PS1 for 9/17/87#WHAT'S WRONG WITH AFFIRMATIVE ACTION FOR WOMEN?

Eliza Paschall, former staff member of the Equal Employment Opportunity Commission in Atlanta with a long record of working for civil rights and feminist goals, has written an open letter to Supreme Court Justice William Brennan, author of the majority opinion in this year's case about Affirmative Action for women. Since the statement bears a thoughtful reading, here are major excerpts from this otherwise unreported letter.

""Your decision of March 25, 1987 in (BF)Johnson v. Transportation Agency, Santa Clara County, California(end BF) that sex WAS relevant in the decision to promote a female as a step towards the goal of 'a work force whose composition reflected the proportion of men and women in the area labor force' hoisted us unto the horns of a new American dilemma -- laws that prohibit preferential treatment because of race and sex versus Affirmative Action plans based on goals of a work force which at all levels reflects the proportion of men and women (or whites and blacks, etc.) in the relevant labor force, or even the population. This makes sex or race very relevant and a factor to be considered.

""Your Decision so violates what I believe to be the spirit and letter of the laws against discrimination for which, as a civil rights activist, I have fought for the last 50 years that I am emboldened to express my dismay and feeling of betrayal at the hands of those to whom I have looked for enforcement of the standard of equal opportunity without regard to sex or race.

""With the passage of the Civil Rights Act in July 1964, our appeal to employers to stop discriminating was not just because it was good business but because it was the law. We all welcomed President Johnson's Executive Order 11246, which invoked the power of the Federal Government as a contractor as a help in making the new law

effective.

""Nowhere and at no time am I aware that the concept of 'representation' of sex and ethnic groups in the work force which sexually and racially reflects the general population, or the labor force, or the work force, was ever adopted as a goal. The goal was to free each of us from stereotypical expectations of 'women.' We argued that each woman is an individual and should not be promoted or demoted because of what some other women have or have not done or would be expected to do, or what other jobs might or might not be held by other women.

""Previous Supreme Court decisions had acknowledged that it 'is completely unrealistic to assume that individuals of each [sex] will gravitate with mathematical exactitude to each employer absent unlawful discrimination.' And yet this (BF)Johnson(end BF) Decision is based on the goal of 36% of the skilled worker jobs in the Transportation Agency being filled by women because women are 36% of the area labor market.

""It is incredible and frightening to read a Supreme Court Decision based on notions of 'underrepresentation,' 'statistical imbalance,' 'equitable representation' and the like, with no explanation or definition of terms. I am bewildered by the Court's explanation that sex might be considered as relevant to the job of road dispatcher in the Transportation Agency.

""The Decision comments that 'the Agency was mindful of the importance of finally hiring a woman in a job category that had been formerly all male.' Why was it important? Is there a female style of road dispatching? How have the citizens of Santa Clara County benefitted from having this position performed by a woman?

""The race of the female promoted to the position of road dispatcher is not identified, which usually means she is white. Is

the 36% 'aspiration' subdivided by race/ethnic/religious identification? What about white women over 40? Should they be preferred to white women under 40? What about physically handicapped men and women, with still other goals or aspirations for employment?

""Might it not help to correct the statistical imbalance to recognize that for purposes of Affirmative Action, the population falls into two categories -- white males without special protective qualifications and everybody else? It might also help speed up the statistical balance simply to give each unprotected white male a negative 10 point handicap, or give everybody else a 10 point benefit, like veterans' points, when a member of a protected class is being compared with a non-protected white male.

""I keep searching my memory and my heart and my files for some clue as to the source of this unnatural concern with how many men and how many women hold what jobs. I find none. My concern as a feminist is that we make every effort to see that the new laws are vigorously enforced, that we not lapse into the old way of applying different standards for men and women even though the present difference may seem to benefit women.

""Sex cannot be both relevant and irrelevant in employment matters at the same time. Promoting a token woman, no matter how well professionally qualified, to improve the Affirmative Action image, seems to assume some inherent inferiority of females. It is the most insidious and deadly form of prejudice and discrimination.''