the school board protest are dropped.

Reverend CHARLES A. LETT, a black 15-year board member who will replace the current chairman, CARL BARKER, when he resigns, is apprehensive about the proposed rotating majority. Lett points out that the chairmanship had already been alternating between the races before Barker took office in 1986. "The student population is not majority black one year and majority white the next," he says, "so why should the board be that way?" The board has not appointed a new superintendent to replace Roussell nor has a search committee been selected. The interim superintendent is JAMES A. CARTER, a black man who served as executive assistant under Roussell.

Blacks of Equal Education Trail Whites in Income

According to a recently released Census report, *What's It Worth? Educational Background and Economic Status: Spring 1987*, the income of blacks continues to lag behind that of whites with similar education. Another Census report, *School Enrollment–Social and Economic Characteristics of Students: October 1988 and 1987*, also reveals that the gap in college enrollment between black males and females is expanding as the number of black men attending institutions of higher learning is on the decline.



Source: U.S. Census Bureau, *What's It Worth? Educational Background and Economic Status: Spring 1987*

Not only do the Census reports show that bachelor's and master's degrees are worth less to blacks than they are to whites, they also show that the number of blacks receiving post-secondary degrees is declining. Between 1984 and 1988, the enrollment of young black men in colleges dropped steadily, from 544,000 to 426,000, while the enrollment of their female peers was rising, from 595,000 to 689,000. By 1988 the number of black men attending college was less than two-thirds the corresponding number for black women.

These figures justify the frequently voiced concern about the passage of black men through the educational pipeline and their future in American society. While the educational achievement of children from practically all backgrounds is declining, according to a National Center for Educational Statistics report, black males are especially likely to measure below their "modal" grade (the grade level where most children of a given age are enrolled).

The Center's report, *The Condition of Education, 1990,* notes that among all races and ages, those most characterized by below-modal achievement are black 13-year-old boys. Underachievement among these students exacerbates their increasing likelihood to drop out of high school later. It is feared that if this trend continues, the available pool of young black men entering college and going on to graduate will continue to shrink. A study by the Office of Minorities in Higher Education of the American Council on Education shows that from 1978 to 1988, the number of black men receiving doctoral degrees dropped in half (by 47 percent), while among white men it dropped far less severely, by 21 percent.

Across the Nation

ILLINOIS: With Chicago's mayoral primaries less than four months away, the rumor mill is already humming with possible candidate names. Potential black candidates include: former alderman and mayor EUGENE SAWYER; Alderman TIMOTHY EVANS; former appellate court judge R. EUGENE PINCHAM, Sr.; Alderman DANNY DAVIS; and Cook County Recorder of Deeds CAROL MOSLEY BRAUN. None of these potentials has publicly announced a decision to run. Meanwhile, white former mayor JANE BYRNE has announced that she will make a bid and Mayor RICHARD DALEY is expected to seek reelection.

Sawyer served as interim mayor after the death of Mayor **HAROLD WASHINGTON** in 1987, and made an unsuccessful bid to stay on as mayor in last year's special mayoral election. One of Sawyer's competitors in last year's race was Alderman Evans, who was supported by Rev. **JESSE JACKSON. Evans ran as a member of the Harold Washington Party, a year-old black political party named after the city's first black mayor, which Evans helped establish.** Pincham, who left the Democrats to join the Harold Washington Party this summer, is currently running for the Cook County Board of Commissioners. Davis was a protege of the late Washington, a committeeman in the Cook County Democratic Party, and a former congressional candidate. Braun is the first black woman elected to the recorder's office, which she won in 1988, and is well regarded in the city.

The primary will be held in February and the general election on April 2. School reform and crime are expected to be the major issues.

PENNSYLVANIA: The political grapevine in the City of Brotherly Love reports that the list of applicants for two-term mayor WILSON GOODE's job is getting crowded. Two potential black candidates are veteran City Council Member LUCIEN BLACKWELL and first-term City Council Member GEORGE R. BURRELL, Jr. Some in the Philadelphia press think a draft may be engineered in the black community to coax black former city managing director JAMES S. WHITE into running for office. White resigned his position in April and is now vice president of Provident Bank in the city.

Potential white candidates, meanwhile, include former district attorney **EDWARD RENDELL**, current district attorney **RONALD CASTILLE**, and Philadelphia Congressman **TOM FOGLIETTA**. Former police commissioner and two-term mayor **FRANK RIZZO** has announced his intentions and opened a campaign office. Foglietta and Rendell are Democrats, while Castille and Rizzo, a former Democrat himself, are Republicans.

Rizzo, who served as mayor from 1971 to 1979, is considered the leading Republican contender. He is notorious for his harsh treatment of blacks when he was police commissioner in the 1960s and for his insensitivity to the black community during his tenure as mayor.

The campaign will probably take shape along two major themes: controlling City Hall and solving Philadelphia's financial woes. The municipal government has been controlled by the Democratic Party for 40 years and by a black mayor for the last eight. Given Rizzo's role, this year's election is not only a struggle for party control but is racially charged as well. Philadelphia is also on the edge of bankruptcy, with an estimated fiscal year debt of more than $200 million. The two parties have been pointing fingers at each other in an attempt to lay the blame for the financial crisis.

The Growth and Diversification of Black Businesses

The Expansion of Black Firms Between 1982 and 1987 May Be Threatened by a Recession or Abandonment of Minority Set-Asides

by Joyce E. Allen

During the 1980s, black-owned businesses increased in number and became more diverse, according to newly released data from the U.S. Census Bureau's 1987 Survey of Minority-Owned Business Enterprises. The survey, which has become a benchmark for assessing the state of black-owned firms, revealed a substantial increase in their number and expansion in such industries as manufacturing, wholesale trade, and finance, insurance, and real estate. This growth and diversity promises greater employment opportunities and increased investment in black communities, and it also offers more black entrepreneurs for youth to emulate.

The survey data show that the number of black-owned businesses rose greatly in construction and business services, an increase due in part to minority set-aside programs at state and local levels. However, some of these programs have been suspended or struck down by the courts in the wake of the U.S. Supreme Court's 1989 *City of Richmond* v. *J.A. Croson Co.* decision (see "After Croson: New Directions for Minority Business Set-Asides" in this issue).

This article examines changes in black-owned businesses from 1982 to 1987, patterns of growth in industries where set-aside programs exist, and prospects for future growth in the black business sector. Analysis of the Census data indicates that the gains made by black businesses from 1982 to 1987 could be threatened if jurisdictions are not able to continue their set-aside programs or if there is a downturn in the economy. During the 1981-82 economic recession, black businesses were particularly hard hit and suffered financial losses, after adjusting for inflation.

More Businesses and Higher Earnings

The Census survey reveals that there were approximately 424,000 black-owned firms in 1987, an increase of 38 percent from 1982 (Table 1)*. Even more noteworthy is the 87 percent jump in the number of firms with paid employees (from about 38,000 in 1982 to nearly 71,000 in 1987). Approximately 220,000 employees were in black-owned firms in 1987, compared to 121,000 in 1982. Most are black or from other minority groups. Despite the fact that their number nearly doubled, the firms employing them employed less than five percent of the minority workforce in 1987.

Another measure of black business growth was the amount of sales and receipts generated by firms. The Census Bureau data show that aggregate sales grew by about 75 percent, climbing from $11.3 billion to $19.8 billion during the five-year period. (All figures measured in constant 1987 dollars.) The average sales and receipts per black-owned firm rose from approximately $36,600 to $46,600, a 27 percent increase (Table 1). However, not all types of firms registered gains. For example, among firms without paid employees, sales and receipts actually declined over the five-year period, while they rose by nearly 13 percent among firms with paid employees. Despite this growth, black-owned businesses lagged substantially behind U.S. firms as a whole in 1987 (with average sales and receipts of $46,600 for black firms versus $145,700 for all U.S. firms).

A Broader Industry Mix

The Census survey reveals that black-owned businesses as a group, like the U.S. business and corporate community, are heavily concentrated in two industries—services and retail trade. A disproportionately high number of black-owned firms were in these industries (65.0 percent compared to 59.8 percent of all U.S. firms). Nevertheless, the fact that the proportion of black-owned firms in these industries declined slightly (by 2.3 percentage points) indicates a trend toward diversification (Table 2). Further, the percentage of firms in transportation and public utilities, construction, manufacturing, agricultural services, wholesale trade, and finance, insurance, and real estate all increased over the period. The trend toward diversification within the black business sector could make it less vulnerable to future downturns in the national economy.

The gains were particularly impressive in manufacturing

* Many of the businesses in the Census survey have no paid employees. Included in this category are street vendors, door-to-door salespeople, consultants, and persons selling cosmetics, perfume, and other goods part-time.

Dr. Allen is a senior research associate at the Joint Center.

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Table 1. Number and Average Receipts of Black-Owned Firms

	1982	1987	Percent Change
Number			
All Black-Owned Firms	308,260	424,165	37.6
Without Paid Employees	270,419	353,350	30.7
With Paid Employees	37,841	70,815	87.1
Average Receipts*			
All Black-Owned Firms	$36,624	$46,592	27.2
Without Paid Employees	16,991	15,940	- 6.9
With Paid Employees	176,937	199,540	12.8

*Constant 1987 dollars
Source: U.S. Census Bureau, *Survey of Minority-Owned Business Enterprises—Black, MB87-1*, July 1990

and in finance, insurance, and real estate; the number of black-owned firms in each area rose by more than 100 percent from 1982 to 1987. Black-owned firms also grew rapidly (by more than 50 percent) in the following industries: wholesale trade, construction, agricultural services, transportation and public utilities, and services.

There was significant growth of black-owned business in construction and in business services (e.g., advertising, computer and data processing, janitorial services, and mailing), two sectors where minority set-asides aided expansion among minority firms nationwide. Within the construction industry, the number of black general building contractors rose by 61 percent, from 3,909 in 1982 to 6,285 in 1987, while the number of black heavy construction contractors, including those with highway and street construction capabilities, climbed by 12 percent, from 570 to 638. The magnitude of this increase is substantially greater among black contractors with paid employees. Growth among general building contractors was 172 percent and in heavy construction expanded by 94 percent.

Business-service firms made up the largest share of black-owned firms in the services industry at 28 percent, followed by personal service (beauty and barber shops, laundries, cleaners) at 27 percent. In 1982, among employer firms only, black business-service firms comprised the third largest category within the services industry. By

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Table 2. Industry Distribution of Black-Owned Firms

Industry	Number of Firms 1982	1987	Percent Change
Services	136,664	209,547	53.3%
Retail Trade	70,811	66,229	- 6.9
Transportation and Public Utilities	23,907	36,958	54.6
Construction	22,459	36,763	63.7
Finance, Insurance and Real Estate	12,957	26,989	108.3
Manufacturing	3,707	8,004	115.9
Agricultural Services, Forestry and Fishing	4,592	7,316	59.3
Wholesale Trade	3,119	5,519	77.0
Mining	270	322	19.3
Industries Not Classified	29,774	26,518	-12.3
Total	**308,260**	**424,165**	**37.6**

Source: U.S. Census Bureau, *Survey of Minority-Owned Business Enterprises—Black, MB87-1*, July 1990

The Color of Capital Punishment

Since the Death Penalty Was Reinstated 14 Years Ago, Those Executed Are Disproportionately Black and From Impoverished Homes

by David C. Ruffin

This election year, opposing gubernatorial candidates in Texas and California faced off over who was more willing to sentence criminal offenders to death. What the candidates did not say on the stump was that the vast majority of people awaiting execution on America's death rows are very likely to be black poor, or mentally ill or impaired.

The Supreme Court banned executions in 1972 but then reinstated them in 1976. According to the NAACP Legal Defense and Educational Fund, there are now 36 states where capital punishment is legal. Since 1976, 141 defendants have been put to death, of whom 56 (40 percent) were black.

Many of those condemned to death are from poor backgrounds. Minorities are highly represented, and illiteracy, as well as severe mental and emotional problems, is common. Of the 2,393 inmates waiting on death row across the nation, Legal Defense Fund figures reveal that nearly half are people of color.

Race and Sex of Death Row Inmates (Total 2,393)

White	1,207	(50%)
Black	946	(40%)
Hispanic	165	(7%)
Native American	44	(1%)
Asian	14	(1%)
Unknown	17	(1%)
Sex: Male	2,362	(99%)
Female	31	(1%)

Source: NAACP Legal Defense And Education Fund, Capital Punishment Project, October 1990

According to Karima Wicks, research director of the Legal Defense Fund's Capital Punishment Project, about half of the inmates on death row are mentally ill or emotionally disturbed, between 10 and 20 percent are mentally retarded, and many are victims of fetal alcohol syndrome (born to alcoholic mothers). Of the 16 states that have used capital punishment since 1976, 10 are in the South. In fact, nearly three quarters (104) of those executed were put to death in five Southern states alone (Texas, Florida, Louisiana, Georgia, and Virginia).

Opponents of the death penalty have given up on efforts to ban it on constitutional grounds. According to Steven Hawkins, a Legal Defense Fund attorney who defends inmates sentenced to death, Thurgood Marshall is the only justice left on the Supreme Court who is opposed to capital punishment. Lawyers from the Legal Defense Fund now focus on reversing the sentences of condemned prisoners--many of whom are indigent and were defended by inexperienced court-appointed lawyers. "These efforts are not as successful as they have been," Hawkins says. "Five years ago, 60 percent of the death sentences that were appealed were overturned; today it's about 40 percent." Amendments that would have imposed the death penalty for over 30 crimes were removed from the omnibus crime bill (S.3266) passed by Congress in October. A provision that would have allowed death row inmates to use racial statistics in their appeals to show that sentencing courts were racially biased was also knocked out of the bill.

Number of Executions Since 1976
Top Ten States

Texas	37
Florida	24
Louisiana	19
Georgia	14
Virginia	10
Alabama	8
Nevada	5
Missouri	5
Mississippi	4
North Carolina	3

Source: NAACP Legal Defense And Education Fund, Capital Punishment Project, October 1990

Amnesty International, the Nobel Peace Prize winning human rights organization, condemns capital punishment universally and cites the United States as one of the few Western industrialized nations that still use it. Other countries that execute prisoners today include China, the Soviet Union, Iran, Iraq, Saudi Arabia, and South Africa. ■

Mr. Ruffin is the editor of *Focus*.

After Croson

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of "discouraged firms," that is, firms which would have been formed were it not for discriminatory barriers. It is important to measure discouraged firms in order to address an issue that Justice O'Connor raised in the *Croson* ruling, namely, whether or not minorities really want to be entrepreneurs (self-employed) in proportion to their representation in the local population.

Government efforts to increase access to business credit also need examining. Some researchers believe the Community Reinvestment Act would improve minority access to financial capital through bank loans if its provisions were better enforced. The Act is viewed as race-neutral because it requires banks to service all local financial capital needs, including those of low- and moderate-income neighborhoods. Its new provisions, under Section 1212 of the Financial Institutions Recovery, Reform and Enforcement Act, strengthen enforcement and establish a rating system for efforts by individual banks in this area.

In the wake of *Croson*, researchers, activists, and lawyers are aware of the challenges that must be met in justifying minority set-aside programs. Fact-finding disparity studies by state and local jurisdictions to provide statistical and anecdotal proof of discrimination continue. Since the courts have ruled on only a few cases, however, it is difficult to ascertain the extent and quantity of evidence needed. Nevertheless, there is a broad consensus that an agenda must be developed to help state and local governments tailor future set-aside programs in ways that meet *Croson* standards. ■

Black Businesses

(Continued from page 6)

1987, the number of those firms had more than tripled, increasing from approximately 2,600 to 8,000, to become the largest group in the services category.

Future Prospects for Growth

A healthy economy and effective set-aside programs at the federal, state, and local levels are two factors that will be critical in shaping future prospects for the growth of black-owned firms. The data from the Survey of Minority-Owned Business Enterprises cannot be used directly to assess the effectiveness of set-aside programs. The survey does show, however, that black-owned firms made impressive gains in construction and business services, two areas where set-aside programs have contributed to black business expansion. Overall gains made by black businesses could be jeopardized by a recession and/or the failure of state and local jurisdictions to restructure their set-aide programs to make them consistent with the Supreme Court's new standards. ■

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