

when you want it done. They need to know if you want a task accomplished in a specific way. Supervising lets you know if your soldiers understand your orders; it shows your interest in them and in mission accomplishment. Oversupervision causes resentment and undersupervision causes frustration.

When soldiers are learning new tasks, tell them what you want done and show how you want it done. Let them try. Watch their performance, accept performance that meets your standards; reward performance that exceeds your standards; correct performance that does not meet your standards. Determine the cause of the poor performance and take appropriate action.¹ When you hold subordinates accountable to you for their performance, they realize they are responsible for accomplishing missions as individuals and as teams.

BUILD THE TEAM

Warfighting is a team activity. You must develop a team spirit among your soldiers that motivates them to go willingly and confidently into combat in a quick transition from peace to war. Your soldiers need confidence in your abilities to lead them and in their abilities to perform as members of the team. You must train and cross train your soldiers until they are confident in the team's technical and tactical abilities. Your unit becomes a team only when your soldiers trust and respect you and each other as trained professionals and see the importance of their contributions to the unit.

EMPLOY YOUR UNIT IN ACCORDANCE WITH ITS CAPABILITIES

Your unit has capabilities and limitations. You are responsible to recognize both of these factors. Your soldiers will gain satisfaction from performing tasks that are reasonable and challenging but will be frustrated if tasks are too easy, unrealistic, or unattainable. Although the available resources may constrain the program you would like to implement, you must continually ensure your soldiers' training is demanding. Apply the battle focus process to narrow the training program and reduce the number of vital tasks essential to mission accomplishment. Talk to your leader; decide which tasks are essential to accomplish your warfighting mission and ensure your unit achieves Army standards on those selected. Battle focus is a recognition that a unit cannot attain proficiency to standard on every task, whether due to time or other resource constraints. Do your best in other areas to include using innovative training techniques and relooking the conditions under which the training is being conducted, but do not lower standards simply because your unit appears unable to meet them. Your challenge as a leader is to attain, sustain, and enforce high standards of combat readiness through tough, realistic multiechelon combined arms training designed to develop and challenge each soldier and unit.

SUMMARY

The factors and principles of leadership will help you accomplish missions and care for soldiers. They are the foundation for leadership action.

The factors of leadership are always present and affect what you should do and when you should do it. Soldiers should not all be led in the same way. You must correctly assess soldiers' competence, commitment, and motivation so that you can take the right leadership actions. As a leader, you must know who you are, what you know, and what you can do so that you can discipline yourself and lead soldiers effectively. Every

leadership situation is unique. What worked in one situation may not work in another. You must be able to look at every situation and determine what action to take. You influence by what you say, write, and, most importantly, do. What and how you communicate will either strengthen or weaken the relationship between you and your subordinates.

The principles of leadership were developed by leaders many years ago to train and develop their subordinates. The principles have stood the test of time and the foremost test—the battlefield. Use the principles to assess how you measure up in each area and then develop a plan to improve your ability to lead soldiers.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

MEASURE PLACED ON THE CALENDAR—H.R. 3103

Mr. HATCH. Mr. President, I understand there is a bill due for its second reading.

The PRESIDING OFFICER. The Senator is correct.

The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (H.R. 3103) to amend the Internal Revenue Code of 1986 to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.

Mr. HATCH. Mr. President, I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. The bill will be placed on the calendar.

SOCIAL POLICY AND CIVIL RIGHTS

Mr. HATCH. Mr. President, I wish to continue the discussion about social policy and civil rights I began a short time ago.

Mr. President, I support the vigorous and sensible enforcement of our civil rights laws and make whole relief for the victims of discrimination. I support affirmative action involving outreach and recruitment. I support training and assistance open to all who are seeking to enhance their ability to compete, without regard to race, ethnicity, or gender. I oppose preferences in the award of benefits or impositions of penalties based in whole or in part on race, ethnicity, or gender.

Opposition to preferences should not be a device used, however inadvertently, to ignore the particular problems resulting from the legacy of prior and ongoing discrimination. Nor should opposition to preferences be used to weaken the kind of affirmative outreach and recruitment I mentioned earlier.

Conversely, I reject the cynical use of the affirmative action label as a means of throwing a protective shield over preferences, as President Clinton and

his administration have repeatedly done.

This administration has pursued a pervasive policy of preference. The President's actions speak louder than his words. The Clinton administration has repeatedly cast its lot not on the side of equal opportunity for all Americans, but on the side of racial, gender, and ethnic preferences and equal results for groups.

Indeed, I find both President Clinton's July 19, 1995, speech on this issue and his administration's review of this issue an artful dodge of the real issues and a vigorous assault on the principle of equal opportunity for all Americans.

In his frequently gauzy July 19 speech, President Clinton never came to grips with the details of affirmative action preferences. He also repeats some false dichotomies long used by other tenacious defenders of preferences. He ignores the variety of ways preferences operate, and are defended, even under his own administration.

Moreover, he defines affirmative action with a combination of breadth and vagueness, allowing him to dodge the tough issues. He does not understand that preferences are not only wrong, they are terribly divisive.

Columnist Robert J. Samuelson has written:

The essence of Clinton-speak is that the president is often saying the opposite of what he is doing. On affirmative action, he deplores those "who play politics with the issue . . . and divide the country." Yet, that describes Clinton exactly. His eager embrace of affirmative action guarantees that it will foment racial and gender rancor.

That was from the Washington Post of August 9, 1995.

He treats the web of local, State and Federal bureaucratic, legislative, and judicial rules and policies requiring the cause of preferences as if they were minor aberrations or barely in existence. They have, in fact, grown over the years, including under his policies.

For example, he claims that sometimes employers abuse the concept—as if local, State, and Federal governments have not been breathing down many employers' necks—playing the numbers game, pressuring and requiring consideration of race, ethnicity, and gender in their employment practices. Indeed, his administration has recently issued guidance concerning Federal employment which provides a shocking, broad-based series of rationales for preferences.

Moreover, the President, in my view, gives too much credit to affirmative action for progress in this country. The enactment and enforcement of antidiscrimination laws, a decrease in prejudice, and economic forces, in my view, have clearly played very important roles in such progress. Even his own task force admits, at least: "It is very difficult * * * to separate the contribution of affirmative action from the contribution of antidiscrimination enforcement, decreasing prejudice, rising incomes and other forces."

¹Kenneth H. Blanchard and Keith L. Kettler, "A Suitable Approach to Leader Development."

The four directives he has issued to his agencies are largely misleading or irrelevant, especially in light of his administration's overall actions. The President says, "No quotas in theory or practice * * *" but he supports a so-called flexible goal.

It is preferences we must oppose, however, not the label for one of the forms of preference. And the Clinton administration has strongly fostered preferences in various ways, as I will explain shortly, sometimes making use of numbers and sometimes not. Indeed, his administration has fostered outright quotas.

With respect to numerical objectives, whether they are labeled goals and timetables or quotas, the harm that occurs is the exercise of preference based on race, ethnicity, gender, or otherwise. It is such preference that is wrong, rather than the precise label we place on the mechanism of preference.

I think it is helpful to conceptualize the numbers approach as functioning along a continuum. At one end, the equal opportunity end, there is the requirement not to discriminate on the basis of irrelevant characteristics, the requirements to review selection processes to ensure that there is no bias and to recruit widely—and no numerical objective. At the other end is a requirement that does one of two things. First, it either establishes separate lists of those at least minimally qualified, based on race or gender, with alternate selection from these lists until a certain percentage is met, regardless of the relative rankings that would exist on a single list. Or, the requirement simply defines equal opportunity as essentially the proportional representation of various groups, and mandates or permits race or gender conscious selection procedures in order to meet that objective.

In between these two ends are various levels of coercive authority and sanctions that require or strongly encourage the use of preference. Thus, somewhere between these two opposites might be what is euphemistically described as a "flexible goal and timetable." In fact, this differs little, as a practical matter, from what is otherwise known as a quota, except in the lack of explicitly separate lists. It might be that an employer is pressured to reach a certain percentage of designated groups in his work force over a period of time without the explicit creation of separate lists. Sanctions remain available, lurking not far in the background. If an employer or school believes that the failure to meet a goal will result in increased oversight, paperwork, and required explanations; the threat of contract debarment, loss of Federal aid, or a lawsuit by individuals, advocacy groups or the Government hanging overhead; or a contempt motion pursuant to a court order which is already in place, then the employer or school is going to try to meet that number, regardless of who is best qualified. If an employer or school does

not believe that the Government intends for the number to be reached, they would have to ask, why did the Government put the number out there? If equal opportunity alone is all that is required, the Government can require that such opportunity be afforded without setting any numerical requirement. I also note that, when race, ethnicity, or gender is used as only one factor in a decision to hire, and that one factor tips the decision in favor of one person and against another, that is discrimination, that is a preference.

Thus, while some numerical objectives may be somewhat less coercive than others, they are no less objectionable. At best, we are speaking of matters of degree, not of kind. The Clinton Administration makes full use of the range of preferences.

President Clinton next says, "no illegal discrimination of any kind including reverse discrimination." Mr. President, this is clearly a verbal slight of hand. The President never defined reverse discrimination. As the President and his legal advisors well know, the courts and executive bureaucracies, regrettably, have deemed a variety of reverse discrimination—preferences—as legal. His own task force, for example, speaks approvingly of the Supreme Court's 1979 Weber decision. That decision permits reverse discrimination in an employer's training program under title VII. The Weber decision is a crucial part of the reverse discrimination edifice in this country. So the President favors reverse discrimination under the name of affirmative action, at least so long as a court anywhere, or a bureaucrat, says its acceptable or might possibly say its acceptable. The congressional testimony, courtroom legal arguments, and policy guidance of his Justice Department amply confirm this.

Indeed, his own administration has vigorously sought to expand the rationales for permitting reverse discrimination. Let us not forget: the Clinton administration was on the losing side in the Supreme Court's 1995 Adarand case. The Clinton administration argued for a double standard based on race and ethnicity in the Federal Government's award of contracts and in Federal Government policy generally. President Clinton managed to omit that fact from his July 19, 1995, speech. President Clinton defended his administration's outrageous defense of racial preferences in layoffs in the Piscataway case.

Next comes the President's clumsiest and most transparent cynicism: "no preference for people who are not qualified for any job or other opportunity." This is a longstanding dodge by the ardent defenders of preference and reverse discrimination. Of course, the problem with preferential policies is that they favor the lesser qualified over the better qualified.

Finally, the President says, as soon as "the [particular affirmative action] program has succeeded it must be re-

tired." We have heard that for at least 25 years. What does the President mean by an affirmative action program succeeding? He does not say, directly. But a careful review of his speech, his task force's rationale for affirmative action, including preferences, and his Justice Department guidance, makes it clear—he does not mean equal opportunity for individuals. The repeated reference, as justification for affirmative action, to various statistical disparities makes clear that affirmative action succeeds in this administration when equality of result—proportionality—has been reached. Indeed, his Justice Department's February 29, 1996 guidance to Federal agencies justifying preferences and reverse discrimination in Federal employment authorizes those agencies to maintain proportionality almost continually.

Despite misleading disclaimers, that memorandum is a wide-ranging defense not only of reverse discrimination well beyond current Supreme Court precedent. It is a thinly veiled defense of quota hiring.

I should also point out that President Clinton takes the Adarand decision as if it is the final guidance on preferences. It is not. His own task force knows better: "The Court's decision concerned what is constitutionally permissible, which is a necessary but not sufficient consideration in judging whether a measure is a wise public policy." There is the question of what is right. In my view, if a business has been discriminated against by a government entity, it should have a remedy. But to prefer another business because it is owned by a member of the same group, over an innocent business owner who belongs to a different group, is wrong.

If one believes that rights inhere in individuals, not in groups, one has to oppose this latter type of program, a contract preference based on race, ethnicity, or gender. The Clinton administration celebrates it. Just listen to the Clinton task force's rationalization: race-conscious contract procurement programs "cause only a minor diminution of opportunity for non-minority firms. In that respect, current programs are balanced and equitable in the large." So much for individual rights. So much for equal opportunity for every individual. No reasonable person would accept such a rationale if the victims were minority firms, and properly so.

The Clinton administration should tell Tom Stewart of Spokane, WA, who testified before the Senate Judiciary Constitution Subcommittee, that contract preferences generally cause only minor loss of opportunity. His guard-rail firm has lost \$10 to \$15 million over 15 years because of preferences—reverse discrimination to anyone else but this President and other defenders of preference and reverse discrimination. Mr. Stewart has numerous letters from prime contractors saying he was low

bidder but could not be retained because of set-aside requirements—the preferences, if you will.

Or tell it to Lance McKinney, the president of Atherton Construction Co. of Salt Lake City, UT, who was not even permitted to bid on certain contracts because of his race. These requirements are far more pervasive in local, State, and Federal governments than the President admits. Even one contract lost because of race is one too many, but the Clinton administration breezily understates the scope of the problem.

The President condescendingly tries to bundle off concern about preferences and reverse discrimination to economic uncertainty in the white middle class. The President thinks the real problems with racial, ethnic, and gender set-asides are those of fronts and fraud. President Clinton just does not get it. He is out of touch with mainstream America. The real problem with racial, ethnic, and gender preferences, including in contract awards, is that they are fundamentally unfair. Preferences and reverse discrimination should be ended, not tinkered with.

The principle of equal opportunity demands that we avoid new forms of discrimination. We must not create new victims of discrimination in the name of affirmative action—something the President's own administration has, in the large, fostered and defended.

Ted Van Dyk, a former assistant to Vice President Hubert Humphrey has written:

The civil-rights fighters of the 1950s and early 1960s can only be shocked that the more recent Democrats, including the president, have taken that struggle for opportunity and transformed it into an attempt at guaranteed outcomes. Hence the official and unofficial, gender and ethnic quotas imposed in staffing the administration.

Mr. Van Dyk has also noted—and keep in mind he was former assistant to Vice President Hubert Humphrey, who helped to write the act of 1964.

Mr. Van Dyk has also noted,

Affirmative action was intended as nothing more than a late footnote to central civil rights and social legislation of the early and mid-1960s meant to remove from American life discrimination against—or for—any person or group. The objective of a generation of civil-rights fighters of all races and colors had been to give every American an equal chance at the starting line—but not a guaranteed outcome at the finish line.

My old boss Hubert Humphrey, principal sponsor of the 1964 Civil Rights Act, made clear during congressional debate that quotas, racial preferences, set-asides and other discriminatory measures were totally at odds with the justice sought through the act. Title VII of the act, in fact, explicitly bans preferences by race, gender, ethnicity and religion.

No one could have predicted then that affirmative action would be transformed into a quasi-entitlement or that well-meaning next-generation leaders, including President Clinton and Hillary Rodham Clinton, would insist on rigid racial, gender and ethnic quotas in filling federal appointments.

These quotes are from the Washington Post, March 9, 1995 edition.

The Washington Post of September 1, 1995, reports:

A divided Montgomery County School Board has refused to overturn a school system decision denying two Asian kindergartners admission into a French immersion program because the transfer would upset the ethnic balance at their neighborhood elementary school.

Only after a public uproar was this particular denial overturned. How does the President feel about this general policy? Will his administration enforce equal opportunity in the Montgomery County schools?

The Washington Post of October 30, 1995, reported:

Principal Inez Sadler's Valley View Elementary School in Prince George's County, Maryland faced a shortage of 50 students for its Talented and Gifted program, but she could not choose from any of the 67 students on a waiting list. The reason: all 67 students on the list are African American, while all 50 available slots are reserved for children of other races.

This is pursuant to a court-ordered desegregation remedy originating in a 23-year-old lawsuit.

In San Francisco, as part of a 12-year-old consent decree, Chinese-American youngsters are being discriminated against in favor of whites, blacks, Hispanics, Koreans, or Japanese for entry to Lowell High School—and there is discrimination in the treatment among these groups as well. This is in the Los Angeles Times, July 13, 1995 edition.

Only in the past few weeks has there been the possibility of some change in those policies.

A 12-year-old girl was denied admission to Boston Latin School recently because she ran afoul of racial preferences.

Does the President believe these practices are right? Should his administration have been doing something about it?

Some of these examples point out something else President Clinton is oblivious to: Preferences hurt all of those outside the preferred groups in any given instance, not just white males. That is the dodge that they hide behind all the time. We are finding they are hurting everybody.

Once we draw a line based on race, ethnicity, or gender, we create new victims of discrimination.

When Miami Dade Community College, for example, offers five faculty fellowships for males of African descent, white males are not the only victims. Females of African descent are discriminated against, as are Asians and Hispanics. But this program is fully consistent with the administration's actual policies.

If President Clinton is truly concerned about equal opportunity, he should straighten out the policies of his own administration.

He could start with the Department of Justice, which of course, as chairman of the Judiciary Committee, I have the responsibility of overseeing. That is one reason why I am taking time to make this statement today.

In 1994, the Clinton administration switched sides in a reverse discrimination case in Piscataway, NJ.

In the Piscataway case, the Piscataway Board of Education decided to reduce the size of its Business Education Department. The choice was between laying off a white female or a black female with equivalent seniority.

Normally, the tiebreaker between two equally senior employees facing a layoff is undertaken in a race-neutral manner, by drawing lots. But Piscataway had an affirmative action plan, which required that the tie be broken on the basis of race in favor of the black teacher. In 1989, the white teacher was discharged.

The Bush Justice Department brought a lawsuit in January 1992 challenging this racially discriminatory layoff under title VII of the 1964 Civil Rights Act. In June 1993, the Clinton administration, then in power, filed two briefs advancing its then position that the race-based layoff was illegal.

Then, stunningly, after the district court ruled in favor of the United States and the white teacher who had intervened in the case in her own behalf, and granted her relief, the Clinton administration flip-flopped and abandoned its earlier position. It, in effect, switched sides and argued against the white teacher in favor of a policy of racial discrimination. It argued to deprive the victim of discrimination of the very relief it had engineered.

The district court's straightforward legal analysis and finding in favor of the discriminatorily discharged teacher was challenged by the Clinton administration's strained legal arguments in its ideological drive to go beyond Supreme Court precedent to further its policies of reverse discrimination.

The advocates of racial preference argue that such preferences can be justified as an effort to enhance racial diversity in a work force.

I have many problems with the administration's position in this case. Let me mention one. I am deeply disturbed by the sweeping rationale DOJ advanced in support of the preference in this case. In its amicus brief—or friend of the court brief—the Department of Justice relied on Justice Steven's concurring opinion in Johnson, which defended preferences by public and private employers in very broad terms, including increasing the diversity of a work force for its own sake.

If the open-ended view taken in DOJ's brief prevails, what is left of the actual language of title VII? Title VII's language bans discrimination in employment because of race. Narrow exceptions to title VII's plain language in Weber and Johnson, unfortunate as they are, do not extend as far as the facts in Piscataway. The Clinton administration's rationale in Piscataway, it seems to me, turns the statute upside down. It is an open invitation to widespread discrimination.

President Clinton should have repudiated the Justice Department's extreme position in this case. Instead, he endorsed it. Now, he tries to claim he opposes reverse discrimination? In *Piscataway*, he advocates it. The court of appeals in that case has recently rejected the administration's effort to participate further in the case. I hope it upholds the lower court, notwithstanding the Clinton administration's change of heart.

Moreover, the Justice Department largely echoed its *Piscataway* brief in the wide-ranging rationales it will accept for preferential hiring in the Federal Government. The Justice Department's claim that whenever an employer can produce statistics, anecdotes, or expert testimony, it can justify racial, ethnic, and gender preferences in order to meet its operational needs is a giant leap down the wrong road for this country. The President should repudiate this memorandum and start over again. He has had to countermand the Justice Department in a pornography case and a religious liberty case, so I am not suggesting anything new for this President.

Let me be clear: I favor racial diversity and integration. The question is, how does an employer achieve it? I believe the proper way of doing so is recruiting widely, including among those who traditionally do not apply for a job, and then hiring on a nondiscriminatory basis, letting the numbers then fall where they may. We should not seek to achieve diversity by trumping the principle of equal opportunity for individuals.

The Clinton administration, in contrast, believes diversity can and should be reached by discrimination and preferences, even in cases involving layoffs, as in the *Piscataway* case. Indeed, as I mentioned earlier, its brief in this case, after changing sides, together with its recent guidance to Federal agencies, embraces multiple, sweeping rationales for reverse discrimination with little limit, at least in the context of hiring, promotion, and remarkably, layoff.

This is a recipe for the division, polarization, and balkanization of our people. It does not bring us together. The drafters of the 1964 Civil Rights Act, such as Hubert Humphrey, have shown us a better way. Instead, President Clinton is taking us far away from the principle of equal opportunity for individuals.

No matter how much the purveyors of preference try to candycoat or obfuscate their policies with euphemisms, they cannot mask the outright discrimination they are supporting. They cannot fool the American people.

Let me mention just some of the other manifestations of the Clinton administration's policy of preference. An August 10, 1994, memorandum to Assistant Secretaries of Defense for Force Management; Health Affairs; and Reserve Affairs and to the Deputy Under Secretaries of Defense for Require-

ments and Resources and for Readiness addressed the subject of improving representation. It is from the Under Secretary of Defense for Personnel and Readiness, Edwin Dorn.

The memorandum expresses concern about the job representation of, for example, minorities and women. That is a fair concern, and the issue becomes, how do you address that concern. The memorandum seems to call for recruitment of minorities and women as applicants for jobs, which I believe is entirely appropriate. But listen to how this concern is further addressed in the memorandum. Listen to how subtle pressure is placed on subordinates to put a premium, a preference, on irrelevant characteristics at the point of hiring or promotion.

The memorandum reads in part:

Secretary Perry is holding me responsible for improving representation within the Office of Under Secretary of Defense for Personnel and Readiness. For this reason, I need to be consulted whenever you are confronting the possibility that any excepted position, or any career position at GS-15 level and higher, is likely to be filled by a candidate who will not enhance your organization's—and thus Personnel and Readiness's—diversity. By working together, we may be able to make faster progress. We know that there is a problem; it may be apparent even at our own staff meetings . . .

Notice that whenever there is a mere possibility that a person in one of the nonpreferred groups is even likely to be hired or promoted for any of the covered positions, race and gender must then come into play. The Defense Department may try to explain that any way it wishes. But the euphemistic phrase making faster progress, as a practical matter, means: if you are about to hire or promote a male or a nonminority, presumably on the basis of merit, do not do it until you check with your superiors and we may well prefer someone else on the basis of race or gender to improve our numbers. Indeed, in the next paragraph, the memorandum states, "I believe that the informal process outlined above will produce results. If not, we will need to employ a more formal approach involving goals, timetables and controls on hiring decisions."

The problem to the Clinton administration is not discrimination. The problem to the Clinton administration is the absence of a particular proportion of each group. By singling out hiring and promotion of white males for special scrutiny, this office in DOD discriminates against them. While this approach is already a formal one—see me before you hire a white male—the threat of even more draconian measures makes it even more likely that his subordinates will make sure they are on board in their hiring to begin with.

Antidiscrimination laws already apply to the Defense Department to ensure equal opportunity. The Department is also certainly capable of recruiting widely for job applicants. But the Clinton administration is going well beyond this with its pervasive policy of preference.

If President Clinton is really serious about equal opportunity, he will repudiate that memorandum.

Let us take another example of the Clinton administration's drive toward equal results. The November 15, 1994, FAA Weekly Employee Newsletter states, "More than half of the GS-15 management positions recently filled through the Air Traffic National Selection System were minorities and females. 'This is in line with Air Traffic's commitment to fill one out of every two vacancies with a diversity selection,' said acting Associate Administrator for Air Traffic, Bill Jeffers." Rather than achieve equal opportunity by recruiting widely and hiring fairly, without regard to irrelevant characteristics, the Clinton administration prides itself on a process, driven not by equal opportunity, but by equal results.

When asked at a congressional hearing on June 27, 1995, whether the administration opposes quotas, the President's Attorney General said yes. Yet, when asked about the propriety of this FAA policy, the Attorney General refused to answer three times, hiding behind the President's ongoing, long-running Adarand review. There was no excuse for failing to repudiate the FAA's policy if this administration was serious about equal opportunity, rather than treating it as a political problem to be managed with euphemisms and dodges.

President Clinton's omnibus health care bill in the last Congress provides yet another example of how this administration really views preferences and has sought to foster preferences and reverse discrimination. The Clinton health care proposal would have given a national council power to set limits on the number of medical students in various specialties and would have allocated funding among various medical training programs. The bill said that among the factors the national council must consider in allocating specialty slots is,

. . . the extent to which the population of training participants in the program includes training participants who are members of racial or ethnic minority groups, [and] with respect to a racial or ethnic group represented among the training participants, the extent to which the group is underrepresented in the field of medicine generally and in various medical specialties.

It was not enough, then, that the medical school comply with title VI which bans racial and ethnic discrimination in programs receiving Federal aid. It was not enough to recruit widely for applicants. The Clinton administration wanted to tell medical schools that the more members of a particular group they enroll, the more likely it is that they will get a financial allocation. How many members of the groups? The bill did not say, a new twist on preferences and their encouragement. Mr. President, if you were a rational medical school administrator competing for scarce Federal dollars, and this bill had become law, how

would you react? Would you simply recruit widely and then select medical students on the basis of merit and talent, without regard to race or ethnicity? Or would you make sure that race and ethnicity play a role in the selection of students, as well? This is a financial incentive for preference.

The revised Clinton health bill, S. 2357, introduced in August 1994, actually added women to racial and ethnic groups in this preference provision. Of course, Federal law since 1972 already bans discrimination against women in federally assisted education programs. Instead of relying on our non-discrimination laws which were written to protect these people and relying on recruitment of the right kind, the Clinton administration actually made this provision more preferential than it was less than a year before.

If President Clinton is so concerned about fairness and doing the right thing, I respectfully suggest that, as a first step, he ought to stop doing the wrong thing.

There are a number of other examples. Let me mention the Podberesky versus Kirwan case.

In addition to need-based financial aid, the University of Maryland at College Park [UMCP] offers two merit-based scholarships. No. 1, the Banneker scholarship, is for black students only. Podberesky, a Hispanic student, applied for a Banneker scholarship. Although he met the minimum requirements, he was turned down because he is not black. He is Hispanic.

The Department of Justice defended the program as a remedy for the present effects of past discrimination in Maryland's public higher education system. The district court ruled for the university, but the fourth circuit reversed and granted Podberesky summary judgment. The fourth circuit said that the university did not have sufficient evidence of present effects of its prior discrimination to justify a preference in its scholarship program, and, in any event, its effort is not narrowly tailored to serve its purported remedial purpose.

Instead of justifying this reverse discrimination, the Clinton administration should be fostering race-neutral financial aid policies.

When the California regents ended reverse discrimination in their policies in the California State university system, how did the Clinton administration respond? The President's Chief of Staff, Leon Panetta called it a terrible mistake. The Clinton administration sought to bully California and perhaps intimidate others. It initially threatened a possible cutoff of Federal aid and Federal contracts. Mr. Panetta, referring to the California universities' Federal aid, said, "Obviously the Justice Department and the other agencies are going to review the relationship." The President's chief civil rights enforcer, Assistant Attorney General Deval Patrick, called this policy of equal opportunity a shame. He called it

unwise. In a statement that only George Orwell could have loved, the Clinton administration's chief civil rights enforcer condemned the California Regent's action as an abandonment of "the ideals that have been with us since our founding as a nation."

This is another example of how the President does not get it: The California Regent's new policy is a step that reflects our Nation's ideals. If the President was truly concerned about fairness, equal opportunity, and against reverse discrimination, he would have supported Gov. Pete Wilson and the California Regents. Nothing better sets out the starkly different visions of this administration and those of us who believe in equal opportunity for all Americans than the Clinton administration's attempted bullying of California on this matter. Nothing better belies this administration's claim to be reformist—though the administration may tinker here and there, it is essentially a defender of the status quo.

This administration is fostering preferences in mortgage lending and property insurance through groundbreaking misuse of fair housing and fair credit laws. The then acting director of the Office of Thrift Supervision has even questioned some of these tactics.

The President, in undertaking his review of affirmative action, reminds me of the French Police Chief in the movie "Casablanca" who pretended not to know gambling was taking place in the nightclub he frequented. President Clinton would apparently be shocked, shocked to learn that reverse discrimination is openly, knowingly, and tenaciously fostered and defended by his administration in practice. Even now, I believe the Clinton administration is working hard to devise ways of perpetuating as much preference as possible, giving up just enough to make it seem as if they are doing something about it. Even then, as I will explain in a moment, the administration is attempting to mislead the American people.

President Clinton is out of touch with mainstream America on the issue of equal opportunity.

Mr. President, it is not enough to nibble at the edges of a problem.

The administration has announced its suspension of one of the preference programs operated by the Federal Government. This is a contract set-aside program operated at the Defense Department, the so-called rule of two program. I approve of this small, first step, but it is so much window-dressing thus far in the administration's review. Indeed, after making a large public relations splash about the suspension of this program, the Department of Defense made a much quieter announcement in the Federal Register on December 14, 1995. It proposed a new preference for awarding certain contracts by adding 10 percent to the total price of all offers other than those from small minority businesses.

And, shortly thereafter, the Clinton administration filed a brief in the

Dynalantic Corp. versus Department of Defense case, which tenaciously defended racial contract preferences generally and under the section 8(a) program.

The President may suspend a few more programs that represent the worst abuses. But, Mr. President, one cannot split the difference on the principle of equal opportunity.

There are numerous preferential programs and policies operated by the Federal Government, a number of which the President can abolish. For example, he could eliminate the use of numerical racial, ethnic, and gender employment goals for Federal contractors. Executive Order 11246 requires Federal contractors to undertake affirmative action to ensure non-discrimination. It does not require numerical goals. Numerical goals are a bureaucratic creation which the President could end with a stroke of a pen.

The section 8(a) contract set-aside program at the Small Business Administration is another example. Section 8(a) is intended to assist small businesses owned by socially and economically disadvantaged persons. The statute defines a socially disadvantaged person as someone who has been discriminated against because of racial, ethnic, or cultural bias. But the SBA regulations require that members of some racial or ethnic groups be presumed to be socially disadvantaged. All others seeking entry into the 8(a) program must prove they are socially disadvantaged. The President should order the deletion of this preference. All American small businessowners should have an equal chance to compete for 8(a) contracts.

Moreover, aside from these three areas, there are many other Federal policies and programs that contain preferences. What does the President intend to do about them?

What is the President's action really about? The answer seems to lie in the candid remark of an administration official, cited in the May 31, 1995, New York Times. In that story, the New York Times reported that "an administration official said there might be some political benefit if black business executives criticized the Administration's eventual proposals. 'We want black businessmen to scream enough to let angry white males understand we've done something for them,' said the anonymous official."

Indeed, President Clinton went to California over the Labor Day weekend and claimed credit for Congress' repeal of an FCC racial preference in the selling of broadcast properties earlier this year. His administration, of course, resisted repeal of that preference, and then wanted it modified, not repealed. His own spokesman had to acknowledge as much. And, as I mentioned earlier, in December, his administration recently proposed a brand new preference at the Department of Defense and continues to defend other preferences.

Let me conclude with the words of Prof. William Van Alstyne, in a 1979 law review article:

... one gets beyond racism by getting beyond it now: by a complete, resolute, and credible commitment never to tolerate in one's own life—or in the life or practices of one's government—the differential treatment of other human beings by race. Indeed, that is the great lesson for government itself to teach: in all we do in life, whatever we do in life, to treat any person less well than another or to favor any more than another for being black or white or brown or red, is wrong. Let that be our fundamental law and we shall have a Constitution universally worth expounding.

This is "Rites of Passage: Race, the Supreme Court, and the Constitution:" in the Chicago Law Review. I have to say I fully agree with that.

Mr. President, this is an important set of issues. We cannot ignore them. We are going to divide this country more than ever if we keep doing this system of preferences that has been going on in this administration and, alas, unfortunately, in some prior administrations as well. I hope that we can do a lot about this. I hope that we will make headway against these preferences and these inappropriate treatments of fellow American citizens as we move on into the future.

I hope the administration will pay attention to some of the things that I have brought up here today.

THE UNTIMELY DEATH OF SECRETARY OF COMMERCE RON BROWN

Mrs. FEINSTEIN. Mr. President, I would like to comment briefly on the tragic death of Secretary of Commerce Ron Brown, which occurred last week in Croatia.

I have known Ron Brown and his family for 12 years. Ron was a friend of mine, and a friend of the State of California. One of his first duties as Commerce Secretary was to find ways to resuscitate California's economy, and he helped to do just that. Ron Brown made the Department of Commerce a positive force for helping the largest State in the Union recover from the devastating recession of the early 1990's.

Ron had a vision of a prosperous America, where the cliché that "a rising tide lifts all boats" could actually come true. He focused his Department and this administration on looking for opportunities to help the American economy make the transition from the era of heavy industry to an era of high technology, scientific innovation, and the advancement of the current revolution in communications.

Ron helped formulate this vision, made sure that his Department gave grants and other forms of assistance to firms pursuing it, and at the time of his death was advocating that vision to other parts of the world.

But even more important than his career was the man himself. Always upbeat, with ceaseless energy, Ron

could persuade the most vehement skeptic of the value of his vision and efforts for our country. He served in a variety of roles, and in each he excelled. His days as an effective leader with the National Urban League demonstrates this, where he became deputy executive director, general counsel and vice president of the Urban League's Washington, DC office.

Ron Brown's boundless energy and commitment to excellence did not stop at the National Urban League. It continued to help him break racial boundaries and become the first African-American to head a major political party, helping to elect the country's first Democratic President in 12 years; the first African-American to become a partner in his powerful Washington, DC law firm; and the first African-American to take the helm at the U.S. Department of Commerce.

I know of no chairman of the Democratic National Committee who was better regarded, whose fundraising calls were more frequently returned, or whose hardships and public statements were more well regarded—Ron Brown was tops.

In my view, Ron Brown's stewardship as Secretary of Commerce was unparalleled. He truly cared about his work and those the Department serves, and the record reflects accurately billions of dollars in trade and new business that will, in the future, benefit this country's businesses and industrial base.

I find the circumstances of his untimely death to be particularly poignant. Here he was, leading a group of business people and his staff, on a mission of peace to the war torn land of the former Yugoslavia.

He did not wait for peace to be restored. He went when risks of hostile action were still present. He did not wait for pleasant weather before springing into action. And, he did not just work on economic issues. He also spent time with our troops over there, to let them know we support their efforts.

Mr. President, we have lost a great American in Ron Brown. Whether it was politics, or crafting legislation for the Senate, or civil rights, or military service, or being a husband and a father, Ron Brown was a great patriot, and a great human being. I shall always treasure the relationship he and I had, and I shall miss him terribly.

To Alma Brown and Tracy, who have traveled with me in the campaign, I send my heart and prayers. With all his family, I share an unrelenting emptiness and sadness. I will miss the phone calls, the smile, the exploits from progress, and, most of all, his abiding and consummate belief in all of us.

LUCIUS WADE EDWARDS JULY 18,
1979–APRIL 4, 1996

Mr. HELMS. Mr. President, on March 14 of this year, one of the most impressive young men I have ever met came

to my office, accompanied by his justifiably proud mother. Lucius Wade Edwards, 16, had just come from the White House. He had visited with First Lady Hillary Rodham Clinton who praised him for having been 1 of the 10 finalists in a contest sponsored by the National Endowment for the Humanities and the Voice of America.

His father, John R. Edwards; his mother, Elizabeth Anania Edwards, and his younger sister, Kate, accompanied him to the White House living quarters for his visit with Mrs. Clinton.

Wade was being honored for his having written a poignant essay entitled, *What It Means To Be An American*. Wade described going with his father to vote.

It was, as I said at the outset, Mr. President, March 14, 1996, when Wade and his dear mother stopped by my office. Three weeks later, on April 4, Wade died in an automobile accident that involved no carelessness, no recklessness, no failure to wear his seatbelt. It was just one of those tragic things that happen, and it snuffed out the life of this remarkable young man.

Mr. President, in a moment I shall ask unanimous consent that two important insertions into the RECORD be in order. The first will be the text of the award-winning essay written by Wade. It is entitled "Fancy Clothes and Overalls."

The second is an account, published in the Raleigh News and Observer on April 4, 1996, relating to the tragic death of Wade Edwards.

I now ask unanimous consent, Mr. President, that the two aforementioned documents be printed in the RECORD at the conclusion of my remarks and in the order specified by me.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FANCY CLOTHES AND OVERALLS

(By Wade Edwards)

A little boy and his father walk into a firehouse. He smiles at people standing outside. Some hand pamphlets to his father. They stand in line. Finally, they go together into a small booth, pull the curtain closed, and vote. His father holds the boy up and shows him which levers to move.

"We're ready, Wade. Pull the big lever now."

With both hands, the boy pulls the lever. There it is: the sound of voting. The curtain opens. The boy smiles at an old woman leaving another booth and at a mother and daughter getting into line. He is not certain exactly what they have done. He only knows that he and his father have done something important. They have voted.

This scene takes place all over the country.

"Pull the lever, Yolanda."

"Drop the ballot in the box for me, Pedro."

Wades, Yolandas, Pedros, Nikitas, and Chuis all over the United States are learning the same lesson: the satisfaction, pride, importance, and habit of voting. I have always gone with my parents to vote. Sometimes lines are long. There are faces of old people and young people, voices of native North Carolinians in southern draws and voices of naturalized citizens with their foreign accents. There are people in fancy clothes and others dressed in overalls. Each has exactly