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## *Origins*

### Canon and Culture Wars on Campus

As an anthropologist, I know that when you've got diversity, you've got a problem, which means that you've got to come up with ways to deal with it in the most realistic way possible.

GLYNN CUSTRED  
*co-author of CCRI*

The 1994 midterm elections represented the biggest loss for an incumbent president since 1946, when Harry Truman lost fifty-five Democratic seats. When the last vote was counted, the Republican Party had ended the Democratic Party's forty-year hold on Congress, gained eleven new governorships to hold a majority for the first time in twenty-four years, and toppled such liberal Democratic icons as New York governor Mario M. Cuomo and Texas governor Ann Richards. The ascending star was a conservative Georgian named Newt Gingrich, but the real celebrities of the 1994 election were the white males who put Gingrich and his fellow conservatives into office.<sup>1</sup> Some 63 percent of them had voted for Republicans, and suddenly they—like the Christian right before them and the soccer moms who would follow—became the group that politicians most wanted to please.<sup>2</sup>

What did white males want and who knew how to deliver it? Analysts didn't have to look far for an answer. California

governor Pete Wilson, near political death a year earlier, had found new life in his 1994 reelection campaign by turning voter attention to illegal immigrants: “they” crowded “our” schools and hospitals and cost the state billions of dollars. Wilson had defined his campaign by championing Proposition 187, a citizen-initiated ballot measure that promised to deny health and education benefits to illegal immigrants. Wilson was for it—some \$2 million worth of advertising had made that clear—and his opponent, Kathleen Brown, was against it. In the end, voters—especially white men—agreed with Wilson. In the post-election prognosticating, Wilson’s use of Proposition 187 became a blueprint for those looking to attract these voters. Immigration and Proposition 187 had worked in 1994. What issue and initiative would work in 1996? Enter Glynn Custred and Thomas E. Wood, two San Francisco Bay Area academics.

At the end of 1994 their initiative appeared to be the proverbial right-place, right-time proposal. Their California Civil Rights Initiative (CCRI) promised to end the use of race and gender preferences in state employment, contracting, and education. In 1994 this meant the end of nearly all state affirmative action programs, and at that moment such a proposal was the answer to the prevailing but not necessarily accurate political buzz. White males voted, white males hated affirmative action, and therefore, according to the crude popular logic of the moment, any politician wanting to win in 1996 had better be ready to pounce on affirmative action. That the initiative would be on the California ballot made the proposition all the more terrifying for the Democrats. California had fifty-four electoral votes—more than any other state—and in 1994 the electoral arithmetic showed that President Bill Clinton could not return to the White House without those votes. That math sent political analysts into high gear. Affirmative action, they predicted, would become the “mother of all wedge issues,” creating a split between a candidate’s supporters. In this case, affirmative action was viewed as a policy that would put white voters—especially white males—in op-

position to minority and liberal voters, thereby dividing the Democratic Party and finishing Clinton off for good.

No two people were more surprised than Custred and Wood. They too were white and male, but their initiative did not stem from flash-in-the-pan anger. Nor was it concocted by strategists striving to find the consummate wedge issue. If their timing looked perfect, it appeared so only in retrospect. Custred, fifty-five, and Wood, forty-seven, had been working in obscurity for two years. They had already failed once to get CCRI on the ballot, and they still had much to learn about politics. The developments that moved Custred and Wood to write and promote an initiative to end affirmative action had been smoldering on U.S. college campuses for years. Custred, a professor of anthropology, watched these events unfold at suburban California State University, Hayward. Wood observed them from the outside looking in.

They were an odd couple. Custred, a disarmingly open man with a ready smile, had the affable demeanor of a Little League coach who values fun over winning. He was tall with a pleasant bulk. His eyes, an almost translucent light blue, would have given a different man an icy effect. He used words like "stuff" when he referred to new academic currents and "dumb stuff" when he disagreed with an idea.<sup>3</sup> He taught at a state university where he had a comfortable retirement guaranteed. Like a number of San Francisco Bay Area professionals in need of less expensive housing and good public schools, Custred lived in Walnut Creek, a largely white suburb connected to the more urban East Bay by a tunnel running through the Diablo Hills. Until the late 1980s, Custred's world revolved around his German-born wife and daughter on one side of the Caldecott Tunnel and his job twenty miles to the south, in Hayward.

Wood, who wore wire-rimmed glasses and, at his most casual, a blazer and khakis, may have looked the consummate preppy, but he didn't fit in anywhere. As a child, he had preferred the library to the playground. His father's career as an Air Force officer had taken the family to Southern California,

Iran, France, and Germany by the time Wood arrived in Berkeley to study philosophy in the late 1960s. Even after he graduated with a doctorate in philosophy in 1975, he continued to spend hours in the library reading everything from *Newsweek* to journals on linguistic theory, and then switched on his computer to read or write for hours more. His attention to detail bordered on the neurotic. Some mornings, he told Custred, Wood woke up before the alarm went off in his small Berkeley apartment, wondering if something he wrote the night before needed another comma. Twenty years after receiving his doctorate from U.C. Berkeley, Wood was still struggling financially. He had held a few temporary teaching jobs and then dropped out of academia to study meditation. Later, he worked for the Federal Reserve Board as a researcher during the day and wrote books on Sanskrit texts at night. But nothing jelled. Wood began to blame trends beyond his control for his failure to move beyond the margins of the academy.

### *Multiculturalism, Hayward, and the Campus Culture Wars*

If Wood observed changes on U.S. campuses from the sidelines, Custred witnessed them from his lectern at Hayward State. During his first years of teaching, Custred taught students who shared his white working-class roots. In the fall of 1976, five years into his teaching career, 63 percent of the freshman who enrolled at Hayward were white; some 20 percent were African American; 8 percent were Asian or Filipino; and 5 percent were Latino. When school opened in the fall of 1994, Custred faced a class that looked decidedly different: 34 percent were Asian or Filipino; 18 percent were African American; 16 percent were Latino; and only 24 percent were white. A similar change in the racial and ethnic mix had evolved on other state campuses.<sup>4</sup> These changes had little to do with affirmative action and everything to do with more permanent demographic changes. The state universities accepted

all high school seniors who finished in the top third of the state's high school graduates, and all but one campus had space for all its eligible applicants.<sup>5</sup> Increasingly, however, applicants were nonwhite. California was inching toward the time near the year 2000, when, demographers predicted, it would become the first state in which white residents were a minority.<sup>6</sup> In Custred's classroom, this reality had already come to pass.

For his part, Custred wasn't bothered by the new students: he found them as uneven in potential as the all-white classes he had taught twenty years earlier. "I have noticed that a lot of the minority students are just not with it," Custred said. "But then we get some who are not only with it but are right at the top. We get a lot of white students who are not prepared either."<sup>7</sup> Nonetheless, the new students would trigger other changes that would begin to grate on Custred.

In the spring of 1979 Robert Portillo, the special assistant to the president of Hayward State and its director of the Employment Affirmative Action Program, predicted that half of the school's tenure-track faculty would retire in the next decade. "It is vital to recognize this and to begin taking steps to insure appropriate minority representation in our faculty ranks," he wrote.<sup>8</sup> Some of the new faculty recruits arrived at Hayward eager to explore new ways of tackling old disciplines. One new current was to look at history, literature, and other fields from a multicultural perspective. They felt that teaching students about the world required including different points of view—black, Latino, and Asian as well as Anglo-Saxon.

Barbara Paige, who had a doctorate in philosophy from U.C. Berkeley, and Gayle Young, who had a doctorate in communications from UCLA, were among the new faculty members enthusiastic about broadening Hayward's curriculum. In 1985 they codirected a three-year state grant to help their colleagues "mainstream the cross-cultural perspective" into their courses. Unlike many grants, this one caught the administration's attention. At seminars attended by the provost, guest

scholars encouraged literature professors to add black writers like Alice Walker and Toni Morrison to their reading lists. The scholars suggested that history professors include the experience and viewpoints of blacks, Latinos, and women. As an anthropologist, Paige, who is black, befriended Custred. The two had different African American intellectual heroes—Custred quoted conservatives like Shelby Steele, while Paige was more likely to cite Henry Louis Gates, Jr.—but Custred enjoyed the debate. “He said he had always been vilified and that at least he could talk to me,” Paige said.<sup>9</sup>

Others warned Paige that Custred was unfriendly to the minority faculty, but she took him at his word when he said he wanted to participate in the grant and invite an anthropologist to lecture on multiculturalism. When Custred’s guest trumpeted what Paige viewed as traditional anthropology and ignored multiculturalism, Paige said, “My mouth dropped. I felt that he had been disingenuous, that he was a closet racist.” Custred could not recall the incident and said only that he “wasn’t very interested in” what Paige and Young were doing. “We felt like we were doing multiculturalism anyway,” he explained.<sup>10</sup> Although Paige felt blindsided by Custred, the three-year grant she helped direct at Hayward produced little controversy. If some disagreed with the effort, they did so privately. When the grant ended in 1988, a group of faculty interested in keeping multiculturalism alive at Hayward founded the Center for the Study of Intercultural Relations. “We could see that we were dealing with a very long journey,” said Young, who is white. “Other academics were not going to jump on this like scientists jumped on the discovery of DNA.”<sup>11</sup>

From the outset, Custred was skeptical of the multicultural scholars. They had, he said, a romantic view of the world. “The model they had was a nice, ethnically diverse neighborhood in a big city where everyone is happy and everyone dances around the Maypole,” he said. “As an anthropologist, I know that when you’ve got diversity, you’ve got a problem,

which means that you've got to come up with ways to deal with it in the most realistic way possible."<sup>12</sup> Custred believed that to live in harmony, Americans had to find common ground.<sup>13</sup> This clashed with the multiculturalists, who were intent on defining and celebrating the uniqueness of ethnic Americans. To many professors interested in multiculturalism, Custred's common ground was limited to traditional Western values and traditions.

By 1989 Hayward's embrace of multiculturalism had begun to nettle Custred. When the new Center for the Study of Intercultural Relations organized a conference—Hayward's first national conference—entitled "The Inclusive University: Multicultural Perspectives in Higher Education," Custred objected. "I could see this moving in a direction I didn't like," Custred said.<sup>14</sup> When he complained, his dean suggested that he participate. It was a mistake. Custred felt like a classics professor among pop culture enthusiasts. He represented tradition and they considered themselves on the cutting edge of a new discipline. He presented a paper defending standard English; his fellow panelists wanted to explore the value of black English. Custred's paper, Young said, was "well reasoned, well thought-out," but, she acknowledged, "there was not much tolerance for his argument."<sup>15</sup> Custred found listening to their papers equally torturous. "I was there listening to some of the most god-awful things you can imagine," he said.<sup>16</sup>

It wasn't a conference alive with open debate. Many of those who attended were under attack at their own universities, and they attended the gathering to find friends and share war stories. Most didn't want to analyze multiculturalism; they wanted to celebrate it. It is impossible to say what would have happened if everyone had been more civil, but they weren't. Custred was ostracized. There was a sense among the conference's participants that they were "agents of change" and Custred represented the status quo. Custred could have lived with the reputation of being unfashionable, but the debate on multiculturalism had a more cutting subtext. "What

we didn't realize," Young said, "is that we were not just dealing with intellectual issues, but with emotional issues. We were asking what it means to be an American, what it means to be an educated person. We were saying that whiteness was constructed to keep people down and no matter how softly you say this, it's hard to take."<sup>17</sup> For his part, Custred was less offended personally than he was intellectually: "I just found it terribly misguided," he said.<sup>18</sup>

The slights at the conference were compounded by other developments at Hayward. In the past, the administration's efforts to increase minority faculty had resulted mostly in the hiring of white women. The pool of minority applicants wasn't as large, and Hayward's intentions to hire more were complicated by the competition from other universities. Nonetheless, in 1989 the administration decided to double its efforts. Blacks, Latinos, or Asians in any field could apply through the administration's main office, and their applications were sent to the different departments for consideration. This meant that departments could add to their faculty numbers without waiting for someone in their department to retire. In effect, the university set aside jobs for minorities. This, too, upset Custred. To him, the set-aside trod on individual rights; it favored candidates because they were part of a racial or ethnic group and discriminated against others for the same reason.

As a child growing up in Birmingham, Alabama, during the 1940s, Custred had seen the evils of lumping individuals into groups. He was one of three children in a working-class family. Until after World War II, his father worked in the tin mills as a speed controller, watching over the machines that turned metal into sheets. The young Custred noted early on how his fellow whites in Birmingham treated blacks as a separate species and, for a while, he accepted that view. But as Custred experienced the world, he began to question the notion that blacks were altogether different from whites.

When the war ended, Custred's father took a job as a salesman for the Alabama Gas Corporation, and Custred some-



times accompanied his father on business calls. His world, he said, opened on those trips. The young Custred discovered black families who lived much like his own family: two parents living in a neat but modest home and struggling to survive. "I was quite surprised," Custred said, recalling the visits. "I thought, 'God, they're no different than we are.'"<sup>19</sup> Custred's family moved on to Vincennes, Indiana, in the year before he entered high school, but every Thanksgiving and for two weeks every summer, they returned to Birmingham, and Custred watched the changes embroiling the South. These experiences and others, he said, informed his belief that it was wrong to sweep individuals into groups. The set-asides, he felt, did exactly that. As a result, when the set-asides were announced at Hayward, Custred organized the anthropology department to decline to participate. "He considered it racist," said Paige.<sup>20</sup>

Other developments troubled Custred as well. When the budget crisis hit California in 1990, it looked like Hayward might announce layoffs; recent hires—minorities and women—would be among the first to go. But Terry Jones, a black tenured professor, and others found a clause in the union's rules that would permit the administration to circumvent the seniority system to retain faculty who offered something unique to the university. A faculty member's racial or ethnic identity, Jones argued, could be construed as unique. Hypothetically, Custred could have been laid off at Hayward so that a junior member of the faculty—a woman or a Latino or black who had just been hired—could stay on. Again, Custred organized his department. "I said, hell, that's fine and dandy, but the problem is we have this union understanding and this would adversely affect the anthropology department." The battle in Hayward's academic senate was fierce. "They just screamed their bloody heads off," Custred recalled. "People got hysterical."<sup>21</sup> In the end, layoffs proved unnecessary, but Custred was becoming more active.

Although Hayward's educational battles received little notice in the media, the same wars were making national news

at places like Stanford, Berkeley, and the University of Michigan. Until the 1980s, students had protested actions taken in Washington—notably the country's involvement in Vietnam. Now the tables had turned, and Washington was reacting—volubly—to actions on campus. An intellectual debate was becoming a national political issue. When Stanford University began discussing the possibility of including new ethnic writers in its core humanities course, U.S. Secretary of Education William Bennett ridiculed the proposed changes. “They are moving confidently and swiftly into the late 1960s. And why anybody would want to do that intentionally, I don’t know,” he said, adding that some at Stanford were being intimidated by the “noisiest” of their colleagues.<sup>22</sup> The *Wall Street Journal* weighed in with an editorial accusing Stanford of riding “the main hobby horses of today’s political left—race, gender and class.”<sup>23</sup> What should have been a pedagogical debate became political.

In fact, Stanford was talking about only a handful of new writers and, in the end, the changes were modest. The freshman Western civilization course was renamed Culture, Ideas, and Values, and the eighteenth-century autobiography of the African slave Olaudah Equiano, readings from the Koran, and Mary Wollstonecraft’s 1792 book on women’s rights joined Homer, Machiavelli, and Freud on the reading list. A new section, entitled Europe and the Americas, used classics such as *Uncle Tom’s Cabin* or *Democracy in America*. The conservative U.C. Berkeley philosopher John Searle wrote in the *New York Review of Books* that “reports of the demise of ‘culture,’ Western or otherwise, in the required freshman course at Stanford are grossly exaggerated.”<sup>24</sup> Referring to the most innovative of Stanford’s sections of Culture, Ideas, and Values, he concluded: “If I were a freshman at Stanford, I might well be tempted to take ‘Europe and the Americas.’”<sup>25</sup>

The canon had survived. But new intellectual camps had formed, and some of the heavyweights were firmly aligned against change. Allan Bloom, an academic from the University

of Chicago, had already risen to fame in 1987 with his book *The Closing of the American Mind*, and Dinesh D'Souza would follow in 1991 with his attack on the new trends in education in *The Illiberal Education: The Politics of Race and Sex on Campus*. A group of prominent scholars, including Jeane Kirkpatrick and James Q. Wilson, formed the National Association of Scholars in 1988 to ensure a "reasoned scholarship in a free society." The Princeton-based group billed itself as "the only American academic organization dedicated to the restoration of intellectual substance, individual merit, and academic freedom in the university." To multiculturalists, those were code words used to defend the Western canon and to attack affirmative action. But it was language to which Custred responded favorably: he helped form a California chapter—the California Association of Scholars, or CAS.

There was much to do. The California State Assembly, concerned that minority students were being left behind in higher education, considered legislation in 1991 to ensure that the freshman classes at the state's public colleges and universities reflected the ethnic composition of the class that graduated from the state's public high schools. A similar bill had been approved by the Democratic-controlled Assembly in 1990 but had been vetoed by Republican Governor George Deukmejian. The California Association of Scholars immediately opposed the 1991 measure, which was introduced in March by Assembly Speaker Willie Brown. Brown's bill called for "educational equity," which as defined by the bill meant that the students and faculty at public schools and universities must reflect the diversity of the state.<sup>26</sup> In addition, it called for "enhanced success at all educational levels so that there are similar achievement patterns among all groups regardless of ethnic origin, race, gender, age, disability or economic circumstance."<sup>27</sup> To ensure that the bill's vision was carried out, it also held faculty and administrators accountable. The CAS argued strongly against such provisions, stating that students seeking admission to college and faculty applying for teaching positions should be judged on the

basis of their qualifications as individuals, not by their race, color, or sex. The Brown bill was vetoed by Governor Pete Wilson.

As Custred became involved in these debates, he began to develop his arguments against affirmative action and, to do this, he did what all academics do: he went to the library. For many, the history of affirmative action begins with the Civil Rights Act of 1964, so Custred looked it up. He read it once, and then he read it again. He was delighted. Title VII, the section on equal employment opportunity, says: "It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."

"I thought, 'Hey, there's nothing wrong with this,'" he recalled. "It just wasn't being enforced."<sup>28</sup> He photocopied the act and took it home. Far from promoting affirmative action that took race and gender into account, the Civil Rights Act, by Custred's reading, actually prohibited it. He began toying with the idea of a statewide initiative. In his mind, taking race or gender into consideration violated the 1964 Civil Rights Act. Custred wanted to write an initiative that would end programs that he viewed as discriminatory against white males and others who were not considered underrepresented minorities.

### *Wood Goes Job Hunting*

While Custred was in the throes of academic politics in the late 1980s, Thomas Wood was looking for work. It was a quest that had problems from the start. Berkeley's philosophy department went all out for its newly minted Ph.D.'s but was less willing or able to help alumni who had been out of the field for several years. And even for its new graduates, the job market was tight.

"We were one of the best schools at placing our Ph.D.'s, and we were happy if we placed half of our Ph.D.'s in tenure track positions,"<sup>29</sup> said Bruce Vermazen, chairman of the philosophy department at U.C. Berkeley. Wood's search had another obstacle, according to Anita Silvers, the secretary-treasurer of the Pacific division of the American Philosophical Association. Few jobs existed in Wood's field, the philosophy of religion.<sup>30</sup>

Wood's job search might have been forgotten altogether if he had not mentioned it in late 1994, when a *Washington Post* reporter asked if he had ever encountered reverse discrimination. "I was once told by a member of a search committee at a university, 'You'd walk into this job if you were the right gender,'" Wood told the reporter.<sup>31</sup> Reporters ferreted out the details of that incident on their own; when some discovered it was San Francisco State University, they confronted Wood. He refused to comment. The school, Wood insisted, wasn't important. The important issue, he argued, was that a member of the search committee felt it was legitimate to tell a white male that he was unlikely to be considered. Imagine, he said, if a committee member had said that to a female or black prospect. "For me, it's a legal question," Wood said. "The law said you can discriminate against some, but not against others."<sup>32</sup>

It was only in a 1995 memo to his CCRI colleagues that Wood offered an explanation of his experience at San Francisco State.<sup>33</sup> The memo raises questions as to whether Wood had ever been discriminated against by anyone. Wood wrote in the memo that even before he had sent in his application to the university, he ran into San Francisco State philosophy professor Anatole Anton in a Berkeley computer store. Anton, Wood noted, was dismayed when he discovered that Wood wanted to apply for the job. "He then proceeded to tell me quite candidly that the department had decided that it needed a diversity hire and that it had already found a black woman who looked promising. 'Well, Tom,'" Wood wrote that he was told by Anton, "'it sounds to me as though you would just waltz into this job if you were the right gender.'"<sup>34</sup>

Undaunted by Anton's warning, Wood applied and he landed on the short list of candidates, according to his memo. The interview, he reported in the memo, went badly. "A number of individuals seemed icily adversarial." When he suggested that he would also like to teach a course in parapsychology, the committee was unimpressed. "There was widespread reaction in the room that this was a preposterous suggestion," he wrote.<sup>35</sup>

Anton, who in 1996 was working to oppose CCRI, said he could only vaguely recall the meeting Wood described. He failed to remember any specific remarks to Wood and said he would have deferred to Jacob Needleman, the head of the search committee.<sup>36</sup> Needleman declined to talk about the incident, but James Syfers, who served as philosophy department chair at the time, said that no one remembered Wood and that he had not been one of the two finalists. The school keeps tape recordings of final interviews, and though they have tapes of the two finalists, they have no tape of an interview with Wood. "No one remembers Tom Wood at all," Syfers said. "I think you can say this with authority: he was not a serious candidate." To Wood's charge that the university was looking for a diversity hire, Syfers said, "We were just looking to find the best person we could find." Budget constraints had prevented the department from hiring anyone in more than fifteen years, and it had no minorities on the faculty in the late 1980s. The committee ended up hiring a black woman who went by only one name—Tandeaka. She left S.F. State after one year to take a fellowship at Stanford University.

Although Wood applied elsewhere, no job offers materialized, and he continued to pick up part-time jobs. One of them sent him to U.C. Berkeley's library at Boalt Hall School of Law to research mediation law. Soon he found his way to the stacks where the multivolume history of the U.S. Supreme Court's 1978 *Bakke* decision was housed. After the medical school at the University of California, Davis, had rejected Allan Bakke, a white applicant, in 1973 and again in 1974, Bakke had challenged their admissions policy, which set aside sixteen slots for

minority students. "It was a fascinating tale," said Wood. "I would go back and forth, seeing the merits of both sides, but in the end Allan Bakke had the stronger case." Wood agreed with Justice Lewis Powell, who wrote the majority opinion, that Davis had violated the equal protection clause of the Fourteenth Amendment by setting aside sixteen slots for underrepresented minorities. Powell ruled that such quotas were unconstitutional, that all applicants had to be considered in the same pool. But Powell also said that race could be considered as a factor in admissions. Here, Wood disagreed. He felt that any use of race ultimately discriminated against other applicants. Wood's position was not difficult to reach since Powell's decision was cautionary. He warned that "racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination."<sup>37</sup> Powell, however, agreed with and underscored the argument that the university's goal of creating a diverse student body was clearly a "constitutional permissible goal."<sup>38</sup> Offering the Harvard College program as a model, Powell said that "race or ethnic background may be deemed a 'plus' in a particular applicant's file, yet it does not insulate the individual from comparison with all other candidates for the available seats."<sup>39</sup>

Whereas Wood chose to read the Powell decision as restrictive, most university and college administrators read it more broadly. "The crucial fact about *Bakke*," wrote Robert Post, a professor of law at Boalt Hall School of Law at U.C. Berkeley, "is that Powell did not end his judgment with a simple declaration of unconstitutionality. He took the unusual step of appending to his opinion the affirmative action plan of Harvard College, which Powell said he would find constitutional. The Harvard Plan celebrated the diversity of individuals, but it also specifically noted that the value of ethnic and racial diversity could be attained only through an admission process that paid 'some attention to numbers.'"<sup>40</sup>

The *Bakke* decision came long before Wood began his job hunt in the late 1980s. He became convinced, however, that

his failure to find a permanent place in academia might have had something to do with affirmative action. He chose to ignore the reality that white males, who represented 75 to 80 percent of all new graduates in philosophy between 1985 and 1990, were in fact filling the majority of the 2,790 job openings during those years.<sup>41</sup> Instead, his experience at San Francisco State University became the focus of his attention, and affirmative action became the explanation for his inability to find a tenure-track job. Much later, he would write a memo to CCRI's Los Angeles office underscoring the initiative's connection to discrimination against white males. "The white male backlash story does not serve our interests (though on the other hand, of course, if we're honest we can't deny that the issue is largely about discrimination against white males)."<sup>42</sup>

Two events in 1990 were of particular interest to Wood. One was the success of Proposition 140, which limited the number of terms a state legislator could serve. "It gave me an idea that the same thing could be done with affirmative action," he said.<sup>43</sup> Then in December, he opened a copy of *Newsweek* that discussed the academic battles over Western civilization courses, such as the one at Stanford, and the backlash against political correctness. "Is this the new enlightenment on campus or the new McCarthyism?" the cover story's headline asked.<sup>44</sup> "Opponents of PC see themselves as a beleaguered minority among barbarians who would ban Shakespeare because he didn't write in Swahili," *Newsweek* reported. "Outnumbered they may be on some campuses, but they are also often the most senior and influential people on their faculties."<sup>45</sup> Of particular interest to Wood was *Newsweek's* story on Theodore S. Hamerow, described as "a wispy, white-haired professor of German and European history" at the University of Wisconsin, who, at the age of seventy, had become a "Don Quixote figure, the chairman of the campus branch of the National Association of Scholars, whose reason for existence is mortal combat with the windmills of PC."<sup>46</sup> The NAS chapter was "preparing to issue a statement denouncing what it



calls minority-hiring quotas being imposed by the university's administration."<sup>47</sup>

Wood called the National Association of Scholars to ask if there was an affiliate in California. By the end of 1991 he had hooked up with Custred.

### *The First Initiative: 1992 to November 1994*

In many respects, Custred and Wood were the kind of citizens California Governor Hiram Johnson of the Progressive Party had in mind in 1911, when he lobbied to include in the California state constitution a voter's right to propose and enact laws by collecting enough signatures to put an initiative on the ballot.<sup>48</sup> Both Custred and Wood were nonpartisan, well-educated citizens who were angry about policies they felt were unjust, and in 1992 they had no strong ties to any one party—Custred was a registered Independent, and Wood had only recently changed his registration from Independent to Republican. What Governor Johnson had long ago failed to foresee was that few initiatives make it onto the ballot without the help of paid signature gatherers and the money of special interest groups.<sup>49</sup> The bottom line was that in 1992 it cost about a million dollars to put an initiative on the ballot. Custred and Wood were about to learn this the hard way.

They began their efforts by calling a few people with an interest in politics whom they knew, or whose names they knew: former L.A. County Supervisor Pete Schabarum, who had managed the successful campaign for term limits (Proposition 140); and Stanley Diamond, at U.S. English, a Washington-based group that promoted English as the country's official language and helped to pass a 1986 "English only" ballot measure in California. Custred had met Diamond a few months earlier at a national conference in Washington. Both Schabarum and Diamond recommended Reed and Davidson, a Los Angeles law firm that specializes in election law and represents some of Orange County's most influential political

donors, as well as some major conservative political action committees. They also recommended Louis W. M. Barnett, a Wilson appointee to the state Unemployment Appeals Board with many contacts and enough political savvy to know that an anti-affirmative action initiative was something the state's Republicans could get behind. "Initially, I thought they were well intentioned and not very politically astute," said Barnett. "They needed to hook up with various political organizations that were affected—people who have an interest in the issue."<sup>50</sup> Another early advisor to Custred and Wood was Michael Arno, the president of American Petition Consultants, a firm that had put some two hundred initiatives, many of them backed by conservative interests, on the ballot. Arno's advice was similar to Barnett's: "I told them to go to the Republican Party."

Custred and Wood hesitated. At that time, they didn't know any Republicans with enough clout to raise the issue, and they were determined to make it nonpartisan. So instead of politicking in 1992 and 1993, they focused on writing the initiative. The language would be fine-tuned from 1992 to 1995. Opponents would later claim it had been the brainchild of countless focus groups, but its most eloquent section—the part that drove civil rights leaders into a fury—came from Custred's initial visit to the library. In his reading of the Civil Rights Act of 1964 and Wood's familiarity with polling data on affirmative action and preferences, they found the linguistic equivalent of a sure thing.

In crafting this section, Custred and Wood drew inspiration from a 1979 U.S. Supreme Court decision involving another angry white man; that decision had, ironically, upheld affirmative action. In 1974 Brian Weber, a white Louisiana steelworker, was turned down for a place in a new training program at a Kaiser plant in Gramercy, Louisiana.<sup>51</sup> Under pressure from federal regulators, Kaiser Aluminum and Chemical Corporation and the United Steelworkers of America had set up training programs to increase the number of minority

workers in skilled jobs. At that time in Gramercy, blacks made up 39 percent of the local labor force, but held only 2 percent of the slots for craftsmen.<sup>52</sup> To remedy this imbalance, half the training program slots were set aside for minorities. When two blacks with less seniority than Weber won places in the training program, Weber filed a reverse discrimination suit, arguing that the preferential treatment given to blacks violated Title VII of the Civil Rights Act of 1964.<sup>53</sup>

The Supreme Court ruled against Weber. Justice William J. Brennan, Jr., stated that private employers have an "area of discretion" and can use preferential programs "to eliminate conspicuous racial imbalance in traditionally segregated job categories." Brennan argued that one could only interpret the meaning of Title VII's ban on discrimination by considering the intentions of the law's congressional authors. Even though Democrats such as Hubert Humphrey had sworn that the new act would never permit preferential treatment, Brennan concluded otherwise. The act, he wrote, "intended to improve the lot of those who had been 'excluded from the American dream for so long,'" and it would be ironic if it were read as a "prohibition of all voluntary, private, race-conscious efforts to abolish traditional patterns of racial segregation." Title VII bars the government from requiring employers to give preferential treatment, he continued, but "the natural inference is that Congress chose not to forbid all voluntary race-conscious affirmative action." The decision infuriated constitutional experts with conservative leanings. "A lot of legal scholars see the *Weber* decision as an illegitimate departure from the intent of the Civil Rights Act," said Eugene Volokh, a law professor at UCLA. So did Wood and Custred.

In addition to reading *Weber*, Wood, a dedicated researcher, had also looked at the polls. They showed that if voters tended to support affirmative action, they hated quotas and loathed preferences.<sup>54</sup> When asked in a Gallup poll in April 1991, for example, if quotas were necessary to accomplish fairness in education, hiring, and promotion, whites opposed them by 59

percent.<sup>55</sup> The dislike of preferences was even greater. When asked if qualified blacks should receive preference over equally qualified whites, 72 percent of all white voters said no and 42 percent of all black voters agreed with them.<sup>56</sup> Wood also looked at a new book, *The Scar of Race*, by Paul M. Sniderman and Thomas Piazza. While noting a 1988 Harris poll that showed 55 percent of the whites polled favoring affirmative action, the authors concluded, "The idea of quotas and preferential treatment is the reef on which affirmative action founders."<sup>57</sup>

As they read about the debate over *Weber* and looked at the polls, Custred and Wood came up with the key for what would be the first clause of the California Civil Rights Initiative. It would not focus on affirmative action but on "preferential treatment" based on race and gender. It, however, would not address other preferences, such as those for military service, disability, socioeconomic status, and special athletic or artistic abilities. The initiative read: "Neither the State of California nor any of its political subdivisions or agents shall use race, sex, color, ethnicity, or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the State's system of public employment, public education, or public contracting."<sup>58</sup> If the Supreme Court could interpret the Civil Rights Act of 1964 as permitting voluntary preferential treatment, Custred and Wood intended to set everyone straight by rewriting and clarifying the state constitution.

In 1993 Wood and Custred began to circulate a wordier version of this clause. By then, Wood finally had steady work: the California Association of Scholars had hired him as its executive director. He now had access to a multitude of prominent professors interested in the issue of affirmative action, and over the next two years he would spend hours on the phone with them discussing the initiative's language. "The nice thing about giving advice to him," said Richard Epstein, a law professor at the University of Chicago, "is that he actually listened."<sup>59</sup> Epstein, a Libertarian who in the end disagreed with the initiative because

it only masked what really needed to be done—in his mind, the University of California system should be privatized—proved to be a lively intellectual sparring partner. Ultimately, however, perhaps Epstein's biggest contribution was to suggest that Wood call Epstein's colleague Michael McConnell, an advocate of school prayer who had one bit of advice: leave religion out of the initiative. McConnell advised Wood: "I believe that inclusion of the term 'religion' could be taken to outlaw legitimate religious accommodations, for example, allowing state employees to take unpaid leave for celebration of religious holy days or allowing religious employees to deviate in unobtrusive ways from a uniform requirement."<sup>60</sup> "The effect of inclusion would primarily be to create confusion and possibly to interfere with the protection of free exercise of religious rights." Custred and Wood agreed, and as a result, religion was left out.

Lino Graglia, a well-known professor of constitutional law at the University of Texas, Austin, and the author of a 1976 book on busing, *Disaster by Decree*, advised Wood to limit the initiative to race. Graglia warned him, "When you include sex, you run into a lot of problems that you don't run into with race."<sup>61</sup> Wood and Custred refused, and their argument on the issue went on until late 1994. Both authors explained their reasons for including gender in long memos to Larry Arnn, the president of the Claremont Institute, who would later become the initiative campaign's first chairman. Custred's two-page memo, which lists seven points, stressed the fairness issue. "Removing gender from the initiative, when for the last thirty years it has been intimately linked with race and ethnicity, would suggest hypocrisy and a lack of principle. . . . The principle of nondiscrimination is for all and should apply to everyone equally. . . . There is a feeling in the black community that the greatest beneficiaries of affirmative action have been

\*In September 1997 Graglia became the focus of a controversy after he said that black and Mexican American students were "not academically competitive" with white students. "They have a culture that seems not to encourage achievement," he said.

affluent white women at the expense of blacks. . . . Indeed it is often said by blacks that white women have hijacked affirmative action. To exclude gender preferences from the initiative would only reenforce this conviction creating the belief that the initiative is in fact a racist measure.”<sup>62</sup>

Wood’s three-page memo, which included nine points, reflected some of Custred’s concerns but focused more on his belief that white males were getting a bad deal. “Sexual discrimination against males is pervasive. The available evidence indicates, in fact, that white males need protection against discrimination on the basis of their sex even more than they need protection on the basis of their race. . . . Omitting gender from the initiative would suggest that CCRI’s proponents believe that there is a difference when in fact there is none. This would play right into the hands of the gender feminists and radical feminists, who would take this as an indirect endorsement of their agenda. . . . Leaving gender in CCRI is the conservative course. . . . Anyone who presses for dropping gender from CCRI should first do some survey research to find out how the American public would respond to that question, because that is what opponents would make the central issue in the campaign against it.”<sup>63</sup>

Volokh, who had clerked for Supreme Court Justice Sandra Day O’Connor, helped to clarify the gender discrimination paragraph. Two years later, feminists would read the initiative’s language on sex discrimination and see red. But in those early days, Wood felt that the academics and Reed and Davidson’s legal team were making their initiative broad enough to escape charges of racism—by including gender—and tight enough to withstand court challenges.

### *State Republicans Discover the Political Possibilities of Affirmative Action*

As Custred and Wood conferred with their legal and academic advisors, state Republicans discovered the issue of affirmative

action on their own. In the fall of 1993, some 170 miles north of the Bay Area, Manuel Esteban, the new president of California State University, Chico, and his new vice provost, Michael Biechler, proposed a faculty diversity program that would set aside a certain number of positions for women and applicants of color. Five years earlier such a program would have passed with little notice—as it had at Hayward—but the ensuing canon wars on U.S. campuses, a tightened budget, and the anti-PC movement had politicized many conservative professors, some of whom were at Chico State. When Biechler announced the set-asides, the white faculty “flipped out,” said Charles Geshekter, a professor since 1968.<sup>64</sup> The debate became front-page news in Chico. “When I came in, it seemed that a faculty diversity program would be well received, but in retrospect that seems awfully naive,” Biechler recalled. “I think it was timing. There was an enormous backlash building.”<sup>65</sup>

One Chico resident who read about the battle was Republican assemblyman Bernie Richter, a former high school civics teacher who was elected to the assembly in 1992. Richter felt the set-asides were wrong, and he wanted to take up the issue in the assembly. It looked to Custred and Wood like a good time to press their initiative. In October 1993, they filed the initiative with the state attorney general. A month later, William Rusher, the publisher of the conservative *National Review* and a distinguished fellow at the Claremont Institute, a conservative think tank in Southern California, wrote a piece headlined “Can California Voters Reverse the Unintended Consequences of the 1964 Civil Rights Act?” Rusher liked the initiative’s political possibilities. “The dilemma into which this will plunge the whole national liberal establishment is obvious,” he wrote. “It is a battle the liberals will be compelled to fight and are doomed to lose.”<sup>66</sup> Rusher urged his readers to support the initiative for the November 1994 ballot.

Patrick Buchanan, the presidential candidate who later proved to have a sharp ear for issues that would appeal to

white voters, also picked up on CCRI early. Even in February 1994, he felt that the groundswell against affirmative action could help return Republicans to the White House. "To win back California, the party must win back the Perot vote, that vast middle-class constituency, alienated and populist, that felt itself abandoned by the Beltway," he wrote in his syndicated column. "To the point: If the GOP is casting about for a populist issue to reunite its old coalition and to slice Bill Clinton's new coalition asunder, that issue is at hand. The California Civil Rights Initiative."<sup>67</sup>

Meanwhile, in the state assembly, Richter proposed Assembly Bill 47, which reflected CCRI and barred the state from taking race or gender into account in employment, contracting, and education. On August 10, 1994, the Assembly's judiciary committee held hearings on it. Conservatives mark the hearings as the occasion when Republican officeholders began to understand the scope of the potential sentiment against affirmative action. "On that day the issue moved from the ivory tower and became a political issue," said Wayne Johnson, a conservative political consultant based in Sacramento.<sup>68</sup> "It became very clear that there were deep divisions in the Democratic caucus on the issue and when you see one party split down the middle on an issue you see a new paradigm."

The hearings were important for another reason. For the first time, Custred and Wood heard Ward Connerly and experienced the effect this black businessman, who had recently been named a regent of the University of California, could have on an audience. Dressed nattily in a dark suit and white shirt, Connerly spoke eloquently against racial preferences. Custred and Wood were mesmerized by what they heard. "He was incredibly articulate," said Wood. "He stole the show."<sup>69</sup>

### *Affirmative Action for U.C. Regents and Students*

Wardell Anthony Connerly was born on June 15, 1939, in Leesville, Louisiana, into an African American family with a



mixture of Indian, Irish, and French Creole blood. "Nobody ever gave me any race or sex preferences when I came into the cold fifty-six years ago,"<sup>70</sup> Connerly recalled. Although that changed later in his life, it was true in his early years. Connerly's maternal grandmother, Mary Soniea, owned a small restaurant in Leesville, but Grace, her daughter, never did as well. When Connerly was two, his parents divorced. Soon after, Grace Connerly met William Parker, an enlisted man from New York. They married on the day before Valentine's Day 1943, but by the end of the year, Grace was dead from injuries that she had sustained in a car accident.<sup>71</sup>

Connerly was left to his grandmother, but not without a fight. His father, Roy, was still around, and he filed a custody suit. The charges made back and forth between Roy and Mary Soniea were not pleasant.<sup>72</sup> Roy Connerly accused his child's grandmother of mistreating the child, and his mother-in-law shot back with charges that her son-in-law was a drunk and abusive. Roy's interest in his child, Mary Soniea charged in papers filed by her lawyers, came from the \$30 a month his stepfather was sending the child and the fact that Parker had named the young Ward as a beneficiary on his \$10,000 life insurance policy. The truth of any of this was never cleared up by the courts, but most important to the young Connerly was the court's decision to give custody to his grandmother.

When Mary Soniea won, she sent Ward to live with her sister Bertha and Bertha's husband, John Lewis. They lived first in Washington, and then later they moved to Sacramento. Along the way, Connerly took to his uncle. "My uncle didn't have more than a second-grade education, but his work ethic was unbelievable," said Connerly. "He'd pile lumber up in the saw mills in California, he dug ditches. He always said you could know the mark of a person by his car, his shoes, and his lawn. Every weekend we'd mow the lawn, wash the car, and shine our shoes."<sup>73</sup> When Ward was nine years old, his grandmother sold her restaurant and moved to California. She had saved enough money to build her own house on the

corner of Grant and Branch Streets in the working-class Sacramento neighborhood of Del Paso Heights. Ward went from living with a model of the work ethic to the home of a woman who believed that a young man needed only two things to succeed—the Bible and his schoolbooks. She drummed home the importance of both. “She had a saying for everything,” Connerly said. “It used to drive me crazy.”<sup>74</sup>

Through 1995 and 1996, Connerly retold stories of his upbringing to reporters who walked away with the distinct impression that it had been a difficult one—he talked about having nothing to eat but sweet potatoes, having to work before his teens, and going to school with holes in his shoes. But in May 1997, A. Lin Neumann, a freelance writer for *San Francisco Focus Magazine*, discovered that Connerly’s extended family based in Sacramento disagreed about just how poor it had been.<sup>75</sup> Elizabeth Stansberry, Connerly’s cousin and also a Republican, and Connerly’s seventy-six-year-old uncle, Arthur Soniea, didn’t so much disagree that Connerly had been raised modestly—it was a matter of degrees. Most of his relatives were homeowners, they said, and they made sure Mary Soniea had the money to raise Connerly. “Our family took care of one another,” Stansberry said. “All the cousins including Ward had Schwinn bikes and we all had our own plate of food at the table.”<sup>76</sup> Connerly’s uncle Arthur added, “I don’t dislike the guy but I dislike what he’s said about having nothing to eat. They’re all lies.” When told a story that Connerly had repeated about not having a car, Arthur Soniea was disgusted. “My wife and I co-signed a loan for him to have a car when he graduated from high school.”<sup>77</sup> Soniea said the whole press ordeal had not been pleasant for the family. His sister, Bertha, who backed some of Connerly’s stories, was no longer talking to him.

Elizabeth Stansberry had answers as to why the successful Sacramento businessman was so confused about his upbringing. “Wardell hates being black, and his grandmother ‘tolerated’ black people,” she told Neumann. “She thought she was better than black people.” Once this news broke, it was not

long before Connerly's psyche became material for a long profile in the *New York Times*, and by the fall of 1997, *60 Minutes* was working on a Connerly program. Connerly's answer to the relatives who disagreed with his version of his early life in Sacramento was to call them liars. Elizabeth Stansberry had another take on Connerly's revisions: "My cousin is narcissistically disordered," she said. "Ward has lied so much that I think he believes his own lies. Ward always disliked being a child of color. He thinks he's white."<sup>78</sup> Indeed, Connerly seemed confused about his own heritage. He would tell some reporters that his grandmother was a full-blooded Choctaw Indian, others that she was a mixture of Creole and French, and still others that he was actually more Irish than anything else. Although Connerly may have viewed himself as multi-ethnic, the world around him and those who enlisted his help to combat affirmative action looked at him and saw a black man—smart, capable, and black.

Connerly finished high school with the grades to get into the University of California. But that was a world too far away from Del Paso. He first went to the American River Junior College and later transferred to Sacramento State. The young student worked full time selling clothes, studied political theory, became student body president, and graduated in 1962. The Monday following graduation, Connerly, a registered Democrat, began work at the California Redevelopment Agency. Three years later he went to work at the Department of Housing and Community Development. Connerly never considered the private sector. "Back in the sixties if you were black and you graduated from college, you felt the option available was the government," Connerly said.<sup>79</sup> As it turned out, he was in exactly the right place in Sacramento: the young orphan from Del Paso was about to meet the man who would become his friend and mentor—though he was almost Connerly's polar image in terms of background.

Whereas Connerly felt obliged to become a civil servant, Pete Wilson, who was six years older than Connerly and

considerably more privileged, had options. Born in Lake Forest, Illinois, on August 23, 1933, Wilson was in grade school when his family moved to St. Louis, where his father worked as an advertising executive and his mother, a former model, stayed home. Wilson attended the all-boys St. Louis Country Day School, and then went to Yale on an ROTC scholarship. After doing his time in the Marine Corps as a commissioned infantry officer, Wilson headed west and entered the University of California's Boalt Hall School of Law. It was an era when competition to get into Boalt was minimal for men from good schools. Wilson was an indifferent student, but it hardly mattered to his career that it took him four times to pass the state bar exam. The young man was more interested in politics than the law. He worked on Richard Nixon's failed gubernatorial bid in 1962. And then, on the advice of his law school roommate, John Davies, Wilson settled in San Diego and practiced law while assessing his own prospects.

In 1965, the same year Connerly went to the Department of Housing, Wilson decided to campaign for a seat in the assembly, and he won. Two years later, the thirty-four-year-old assemblyman was appointed head of the new Assembly Committee on Urban Affairs and Housing. He heard from others in the public housing sector that the twenty-eight-year-old Connerly was an up-and-comer, and he wanted him to work for the committee as its chief consultant. Twice Connerly turned down Wilson's offer. Although Wilson later denied it, Connerly felt then that part of Wilson's motive in pursuing him had to do with his skin color. "The governor says no, but I have my own view, I think it weighed into the equation," Connerly said in 1995.<sup>80</sup> Connerly played hard-to-get. Only when Wilson finally raised the salary did Connerly accept. It wasn't the money—that raise had to be cleared by another committee—but Wilson's talk of Connerly's chance to affect policy that did the trick, according to Connerly.<sup>81</sup>

While others had underestimated Connerly, Wilson didn't. Early in their relationship Wilson asked Connerly what he

wanted to do after working on the committee. Connerly didn't hesitate to respond. He wanted to go back to the Department of Housing and work his way up to division manager. "How can you be so limiting?" Wilson asked. "I was kind of taken aback by that," said Connerly. "I never thought about it. I guess government is sort of a safe haven for blacks. We guess we are going to get an equal shot at government jobs and I didn't have that same level of faith in the private sector."<sup>82</sup> Wilson told him he should consider going into business for himself. Connerly thought, What is he smoking?<sup>83</sup> The conversation was a turning point in Connerly's life. Connerly liked Wilson enough to declare himself a Republican in 1969,<sup>84</sup> and the Yalie and the Sac State graduate became bound by a friendship made more powerful by the promise each held. The friendship had an emotional overlay, as well. Wilson never had children of his own and Connerly had been fatherless from an early age. Although his uncle John Lewis had been a powerful role model, Lewis lacked the sophistication to counsel Connerly in his professional aspirations. Wilson fulfilled these needs. "All these things played a role in our friendship," Connerly later acknowledged.<sup>85</sup>

When Wilson left Sacramento to run for mayor of San Diego, he asked his friend to follow him. Connerly declined and returned to the Housing Department. His time in the legislature, however, had been well spent. He had made valuable contacts. Furthermore, a Wilson-authored 1967 bill that amended the laws that govern local planning gave Connerly an idea for a new business.<sup>86</sup> The law required local government entities—counties and cities—to include an affordable housing blueprint in their long-range plans.<sup>87</sup> Connerly left government and started Connerly and Associates, which consulted for local governments that needed to fulfill the change in the planning laws. The business thrived, and as Wilson moved from the mayor's office to the U.S. Senate and then to the governor's mansion, Connerly returned Wilson's early faith with generous campaign contributions.

It wasn't, however, only the \$108,000 in campaign contributions from Connerly and Associates that brought Connerly's name to the fore when the governor was ready to make appointments to the Board of Regents.<sup>88</sup> Connerly's skin color also played a role, according to Connerly and others. A year earlier, the governor had appointed John Davies, his law school roommate and longtime friend, to the Board of Regents. The twenty-six regents—eighteen of whom are appointed by the governor—oversee one of the world's premier public university systems. Although the regent's post pays nothing, it is considered one of the plums in the governor's bag of political patronage.

Liberal assemblymen didn't much like the Davies appointment when it was made, and as the time approached to confirm the wealthy San Diego lawyer, they came to like it even less. In the year Davies had been sitting on the board, the regents had made some decisions that left critics wondering whether the board's members were too far removed from the lives of students and faculty. Of most concern was a decision supported by a majority of the board, including Davies, to award former U.C. president David Gardner a generous severance package at the same time that budget constraints had pushed the regents to raise student fees. State legislators, Common Cause, the Latino Issues Forum, and the National Organization for Women promised a revolt over the Davies confirmation. The appointment of another white male millionaire, they argued, would not broaden the board's outlook.

Wilson wanted Davies, but he also understood the need to appease his critics. He had little choice. A 1974 revision of the state constitution required the Board of Regents to reflect California's "economic, cultural, and social diversity . . . including minorities and women."<sup>89</sup> As of 1993, the board's eighteen appointees included twelve white men, one Asian American, two Latinos, four women, and one black.<sup>90</sup> With pressure building on the Senate Rules Committee, which confirms appointments, Wilson cut a deal. If the committee ap-

proved Davies, Wilson would fill further vacancies with women and minorities.<sup>91</sup> One of the governor's first diversity appointees was Connerly. In a sense, the Connerly appointment reflected Supreme Court Justice Powell's recommendations on affirmative action in the *Bakke* case. Connerly was entirely qualified—he had proven himself a capable businessman—but race was among the many factors that Wilson considered. “The external pressure to make the board more diverse caused the governor to focus on me,” Connerly acknowledged, while adding that it is an appointment that he could have asked for and received at any time. “The external pressure caused Wilson to say I am going to have to lean on Ward to take this, and he did kind of lean on me,” Connerly recalled.<sup>92</sup> If the critics of the Davies appointment weren't completely happy, they could hardly object. Even though Connerly was another Wilson crony, he was one who had been raised in a different world. With one member absent, the Senate Rules Committee approved Connerly's appointment four to zero in February 1994, and the full Senate followed with a thirty-seven to zero vote of approval. Little did they know that Connerly would prove to be Wilson's Trojan horse.

Connerly's early actions on the board quickly indicated that he would become an outspoken ally of U.C.'s 162,000 students and faculty.<sup>93</sup> He voted against fee hikes, closely questioned all financial decisions, and in January 1994, he wrote an open letter sharply criticizing his fellow regents for being too anxious to please U.C. administrators and approve every measure presented by U.C. President Peltason. “If we subscribe to this view, there is no reason for us to meet,” he wrote. The board, Connerly argued, failed to give faculty and students enough time and consideration. Connerly's opinions at meetings were just as strong. He dared to question matters that had been considered off-limits: one of them was affirmative action. It was Connerly's interest in this issue and his willingness to work extra hours on university business that led Chairman Clair Burgener to suggest in August 1994 that the new regent

meet with Jerry Cook, a statistician and lecturer at the private University of San Diego, and his wife, Ellen, an accounting professor. "It was an admissions problem," Burgener said as he recalled his role in the meeting, adding that he believed Connerly would be helpful in explaining to Cook why his son had been rejected. "I thought that it would be constructive. I knew that Connerly had an interest. He's a minority. I never had any idea of how far he intended to go."<sup>94</sup>

Burgener and those who testified on Connerly's behalf during the hearings on his appointment as a regent might well have known if they had bothered to read the *Sacramento Bee* closely. Soon after Wilson was elected governor in 1990, the *Sacramento Bee* focused on some of the conservative African American businessmen who had supported Wilson. By this time, Connerly had been named to a few committees, represented several construction associations, and had developed an unusual position toward minority contracting. Although his own business had registered as a minority firm to take advantage of minority contracts—a step Connerly said he was forced into taking to protect business he already had—he disliked the preferences. "I'm opposed to it [affirmative action]," Connerly told the *Bee* in 1991. "For me it's the ultimate insult. I don't need any brownie points from anybody. I don't want any from anybody. And to my knowledge we have never taken advantage of it."<sup>95</sup>

In the same year that Connerly was publicly speaking against affirmative action in contracting, Cook's son James, a sixteen-year-old graduate of U.C. San Diego, applied to five University of California medical schools. When young Cook was rejected by all five schools, his father decided to find out why. The average age of those admitted was twenty-five and a half,<sup>96</sup> and while his son's age was an obvious stumbling block, his father saw it differently. As he put it: "I walked across the street where they keep the records of people who apply to medical school. I bring the records home and it takes me five minutes to conclude that it wasn't about my son."<sup>97</sup> Cook found that Latinos with lower grade point averages and



test scores were three and a half times more likely than whites and Asians to gain acceptance at Davis. Blacks with similarly low numbers were over two and a half times more likely to be admitted. The University of California's medical school admissions, Cook concluded, violated the Supreme Court's 1978 *Bakke* decision on affirmative action. That decision said the university could consider race as a factor in deciding whether to admit a student—as long as it was not the only or the primary factor. Even though the university's lawyers saw it differently, Cook decided that in the medical schools' admissions policies, race had become the ultimate deciding factor and he wasted no time in going to the authorities. By July 1994 the University of California's lawyers issued their report: in it they argued that the medical schools had complied with *Bakke*—that all of the applicants had been considered by one committee and that no slots had been set aside for underrepresented minorities. Cook was unsatisfied. "It was a pure slap in the face," he said. "I called this guy Burgener and said this is all garbage, and he said, 'What did you expect them to say?' He said, 'You should meet Regent Connerly.'"<sup>98</sup>

Cook and his wife flew up to Sacramento and were ushered into the white clapboard Victorian on Twenty-first Street where Connerly and his wife, Ilene, have their consulting business. "We sit down in this room and this black man walks in and I look up and think, 'Oh God,'" Cook said later.<sup>99</sup> He had been unaware that Connerly was black. "He sits down and I pull out the data. I was afraid that he was going to pick me up and beat the crap out of me," recalled Cook. Instead, Connerly proved to be as disturbed by the data as Cook himself.

Connerly didn't like what he heard, and he spoke privately that summer with Wilson, U.C. President Jack Peltason, and other regents. Although Wilson had been a longtime supporter of affirmative action, his discussions with Connerly began to have an impact. In the summer of 1994, though, the governor was too busy with his reelection campaign to pay much attention to affirmative action.

Connerly, however, had plenty of time, and he was way ahead of the governor in thinking about the university's use of race as a criterion in its admissions decisions. He'd already made up his mind when Wood and Custred attended the State Assembly's Judiciary Committee meeting on August 10, 1994, to hear testimony on Assemblyman Bernie Richter's proposed bill to ban affirmative action. "There was a time when affirmative action had a value," Connerly told the standing-room-only audience that included Custred and Wood. "There was discrimination in all sectors of California and we needed some sort of shock treatment. The time has come to take off the training wheels."

Richter's bill failed to make it out of the committee, and despite support from conservative commentators like William Rusher and Patrick Buchanan, Custred and Wood could not attract the money they needed to run their initiative campaign. Instead, they began to talk to Connerly, and they watched as Proposition 187 began to gather momentum. Ultimately, it became the defining issue of the 1994 elections and cut the electoral path for CCRI.

### *CCRI's Political Precursor*

The social and political environment that pushed Proposition 187 to the fore had been planted even before Custred and Wood met. When Pete Wilson was elected governor of California in 1990 and gave his first state-of-the-state address, the Democrats who had opposed him were elated. He sounded like one of them—calling for better health care and more social services for the poor. But Wilson's moderate rhetoric was to change quickly. By 1993 only 15 percent of the voters wanted to give the ex-Marine a second chance as governor.<sup>100</sup> It was no wonder—his first term had been a series of disasters, although most weren't of his making. Wilson took office in 1990 just as California's recession-proof economy lost its lift. The housing market fell, Washington closed military bases,

and defense contractors laid off employees. In some Southern California towns, For Sale signs were as ubiquitous as mailboxes. Wilson's finance department warned him in 1991 that events were moving beyond his control. Professionals who paid taxes were selling their high-priced homes and moving out, and poorer residents who used tax-based services were moving in. "California's major tax receiver groups—students, welfare recipients, prisoners and Medi-Cal eligible—are growing more quickly than its taxpayer group," his finance department stated flatly in its 1991 report. "Much of this growth is based on increases in the number of school age children, resulting from immigration and a recent surge in the birth rate."<sup>101</sup> The California dream was turning sour.

Hard times bring out the best—and the worst—in people. Californians are no different. When the economy went into a tailspin in 1900, whites chased Chinese laborers off the farms. In the 1920s the Orange County Farm Bureau passed a law excluding the Japanese from owning property and warning, "A nonwhite majority is envisioned if today's immigration continues." And during the Great Depression, the state rounded up Mexicans, many of them legal residents, and dumped them over the border. It was to this tradition that Wilson turned for political salvation. In a 1991 interview with *Time* magazine, Wilson seemed to throw up his hands. Since 1985, Wilson told *Time*, the state's population increased by 18 percent, school enrollments by 23 percent, welfare by 31.5 percent, and Medicaid by 49 percent. "We will have to minimize the magnetic effect of the generosity of this state," he said. "There is a limit to what we can absorb."<sup>102</sup>

When his critics jumped on these remarks, Wilson retreated. Nonetheless, through his first term, he continued to insist that Washington reimburse the state for the cost of serving illegal immigrants. Wilson was not alone in linking the state's budget problems to increases in illegal immigration. U.S. Senator Dianne Feinstein, former San Francisco mayor and a Democrat who had narrowly lost the 1990 governor's

race to Wilson, began to pressure Washington in early 1993 to increase the number of agents patrolling the border. With Democrats like Feinstein and California's other U.S. Senator, Barbara Boxer, taking up the issue, Wilson renewed his attack. In August 1993 he declared that California was "under siege" from illegal immigration and made a series of proposals. The two most dramatic: deny citizenship to children born on U.S. soil to illegal immigrants, and cut off health and education benefits to anyone in the state illegally.

If liberals, Catholic leaders, and even some Republicans, such as former Housing and Urban Development Secretary Jack Kemp and former Education Secretary William Bennett, criticized Wilson for scapegoating, the governor's attack against illegal immigrants resonated with many ordinary voters. In the years since World War II, the strong pull of California's flush economy and a 1986 amnesty program had significantly changed the color of Los Angeles, Santa Ana, Oakland, and other major California cities. More than one out of four Californians was Latino.<sup>103</sup> The changes scared longtime residents. Instead of blaming bad, overcrowded public schools on funding cuts, voters blamed the decline in schools and city services on the presence of too many immigrants with too many language problems. "We are becoming a third world state," Robert Lacy, a computer executive, told a reporter in 1994.<sup>104</sup>

Still, the numbers were on Lacy's side: the electorate was white. Whites represented only 52.8 percent of the population but accounted for 88 percent of all registered voters; in contrast, the nonwhite registered voters were 11 percent Latino, 6 percent black, and 5 percent Asian.<sup>105</sup> Latinos were the fastest-growing segment of the population, but the voting power of their 31 percent population share would take years to emerge—the majority were too young to vote and many of those who were old enough failed to file for citizenship. Instead of representing the growing power of ethnic minorities, the state's demographics exaggerated the power of white voters.<sup>106</sup> If whites had a gripe with the new immigrants, they

could register their complaints in the voting booth. And in 1994 that is exactly what they did.

Wilson's talk of rescuing California from a deluge of illegal immigrants never led to action. His own proposals to end health care and education for illegal immigrants never made headway in the legislature. But the concerns about illegal immigration that came from Wilson and the state's two Democratic senators, Feinstein and Boxer, had stirred up white Californians. Once riled, they didn't need an elected official to change California's laws. Under the state initiative process citizens can propose new laws or changes to the state constitution by collecting enough signatures to put an initiative on the ballot. Proposition 187, an initiative to ban state services to undocumented workers, was drafted by Ron Prince, an accountant living in Orange County; Harold Ezell, an outspoken former regional director of the INS; and Alan C. Nelson, director of the INS during the Reagan Administration. The initiative caught on like an October brushfire. At last, people had someone to blame for lost jobs, lousy schools, and limited prospects. And Wilson, already on record as opposed to educating the children of illegal immigrants, became Proposition 187's point man. So dedicated to the issue did he become that he spent \$2 million in television commercials that featured Proposition 187. One of his campaign commercials showed night vision video clips of immigrants sneaking across the border. "They just keep coming," the tag line read. Wilson promised to turn them away from schools and hospitals. He would reserve those services—which cost \$2.5 billion in tax dollars—for California's legal residents.

By September 1994 a governor whose future had nearly fallen through the political cracks over the economy now found that few residents talked about the downturn anymore. Instead, they talked about illegal immigration. Wilson made the front pages of the *New York Times* and *Washington Post* and the cover of *Time*. No matter that most legal analysts argued that the courts would declare the initiative invalid, most voters felt that

Proposition 187 would send a message to Washington. Although the measure provided no mechanism to force Washington to pay up, Wilson too said it would pressure Washington to reimburse the state for the cost of providing health and education services to illegal immigrants.<sup>107</sup> On the morning of November 9, the governor's political instincts proved on target. He won almost as resoundingly as Proposition 187—Wilson won with 55.2 percent of the vote and Proposition 187 won with 58.9 percent of the vote.<sup>108</sup> The *Los Angeles Times* described Wilson's landslide victory as "one of the most dramatic comebacks in California political history." And the paper noted its consequences. The victory thrust Wilson "firmly into the ranks of possible Republican contenders for the White House in 1996."<sup>109</sup>