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Advancing civil wrongs

A U.S. Senate panel is considering the president's nomination of a Southern California attorney, Bill Lann Lee, to head the Justice Department's civil rights division. The nomination is controversial because Mr. Lee is a proponent of racial and gender preferences.

This fact should be of special interest in Orange County, because the Clinton Justice Department, under the last person to hold its top civil rights post, swooped down on Fullerton two years ago with an outrageous claim that the city had been discriminating in police- and fire-department hiring.

Not a shred of evidence was advanced other than the fact the gender and racial makeup of the department didn't mirror the demographics of Los Angeles County (never mind that Fullerton is, of course, in Orange County). The feds were not deterred by the fact that no job applicant had claimed to have been discriminated against, and, indeed, the city's previous half-dozen public-safety hires were all ethnic minorities or women.

The Justice Department originally demanded a fine of \$1 million, but Fullerton was eventually able to get the feds out if its hair with an \$80,000 settlement.

The nomination of Mr. Lee promises more such federal fixation on counting people by race and trying to force quota programs on local governments and other jurisdictions.

For instance, the Legal Defense Fund that Mr. Lee has headed in L.A. filed a complaint with the U.S. Department of Education against the University of California system last year after it adopted a color-blind admissions policy, under which no extra points are awarded or subtracted for a candidate's being of a particular pigmentation or chromosomal makeup. The complaint takes issue with the UC system's standardized test scores for applicants because some "minorities and women have scored, on average, lower than whites and males on most of these tests." (In fact, University of San Diego law professor Gail Heriot has noted to us, women tend to do as well as men on standardized admissions testing for the UC system's law

schools.)

Mr. Lee was also party to a suspicious legal maneuver last year in an effort to foist a race- and gender-conscious hiring program on the L.A. Police Department. Mr. Lee and other litigants worked out a consent decree with city attorneys under which race and gender preferences would have been extended for 18 years. Yet they somehow forgot to tell the judge, William Keller, who is presiding over the litigation, about their deal; in fact, as the judge's own eventual provisional order in the case notes, they appear to have hidden from him key details, instead manipulating things so that a magistrate judge signed off on the plan before Keller could learn about it.

They also bypassed the requirement for a "fairness hearing" designed to consider the impact of such an agreement on third parties — such as, perhaps, white male police officers who might be discriminated against under its terms.

This attempt to do an end-run around Judge Keller was done on election day last November — the day on which Proposition 209, outlawing state-sponsored discrimination, was to be voted on.

"Mere coincidence? I don't think so," says Newport Beach attorney Shawn Steel, who is consulting in litigation by opponents of the discrimination lawsuit.

"Judge Keller, when he found out about this attempt to get a consent decree enacted without his knowledge, was furious," says Mr. Steel. The attorneys' "unusual procedures ... certainly raise alarms," said the judge.

Mr. Lee, in short, has shown he's willing to be "sneaky, underhanded," as attorney Patrick Manshardt of the Individual Rights Foundation in Los Angeles puts it, to advance his agenda. It is not an agenda consistent with the equal protection clauses of the Constitution or the guarantees of governmental color-blindness in federal civil rights legislation, or the reaffirmation of those guarantees in California's Prop. 209. The Senate Judiciary Committee will be making a stand for those guarantees if it asks Mr. Clinton to withdraw this nominee.