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Toward a *Transformative*
Agenda Around Race:
Redefining Legal Services
Practice for the 21st Century

- *What does modern science tell us about race and discrimination?*
- *What does it mean for our practice?*

Challenging the Existing Intent Doctrine

- “[T]he invidious quality of a law claimed to be racially discriminatory must be traced to a racially discriminatory purpose.”

Washington v. Davis, 426 U.S. 229, 240 (1976)

Challenging the Existing Intent Doctrine

- Plaintiffs must prove that the decision-maker “selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable [racial] group.”
Personnel Adm’r of Mass. v. Feeney, 442 U.S. 256, 279 (1979)

U.S. Department of Justice

Office of Legal Policy

Guidelines on Constitutional Litigation

February 19, 1988



Office of the Attorney General

Washington, D. C. 20530

In recent years, discussion about the interpretation of our Constitution has flourished not only in academic circles but, as the celebration of the Bicentennial of the Constitution has illustrated, in large sectors of the public as well. Of course, for the Department of Justice, there is an intensely practical side to this occasionally theoretical debate. Every day, in federal courts across the nation, the government is involved in litigation -- both civil and criminal -- in which the interpretation of the Constitution is an issue.

These "Guidelines on Constitutional Litigation" have been prepared by the Justice Department's Office of Legal Policy, which functions as a policy development staff for the Department and undertakes comprehensive analyses of contemporary legal issues. The primary purpose of these Guidelines is to help government litigators think clearly about issues of constitutional and statutory interpretation that arise in the course of their litigation.

However, these Guidelines represent more than just an aid to government attorneys. In providing an analysis of a wide range of issues of constitutional interpretation, including many that are infrequently discussed, the Guidelines will be of interest to anyone concerned about a provocative and informative examination of the issues.

A handwritten signature in cursive script that reads "Edwin Meese III".

EDWIN MEESE III
Attorney General

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U.S. Department of Justice
Office of Legal Policy

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Report to the Attorney General

The Constitution in the Year 2000: Choices Ahead in Constitutional Interpretation

October 11, 1988



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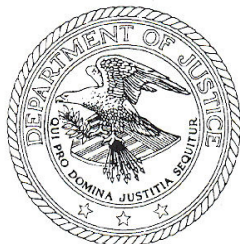
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U.S. Department of Justice
Office of Legal Policy

Report to the Attorney General

Redefining Discrimination:
Disparate Impact and the
Institutionalization of
Affirmative Action

November 4, 1987



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- “The premier civil rights issue...for the foreseeable future, is the question of whether discrimination shall be defined for the purposes of the nation’s civil rights laws as it has been traditionally understood... namely in terms of intentional conduct.”

No Discriminatory Purpose / Facially Neutral

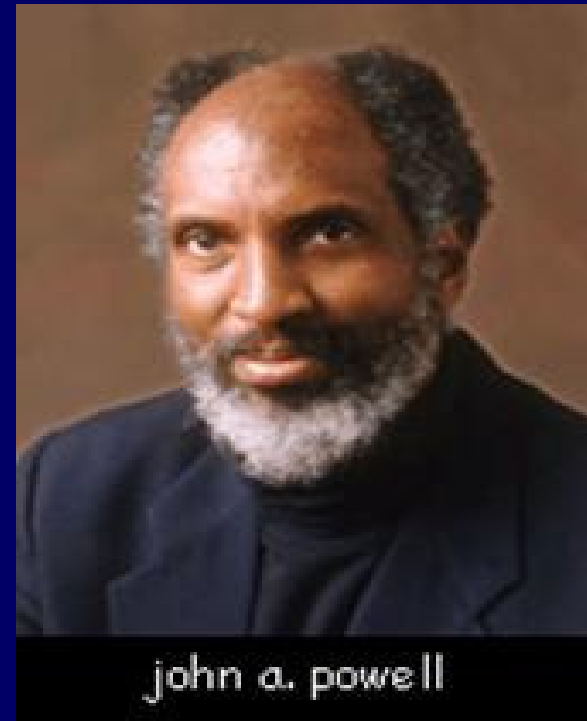
- Employer's requirement that employees possess a high school diploma (*Griggs*)
- A zoning ordinance barring construction of apartment complexes in neighborhoods of single-family homes (*City of Black Jack*)
- A state's height and weight requirements for prison guards (*Rawlinson*)

Modern Science

- All of us, regardless of race, have cognitive biases that influence how we perceive and make decisions.
- The behavior of human beings is often guided by racial and other stereotypes of which we are completely unaware.

john powell

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Colin Bailey



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