could pass Congress—Clinton’s scheme could be strengthened with a few steps. That means eliminating the A.M.T. exemption for gifts of appreciated property, clamping down on the definition of “real estate professional” and lowering the limit for home mortgage deductions from $1 million to, say, $300,000. The last step alone will net at least $15 billion by 1998.

But by far the cleanest way to preserve the plan’s progressivity would be to ratchet up the top capital gains rate to about 36 percent—the magic point where it’s not worth the time, trouble or money to pay your tax planner to think up new ways to outsmart Uncle Sam. That would fix the worst flaw in the plan, the world of difference between capital gains and income rates. If the pre-1986 past is any guide to the future, the differential could create dustclouds of artificial economic activity. This comes at great social cost, for there are much better ways to spend the nation’s minds and money than on tax shelters.

**WHILE THE E.E.O.C. SLEPT**

**Racism Du Jour At Shoney’s**

STEVE WATKINS

Billie Elliott wants to get a spot on Oprah. The way she looks at it, that’s how she’ll reach the kind of people who need to hear her story most: people like her who lost their jobs not because they didn’t do them right but because of somebody else’s bigotry. Elliott’s story is about battling corporate racism in America, and she wants a chance to tell it to the 15 million others who watch Oprah too.

She wants me on Oprah with her so I can talk about the civil rights climate over the past twelve years and about how the country under Ronald Reagan and George Bush and the Equal Employment Opportunity Commission under Clarence Thomas ignored the systemic racism that still plagues much of the American workplace. There are an increasing number of discrimination complaints but fewer and fewer E.E.O.C.-negotiated settlements and class actions. She wants civil rights lawyer Tommy Warren on as well so he can talk about the five hard years he has spent as the principal attorney on her case, Haynes et al. v. Shoney’s Inc., which started when Billie and her husband, Henry, white managers of a Captain D’s seafood restaurant in Marianna, Florida, were fired because they wouldn’t obey orders to “lighten up” their store—a company euphemism for reducing the number of black workers—and hire “attractive white girls” instead. The black workers they tried to protect lost their jobs; among them were Madeline Her- ring, with whom Billie had worked for years at the Union 76 diner before they came to Captain D’s, and Lester Thomas, whom Henry had promoted to assistant manager because Lester had worked hard and deserved it.

Billie wants to get on Oprah and tell people how she and her husband fought back against Captain D’s parent company, Shoneys’ Inc., one of the largest family restaurant chains in the country, with its 1,800 stores in thirty-six states and its billion-and-a-half-dollar-a-year business. It’s also a chain whose unwritten but clearly racist policies in hiring and promotions are now costing it $132.5 million as it is forced to enact a sweeping affirmative action plan and pay off claims to tens of thousands of former workers and job applicants—with $19 million going to the plaintiffs’ lawyers—in the country’s largest class-action settlement ever for racial job discrimination.

Tommy Warren’s voice trembles in anger sometimes when he talks about the case that has consumed him for the past five years—about the Elliotts and other white managers who were fired because they wouldn’t get rid of black workers, and about the thousands of black workers themselves who were cut out of jobs: people like Josephine Haynes, one of the nine named plaintiffs in the class-action suit, who never got a response to repeated applications at two Shoney’s in Pensacola, Florida; and Carolyn Cobb, another plaintiff, who spent more than twenty years at a South Carolina Shoney’s and has seen a steady stream of white employees advance past her into management. Warren is angry for a lot of reasons—the lost opportunities, the damaged lives—but one of them is the failure of the E.E.O.C. to recognize the blatant pattern of discrimination in the Shoney’s empire—or to do anything about it. Workers filed hundreds of complaints against Shoney’s and its various divisions over the years, Warren says, but little came of them beyond some small individual settlements, all in keeping with what for some time has been the commission’s chamber-of-commerce approach to discrimination complaints. Before Reagan, Bush and Thomas, the E.E.O.C. was settling 32 percent of the cases it closed; that figure has dropped to less than 14 percent. Those “Merit Resolutions,” or settlements, fell from 26,507 in 1981 to 11,032 in 1991, while complaint dismissals rose from 21,097 to 38,369.

The E.E.O.C. did manage to file an amicus brief in support of class certification—two years after the Shoney’s suit was filed. However, the federal judge handling the case said he already had “too much paperwork” and dismissed the government’s brief as irrelevant.

Warren wasn’t aware of the E.E.O.C. complaints or the number of individual suits against Shoney’s when he heard the Elliotts’ story in April 1988. When he started interviewing other Shoney’s and Captain D’s employees, though, the stories they told convinced him that the Marianna Captain D’s case fit a racist pattern that ran throughout the company. He found a former manager at a Tallahassee Shoney’s who said that he too had been pressured to get rid of blacks and to hire white workers instead. The manager said that once, when two black employees were late for work, a Shoney’s division director who was visiting the store took him into a cooler, grabbed him by the tie and yelled in his face, “This is how you talk to them: ‘Listen you black bastard, get to work on time or get the fuck out.’ ” The manager was later fired.

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With the Elliotts’ case bolstered by stories such as these, Warren hired an investigator to visit 250 Captain D’s and Shoney’s in ten other states and check out their racial composition. The investigator came back with a report that echoed the Elliotts’: few black managers or cashiers; few blacks in “customer contact” positions; garden-variety restaurant racism; blacks in the back.

Warren dug through old court records, contacted other civil rights attorneys scattered around the country and tracked incidents of discrimination in ever-widening circles to other stores in other states. One of the most troubling, because it might have blown the lid off the Shoney’s secret years before, was a 1985 lawsuit in Montgomery, Alabama. In that case, two black Shoney’s employees said they were ordered by their manager to hide in a restroom because some company executives had shown up for a surprise visit and there were “too many” blacks at work that day. The women complained and subsequently lost their jobs, but they sued. Shoney’s settled out of court. The manager for the Montgomery restaurant said later in a deposition that he got a call from the company president when the settlement was announced. “You’re not going to believe this,” the manager said he was told, “but the stupid fucking bitch has decided to settle the suit for about $25,000.”

The case spiraled upward as Warren continued his investigation through 1988 and gathered evidence implicating company officials all along the corporate chain of command, including particularly damning testimony against Ray Danner, the co-founder, longtime C.E.O. and board chairman of Shoney’s. Everyone, it seemed, had a Danner story—about a racial epithet, a joke, a threat, an order to terminate—and when Warren traced some of those tales to former upper-level managers in Nashville, “in the belly of the monster,” where Shoney’s has its national headquarters, he knew he was onto something big.

Warren discovered zero minority representation at the upper levels of Shoney’s management, and virtually none at any level in the central office in Nashville. He learned that well-built black men at some stores might be referred to as “Arnold Schwarzenigger,” that too many blacks meant a restaurant was “too cloudy” or that someone must be “shooting a jungle movie” or that it was “Little Africa.” He learned that hiring blacks back after you’d just “lightened” your store was “re-nigging.” He learned that “nigger stores” in predominantly black neighborhoods might have black managers, but that otherwise the place for many minority applications was “File 13;” the trash can. But there were other ways to note the race of black job applicants so they could be rejected: a simple “A;” for instance, which stood for “Ape”; or a colored-in “O” in the Shoney’s name on the application form.

When the NAACP Legal Defense Fund agreed to help out with the case near the end of 1988, one of the first things it did was publicize an 800 number for complaints. The calls poured in from black workers and job applicants who said they had been victims of Shoney’s discriminatory policies, and from white employees as well, many of whom had worked in supervisory positions and said they had been forced to carry out those policies in order to keep their jobs. These witnesses described a corporation where there was no affirmative action plan; where there was no job posting, formal application process or objective criteria for promotions; where racial slurs and specifications on the “right” number of blacks were common, where officials charged with discrimination were rarely, if ever, punished; and where all the decision makers were white. Plaintiffs’ attorneys filed more than a hundred depositions from these witnesses in the class action.

Nineteen eighty-nine was not a good year for class actions in job discrimination cases. With an increasingly conservative federal judicial system, class certification requests had been in freefall for more than a decade, down 96 percent from 1,106 in 1975 to 51 in 1989. The Supreme Court punctuated that decline in 1989 with half a dozen new rulings that severely restricted the ability of workers to bring and win discrimination suits. But Warren and Barry Goldstein, who was the N.A.A.C.P.’s attorney on the case—and who had been the principal attorney in one of those Supreme Court cases, Lorance v. AT&T Technologies—were confident that they had overwhelming evidence of “the easily understood type of discrimination,” evidence that fundamentally challenged the E.E.O.C.’s smug and often-repeated assertion that “demographic diversity” had been achieved in the workplace and that systematic discrimination no longer existed.

The class action that Warren and Goldstein filed in April 1989 alleged massive discrimination in hiring, firing and promotion in the Shoney’s corporate empire; they had depositions from job applicants, cooks, waitresses, store managers, area supervisors, division directors, regional vice presidents, personnel directors and even a former C.E.O. implicating seventy restaurant managers, 104 midlevel supervisors and thirty-six senior executives.

No name came up more often in the class action complaint than Captain D himself, Ray Danner, as senior corporate officials got in line to confess their sins and tell their Danner tales. Dave Wachtel, the former C.E.O. who had worked his way up over a twenty-year career beginning as a Shoney’s busboy, said in a deposition that his boss’s racial attitudes were common knowledge in the company, and that Danner once discussed contributing money to the Ku Klux Klan and matching dollar-for-dollar any senior employee’s contributions.

Another high-level Shoney’s executive, a former division personnel director named Thomas Buckner, said Danner apparently thought the company’s discriminatory policy made...
good business sense. "Danner would say that no one would want to eat at a restaurant where 'a bunch of niggers' were working," he reported.

Royce Browning, a former Shoney's vice president, echoed Buckner, Wachtel and dozens of others. Everyone, he said, knew Ray Danner's laws: "Blacks were not qualified to run a store. Blacks were not qualified to run a kitchen of a store. Blacks should not be employed in any position where they would be seen by customers."

Billie Elliott: 'I will not sit back and watch people do me and other people wrong.'

And the personnel statistics prior to the lawsuit bore this out. Only 1.8 percent of the store managers in the Shoney's restaurant division were black. Out of 441 employees at the supervisory or supervisory-trainee level in the corporation, only seven, or 1.6 percent, were black. Out of sixty-eight division directors, a position at the low end of out-of-store management, only one was black. And at the higher levels of corporate management, at the end of 1989, the year Haynes et al. v. Shoney's Inc. was filed, there were no blacks at all. Instead, more than 75 percent of black Shoney's restaurant workers held jobs in three low-paid, non-customer-contact positions: busperson/dishwasher, cook/prep person and breakfast bar attendant.

In his deposition Danner himself denied everything—or almost everything. He admitted to having used the word "nigger," but repeatedly answered "I do not recall!" when confronted with a long list of employee accusations. And there was one other incredible admission: "In looking for anything to identify why is this unit under-performing," Danner said, "in some cases, I would have probably said that this is a neighborhood of predominantly white neighbors, and we have a considerable amount of black employees and this might be a problem."

Indeed, the smoking gun in the case came in the form of a letter Danner wrote complaining about the performance of a Jacksonville, Florida, Captain D's and comparing the racial makeup of that store, which had several black employees—some of whom were later fired—to the all-white, or nearly all-white, composition of other fast-food restaurants Danner visited in the area.

The Haynes case won class certification in July 1992 for as many as 75,000 black workers, former employees and job applicants in all company-owned stores in the corporation's Shoney's and Captain D's divisions. The white plaintiffs—including Billie and Henry Elliott—were dropped from the suit, not because their complaints lacked merit but because they didn't meet court standards for class recognition. The Elliots did win $175,000 in a separate settlement with their franchise owner, which was about what they would have earned had they stayed with the company.

Four months later, in November 1992, Shoney's—without admitting guilt—agreed to the record $132.5 million settlement. Ray Danner, who refuses to comment on any aspect of the case or his involvement in it, was forced to pay half that amount out of his own pocket; insurance covered most of the rest. The company also agreed to a comprehensive affirmative action plan that includes a commitment to hire increased numbers of black workers at all levels in company restaurants, with the targets for those hired based on area demographics. Shoney's is also required to place black managers in 20 to 23 percent of its restaurants within the next five or six years; to have at least three black regional directors by 1998; and to test equally qualified job applicants of different races against each other regularly to see if the company's restaurants are selecting employees fairly. The settlement even gave plaintiffs' attorneys veto power over candidates for senior jobs in some departments, including personnel and recruiting.

Danner wasn't quite through, though. Shortly before the settlement was finalized in January 1993, the Danner-controlled board of directors—unhappy with the imposed settlement, according to an article in The Wall Street Journal, and with the company's zealous approach to implementing the affirmative action plan—forced out the progressive C.E.O. they had brought in to handle the lawsuit and counter the negative publicity. When Shoney's stock dropped after that, however, in reaction to what analysts said were fears that the tainted Danner still controlled the corporation, the board initiated a buyout of all Danner's remaining shares to finally sever his ties to the company.

In a Washington Post Op-Ed piece shortly before he left office last year, Evan Kemp, Clarence Thomas's replacement as E.E.O.C. chairman, suggested that the idea of diversity in the workplace is being used to cover what he called "a regime
of quotas” that threatens to tear the country apart along ethnic, racial and gender lines. “Hiring by the numbers,” he said, has become our de facto civil rights policy, and since there are 106 ethnic groups in the American labor force, how can we possibly provide group entitlements for them all?

Kemp repeated the conservative lament about these “group entitlements” wrecking our happy workplace, where businesses would hire the right people for the right jobs—regardless of race, gender and ethnicity—if only they were left alone to do it.

A recent National Law Journal poll belies those claims. It indicated that 78 percent of adult Americans believe most or all employers “practice some form of discrimination in their hiring and promotion practices,” and 25 percent said they had experienced job discrimination personally. N.L.J. also reported that though class actions have fallen, federal employment litigation has risen 2,000 percent over the past twenty years.

Discrimination—both specific and systemic—still exists in the American workplace, and that’s something else Billie Elliott wants to tell Oprah. “If I had it to do over again, I would do the same thing,” she said recently. “I will not sit back and watch people do me and other people wrong. . . . I feel like if more people would stand up to people like this, a lot of people wouldn’t be done the way we were. And I think there’s a whole lot more places around here where the same things happen.”

ANTI-IMMIGRATION LAWS

Closing the Golden Door

ARTHUR C. HELTON

The United States is in the throes of high political debate reminiscent of the anti-immigrant furor stirred up by the Know-Nothing movement before the Civil War and the xenophobic propaganda of the Ku Klux Klan in the 1920s. Images of the bombed World Trade Center and of shivering Chinese from the Golden Venture, run aground off New York, have dominated the debate. Lawmakers have sought to react to popular sentiment by introducing more than fifty legislative proposals designed to enhance immigration law-enforcement and curtail migration. Now the White House and key members of Congress are about to accelerate the legislative pace. Romano Mazzoli, chairman of the House immigration subcommittee, plans to mark up his sweeping asylum bill shortly. And the Administration intends to announce with some fanfare expanded and stricter measures on asylum within the next few weeks. At the September 30 Senate confirmation hearing for Doris Meissner, President Clinton’s nominee for Commissioner of the Immigrant and Naturalization Service, the current immigration “crisis” was once again rehearsed in exquisite detail.

The likely losers in this swirl of debate and demagogy are refugees from political repression with a well-founded fear of persecution if they are turned away from U.S. shores. They are the ones whom a tightening of asylum criteria and procedures will hit hardest because they often flee their home countries in irregular or unauthorized ways. They may have no travel documents or even identification papers. Indeed, if they had been able to obtain a passport or permission to leave their home countries, why would they need protection here? Such sojourners include asylum seekers from Afghanistan, China, El Salvador, Ethiopia, Haiti, Iran, Iraq and Sudan, who have fled torture, execution or arbitrary detention.

The legislation introduced by the Clinton Administration in July could increase the risk that refugees like these will be returned to places where they may suffer persecution. The Administration’s bill would cover asylum seekers who arrive without valid travel documents or who are intercepted on the high seas, and would provide for quick interviews with U.S. immigration officers, at which the individuals would have to establish on the spot a “credible fear of persecution” or face immediate expulsion or exclusion. Administrative review of denials of protection would be summary in character and accelerated dramatically. Judicial review would be either eliminated or rendered largely meaningless.

There is no need for policy-makers to succumb to the extreme, indeed hysterical, character of the current immigration debate. Several steps should be taken to achieve an appropriate balance between our tradition of generosity and the sovereign prerogatives of immigration control.

§ The Administration should conduct an early high-level review of immigration control to insure that enforcement is firm but fair. New leadership must be installed at all levels immediately at the I.N.S. to insure an adequate review.

§ Political leaders and concerned citizens should help explain the national benefits of immigration. Newcomers should not be made scapegoats for a depressed economy or social or law-enforcement problems that should be addressed in their own right.

§ The Administration’s bill on asylum should be amended to provide sufficient safeguards to insure that genuine refugees have a fair opportunity to receive protection. This would include meaningful administrative and judicial review as well as an opportunity for applicants with substantial claims to be released from detention and permitted to be productive members of society while they pursue asylum.

§ The asylum adjudication system must be streamlined and be assigned sufficient personnel and resources to be capable of deciding claims fairly and expeditiously in order to recognize genuine refugees and avoid attracting spurious claims.

The United States should be generous in terms of immigration and not succumb to Know-Nothing tirades. In any event, refugees must be protected as required under international law. Asylum is neither a cold war luxury nor a rhetorical device for restrictionists. It is a fundamental form of human rights protection that must not be compromised.

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