Race—Workplace

Race-Based Jobs Stir New Debate In Workplace

By Frances A. McMorris
Staff Reporter of The Wall Street Journal

When Shirley Ferrill got a job making get-out-the-vote calls during the 1994 Alabama governor's race, one of her key qualifications was the color of her skin. The telemarketing company was looking for blacks to call black voters and whites to call whites.

RACE-
workplace

Ms. Ferrill, who is black, is one of many people companies hire in the belief that their race will be an asset in dealing with minority groups. Many minority-owned businesses are built on the premise. Corporate America has embraced the idea, creating thousands of race-specific jobs in marketing, advertising, publishing, purchasing, entertainment and countless other fields.

Ms. Ferrill's experience raises the difficult question of when race-based hiring violates civil-rights laws. In 1996, she filed a discrimination suit against **Parker Group** Inc. of Birmingham, Ala., for assigning blacks to call blacks and whites to call whites, having different scripts for callers of each race and housing blacks and whites in separate rooms. And she won.

In another case, this one involving a Hispanic manager at a Milwaukee employment agency, a federal appeals court panel in Chicago was emphatic. "A plan to run a business specially designed to be managed by minorities," it declared last year, "is a plan to violate the civil-rights laws—either the rights of minority workers assigned to the business against their will or the rights of other workers excluded from those jobs."

That logic calls into question a growing segment of the economy: Since the 1960s, antidiscrimination laws, affirmative-action goals and community pressure have encouraged employers to pursue ethnic diversity in their work forces and business practices. Many companies have naturally turned to nonwhite employees to lead their diversity efforts in hiring and choosing suppliers.

And as the spending power of minority groups has increased, more companies have hired minority-owned agencies and marketing firms to pitch their products. The University of Georgia estimates that African-Americans spent more than $501 billion on goods in 1998, Hispanics $353 billion and Asian Americans $209 billion.

Clarence O. Smith, president and cofounder of **Essence Communications** Inc., the New York publisher of Essence and Latina magazines, says the Chicago court missed the mark. There is nothing wrong with starting a division with a minority manager to focus on a minority market, he says—as long as the manager isn't placed there over his objections. Essence "wouldn't be in business if there wasn't a need for targeting the minority market," Mr. Smith says.

Companies don't necessarily need a black manager to hire blacks in their finance departments, Mr. Smith adds. But a company that wants to sell financial services to blacks "probably would do a more effective job working through African-American executives and African-American advertising agencies, because you're

Please Turn to Page B8, Column 3

Continued From Page B1

dealing with a culture that has a different experience from the general culture."

Donna Banks, vice president of **Mycom Enterprises**, a black-owned ad agency in Cincinnati, says she believes what is really at issue is workplace diversity. The firm, while predominantly black, also employs whites and Hispanics, she says. And although her firm handles assignments aimed at blacks, it does other work as well, she adds.

Still, she says, minority employees are "necessary" for targeting minority consumers. "If you're not part of that culture, that is something that is really hard to learn," she says. "It's just lifestyle and knowing what affects them and what they view as positive and what they view as negative and what could be hurtful to them."

Magaly Petersen, who runs the minority purchasing program for **Advantica Restaurant Group** Inc., says she doesn't feel "pigeonholed" in her job. The Spartanburg, S.C., company, parent of the Denny's restaurant chain, hired Ms. Petersen, who is Hispanic, in 1995 after reaching an agreement with the National Association for the Advancement of Colored People to commit to using black suppliers. The agreement stemmed from Advantica's settlement of lawsuits alleging that some Denny's outlets gave black customers poor service.

"I'm in this position because this is something I want to do and I'm good at it," Ms. Petersen says. "People like to deal with people who look like them or that they can relate to or have something in common with." Nevertheless, since the 1970s courts have said customer preference can't be used to justify unlawful discrimination.

Lawyers say companies can get into trouble when their work forces are segregated, even if they don't intend to discriminate. Richard Shaw, a partner in **Jones Day Reavis & Pogue**'s Pittsburgh office, encourages clients to watch for concentrations of minorities in certain divisions or types of jobs. Still, he adds, "there aren't any clear guidelines" beyond the law's prohibition against restricting a person's opportunities based on race.

Using minorities to sell to minorities may be "okay as long as there is free mobility within your work force," says Mark McKenna, a lawyer who represented an African-American executive in a lawsuit against a Chicago beer distributor, **Zema Systems Corp.** "To pigeonhole people is illegal," even if it boosts the company's bottom line, Mr. McKenna says.

Zema recently settled for an undisclosed sum after a federal appeals court panel in Chicago concluded that the executive, Leon Johnson, had shown enough evidence for a jury to hear his complaint that he "was expected to manage and befriend" only blacks and that he was fired for failing to comply with "race-based limitations."

Mr. Johnson had been hired by a predominantly black company that catered to blacks in 1991, a month before it merged with a mostly white distributor to form Zema. After the merger, Mr. Johnson was named vice president of sales and marketing at the combined firm.

Mr. Johnson alleged that he was initially told he would run the joint sales operation, but was later told to limit his dealings with whites. He complained about blacks and whites being segregated in the office, about white managers getting company cars while blacks had to drive their own and about racial slurs directed at other black employees. "I was supposed to overlook the injustices, which I could not do," says Mr. Johnson, now a sales representative for an automated teller machine leasing company.

Zema's lawyer, Roger Guerin, acknowledges that the separate offices "appeared bad" for his client, which has also settled other race-discrimination lawsuits. But he denies there was any discrimination. He says Zema's work force was segregated because the company didn't physically combine the two operations until after Mr. Johnson sued. Each kept its traditional sales territory, with blacks selling to blacks on Chicago's south side and whites and Hispanics dealing mostly with whites on the north side, he says.

Mr. Guerin says Mr. Johnson was indeed criticized in his last evaluation in 1994, for spending too much time with a white sales manager who was his friend. Mr. Guerin says Mr. Johnson "was never brought in to run any black area" and was fired after a consultant recommended that his job be eliminated and his duties shifted to other executives, Mr. Guerin says.

In the 1994 case involving the Milwaukee employment agency, Oswaldo Bermudez sued **TRC Holdings** Inc., alleging, in part, that he was transferred against his will to a unit focusing on minority employees because he is Hispanic. He said he told company officials he didn't want the transfer because the unit was struggling and his commissions would suffer. He alleged he was fired in October 1993 because he filed a race-discrimination claim with a state agency and because he wasn't able to turn the unit around.

Initially, a federal judge dismissed his case. But a federal appeals court in Chicago reinstated it, saying his allegations, if proved, would clearly violate the civil-rights laws. Then, last year, a jury found in TRC's favor. Vanessa Jones, an attorney for the company, says Mr. Bermudez "wasn't asked to focus on minority markets."

In Ms. Ferrill's telemarketing case, the federal appeals court in Atlanta concluded in February that her job assignment was unlawful because it was based on stereotyped assumptions that blacks "would respond to blacks" and that her race was directly related to her ability to do the job. The court upheld a jury's award of $500 in compensatory damages but threw out its $4,000 punitive award.

Stephen Strickland, the Parker Group's lawyer, had argued that "the-race-of-the-interviewer effect" is well established in face-to-face and telephone interviews. He says his client "didn't have any ill will" when it hired blacks to target black voters.

It's Not All Linux: Other Free Programs Are Building the Web

Continued From Page B1

future is for the BSDs in a world where Linux is getting most of the "mindshare."

Mr. Hubbard says the ranks of FreeBSD users continue to swell. One reason is that all BSDs are distributed under a license that lets users do almost anything with them—including put the software into traditional commercial products. The Linux license, by contrast, requires users to make any use of the software—such as a piece of specialized computer networking gear—freely available to everyone else. That restriction keeps many companies from using Linux in key products.

It might well make sense for the BSDs to put aside their differences and unite under a common set of specs. But peace may be too much to expect in the free software world. Two of the BSDs tried to merge a few years ago, recalls Charles M. Hannum, a programmer with the NetBSD project. But at a meeting between the two camps, "while everyone agreed it was a good idea," he says, "no one wanted to give anything up, and it just fell apart."

THE WALL STREET JOURNAL

FRIDAY, SEPTEMBER 10, 1999

Money-Laundering Case Is Difficult to Unravel

By David S. Cloud
And Glenn R. Simpson
Staff Reporters of The Wall Street Journal

Far-Flung Probe

The investigation into money laundering at the Bank of New York involves more than a half-dozen law enforcement agencies in several countries. Some major players are:

- **Federal Bureau of Investigation** (U.S.)
  Launched an investigation last year into suspicious account activity at Bank of New York.
- **Treasury Department** (U.S.)
  Financial Crimes Enforcement Network keeps tabs on international money flows.
- **National Crime Squad** (Britain)
  Reportedly alerted U.S. authorities to large money flows through accounts in the Bank of New York's London office.
- **Federal Security Service** (Russia)
  Successor to the Soviet-era KGB.

WASHINGTON—If it seems that U.S. investigators are struggling to unravel the Russian money-laundering story, there's good reason: The task is, indeed, a struggle.

Investigators are looking at billions of dollars that flowed through accounts at Bank of New York Co. during the past year. A portion of the money, they suspect, came from illegal activities within Russia, possibly involving organized crime. But it's an enormously complex investigation, involving offshore accounts, secretive companies and sensitive foreign-policy issues, including whether U.S. officials were aware of concerns that some of the money may have been skimmed from Western economic aid to Russia.

Here's a look at some of the big questions:

Where did the money come from? That's still a mystery, perhaps the biggest one. People familiar with the investigation believe as much as $10 billion flowed through nine accounts at Bank of New York over the past year or so, although it's possible that figure may have been inflated by double-counting some transactions. Much of the money came through accounts affiliated with **Benex International**, a New Jersey-registered company. Hundreds of accounts at dozens of other banks in the U.S. and abroad also were involved.

The amounts involved seem too huge to be the proceeds of simple racketeering or other traditional organized crime operations. That makes the Federal Bureau of Investigation suspect that some of the money came from foreign aid to Russia, and authorities say they are looking at whether International Monetary Fund assistance may have been diverted through the accounts. British authorities have already identified at least one instance in which some $200 million appears to have been diverted, at least temporarily, to an offshore account held by a Russian bank.

But in a government that lacks fiscal transparency, there are also ways of manipulating aid flows to make huge profits without actually stealing the aid itself, mainly through currency transactions. So we may never know for certain if the aid was misused.

It's also likely that at least some of the money was earned legitimately. Like other unstable economies such as Mexico, Russia has endured huge, devastating capital outflows because investors want to put their money where it will be safe or hide it from creditors. Many of Russia's biggest banks collapsed last summer, spurring massive capital flight.

What crimes may have been committed? That's one of the problems. Under U.S. law, to charge somebody with money-laundering, prosecutors must show that the funds in question are the proceeds from one of several so-called specified unlawful activities. The list is quite long when it comes to crimes committed on U.S. soil. But only about a half-dozen foreign crimes qualify, such as drug-trafficking, murder-for-hire and kidnapping. It could be very difficult to trace any of the money directly to foreign crimes. And getting Russian police to help do the leg-work could be equally daunting. Still, there is the possibility that other U.S. laws may have been broken, such as operating a wire-transmitter service without a license.

Why did the Clinton administration support continued aid to Russia if it was worried about it being stolen? After initially denying knowledge of the probe, administration officials said this week the Treasury Department first learned of the Bank of New York investigation in April from regulators at the Federal Reserve Bank of New York. They were told there was no evidence that IMF or other aid was diverted, they said. Officials say they are generally aware of allegations of official corruption and improper use of aid, but firm evidence implicating Russian President Boris Yeltsin has been lacking. In that environment, keeping Russia afloat by continuing Western aid was the only logical course, officials said.

What is known about Benex? Benex, which was incorporated in 1993, is controlled by Peter Berlin, a Russian emigre who is married to Lucy Edwards, who served as a vice president in Bank of New York's Eastern European division. Mr. Berlin and Ms. Edwards, who was fired by the bank after the investigation came to light, both deny wrongdoing. Little is known about Benex's business dealings.

What other companies may be involved? Many. Money-launderers often set up or take over shell companies and funnel funds through them to cover their tracks. **Menatep Bank**, a bankrupt Russian concern, is being looked at by authorities because it may have been involved in setting up offshore companies through which some of this money may have flowed. Authorities are also looking at Menatep's vice president, Konstantin Kagalovsky, formerly Russia's representative to the IMF, who is married to Natasha Gurfinkel Kagalovsky, a senior vice president of Bank of New York, who headed the Eastern European division. Both have denied any wrongdoing.

Why is this investigation so hard? Russia's opaque economic system defeats many of the information age's most powerful tools. Computerization and record-keeping standards are lacking.

The FBI also has no overseas investigative authority, although it has agents stationed in Moscow who have been requesting help from Russian law enforcement. And cooperation between the U.S. and Russia on law-enforcement issues remains extremely weak. Sometimes, U.S. and Russian agencies actually operate on a "quid pro quo" basis, making deals to assist each other on a one-for-one basis.

—Michael Allen in New York contributed to this article.

THE WALL STREET JOURNAL

FRIDAY, SEPTEMBER 10, 1999