

## **CIVIL RIGHTS: ARE WE ALL INCLUDED?**

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### INTRODUCTION: Roger Pilon

Good afternoon. My name is Roger Pilon. I'm a senior fellow at the Cato Institute and it's my pleasure today to welcome you here to what will prove to be, I'm sure, a very interesting, perhaps even provocative, discussion by Bill Allen.

We're delighted to have Bill with us. We are not in the least surprised, but delighted as well, that he has packed the room. It may be a little uncomfortable as people continue to come in and have to stand, but in another couple of years our new building will be built with state of the art auditorium and then we can probably have Bill back, if he has survived the political battles between now and then, and he will then be able to pack us all in in state of the art and more spacious surroundings.

Bill has been a member of the U.S. Commission on Civil Rights since April of 1987. He was appointed Chairman by President Reagan in August of 1988. He is a professor of government at Harvey Mudd College in Claremont, California, where he has taught since 1972. He has during that process fought many a battle, been at the academic barricades for many years and demonstrated once again the insight that Henry Kissinger left with us that the battles are so fierce in academia because the stakes are so low. He is now in government where the battles are probably no less fierce but the stakes are a little more substantial.

Bill has taught at American University. He has been a lecturer and a Fulbright Fellow at the University of Rouen. He has been a Liberty Fund Bicentennial Series advisor, member of the National Council of the Humanities, and a Kellogg National Fellow. Something I did not realize is that Bill has served as the President of the Board of Education of the Claremont Unified School District and was a consultant to the Whittier Union High School District and the city of Pomona, California.

He served as one of two chairmen of the California branch of Scholars for Reagan, demonstrating beyond venture of a doubt that Scholars for Reagan is not an oxymoron.

Bill was born in Florida; he took his B.A. from Pepperdine College in 1967, his master's degree and his doctorate from the Claremont Graduate School.

It's a genuine pleasure for me to welcome Bill here and to invite him to discuss the subject for today, which is "Civil rights policy: Are we all included?" Would you join me, please, in welcoming Bill Allen.

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Thank you for that lovely introduction, Roger. I, however, was somewhat apprehensive about the invocation of the future with respect to what might occur two years from now. And particularly since you did so in a manner that put in doubt the prospects of my survival. Even if it were the case that I could survive two years of the kinds of struggles that Roger has outlined, it would be much to be doubted whether I would be sane were I willingly after that time to return to them.

And yet, civil rights is one of those kinds of questions that we often find ourselves confronted with willy-nilly, and having to deal with whether we like it or not. And I recall, when the Reagan administration came into office eight years ago, I dropped off a note, a memorandum, to Lyn Nofziger and a few other people in which I described to them how they should approach the question of civil rights, in my view, thinking that it would never suffice merely to declare some principles or propositions to the country, given the history and the intensity that would be associated with civil rights questions. So I proposed to them that they take a person or persons whom they could install, perhaps in the Justice Department, whose entire mission would be to carry the Reagan challenge to the various affected constituencies and with the purpose in mind of persuading them that whatever it was that the administration was coming to propose would work. And that they take such a frontal approach as the best way to deal with lines of communication and those channels of involvement that would create any opportunity, if there were to be opportunity, for success in this regard.

Well, my advice was regarded with the attention appropriate to the price tag it bore and you know the story that has unfolded since that time. One of the ironies is that I had formed the opinion and impression that civil rights was perhaps one of the last things in the world I ever wanted to have anything to do with. For various, I suppose, obvious reasons, the history of racial strife in our country is at best ugly and it certainly cannot be a source of attraction for the ordinary intellect, as I at least conceived it, to want to have to deal with such problems and questions. It seems to me that it's almost a measure of one's health that one wants to deal with such things only to the extent that they are imposed, that it is a matter of obligation that one simply cannot duck. And after spending the first several years of this past administration keeping a complete distance, apart from that initial memorandum, there was perhaps no one more surprised than I when I said yes, in 1987, to the Commission on Civil Rights.

I'm not sure today entirely why I said "Yes," apart from the fact that Penny asked me. But I do know that since the time I said yes, I've spent a good deal of time thinking about civil rights in the United States. Which is not to say I didn't think of it before. But my thought is certainly far less academic now than it has always been heretofore. I'm one of those people who defend academic thought, so I don't say that to belittle it. I believe some of the most valuable work we have in terms of understanding ourselves has been produced in the academy by people who spent full time on the job at their research and their teaching. We saw this, of course, quite recently in a dramatic way (at least the impact that academic thought can have) when the Supreme Court in *Richmond v. Croson* delivered its opinion last Monday. There Justice O'Connor largely implemented an argument that was provided to her by Drew Days III, in an essay written in the *Yale Law Review* two years ago.

Now the significance of that is, of course, not really that it was academic, though Mr. Days is now an academic. He was of course the Assistant Attorney General for Civil Rights in the Carter administration. What is more, it was he who presented the government's argument in the case *Fullilove v. Klutznik* and thus his essay two years ago was a reconsideration, to some extent even a recantation, of the argument he presented in *Fullilove*. He does not apologize for doing the work that an attorney is expected to do; he represented his client. And he won, back in 1979. But in 1987 his impression was that that victory had come too easily and too cheaply. And therefore he elaborated an argument that maintained, effectively, that we've got to be more careful in the United States about the way we resort to race. We must at least fence in, hedge in, states and municipalities. For our history persuades us that their ready and frequent resort to race is subject to substantial abuse. And following out that line of argument last Monday, Justice O'Connor struck down the 30 percent set-aside program in the City of Richmond, largely on the rationale provided by Drew Days.

Now when you think about that relationship, it's certainly ironic because in the aftermath of the opinion, our press and many of those of us who have been commentators have been focused on the threat to affirmative action, the threat to racial preferences, the threat to set-asides in the decision; I don't know that I've heard anyone yet refer to the significance of the fact that this opinion was inspired by a man who said explicitly his purpose was to secure affirmative action by drawing the line in this manner. This is an indication of how troublesome the policy aspects of civil rights can be.

And then of course there are the political aspects of civil rights. We have a Commission on Civil Rights in the United States. We don't always know what it's supposed to do—meaning we citizens, meaning sometimes even we public officials. It's a matter of great debate right now. There was a recent report issued by the Citizens Commission for Civil Rights, which consists by and large of the fraternity of alumni of the Commission on Civil Rights and other related persons, most of them substantial people, people who have contributed much over the course of the past twenty-five years to our country's development in this respect. They of course address the whole spectrum of civil rights enforcement issues and not merely the Commission on Civil Rights. But they also spoke about the Commission. They made recommendations as to how it should be treated in the present administration, the most significant of which were that the Commission should be reconstituted, should again become a Presidentially-appointed Commission with Senate confirmation; and secondly that the Commission should once again enjoy the prestige that Presidential recognition would bring to it.

When I contemplate how in the old days commissioners were appointed, greeted and entertained by Presidents, it becomes much easier for me to understand why it is the Commission had the kind of impact it did in the 1960s, in the production of the Voting Rights Act and similar ventures. It is certainly the case that the struggles of the past eight years have precluded that degree of interaction and authority. Nevertheless, we still have a Commission. It doesn't look the way it used to look. It has a built-in dissenting function which pretty much produces a standstill given its present constitution, and indeed our most recently appointed Commissioner still awaits a formal swearing in at the hands of the President, a Vice President or just about anybody. So there's work to be done.

There's also work to be done on the political front in simply bringing people to recognize the importance of abiding by the forms. There are, after all, these eight public officers who are in office and who have an official responsibility and some of whom at least may even be talented. And it stands to reason that one should expect our government to pay at least formal heed to their existence. We find it very difficult, I do personally, even to get an acknowledgment, for example, from the present Attorney General of the United States that the Immigration Reform and Control Act of 1986 requires him in association with the Chairman of the EEOC and the Chairman of the Commission on Civil Rights, to appraise the enforcement of the antidiscrimination provisions of the Immigration Reform and Control Act. It's easy for a citizen who nevertheless happens to capture much in the way of publicity, to gain an audience with the Attorney General. It's very difficult for the Chairman of this Commission to get him to undertake our statutory obligations.

These are the kinds of things that obviously begin to structure for us a view of what the policy environment is looking like. We begin to raise questions even about the new Administration's agenda. We begin to wonder, "Are we going to enter a phase, an era, in which civil rights consists mainly of symbolic gestures and symbolic politics," or are we finally going to get down to work and address the real and substantial questions we confront in this country? I can give you innumerable examples of those; I'll content myself with very few to begin with.

We all are aware of the growing need to resolve the question of whether there have been instituted in institutions of higher learning, particularly selective institutions of higher learning, upper limits on the presence of Asian Americans. You will find a very informative discussion of this topic even in this month's issue of the *Yale Law Review*. The evidence is well-nigh irrefutable at this point that we have to deal with the question of an affirmative action designed as an instrument to create access having become an instrument, indeed a sword, by which some are eliminated or kept out, a sword which works for all the world just like the old Jewish quotas used to work in the 1920s and '30s. We want to know whether the agencies of the United States charged with the responsibility to review such things are doing so. We want to know whether the Office of Civil Rights at the Department of Education is taking seriously its obligation to guarantee that that kind of discrimination does not occur. We want to know whether in fact, assuming it occurs as the evidence suggests, it is a necessary result of seeking to expand opportunities for blacks and Hispanics or whether in fact it is occurring as a result of affirmative action now being turned to guarantee certain ratios of white students at those universities.

These are unsettled questions and they are unsettled in a way that should leave us unsettled about the state of the discussion on civil rights in the United States. We've just issued at the Commission our magazine *New Perspectives*. I should say reissued. It has been in hiatus for two years due to our severe budget cutbacks. We have now reestablished it. We have devoted this initial issue to NCAA rules, particularly Proposition 48. More recently you've heard of Proposition 42. We do not discuss that because that issue arose after we had completed the magazine. You will find in that magazine serious questioning about the operation of the NCAA as an organized cartel, closing opportunities to people who have worked hard and trained themselves to qualify for those opportunities, and having a disproportionate impact on disadvantaged youths. This is not a Commission opinion; this is a magazine. It's a journal of opinion. The people who write for it express their own views. But I've written one of the essays in which I've described the process as Rhodes handicapping, and by which I mean to say that the pretense that our ath-

letes are also our best scholars is operating in an invidious manner. It is alive both of course in terms of the claims for scholarship and in terms of the claims for athleticism, but worse than that, it means proscribing, closing the doors to opportunity for people often for whom there will be no other opportunity.

Now we raise those kinds of questions at the Commission on Civil Rights because we have been brought up, so to speak, to expect the resolution of civil rights problems in the United States to address the fundamental questions about polity, about civil order; questions of individual merit and rewards appropriate to merit; questions as to the treatment of classes of citizens when that treatment is in fact inconsistent with the guarantee of flexible and open institutions implicit in our Constitution. We raise these questions because in the United States these questions have never been closed. We raise these questions because we continue to be dedicated to the proposition that once these kinds of questions have been closed, we then can place complete confidence in the operation of American institutions themselves to guarantee prosperity and certainly to guarantee fundamental equity in the pursuits that individuals may undertake.

The policy agenda is a very long one. I'm going to assume that if we turn to questions and answers, you will be able to generate some specifics on policy areas that I have not mentioned and am not now going to mention in the course of these introductory remarks. But I do wish to highlight some of the broad questions that I've only indicated heretofore that remain to be answered, and to focus on what seems to me to be the crucial distinction we need to make: not so much what specific response will be given to these questions, but rather how shall we answer them. We know, to return to *Richmond v. Croson* for the moment, that the question of racial preference is somehow at the center of all talk of civil rights today. It would be better if we could say by civil rights that we meant simply equal rights of citizenship. We're not able to say that yet because we've not yet found the means for eliminating the concern with racial preferences. That says to me that there is a continuing conversation in our society, a need for a continuing elaboration of those principles that will assure us that we can get by and get on without implanting at the very core of our national being racial preferences. Now in order to carry on that conversation, we have to be willing to engage; we have to be willing to say we're all committed to the moral objective of a free society.

We're all committed to the realization of that equality vouchsafed in the Declaration of Independence. We all fervently believe that even today, in 1989, there are continuing indications of racial tensions and other difficulties, which can be generally described as civil rights problems, that we must focus on. We can all believe that and we can all believe it requires urgent attention, even as we disagree as to what the appropriate remedies are, and particularly even as we carry on the debate about the centrality of racial preferences.

Now, to show you the practical importance of that and then to close, there is today a line of debate as to whether the past eight years have not produced in the United States greater racial insensitivity. We understand characteristically the charges made that Ronald Reagan has somehow reawakened the sleeping beast of racism and thus when we see the outbreaks, which we must take very seriously on our university campuses and in our communities, that bring to mind all the old uglinesses that people had hoped were gone, we become concerned that if they are indeed the product of Ronald Reagan that we find a way to purge ourselves of them as quickly as possible. Yet, I ask you to bear in mind that there have been for a period far longer than the last

eight years warnings that we have heard in this society, warnings that we were undertaking practices that would produce such backlashes as we now see, warnings that we were applying as remedies tools which in the end would only further divide and embitter. And I ask us, if we are responsible, ought we not at least to pause before sinking our teeth into the comforting conviction that Ronald Reagan alone produced racism in the United States? Ought we not to pause and wonder whether perhaps those early warnings were true?

And if you think we ought to at least pause and wonder about that, then you will agree with me that we have no more urgent policy requirement than to review the remedies—not the purposes, not the goals, not the ends—but the remedies we have heretofore preferred. That is the kind of role that the Commission on Civil Rights has been created to fulfill.

Another area of concern, which I will mention now, for future reference, is that of the proper role of the tort—settlement and judgment in civil rights cases. I am troubled by the disturbing signs that our courts are not equally receptive and hospitable to all. Instead, some cases seem invariably to produce governmental intervention and regulation while other, similar cases yield substantial judgments or settlements. At no time in this century has any American black, for example, ever received on account of unconstitutional segregation like to the \$1.1 million awarded the Ray children. One might wonder about this not just because the disparate treatment is unfair but more compellingly still because the deterrent power of damages in the Anglo-American tradition far exceeds anything governmental regulation has ever produced! It is remarkable that this can have gone on for so long and never received any studied attention. Certain it is that such a topic should be on the Commission's agenda.

We also have more abstracted tasks. I've pointed out to people, in this year in which we have to reauthorize the Commission, and I pray that it will be reauthorized—I assure you. My conviction is utterly unshaken that we still require it. That there is work to do of a variety I have already described and additionally there is the simple, eggheaded, laborious task of telling us what our civil rights are. Most of us have no idea. We have passed nearly 150 statutes or amendments without even pausing to review them, since 1875. No one has passed a comprehensive eye over the entire edifice of regulations and statutes. There are among them mutual contradictions. There are certainly confusions, verging sometimes on chaos. It is time for recodification of our laws. And there is perhaps no more fit agency to undertake that purpose than the Commission on Civil Rights. Were it to do so, of course, it would have to be in the context of a broad social discussion in which all acknowledge the sensitive issues at stake, the sensitive interests to be affected and the principles consistently to be kept in mind. I believe it can be done. I believe there is the willingness, certainly at the Commission, in this government, and above all in this country, to do it if we only first take the step, form the resolve that we want to get on with the work of making civil rights an historical term in the United States.

I'd be glad to take any questions you might have.

Q: Could you speak for a moment on the tone that has been set by President Bush vis-à-vis the outgoing remarks by President Reagan on civil rights leaders?

CHAIRMAN ALLEN: Well, I would not purport to speak on behalf of the President. I think that he's capable of doing that himself. I will say to you, however, that it seems to me Mr. Bush has

made clear that he wishes to chart his own course; he wishes to form his own reputation; and I believe we owe him the opportunity to do just that.

Q: On civil rights, though, has he spoken with you or given you any sort of signals? And when I ask you about Reagan maybe I could expand a bit. President Reagan left in his last week basically with a parting blow to civil rights leaders saying that they were scamming or trying in some way to benefit financially from their positions at the heads of these organizations; also they perpetuate notions of racism that do not actually exist. By contrast, Mr. Bush in talking about his kinder, gentler nation and speaking out on equality on a number of occasions, such as his inaugural address, but even during the transition, has seemed to set a different tone. However, he has been very unspecific vis-à-vis the civil rights agenda. Do you anticipate, you mentioned in your remarks, that there could perhaps be a Presidentially-appointed Commission with Senate confirmation—do you anticipate that Bush would elevate the stature of the Civil Rights Commission, or perhaps work to get more federal funding so that you won't be hand to mouth, or in some way help you pursue this agenda which you say is fairly large and yet unfulfilled.

ALLEN: I would certainly urge it upon the President to give greater attention to the Commission on Civil Rights. No, I have not heard from the President; I have not spoken with him.

With respect to your broader question, you know, there's probably nothing more common in the politics of our country than for us to resolve the motivations of people into their interests. No matter what the issue is. It's almost a reflex for us Americans to attribute whatever people decide to do to some interest, seen or unseen, that they have. The press does it routinely; politicians do it routinely; and the people do it routinely. I approach that question by reminding myself constantly of the argument set forth in the first Federalist Paper. When Alexander Hamilton explained to his countrymen that, yes, I am a supporter of this constitution but my motivations are hidden within my own breast. Why? Not because I try to keep them secret, but because in the nature of things human motives are always secret. We cannot resolve the motives of those who support or oppose questions into interests because we cannot know their motives. We have to assume that people will end up on the right side of questions sometimes for the wrong reasons, and that they will end up on the wrong side of questions sometimes for the right reasons. And assuming that, we are then left with nothing but to focus on the questions themselves. Being unable to know their motives, we can at least judge how the question stands.

Q: I read today that the Attorney General has evidently given a veto to Jesse Jackson on the appointment of Assistant Attorney General for Civil Rights. It was my understanding Mr. Jackson was a member of the party that lost the Presidential election; you're a member of the party that won. Have you been consulted about any of this? [laughter]

ALLEN: I have not heard from the Attorney General about his appointment as an Assistant Attorney General for Civil Rights—nor about anything else under the sun.

Q: Does your essay on the NCAA regulations contain recommendations?

ALLEN: Well, this is an essay of opinion, and therefore it is not a Commission report.

Q: Yes, but is it going in that direction?

ALLEN: Well, no motion has been made to that effect at this time.

Q: Do you think it will?

ALLEN: It has not been my intention. Now the Commission of course will have a meeting in two weeks, and if my brothers and sisters on the Commission, moved by the spirit, should say to me, "shouldn't we do something?" they will probably find me quite well disposed. [laughter]

Q: Do you think there's any merit in using the argument that one's civil rights are infringed by things like licensing laws that prevent you from doing certain types of work?

ALLEN: I think there's the greatest merit in making a civil rights argument against licensing laws in two instances: One, when the licensing laws historically have been employed as a screen for exclusion. They then are among the other suspect remedies that we have to look at with a very careful eye. The second case is when the licensing operates in an irrational manner, that is to say, when there is no reasonable governmental interest to support it.

One of the things I would like to emphasize is that civil rights are not merely the preserve of targeted subpopulations. Civil rights are the concern of all citizens, and indeed even noncitizens, among us. My concern with the Immigration Reform and Control Act is in fact that in a certain respect a kind of discrimination is required by law, which I think is inappropriate, and I should like to see us amend that. But in licensing, that can also happen. Licensing can impose discriminations against individual citizens that are unacceptable. So, yes, I think we should file civil rights claims in that regard.

Q: Has the Commission given thought to reviewing claims, in some communities, that black school children are being taught to hate "whitey?"

ALLEN: I had heard the report to which you refer. I have not followed up on it personally. And I have not heard of other such reports that would give an indication of the dimension of the possible problem. I'd like to make a distinction. We know that people are people and there will be in families and schools and wherever else, on a one-to-one basis, occasionally incitations to hatred or other forms of antisocial expression. But if there's an organized presentation of race hatred, that's a separate question. That people in any given community might in fact begin to form objectionable opinions will be much to be regretted but not necessarily an immediate subject of investigation for the Commission. But where there is the organized development and expression of hate, leading perhaps to the kinds of social expressions that cause us most concern, we would of course want to be involved. And I must say to you, it is entirely possible, as we pay continuing attention to the rise of groups like skinheads and others, which we are seeing more of in certain parts of the country, as we pay continuing attention to the increasing racial tensions on university campuses and elsewhere, it would seem to me the most natural thing in the world to include in our survey of these developments the kind of situation to which you refer.

Q: Going back to the issue of racial preference, the history of situations where the government has given special preference to any group, whether it's feudalism or slavery, is that the prefer-

ences never disappear and it's only blood that overturns them, like the French revolution and to some extent the English revolution. What do you see the future of racial preference here? Will there, will the point of equality ever be attained or will they continue?

ALLEN: Let me say I think you're quite right in your historical assessment, basically that there are, let's call them Old World practices, which we have never seen eliminated except through blood. That's quite true. And the question then becomes for us, are we converting ourselves into an Old World type society? I believe that is a question for us but not the immediate question. I said to you before we have to carry on the debate over racial preferences. And I would like to distinguish that from the debate over affirmative action, a term which has been much too confused and confusing in recent years. In the first place, the debate was carried out incompetently over the last eight years and largely due to that incompetence is not really a viable discussion. There are several forms of affirmative action and it is perhaps not even interesting any more to try to distinguish the several forms. So why discuss racial preference? I do not mean any specific program from affirmative action to set-asides. I mean it's for us to carry on precisely that general discussion of how race conscious we can permit our laws to be. And I see that as a continuing question. It was partially, of course, involved in the decision *Richmond v. Croson*. It will be involved in any decision touching civil rights issues, but below that policy-determining level is the broad question of where we stand as a people. And we cannot often enough remind ourselves of the standards to which we need to be held. It is never either too late or too frequent to remind ourselves of the standards to which we wish to be held.

Q: [inaudible]

ALLEN: Absolutely. I think it's easier than you say. I think you know and I know and all the rest of the people in this country know that civil rights basically is fair and equal treatment. We know that that's what we mean by it, by and large. And although the term comes to be abused—you're quite right about that, I don't disagree with you—although it becomes confused with poverty and welfare and so many other things, we all know at bottom what it means. And therefore what you have outlined, it seems to be is not a terminological problem but rather a political problem. Can we live by what we know? We can all recite the Declaration of Independence but can we live by it? That's the question you're really asking me. I believe we can, but we can't do it with our eyes closed. We can't do it halfheartedly. We've got to mean to do it if we're going to do it.

Q: [inaudible]

ALLEN: In our public lives, the way we operate our society.

Q: [inaudible]

ALLEN: We don't have it. To my knowledge we don't elect a government of the economy or government by psychology or any of those other things. Let me just put it this way. I have recently, describing our report on discrimination against handicapped newborns, taken the occasion to elaborate my understanding that we cannot generate rights from needs, that that is a fallacy of the highest order. So what you're really asking me to do is here to reaffirm that needs do not produce rights. Our rights stem first of all, of course, from nature and take their expression in

the positive institutions of our society. And what we want to do is assure, as I said at the outset, equal rights of citizenship, assure that those positive institutions affect all in the same way. Now sometimes you will say, as George Washington did, that that means the same justice for rich and for poor. But the reason Washington referred to the same justice for rich and for poor is not because he thought that wealth defined rights, but because he knew as a practical matter that when rights become obscure, when you have problems, the problems usually occur along certain fault lines in society. And it would be manifestly imprudent to ignore those fault lines when you're trying to resolve those problems.

Q: The National Urban League earlier this week gave its annual assessment in the D.C. press, said basically that inequality has grown in the last eight years. Is that, in your view, an accurate assessment of the starting point for the Bush administration?

ALLEN: I cannot say it's an accurate assessment of a starting point simply because I have not yet read the Urban League report. And I would want to see what the condition of their evidence is before I arrived at any conclusions in my own mind about it. But I will say this about the general proposition. There are at least two questions, at least two questions to be raised about continuing gaps in the financial or economic status of differing racial groups in our society. Only one of

those questions is a civil rights question. The other question is an opportunity question but not a civil rights question. And if we have raised those questions with clarity, then we should be able to say who it is that can do something about it. I can't speak to it at this moment simply because I haven't reviewed the report.

Q: I don't understand the distinction. Can you explain?

ALLEN: I can only explain it by trying to give you examples, I suppose. It's always entirely possible that you would find—well, let me take the example of Asians in higher education, which is a similar question in its own way. If indeed Asians are being admitted to the university at a disproportionately high rate because on all the nominal standards they qualify, the distinction between their rate of admission and that of whites who are entering at a lower rate will not necessarily imply a civil rights problem. It may say something about opportunities. It doesn't mean that Asians are by nature brighter, either, but it may mean that they pursue education in such a way as to prepare themselves for this opportunity differently than do whites. And so whether you want to raise a civil rights question or a question about the way the opportunity is approached would have to be answered by that kind of evaluation.

Q: I'd like to follow up to that question. What kind of evaluation would we need to be looking for to accurately assess the obvious continuing disparity in economics between blacks and whites? Whether you read the Urban League report or the NAACP's or anyone else's, there seems to be fairly substantial evidence presented in the Bureau of Labor Statistics or presented by the Department of Commerce or the Department of Labor that there is a gap in income and ability to earn between blacks and whites and also between women and men. Now at what point would we need to assess whether this is a civil rights problem or, as you suggest, some sort of difference in the opportunities?

ALLEN: Well, at every point. Let's just focus on the wage gap for the moment because conceptually it's easy to deal with. The wage gap is not a thing that exists at a given moment in time, it's dynamic. And the only interesting statistic in dealing with wage gaps are the trends over time, the direction in which things happen to be moving. When I say I haven't read the Urban League report and haven't seen the evidence, I mean I don't know what the evidence for the direction they cite is. It's not a question of what the present reading might be, because that's essentially irrelevant for policy purposes. Now if you look at the direction, you may discover in a gap reason for pessimism or reason for optimism. Pessimism is due when the gap increases over a relevant time span; optimism is due when it decreases over a like span, as happened for black males between 1940 and 1960. A Commission report noted that a few years ago. It also noted that the gap closed between 1960 and 1980, though more slowly. It is more than a little ironic that progress is slower with legal protections and positive programs in place. Still, the gap has been closing. People have attempted various explanations for that closing gap. We're never sure entirely what all the causes are, but we have to recognize that whatever the causes are that were operating to close it, those are the things that we want to isolate in order to see that it continues to close. That then will define the policy approach. Now I speak not as someone for whom, whose work that is professionally but merely as someone who understands how that work is done. You would isolate your policy options by understanding what the specific relationships are. So we cannot give an ad hoc answer to the question, since we know that there's a gap, what should we do about it. Now, the question must come from our evidence. That's the point I'm emphasizing to you.

Q: Someone argued, though, that the Reagan administration made no attempts to isolate those sorts of issues that would continue to close the gap.

ALLEN: As you know, that's a historical question. And though I have a penchant for historical scholarship, that's not one of the things I'm studying at the moment.

Q: What do you mean when you say that the debate over affirmative action over the past eight years has been incompetent?

ALLEN: I mean incompetent. [laughter]

Q: In what sense?

ALLEN: I mean in the sense that the question has never been posed in a way that would force the country to have to come to terms with it and deal with it. The consequence of which is that affirmative action is seen more confusedly than ever before, at the same time as it is more deeply rooted than ever before.

Q: How would you pose that question?

ALLEN: As I have said, I think that the question is irrelevant now. I wouldn't pose it now.

Q: If you could look back, how would you have posed it over the last eight years? The country's going to have to deal with it.

ALLEN: Eight years ago I would have taken the advice I wrote to the administration in my letter and I would have sent people out into affected communities, to affected constituencies, and I would have said to them, have I got a deal for you. Look, we all want to get to the same cities, but there are differing ways of traveling. You want to take the train; can I interest you in an airplane? That's how I would have done it.

Q: I'd like to follow up on the question regarding disparities of income. It seems to me your answer, which if I understand you correctly, the distinction you made is this: if income gaps or inequality is due to discrimination, we may be facing a rights problem; if its due to something else, we still have the problem, it may have nothing to do with civil rights. It is a rather shocking thing to many white Americans who have been told again and again and again there's this huge gap between black and white, to see West Indians, very black West Indians do better on these scales not only than American blacks but than American whites; or, again, American black women of a certain age make a higher income than American white women of the same age and same education. It seems to me that what you really want to get down to in isolating this factor you were talking about is the question of what is it that's producing this problem. Is it a discrimination problem? If it is, the law can deal with it. Or is it a problem of family, problem of education, problem of culture, whatever it may be? These are not to be ignored, but they certainly would be approached from different ways.

ALLEN: You say that very well, Mr. Wallin. [laughter] ~

Q: I agree with you. I think that what happened is that the Reagan administration managed to get caught being against affirmative action rather than for a different type of affirmative action. What can—and I think we've lost some important ground over the last eight years—what can conservatives generally do to reach out to the moral high ground on the issue of civil rights and begin a counterattack or a new attack in reinvigorating the traditional principles of civil rights?

ALLEN: I must tell you, in response to your question, that as a Commissioner, as Chairman of the Commission on Civil Rights, I don't have an official concern for the fate of conservatives. [laughter]

If I may put aside my Commission hat and give friendly advice to brothers and sisters with whom I have long labored, I would say it's simple: one simply has to get out there and undertake the work directly and seriously. And I said this last August at the Young Americans for Freedom convention, it's useless to make abstract arguments about the superiority of conservative approaches; if you believe they work, get out and make them work.

Pilon: Bill, I'm going to interrupt here and ask you a final question mindful that I am the only thing that stands between us and lunch. Go back to your formal remarks in which you said that the urgent policy requirement of the Commission is to review remedies, not policies, goals, etc. Since remedies are themselves a function to a substantial measure of those policies and goals, do we not have to, at least to some degree, consider the two together to arrive at the kinds of remedies that we can all agree with?

ALLEN: I want you to know that now I am the only thing that stands between us and lunch.

If I said “not policies,” that was a slip of the tongue. What I would have intended to say at that point in my remarks was that the urgent work of the Commission is remedies and policies, not ends, goals and objectives. By which I mean to declare only that we are fundamentally agreed on the objectives of the society, we are not at war over those objectives. I do not believe there is a serious debate in this country over the meaning of the principles of the American Declaration and Constitution and the guarantees to be brought meaningfully to bear in the lives of citizens. If there is such a debate, it’s not the one I’m carrying on. What I’m saying instead is that, while we are all agreed there, we don’t necessarily understand those policies and remedies that will aptly produce that results we aim at. And therefore I see the Commission as taking a lead in trying to pick its way through the thicket of policy options, of remedies.

One of the things that I’ve always been frustrated by is to find people forced into a defensive posture where they defend their old remedy at all cost, no matter what, because they lack confidence in our sincere commitment to the goal. What I’m saying is there’s no need to defend a Model-T because you’re not being threatened with a loss of transportation. What we’re about is trying to find the most effective way to produce the goal of American society.

Pilon: Thank you very much, Bill. As usual, you did not disappoint. We are going to break now for lunch. In a few minutes the chairs will be gathered together by our interns here and then the food will be brought up. Again, thank you all for joining us here this afternoon.