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AFFIRMATIVE ACTION AND THE CALIFORNIA CIVIL WRONGS INITIATIVE*

BY EVA JEFFERSON PATERSON**

The topic today is affirmative action and the California Civil Wrongs Initiative. As you have noted, affirmative action is front and center in the public discourse at this time in our nation's history, particularly in California. Two days ago the Fifth Circuit came out with a decision called *Hopwood v. State of Texas*. I was talking with Dean Paul Brest at Stanford Monday night and he asked me "Did you hear what the Fifth Circuit did?" In the old days, when you heard that the Fifth Circuit was going to come down with a decision, you assumed it was going to be something forward-looking, something advancing the interest of people of color and other under-represented people. But, given the political climate of this time, you can no longer rely on the federal judiciary, and certainly not the state judiciary, for any forward-looking decisions or for any relief that's of any real benefit to much of anybody except maybe the wealthy and major corporations. And I have nothing against wealth, but it seems that wealthy people are not the only people who should be protected by the judiciary, but that's not what's going on now.

When Dean Brest told me that the case involved the University of Texas, I remembered that there had been a challenge

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to race conscious admissions at the University of Texas and I could only assume that the decision had gone the wrong way. My assumption was correct. I got the decision last night and only had a chance to scan it this morning, but I think I can give you a fairly good overview what the decision is. It's not a good decision. Those of you who have studied affirmative action and who have taken constitutional law are probably familiar with the case of the *Regents of the University of California v. Bakke*. I'm delighted to tell you that I'm part of a team and Nancy Stewart, my colleague, is here with me today, that's suing the University of California Regents because of some violations that they engaged in when they took their vote on July 20, 1995. They seem to be front and center in litigation around this sensitive issue of race, remediation of racial discrimination, and what this country's going to do.

One of the themes that I would like to leave you with today is that we are at a crossroads in this country on race. We are at a defining moment in terms of what we're going to do. Are we going to pretend, in the words of one panelist I was with from the Pacific Legal Foundation, that racial discrimination is a thing of the past? This man absolutely believed that racial discrimination is over. He also said when we were talking about the reason that racism, from my perspective, is still alive and well, he said, "You know, my forefathers fought on the side of the union in the civil war" and I guess that was supposed to be some kind of dispensation, that somehow they wore blue uniforms, so there's no racism.

There are some good folks in the media turning up some good stuff. They're dogging us because, "Oh, racial preferences, people who aren't qualified are getting into Cal." Governor Wilson and the other Regents are calling up for people to get them into Cal this way. That's okay, because that's business as usual. If someone gives \$4 million to the University and their child wants to get in, of course we want to look at them in a special way. The thing that society needs to recognize is yes, we don't look at everybody in the same way when we let them into institutions. If somebody gave UC \$4 million, you can bet your last dollar their kid's going to get in. That may not be right, but we know that that's how things are done. I don't really see the large donor exemption in the California Civil

Wrongs Initiative. Somehow that preference got left out. Maybe they can amend it by November.

I love jazz, and I describe myself as a jazz speaker. I have some themes that I kind of riff off of, so you have to kind of hang with me. The other thing I've said many times is that I'm a Magna Cum Laude graduate of the Fidel Castro School of Public Speaking. But I've been told I have to be done by 1:00, so towards the end I'll start really speed-rapping, so I'm just warning you now. Because there's a lot to say and I think about this stuff all the time and it's everywhere you go. If you are black you cannot *not* think about this. There's no way you cannot think about race. And some people who are unenlightened say "Oh you folks are just so sensitive, can't you get over this."

Ward Connerly says he has a white friend and race never came up in their conversations. I believe that. I have white friends that I don't talk to about race—there are other things to talk about, but when you look at my skin that's the first thing you see. Race is a constant if you're a person of color. If you're white it's a constant. I cannot get a cab in New York City. Talk to any black man you know about how he is treated walking down the street.

Now let me give my little disclaimer—you're going to hear me talking about white people, you're going to hear me talking about white men. I have nothing against white men, some of my best friends are white men; that's not the issue. And I very sincerely, and I'm saying this to the white people and particularly the white men, I am not your enemy. You are not my enemy. Somebody's trying to drive a racial wedge between us so that we're kind of checking each other out across the gulf. And this is being done for very specific political ends and we need to not fall into that trap. We are not each other's enemies. However, when you are analyzing race and gender in this society, the power and the money are disproportionately held by white men.

I was reading a very interesting article saying that we have not really looked very much at poor white men. All white men are not masters of the universe. The people who are being

laid off in various corporations are probably disproportionately white men, so I'm not trying to say that white men are living large and things are just wonderful if you're white and male; I do not think that at all. But look demographically or empirically at who the lawyers are. Bob Dole commissioned a Glass Ceiling report and I guess he forgot he had asked for it, because all of the sudden he goes, "Oh, gee, I'm not for affirmative action." (I'm sure there's some interesting pillow talk between Liddy and Bob Dole, but that's another lecture.) The Glass Ceiling report that he came out with indicated that despite about thirty years of affirmative action, ninety-five percent of the managerial jobs in Fortune 500 companies go to white men. Now, once again, I'm sure every white man in this audience is not a president of a corporation, (if you are, I would like some donations for various causes). If you're not, you're struggling just like all of us. You're economically nervous, everybody's nervous, and that's another thing that I would like to talk about as something fueling this whole assault on affirmative action and on immigrants.

I don't know if you saw the paper today, but the Congress, the House did something just scandalous and reprehensible in basically passing into law one of the provisions of Proposition 187 that's been struck down as unconstitutional. As my colleague Robert Rubin said "Now maybe you want to say undocumented people can't get jobs and shouldn't be able to come in, but we're talking about babies, we're talking about kids, we're saying they're not entitled to an education." What's that about? That just seems very heartless, but these are the times we are in.

My colleague Marcia Rosen has been at the forefront of fighting to not criminalize the activity and status of being homeless. A Seattle decision, I believe it was out of the Ninth Circuit affecting a Seattle homeless ordinance—the lead decision was written by Judge Kozinski, basically said, if you're homeless that status can be criminalized. If you look at statistics, the homeless are disproportionately African-American, and obviously they're disproportionately poor, that goes without saying, but we seem to be entering a time in our history where our hearts have turned hard, where we want to scapegoat people. There's a group called the Manhattan Institute

which came out with a study saying that more people should be put in prison. The fastest growth industry in California is the prison industry. The second largest lobby in California legislatures is the prison guards. Prison guards make more money than teachers. We have built six to nine new prisons in the time we have not built one new campus in the UC system.

Gloria Steinem often says you can tell people's priorities by looking at their checkbooks, by what they give money to, by what they spend money on. You can tell a society's priorities by where it spends money, by where its money is budgeted. We can't put people in prison fast enough. The people being put in prison are disproportionately Latino and African-American. In the first nine months of the institution of Three Strikes in Los Angeles, 89% of those put in prison for life under Three Strikes were Latino or African-American. I could go on and on and on, but we're talking about race, we're talking about America, we're talking about what's going on. If you are Californians, and I presume most of you are, this is all being done in your name. The first three people executed under the new let's lethal inject them to death law were white. The bulk of the people who are going to be following those three white men who were killed will be African-Americans and Latinos. And it's going to get to the point where it's just routine. There aren't going to be big protests at San Quentin, it's just, "Oh, another person was executed."

In the decision called the *McCleskey* decision, Justice Powell, (who I will get back to in just a second and I'm riffing hard now) basically said yes, we know that the death penalty is implemented and handed down in a racially discriminatory way, but the whole criminal justice system is infected with racism and if we took out the racism in the death penalty we'd have to look at the racism in the criminal justice system and we couldn't do that. That is in a decision of the United States Supreme Court. That is something that I have to look at and try to respect as a lawyer. These are the times that we are living in.

Justice Powell, however, is liberal compared to the court we have now, which is also frightening. Back to Justice Powell. In *The Regents of the University of California v. Bakke*, the

Supreme Court split—four said no affirmative action, no race consciousness, four said yes. Three of those four are gone; only Justice Stevens is still there. The pivotal vote was Justice Powell's. He basically said you may not have quotas. You must remember this: quotas are illegal.

You're going to hear in the discourse around the civil wrongs initiative that affirmative action means quotas. The polling that the right has done has indicated that "quota" is a buzz-word. If you say "quota" or "preference," people get angry. What's interesting though is that the preferences that people are angry about are the preferences that Governor Wilson and his cronies have been using. So the word "preference" makes people nuts. The right wing is much better than the left at coming up with ways of packaging information to change the hearts and minds of the electorate. The left is horrible, but we're getting better. The left thinks we're right, everyone should get it, vote for us. We need to figure out how to put our ideas in a way that's persuasive.

Hopwood v. State of Texas. Justice Powell basically says in his decision, which was controlling in *Bakke*, that diversity is a justified aim of the state that can be the basis for race conscious relief. He referred to the Harvard plan whereby they used diversity as a factor in admitting students to their undergraduate school. Now, this analysis has been repudiated by the Fifth Circuit. It holds that diversity is not anything we care about in this society. I don't know about you, and I probably shouldn't say this at a law school, but I get sickened reading some of these decisions. You probably do as law students for different reasons; but, they cite Justice Thomas with pleasure and Justice Posner from the Seventh Circuit for support for their notion that diversity is not anything we should care about as a society.

Now, one thing I say to people is that this affirmative action issue is personal for me. What I say when I talk on affirmative action is that I am the face of affirmative action, and people go: "Don't say that. They're going to hate it even more. You're exactly why they don't want it." But I got into UC Berkeley Law School in 1972 under an affirmative action program. I'm not stupid; I had been in the National Honors Soci-

ety. And this is immodest, but I think it's important to make this real because the rap on affirmative action is that it gets unqualified people into schools, employment settings and contracting.

I am a qualified person. I was in the honor society in high school. I got into Northwestern University, I was number 6 in my class. I got out of my first year of English at Northwestern University, which is not a slouch school (and we're a football powerhouse now). I was student body president. We shut the school down in the 70's. We were taking over buildings doing all kinds of things and going to class seemed like it wasn't the most important thing to do. So my grades weren't great. My LSAT's, I was only in the 88th percentile. That is clearly not unqualified, but that would not have gotten me into Boalt. But I was in there in my class (including Lance Ito, who was my classmate).

I had classmates who had been professors at Princeton, who had been nuclear physicists. The class was awesome. But the class was also I think about 25% people of color and 40% women. The people who admitted us had decided that they wanted a great mix of color in the class. In this incoming class at Boalt in 1995, out of a class of about 270 people, 22 of those were African-Americans. If the plan that the regents voted on July 20, 1995, goes through, there will be three African-Americans in the incoming class in 1997.

I feel very emotional about this because that's me. We have beaten Governor Wilson three times in litigation — I'm unqualified? Think about this. He's calling folks to get his friends in through the back door. I got in through a bogus preference program? Excuse me. So this is very personal. The State of California is basically saying black people and Latinos will not be educated at our universities. We pay taxes; we are Californians but we're not allowed to go to their schools. That is wrong and we will fight to the death, (well not to the death . . .).

Asians and Whites are not my enemies. Asians and Whites will benefit from what the Regents did, but what we're talking about is sharing. We're talking about a system that allows

more than three African-Americans into UC Boalt law school. It seems that any reasonable person would be for that. I'm one of the people that Governor Wilson is saying does not deserve to be educated by the University of California.

As they say, and I'm jumping ahead a little bit, in *Hopwood*, the court says affirmative action stigmatizes people of color. Well, as I've often said, "Stigmatize me, give me that degree." As though if you don't have the Berkeley degree you're not stigmatized as a black person. My clients in the fire department, my client Bob Demmons is now the chief — when you get despondent, remember Bob Demmons sued the fire department five years ago, he is now the chief. Willie Brown is now the mayor, a man who shined shoes, couldn't get an apartment in San Francisco because he was black, he is now the mayor. So do not be despondent when you see things like *Hopwood*, the Congress acting so crazy, homeless people harmed. Good things can happen.

One of the rationales that the Fifth Circuit gives for repudiating affirmative action is that people like me will be stigmatized. Well, yes, I could tell that some people at Boalt thought I was dumb. I'd never had that experience because I was always at the top of my class — I see this sister shaking her head — I never had anybody look at me like I was stupid because I was black. I was not accustomed to that. Call me arrogant, call me whatever, but you know, I was always at the top, so somebody looking at me like I was dumb was unexpected and it hurt, but I still have the JD from Boalt. And I can still send a paper to governor Wilson, he has to show up in my office and answer some questions. And he probably doesn't like — I wouldn't if I were him, and he's not going to like it when he shows up, but he's going to be there.

Another portion of *Hopwood* says something that is very prevalent in the intellectual discourse around affirmative action. There's this notion that there should be no group rights, there should just be individual rights. Affirmative action talks about group rights. The reason I'm not picked up by a cab driver in New York, has nothing to do with myself as an individual. I have plenty of money in my pocket; I'm not hardly going to rob a cab driver. The reason I'm not picked up is be-

cause of my status as a member of the black group. That is what it's about. And for these people to say there shouldn't be an group rights or entitlement totally misunderstands the nature of racism and sexism in this society. The very essence of the discrimination is based on your membership in a group. So, to ignore that and to say that there should not be group remedies is to ignore reality.

The other thing is, I was just scanning the Hopwood opinion very quickly for your edification. Some of you are scholars and law review members. We need scholarship of the sort that David Oppenheimer engages in from progressive people, so that when some of the more progressive judges are looking around for scholarly support for their contentions that it's there. So, I know many academics may feel, "God, I wish I were litigating." There's a role for litigators, but there's a role for scholarship and we need scholarship in the area of affirmative action on race and gender.

The plaintiff in the case is a woman named Cheryl Hopwood. This is also very personal for me. She is the wife of a military man who was stationed in San Antonio. I was born in San Antonio —my dad was in the service. Thank God I was taken out of the country and was educated in England and France. I was born in 1949. I was born under apartheid in this country. Think about that. *Brown v. Board of Education* wasn't handed down until five years later. I was born and grew up under apartheid. De jure, legal segregation was allowed in this country. I was taken out of the country and I think that's why I'm standing here today instead of somewhere else where I would not like to be.

The Hopwood court goes to say, well Cheryl Hopwood is the kind of person who we'd like to have in the law school. Well, if you look at most diversity programs and affirmative action programs in education or employment, they don't just look at race and gender, they look at a whole variety of factors that will actually give diversity to an educational institution or an employment setting. But what they do once again is try to pit the white woman against the Latinos and the African-Americans. The racial and gender wedge. It's an old trick that works. That is why some of us are calling the CCRI, Willie

Horton goes to college. It's the very notion that you want to put a black man — a latino — as a bogeyman and it gets everybody all crazy, and then they vote the way you want them to vote.

I've talked about the fact that the decision in *Hopwood* is against the University of Texas; it's also against the Thurgood Marshall Legal Society and I'm sure he is turning in his grave at what has happened, that his successor on the Court, Clarence Thomas, is quoted with positive views in the *Hopwood* decision where Clarence Thomas talks about racial paternalism.

Clarence Thomas and I are contemporaries. When I graduated from Northwestern University in 1971, I applied to Yale Law School; I did not get in. That same year Clarence Thomas got in. I think he took my place, and I'm still mad. Although I must say I'm much happier out here than I would have been in New Haven. But I happen to know that there was affirmative action at the law school at Yale. And Clarence Thomas wants to deny that. Does he think he's on the Supreme Court because he's the most brilliant lawyer in America? He's on the Supreme Court because the only black justice retired. Yet he and Ward Connerly want to slam the door so nobody gets in and pretend that they got in through their own merit. Hogwash. And these are the worst types of African-Americans, Latinos, Asians and women, the type that are in deep denial about how they got what they did, and then they give aid and comfort to racists because racists go "Well here's a black man saying this and I'm surely not racist." They're the very worst type of people. In my heart, I was raised a spiritual person and I don't like to trash people, but it's hard not to get very angry and very bitter about the Ward Connerlys, Shelby Steeles, and Clarence Thomases.

They also talk in the *Hopwood* decision about the double and softer standards of affirmative action. Well, I had to take the same exams that everybody else did in law school. I got in on affirmative action, but no, there wasn't a little thing on my exam that said "Affirmative action passer." You know, I had to take the same bar exam everybody did, and I passed it and it didn't say, "She's black, don't read these questions, just let her

through," God, I wish things were that easy. So this double and softer standard is just nonsense.

The good part of *Hopwood* is that it doesn't seem to undercut *Croson* or *Adarand*, which basically indicates that if you can show through findings that there has been overt discrimination or under-representation of women or people of color, that constitutes the factual predicate for the implementation for race and gender-conscious relief. That is, you have to show that there were either overt acts of discrimination or statistical under-representation of protected groups. So that is still upheld by *Hopwood*. You then have to show that there are still present effects of past discrimination. Now this, I just want to burst out laughing. There was segregation in society, slavery, people had to get to the back of the bus, separate drinking fountains and we ended that 40 years ago, so there are no present effects? It's just ludicrous, but this is the kind of nonsense that's being put into various decisions. The magnitude of the effects of the past discrimination must be shown and the remedy must be narrowly tailored. This is just your classic strict scrutiny analysis and they don't seem to have repudiated that. The Fifth Circuit seems to indicate that the law school did not do a sufficient investigation or make a sufficient showing that these requirements had been met and that's why they struck down the race conscious relief for Latinos and African-Americans.

The court also, and this is something that the current conservatives seem to revel in, they really have an a-historical approach to race. This is a passage that just really upset me when I read this, when they're talking about why the knowledge of historical racism cannot be a justification for affirmative action, and you can just see the tears rolling down their faces as they're writing this: "Rather it is the very enormity of that tragedy (racism) that lends resolve to the desire never to repeat it and to find a legal order in which distinctions based on race have no place." I guess it was Justice Brennan who said, we have to take race into account for awhile, before we can not take it into account. To kind of pretend that race plays no factor in how you are treated in this society is nonsense. Ask any person of color you know and they will tell you a story; they will tell you eight stories. And you know that from just

opening up your eyes and seeing what's going on in society.

The decision ends with a lengthy dissertation on relief which is rather frightening. The court suggests that damages might be available to plaintiffs. Now that's going to freak out any law school or any institution that thinks it may have to pay damages as a consequence of losing an affirmative action challenge. So that is going to have a very profound, chilling effect on people. It's indicative of the assault on affirmative action that's going on. You've seen what the Regents did. Governor Wilson issued an Executive Order on July 1st of last year, basically knocking out affirmative action throughout the state.

Clinton — we've got to stay on him because he now has as one of his chief strategists a man named Dick Morris. Are any of you familiar with the campaign of Harvey Gantt v. Jesse Helms. There was the infamous, and you have to use your imagination, white hands commercial, where they had a pair of white hands crumpling up a job application and the voice over said, "you would have gotten that job, but for the unqualified black man who took it from you;" you know, Willie Horton goes to the work place. Willie Horton's busy. Dick Morris came up with that commercial. He is now Clinton's chief strategist. Keep that in mind when you see what's going down. It was a winning strategy, but is it the one we want to win with?

Clinton just decided, and he threw up a trial balloon, this is not set in concrete, so if you don't like it you should write or fax the Clintons. Maybe Hillary would be a better person to talk to. Anyway, Clinton has tried to put a momentary moratorium on set-asides. We're also seeing increased calls at our office from African-Americans who are being hit by more racism.

In November of 1996, about 7 months from now, the California Civil Wrongs Initiative will be on the ballot. It is a brilliant piece of work. They, as I said before, used focus groups, polling; they really tested what would work. We understand from Lou Harris, who's doing polling for us and who is very much in the world of the pollsters, that they tested 47 versions of the language until they arrived at the one they wanted. And

David Oppenheimer and I will tell you, we know that that's probably true because we had our own counter-initiative which did not survive, but you just keep playing with the language to see where you get up to 51%.

The language they arrived at is brilliant. It basically tracks the language of the Civil Rights Act of 1964. Here's the first clause of the civil wrongs initiative: "The state shall not discriminate against or grant preferential treatment (unless you're Governor Wilson) (that's not in the initiative) to any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, public education or public contracting." Let me read you the first words of Title VII, the employment discrimination aspect of the Civil Rights Act of 1964: "It shall be an unlawful employment practice for any employer to fail or refuse to hire or discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex or national origin." Pretty much a mirror, it's brilliant. And if you read CCRI you go, this sounds great. But let me tell you what it would do.

Fourteen years ago, my friend Jim Jefferson (who was just pilloried by the Examiner, I think they said 8,000 times he had tax problems, he's paying the money back, I guess they had some space to fill up that day, I don't know if you saw the article, but it was really quite scandalous) but my friend Jim Jefferson is a minority businessman and he was representing a group of minority businesses who wanted more contracting dollars from the City and County of San Francisco. Now keep these numbers I'm going to tell you in mind. 40% of the businesses in San Francisco, eligible to do contracting were minority and women owned. When we looked at what percentage of the construction contracting dollars of San Francisco went to women and minorities combined, 7.3%. Now this is where I gave you my disclaimer earlier, I'm not trashing white men, but 92.7% of the construction contracting dollars went to white male firms. That's just not fair.

A minority and women contracting ordinance was put into place. Now, ten years later, according to Ed Lee, head of the

Human Rights Commission, 16% of the contracts are going to women and minorities combined. We're still not at parity; white men still get 84% of the contract dollars. Yet this ordinance would be unconstitutional under the Civil Wrongs Initiative.

The analysis that I articulated to you under *Hopwood* that the legislature must make findings of discrimination. That was done by the San Francisco Board of Supervisors. Their program is narrowly tailored. There are some contracting areas in San Francisco where Asians and Blacks are at parity; there's no affirmative action there. The program is of limited duration; that is, when parity's reached the affirmative action ends, that's part of the ordinance in San Francisco. Despite the fact that we comply with Croson and Adarand and the requirements under the strict scrutiny analysis of the Fourteenth Amendment, the Civil Wrongs Initiative would eliminate this program. A lot of the major funding for CCRI is coming from the contracting community. They want to go back to the days where they had it all. It's not fair, we've got to fight this. That is what this is about.

The thing you've got to realize, there are two things I must leave you with about the Civil Wrongs Initiative. This is about politics. I'm more familiar with polls than I would ever care to be but I'm going to have to be because what I was saying to David, what I want to put in all your minds and hearts, is we can beat this thing — the numbers are slowly coming down in terms of the support for it. When people find out what it's about they're outraged. People by margins of about 52% in California support affirmative action. They're overwhelmingly in favor of the concept of equal opportunity. They know that racism and sexism exist and the funny thing we found from our polls is that Californians believe that if a company has been found guilty of discrimination, the head officers should be imprisoned. This is God's truth, I couldn't make it up. So there's a real strong sense of equity, but we haven't packaged our arguments very well, and if you have something called the California Civil Rights Initiative, it is a deceptive way of putting this out.

Patrick Buchanan, in February, 1994, two years ago, wrote

a column saying this: If the Republicans are to regain the White House (and this was before the Gingrich revolution) they must get California. To do that they must put a populist issue on the ballot that agitates the angry, white men (by the way, one of the groups that supports our side is the group called Angry White Guys for Affirmative Action) and you have to put a populist issue on the ballot. The issue he explicitly calls for is the Civil Rights Initiative. So this is part of a strategy on the Republican side to get people mad. Willie Horton goes to college to do the Harvey Gantt number. So this is what this is about.

It's also about the economy. Now Patrick Buchanan I find repulsive, but one of the things that he says that really resonates is that the corporations don't care about people, everybody's nervous, everybody's afraid of downsizing, everybody's afraid of losing their job, and what you do rather than look at the structure of society, you go hmmm, who can I blame, who can I scapegoat? Well, it's 1994, maybe immigrants, yeah, yeah, we'll pass Proposition 187. Now, I'm sure all of you feel much more secure economically after the passage of 187, right? Not hardly. Okay, that didn't change things, who can we go after next? Women and minorities, they're taking my jobs. That's what this is about —scapegoating and having a place where people can park their economic anxiety. I do not want to downplay the fact that for some people of conscience, there is a valid public policy debate around affirmative action. Merit, group rights — I don't mind that if it's coming from a principled place, but that's not where this is coming from.

Had I given myself more time and not talked so much, I would have given you a historical overview of the development of affirmative action. I'll do that in two minutes. The first affirmative action program in the United States was after the civil war. It was the 40 acres and a mule program that took into account that slavery was wrong and that something should be done about it. One thing you should realize is that that program was never implemented. If I were to walk you through this, which I just don't have time to do, I would remind you that 100 years ago was the Supreme Court decision in *Plessy v. Ferguson* which said separate but equal is the law of the land. And I'm a very Californian, new age type person,

and I think it's very interesting that 100 years after *Plessy v. Ferguson* we have something that threatens to do the same thing in California.

You might want to know that the first race conscious executive order in the United States was issued by President Nixon, that flaming race-conscious, Black-Panther-supporting Republican. But, in 1969 he instituted something called the Philadelphia plan, which basically required those receiving federal contracts to make sure that a certain percentage of people of color got contracts. The percentages went from 1% to 12 % and he did this so the first person who had affirmative action was a Republican, not us, but now, because it's politically expedient to trash affirmative action, the Republicans are doing it.

CCRI will be on the ballot in November. There is a deadly clause, Clause C, which basically allows gender discrimination to be enshrined in the California Constitution. I think that may be the fatal flaw of the initiative because women are key to this. An interesting thing that you should know is that the population of California is about 50% white; the electorate is 83% white. White people, and once again, I do not mean to say this in an offensive nature, but I'm just acknowledging certain racial dynamics in the state. But the electorate is overwhelmingly white.

The strategy that must be employed to defeat CCRI is as follows. This was put together by the people at the Applied Research Center, my friends Jan Adams and Rebecca Gordon. 80% of African-Americans must vote against CCRI. Basically every African-American in the State must vote. If you're not registered to vote, you'd better. We've hooked up with a group called Pac Tech in Southern California which has the state broken down by computer block by block. They can tell you who's eligible to vote and who's registered, so I will know every black person in this state that is not registered and I will talk about you in public settings and those of you who know me know that I will. Seventy percent of Latinos must vote against CCRI. The Asian community is very split on CCRI. I believe that many Asians feel that they are harmed by Affirmative Action in education, but if you look at employment statistics

and contracting statistics, racism very much works against Asians. Until we sued the San Francisco Fire Department there was not one Asian officer. Affirmative action is a mixed bag for Asians. We need to get 55% of the Asian vote. We need to get 45% of the white vote. This is going to turn on getting out righteous white men who think that you shouldn't have 93% of the contracts, that there should be some equity and we need to really use a gender gap strategy which will be employed.

We can win. There were ten bills in the legislature to eliminate affirmative action, and we defeated every one. That news is not out, we defeated every one. The Assembly is controlled by conservative Republicans and we still beat them. We have beaten Governor Wilson. He sued himself. He sued himself and lost, or won, I don't know. The Harris poll indicates that as people find out about what this is really about the numbers come down. There's a state-wide campaign as you know and I'll be honest with you all, the left is very good at fighting itself. We're better at fighting ourselves than the other side and we've been involved in a civil war for a long time. The civil war came to an end on Friday. There's one unified campaign. We will not repeat the mistakes of 187.

The campaign will basically have two pieces — a media and public education campaign. The votes are in the media markets of Southern California. We will need to have lots of commercials. Bob Shrum, who has done a lot of media, is on board. Saatchi and Saatchi is on board pro-bono. The strategy that's most effective in Northern California is grass roots; it's how the Board of Supervisors was turned around; it's how Mayor Brown got elected —that will be employed. And we're trying to employ grass roots in Southern California. We're trying to change the way politics is done in California. We're going to do this right, and try not to be divisive and try to be harmonious in how we do this, and try to take the high road. As people said, the means are the ends.

As I said in the beginning, this is a defining moment for us. You can't be all pessimistic and doom and gloom because look, there are people in this room, African-Americans, Latinos, Whites, Asians, men, women, straights, gays and lesbians,

immigrants. Everybody is here trying to get educated about race. 15 years ago this wouldn't have happened at Golden Gate University. There would not have been the universe of people who cared about this who have the ability to do something about it. We have to give it our all. What I have said is that for the next seven months I have to give myself wholly to this campaign. I think if Thurgood Marshall were alive he would be doing this because you have to do this. And all of us have to know that on November 6 that we did everything that we could to defeat CCRI. What this is about is race and what society is going to do.

California breeds wonderful things. Many of us moved here because we were back east and like the weather here and like the politics here. I remember in the '60's everything was happening in Berkeley and I desperately wanted to get here and I'm now here. But a lot of very evil things come out of California; Richard Nixon, Ronald Reagan, Proposition 13. I can go on and on. The California Civil Wrongs Act is a virus and we can kill it here. If we don't kill it, it's going to spread east — it's going to affect everybody back east. So we have an historic responsibility to do everything we can.

Thank you for coming. Thank you for caring about race. It's a beautiful day; you could be elsewhere except those of you who need MCLE credits. But this means a lot to me that people care about grappling with this issue. It's very thorny. Let's keep talking to each other. And I look forward to drinking Champagne and victory in November of 1996. Thank you.