

The articles follow:

[From the New York Times, Mar. 22, 1996]

#### BAD LAW ON AFFIRMATIVE ACTION

For two decades the governing principle of affirmative action in higher education has been that race and ethnicity may be a factor, but only one factor, in choosing among applicants in pursuit of the legitimate purpose of a diverse student body. That was the judgment of the Supreme Court in the celebrated 1978 case of Allan Bakke, a white applicant who sued for entry to a California state medical school.

Now a panel of the U.S. Court of Appeals for the Fifth Circuit declares that the Bakke decision is no longer good law. In a lawsuit by four rejected white applicants, the court strikes down a program of the University of Texas Law School to bring more blacks and Mexican-Americans into its student body. This tool is impermissible, say the judges, "even for the wholesome purpose of correcting perceived racial imbalance in the student body."

The ruling is hasty, aggressively activist and legally dubious. If the Bakke decision is no longer the law, it is for the Supreme Court to say so. We hope the high court does not, for its basic rule is sound. Rigid racial quotas are out, but no serious educational institution should be forced to disregard the goal of educating a diverse population.

To reach this result, the appeals judges engaged in exotic reasoning. They found that a now-retired Justice, Lewis Powell, who announced the judgment in Bakke, spoke only for himself on the racial diversity question. It is true that he was joined in the judgment by four other justices who relied on different legal grounds, but Justice Powell's announcement has soundly been regarded as the rule of the Bakke case for nearly a generation. Moreover, it has been widely hailed as the work of a respected moderate well grounded in experience as head of the school board in Richmond, Va.

Texas higher education officials have commendably sought diversity, but they cannot fairly be accused of adhering to rigid quotas. The diverse statewide population is 11.6 percent black and 25.6 percent Hispanic; while the 1992 law school entering class was 8 percent black and 10.7 percent Hispanic. Yet the appeals court says the school may not use "ethnic diversity simply to achieve racial heterogeneity, even as part of the consideration of a number of factors."

That is the doctrine of a "color-blind" Constitution, but it speaks to a time not yet here when the historic stain of racial oppression is erased, competition is truly equal and diversity comes more naturally. As another former Justice, Harry Blackmun, observed in the same Bakke case, "In order to get beyond racism, we must first take account of race. . . . And in order to treat some persons equally, we must treat them differently. . . . The ultimate question, as it was at the beginning of this litigation, is: Among the qualified, how does one choose?"

The appeals court judges, eager to be the first to declare the battle for equal right over, have rendered a judgment that should not stand.

[From the New York Times, Mar. 22, 1996]

#### HANDCUFFS ON LEARNING

(By Anthony Lewis)

SAN DIEGO.—Universities around the world came to understand long ago that the quality of education improved if they had students with varying life experiences. That is why Oxford colleges sought working-class students. It is why Harvard, Yale and Princeton are far better universities today than when they were confined largely to privileged young white men.

In the life of Americans, race is a profound factor. Blacks may be bright or dull, rich or poor, but their experience in life has been different from whites'. And so, long before the phrase "affirmative action" was invented, universities thought it wise to have students of varied racial backgrounds.

The freedom of American universities to consider race along with other factors in choosing students has just been struck a devastating legal blow. It came in the decision of the United States Court of Appeals for the Fifth Circuit in the case of Hopwood v. Texas.

The University of Texas Law School some years ago had what amounted to a segregated admissions process. Minority applicants were considered by a separate committee and on different standards.

Cheryl Hopwood and other rejected white applicants sued, claiming that that system denied them the "equal protection of the laws" guaranteed by the 14th Amendment. The Fifth Circuit, ruling in their favor, could have limited itself to the particular admissions process at issue. But it went much further.

The court said that the Texas law school "may not use race as a factor" in admissions. It did not speak of a dominant or even significant factor but outlawed consideration of race as any factor at all. Moreover, in an extraordinary display of hostility, the court left the way open for the plaintiffs to collect money damages for what it said was "intentional discrimination."

The Equal Protection Clause of the Constitution, which the court found violated, applies only to state action. But private universities may also be affected. Civil rights laws forbid racial discrimination at private universities that receive any kind of Federal aid—and nearly all do.

The ultimate danger is to the freedom of American universities. The Fifth Circuit treated this case as if it were the same as the Supreme Court's recent decisions limiting set-asides for minority contractors and broadcast licensees. But education is different. Its freedom in decisionmaking—an urgent need in our society—has to be weighed against the rightful claims of equal protection.

Reading the Fifth Circuit's opinion, by Judge Jerry E. Smith, one feels a sense of detachment from reality. For instance, it rejects as racist the assumption that an individual "possesses characteristics" because of his race. Right. But the issue is not characteristics. It is experience. And any judge who thinks black Americans have not had a different experience is blind.

Think about women judges or Supreme Court justices. They are not wiser or less wise by virtue of their gender. But they have had a different experience from men, and that is why it is important to have them on the bench.

The reality of university admissions, as opposed to the mechanical abstractions of the Fifth Circuit decision, is on display here in California. Gov. Pete Wilson, playing to white male resentment, pushed through the Board of Regents a rule forbidding the use of race or gender as a factor in admissions to the University of California.

Now it turns out that regents who voted for what they called "merit" admissions had leaned on the University of California at Los Angeles to admit the children of friends. An investigation by The Los Angeles Times shows that U.C.L.A. gave special consideration to children of politicians and the rich.

In other words, we have affirmative action for the privileged. But not for the race that was enslaved for 200 years and abused for another 100 and more.

Universities, in their freedom, can increase understanding across the racial lines in this

country. Unless the Supreme Court undoes this assault on their freedom, we are going to be an even more divided society. ●

#### THE RECENT BOMBINGS IN ISRAEL

Ms. MOSELEY-BRAUN. Mr. President, I would first like to congratulate President Clinton for his leadership at the "Summit of Peacemakers" conference which was recently convened in Egypt. I salute the President and the other world leaders who gathered in Sharm El Sheik for their avowed support of the Middle East peace process and their strong showing of international solidarity against terrorism.

I also want to extend my heartfelt sympathy and condolences to the families of those murdered in the recent terrorist attacks in Israel. May the Almighty comfort them among the mourners of Zion and Jerusalem. As the Nation of Israel mourns the loss of its sons and daughters, I pray that the story of Purim will serve to comfort the entire family of Israel and give it hope, knowing that God will deliver the Jewish people today as in the past.

Mr. President, I condemn in the strongest of terms the barbarous acts of organized and random terrorism against innocent Israeli civilians, including young children. Those responsible for these indiscriminate and cowardly acts of murder and violence must be held accountable for their actions and brought to justice. Their punishment must be swift, decisive and thorough, not only to serve as a deterrent, but as a reminder that the world community will never allow the evils of terrorism to triumph over the forces of peace.

I call upon the peace and freedom loving peoples of Gaza, the West Bank and the Arab world to condemn outright these heinous acts of barbarism allegedly committed on their behalf and in their name. These acts do not further Palestinian interests nor, I believe, do they represent the sentiments of the overwhelming majority of the Palestinian people. I further enjoin them to outlaw, expose, disarm and arrest members of paramilitary organizations within their midst and to deny them sanctuary and safe haven. Their presence and actions are a threat not only to the State of Israel, but also to the Palestinian self-rule national authority in the West Bank and Gaza.

Mr. President, we can no longer afford to look at terrorism and suicide bombings in Israel—and in other parts of the world—as a distant danger. The bombing of the World Trade Center in New York City in February 1993 and the bombing of the Federal building in Oklahoma City last April have shattered our false notions of security. Anti-terrorism units, swat teams, and bomb squads train with the same intensity and seriousness of purpose as sprinters, long distance runners, swimmers, and gymnasts in their preparation for this summer's Olympic games in Atlanta. In truth, every act of terrorism—in Israel or elsewhere—strikes

at the essence of all free, democratic and open societies. Our disagreements are dealt with civility and without violence or the threat of violence.

With each terrorist threat against the Government, our citizens lose a measure of their freedom. When an American seeks to exercise even the most basic of rights—renewing a driver's license, boarding an airplane or picking up documents at a government building—he or she is often subject to a thorough search of his or her person and property. Even the street in front of the White House—the people's house—has been closed and street traffic rerouted. Moreover, streets around the House, Senate and Capitol buildings have been blocked-off and barricaded. All of these measures have been done because of our heightened sense of vulnerability to terrorism. The humiliation and inconvenience that these situations present are mitigated only by the American people's acquiescence and realization that such practices are unfortunately necessary in today's world. But it does not have to be this way, and we must not become accustomed to the threat of terrorism. To the extent that we refuse to accept it, to the extent we refuse to be desensitized to violence, we will invigorate the will to fight it.

The most recent bombings in Israel have also had a direct impact on my home State of Illinois. The celebration of the Jewish holiday of purim is traditionally one of the more colorful festivals in the city of Chicago. Children are dressed in costumes, friends exchange gifts and there is laughter and merriment. However, as events of yet another suicide bombing in Israel unfolded, grief, anxiety and depression replaced joy, laughter, and merriment.

The juxtaposition of bombs and purim provides a context for understanding how we can draw inspiration and strength from history. Just as the Jews in Ancient Persia responded to danger with prayer and courageous action, so too must we. Mr. President, I, for one, am tired of lighting candles, attending memorial services and waiting for news of the next terrorist attack. It is time for us to be proactive and not merely reactive. We must declare all-out war against terrorism and terrorist organizations and take the fight to them wherever they exist—at home or abroad. We must make it clear to terrorists, their organizations, and the countries which sponsor and harbor terrorists that their actions will not produce the desired result—the interruption or abandonment of the peace process—and that the United States and other nations will no longer permit their actions to go unpunished.

There must be a recognition, however, that terrorism cannot be defeated through unilateral action alone. World leaders must understand that it is in every country's interest to have this menace eradicated from the face of the Earth. Unless and until serious anti-terrorist actions are implemented

internationally, including the denial of safe haven and sanctuary for perpetrators of terrorism, we can expect more, not fewer, incidents like we witnessed in Israel these past 2 weeks.

Mr. President, we, the inhabitants of this planet, are one family. While differences and disputes are unavoidable, I believe all problems, no matter how intractable they may seem, are soluble. Peace and negotiations are not just the answer—they are the only answer.●

#### GENE R. ALEXANDER

● Mr. SIMON. Mr. President, I want to commend and congratulate Mr. Gene Alexander of Benton, Illinois. On April 25, 1996, the school library at the Benton Elementary School will be dedicated as the Gene R. Alexander Learning Resource Center. Mr. Alexander was a teacher and principal in the Benton School District for 32 years.

Now that he has retired, "Mr. A." spends his free time volunteering for these same children. He does everything from cleaning school desks to teaching children about the American flag. His commitment to these children is inspirational.

We need more leaders like this and having a library dedicated to him is a fitting tribute. I want to commend Mr. Alexander on his hard work and his lifetime of dedication to the children that he serves.●

#### REFORM OF OUR TAX CODE

● Mr. SANTORUM. Mr. President, I wanted to take a few minutes to talk about the tax burden that American families feel today and the drastic need for fundamental and comprehensive reform of our Tax Code.

During our brief break from legislative business over the past 2 weeks, I had the opportunity to visit with constituents in various communities in my State to discuss the effects of Federal tax policies on families. Quite clearly, the tax burden over the past few decades has greatly increased; the inequities of the Code have been exacerbated; and the incentives for savings have largely diminished. If it was anything that I heard during the course of nine town meetings, it was the demand for a fairer, simpler tax system and an even greater demand by taxpayers to keep more of what they earn.

As a Member of the House of Representatives, I served on the Ways and Means Committee, which has jurisdiction over tax legislation. I recognize that our current system of taxation is burdensome and intrusive, and I think we are all aware how complex our system is, given the large amount of time Americans spend in computing and filing their taxes each year.

On Monday, I had the pleasure of traveling through Pennsylvania with Senator SPECTER, along with our Governor, Tom Ridge, as we hosted the distinguished majority leader, Senator BOB DOLE. The significance of traveling

across my State on tax day brings with it a renewed commitment to fight for Federal policies addressing and correcting not only the many inequities in our system, but demanding a fundamental reexamination by this Congress of the Federal Tax Code as a whole.

I strongly believe that Congress must continue to explore comprehensive simplification of our Tax Code. Several of my colleagues have introduced legislation to institute various alternative tax systems as well as proposals to provide varying degrees of tax relief to American families. To reaffirm this commitment to tax fairness, I am pleased today to join Senator DAN COATS as a cosponsor of his legislation to provide not only for middle-class tax relief, but also to encourage increased personal investment and savings while balancing the growth of Federal spending in general.

This Congress, as a direct result of the Republican majority, has come as close as a veto pen to enacting tax fairness for American families—fairness and relief that many would have realized in preparing their tax returns by Monday evening's filing deadline. A year after the political battle over tax relief and a year later on tax day, the same challenges and needs remain in devising a tax structure that provides greater balance, incentives, and benefits to American families and taxpayers. These next few weeks in the Senate are critical and serve as another opportunity to readdress, pass, and finally enact these changes.●

#### HONORING BRIAN PALMER HAFLER

● Mr. KERRY. Mr. President, I would like to take a few moments to acknowledge a very talented and promising resident of Massachusetts, Brian Palmer Hafler. Brian was chosen as a seventh place winner in the prestigious Westinghouse Science Talent Search, a national competition that recognizes the outstanding math and science achievements of high school students aged 16 to 18. Brian was recognized for his research involving T cells, research that may be instrumental in the future treatment of autoimmune diseases.

After graduation from the Roxbury Latin School, West Roxbury, MA, Brian intends to continue his scientific research as a molecular biology student at Princeton University. In addition to his scholarly accomplishments, Brian has won varsity letters in wrestling and cross country, numerous academic awards, and a service award for his work in tutoring inner-city students.

I applaud Brian on receiving the Westinghouse Science Award, and wish him success in his future endeavors.