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COMPARABLE WORTH IS NOT PAY EQUITY

INTRODUCTION

The House of Representatives apparently wants to put the federal government back into the business of wage controls—permanently. This is the unmistakable message of the comparable worth bill, H.R.5680, passed by the House on June 20 by a staggering 413 to 6 majority. Though the bill's proposals are modest and designed to seem harmless, they are an important step toward increasing federal control of the U.S. economy.

The bill calls for a study to determine if there are wage differentials between predominantly female job classifications and "comparable" male classifications in the federal government. But the definitions in the bill, based on the comparable worth doctrine, ensure that not only will differentials be found but that such differentials will be termed evidence of discrimination. This is precisely the kind of study conducted by Washington State in 1974 (and updated subsequently), which resulted in a court The state was found guilty of discrimination suit the state lost. not because comparable worth is an operable legal concept, but precisely because the state was deemed to have accepted the premises of the study by virtue of commissioning it. Final passage of H.R.5680 by the Congress would open the federal government to the same sort of lawsuit, which, at a minimum, could cost the government \$10.3 billion in back pay and pay increases.

In the wake of the successful passage of this bill in the House, hearings have begun on a previously introduced bill, H.R.5092, which would extend the comparable worth concept to private sector wage-setting. Again, the bill pretends to do less than it actually does. It claims that its goal is "to reaffirm the provisions in Federal law which declare that equal pay should be provided for work of equal value." But this deliberately misstates the federal law. That law correctly calls for equal pay for equal work; it says nothing about the murky concept of "equal value."

Back-door efforts to make comparable worth the law of the land ill serve women and society. Comparable worth would have a devastating impact on the economy. Simply enacting it in the private sector would cost \$320 billion. It would seriously imbalance labor markets, causing labor shortages in some jobs and oversupply in others. It would mean a giant step toward central economic planning, because "fair wages" would be determined by bureaucrats and consultants instead of employers and employees. Labor unions would lose meaningful bargaining power, becoming simply conduits for demands to raise job value ratings. ironically, it would harm women by retarding their steady progress toward true equality and occupational integration. Indeed, by throwing a wrench into the job-creating mechanism of the U.S. market economy through wage controls, it would price many women, particularly lower-class women with few skills, out of jobs altogether.

But these implications cleverly are masked when comparable worth is cloaked in the mantle of pay equity. Comparable worth, of course, has nothing to do with pay equity and the two should not be confused in policy makers' or the public's minds. To oppose comparable worth is not to oppose pay equity for women. The tragedy is that comparable worth, like many liberal "solutions," will accomplish nothing for women while expanding the role of Big Sister at the taxpayer's and market economy's expense.

PROVISIONS OF H.R.5680

The Federal Pay Equity and Management Improvement Act of 1984, sponsored by Rep. Mary Rose Oakar (D-OH), Rep. Patricia Schroeder (D-CO) and Rep. Steny Hoyer (D-MD), and cosponsored by over 40 other House members, contains three titles. Titles II and III concern the merit pay system and the senior executive service. Title I calls for a comparable worth study.

As amended, Title I proposes a study to identify any discriminatory wage-setting practices within the federal government's position classification and job grading systems. Within 10 days of final passage, the Office of Personnel Management is to establish a Pay Equity Study Council, consisting of at least six members. Five or more must represent "labor organizations representing substantial numbers of female employees" and one or more must be from "employee organizations composed primarily of female employees" whose purpose is "promoting the interests of women in Government." In other words, the Council probably will consist entirely of those from the same special interest groups.

The Pay Equity Study Council is to select a list of five consultants for the study; the Office of Personnel Management must select one of the five. The contract with the consultant will require that the study be completed in six months. The consultant's final report is required to specify measures and recommendations for actions which may be necessary to eliminate any inequities identified. No inequities, however, may be eliminated by reduction in the pay rate for any position.

PROVISIONS OF H.R.5092

The Pay Equity Act of 1984, also introduced by Rep. Oakar, explicitly assumes that the wages of full-time working women are lower than those of full-time working men because of alleged discriminatory sex-based pay practices in the private sector. According to the bill's logic, the federal government is responsible for eliminating this alleged sex discrimination by forcing a restructuring of pay scales throughout the economy based on comparable worth principles.

The bill would have the Equal Employment Opportunity Commission identify and measure such discrimination, launch a program of continuous public education on the subject, provide technical assistance to any private firm requesting it, determine the number and nature of all pending sex discrimination charges before the commission, report details about such charges and its own activities to Congress, and step up enforcement to implement comparable worth principles.

Other sections of the bill call for a study and other measures to implement comparable worth within the federal government, and are essentially the same as Title I of H.R.5680. Though the explicit assumptions of private-sector wage discrimination against women as a class contained in H.R.5092 are omitted from H.R.5680, they are present implicitly.

ORWELLIAN DEFINITIONS

Considering the year, it is perhaps appropriate that "new-speak" has triumphed. The bills have transformed equity from "equal pay for equal work" to "equal pay for work of comparable value." Declares Rep. William Ford (D-MI), a strong supporter of H.R.5680: "...we are looking beyond the narrow parameters of the original equal pay for equal work concept into the realities of life, and that is that people have something beyond equal pay rights; they have comparable worth rights..."

"Double-think" is also evident in the legislation. Part of the bill's stated goal is "to eliminate certain discriminatory wage-setting practices within the Federal civil service." Yet Title I proposes a study to determine whether any discriminatory practices exist. It seems that the sponsors want the taxpayer to finance a study when they already "know" the results. In fact, H.R.5680 defines the term "discriminatory wage-setting practices" so that there must be discrimination.

A "discriminatory wage-setting practice" is defined by the bill as any practice, whatever its economic rationale or intent,

Congressional Record, House, June 28, 1984, p. H7312.

which results in lower pay rates for female-dominated positions than "comparable" male-dominated positions. Such differences in pay scales are termed "discriminatory wage differentials." These will be identified using an "equitable job evaluation technique," defined as an "objective" numerical rating system.

Present law provides that the government determine pay scales by following the "principle of equal pay for substantially equal work"; that "Federal pay rates be comparable with private enterprise pay rates for the same levels of work"; and that for prevailing rate employees, pay rates will be "in line with prevailing levels for comparable work within a local wage area" and "maintained so as to attract and retain qualified...employees."

In other words, equity is defined by the law as "equal pay for equal work" and the federal government is instructed to look to the private sector to determine fair wage rates. In so doing, it must give due recognition to the heterogeneity of local labor markets, labor shortages, and other features of the labor market.

Thus the absence of the explicit term "comparable worth" in H.R.5680 may well have been a tactical omission designed to lead members to believe they were supporting an equal pay bill. Yet the bill's definition of "discriminatory wage differential" is based squarely on the doctrine of comparable worth, and acceptance of the definition implies acceptance of the assertion that the private labor markets discriminate against women as a class.

"WHAT IS WRONG WITH A STUDY?"

House Majority Leader Jim Wright (D-TX), in urging members to vote for the second Oakar bill, observed to his colleagues that "All of us at one time or another have endorsed the basic principle of equal pay for equal work... That is what this bill provides. The Oakar amendment calls for a study by a competent private consultant concerning equity in the marketplace and equal pay for equal work... What is wrong with a study?" But if Congress accepts the Oakar definition of "discriminatory wagesetting policies," and orders a study based on these definitions, there is legal precedent that makes this study more than "only a study." It makes it a vehicle for enacting comparable worth doctrines judicially rather than legislatively.

The so-called Tanner decision in the Washington State case reveals both the intentions of comparable worth advocates and the inherent danger of commissioning "only a study." U.S. District Judge Jack Tanner ruled that the State of Washington, by commis-

² 5 U.S.C.S. §5101, §5301, §5341.

³ Ibid., §5301.

⁴ Ibid., §5341.

⁵ Congressional Record, op. cit., p. H7321.

sioning and accepting a study showing that female-dominated jobs were paid less than male-dominated jobs of comparable value as measured by a consultant's rating system, had thereby admitted to

discriminating against women and was therefore obliged to raise the women's wages.

Alvin O. Bellak, a partner of Hay Associates, a job evaluation consulting firm, testified before the Civil Rights Commission that the Washington State lawsuit was "a 'failure to pay' case, not a comparable worth case...." Bellak added: "Our best understanding is that [comparable worth] is not the law of the land at this time and will not be until either Congress passes new, specific legislation or the Supreme Court makes a definitive interpretation in a Title VII case."

Ironically, the position on comparable worth by the Hay experts contradicts the arguments of those who use Hay and other rating systems to attack alleged unfairness of the labor market. "Implicit in our ultimate pricing recommendations to clients," noted Bellak, "was the principle that job holders were drawn from and, therefore, should be paid competitively with a defined labor market."7 Job rating systems can demonstrate that a certain female-dominated job classification is paid less than a certain male-dominated job classification. They neither prove nor disprove discrimination. The findings would be equally compatible with such differences resulting from legitimate economic or social considerations such as turnover rates, labor force attachment, type of education and training, and working conditions, to mention only a few. 8 These factors are completely ignored by the Oakar legislation, which asserts that if differentials in pay occur, they are, by definition, discriminatory. Such is the basis of the "study" sought by Oakar.

COST TO THE TAXPAYER

When evaluating the cost of H.R.5680, House members mainly considered the study's pricetag. Since the bill specifies that the members of the Pay Equity Study Council serve as non-paid volunteers, and the Office of Personnel Management would have to fund the study with existing appropriations, it was easy enough to assume that the study would mean no new federal outlays. This is a serious illusion.

Alvin O. Bellak, "Comparable Worth: A Practitioner's View," Prepared at the request of the U.S. Commission on Civil Rights for presentation at Consultation on Comparable Worth, Washington, D.C., June 6-7, 1984, pp. 3-4.

For an overview of the economic arguments against comparable worth, see Peter Germanis, "Comparable Worth--Part 1: A Theory With No Facts," and "Comparable Worth--Part 2: The High Cost of Bad Policy," Heritage Backgrounders No. 336 and 337, March 2, 1984.

The minority view in the committee report on H.R.5680 pointed out the bill's enormous implicit cost, given the litigation almost certain to follow. Washington State, in the wake of its own study, was ordered to pay \$861 million in back pay and annual increases for some 33,000 employees who allegedly suffered sex discrimination. The House Minority Views Report thus estimates that "the federal government could be required to raise some wages by \$1.8 billion per year and authorize back pay of \$6.7 billion for some 466,000 employees." According to Rep. William Dannemeyer (R-CA) the total initial cost, including pension costs, would be \$10.3 billion. That there will be considerable cost is admitted, perhaps unintentionally, by comparable worth advocates. Says Rep. Pat Schroeder: "Now, if that study comes out that way [demon strating wage differentials] and this body then does not do something to correct it and we know that it is there, then we are guilty of intentionally discriminating."

The indirect costs of the bill, including those due to distortions in the labor markets and the inefficiencies of government wage-setting, are incalculable. According to a Hay Associates estimate, wide application of comparable worth principles to the private sector could well cost over \$320 billion and significantly increase inflation. 12

This apparently has not deterred Rep. Oakar, who has held hearings in San Francisco on her bill (H.R.5092) to extend the comparable worth concept to the private sector.

THE COMPARABLE WORTH FALLACY

Anything can be compared in a facile sense, even apples with oranges. But comparing the intrinsic "worth" of different types of jobs cannot reveal their market value. "Worth" to society is a subjective, normative concept, and each person usually values the same good or service very differently. Mothering (and fathering) is "worth" a great deal to society, probably more than singing (although that is a value judgment), but mothers are paid nothing and Michael Jackson is a multimillionaire. Is a baseball player worth more than a brain surgeon? The question is meaningless. But confusing absolute worth and market value is just one problem associated with the comparable worth doctrine.

A second problem is the assumption that job evaluation is an objective process; even professional job evaluators do not make this claim. According to comparable worth advocates, assigning a

Federal Pay Equity and Management Improvement Act of 1984, House Report 98-832, p. 42.

Congressional Record, op. cit., p. H7318.

Ibid., p. H7313.

Jake Lamar, "A Worthy But Knotty Question," <u>Time</u>, February 6, 1984, p. 30.

numerical rating to various factors such as duties, responsibilities, qualification requirements and working conditions, and then adding up the numbers, will produce "comparability." Determining what weight to give each factor, however, is a highly subjective enterprise. Those unfamiliar with numerical techniques seem to have an almost mystical faith that numbers, in contrast to words, are of themselves "objective." Those who do understand numerical techniques, on the other hand, can manipulate the numbers to lend credence to ideological positions. No job evaluation process can measure the absolute worth of a job and prove to a legal certainty that one type of job is worth as much as another. Yet this is what the comparable worth proponents insist can be done.

POLITICS -- EXPANDING ITS LIMITS

In Alice in Wonderland, Alice tells the Queen of Hearts, "There's no use trying...one can't believe impossible things."
"I daresay you haven't had much practice," said the Queen. "When I was your age, I always did it for half-an-hour a day. Why, sometimes I've believed as many as six impossible things before breakfast."

Proponents of comparable worth legislation would like Congress to practice believing the impossible and then make it the basis of U.S. law. Among the impossible assumptions of the Oakar bills and their supporters:

- 1) There are, according to H.R.5092, "provisions in federal law which declare that equal pay should be provided for work of equal value." 13 Not so. The law says "substantially equal work," not "work of equal value." The key word is value. Who is to determine it?
- 2) "Title VII of the Civil Rights Act of 1964 prohibits employers from paying women lower wages [than men] even when job content differs;"14 that is, when they are doing work of comparable value.

This assertion is based on a misinterpretation of the 1981 Supreme Court decision County of Washington v. Gunther, a sex discrimination case brought under Title VII. Although the case involved cross-occupational wage differences, the issue settled was rather narrow. The Court noted:

Respondents' claim is not based on the controversial concept of "comparable worth," under which plaintiffs might claim increased compensation on the basis of a comparison of the intrinsic worth or difficulty of their

¹³ H.R.5092, p. 1.

Federal Pay Equity and Management Improvement Act of 1984, House Report 98-832, p. 5.

jobs with that of other jobs in the same organization or community. Rather, respondents seek to prove, by direct evidence, that their wages were depressed because of intentional sex discrimination....¹⁵

Intentional sex discrimination, like race discrimination, is against the law. "Since <u>Gunther</u>," notes Robert Williams of the Washington D.C. law firm <u>McGuiness</u> and Williams, "most of the lower courts that have considered the 'comparable worth' doctrine have rejected it...with the Washington state case a 'glaring exception.'" 16

3) Rep. Olympia Snowe (R-ME) asserts that "...women workers in this country are segregated into a small number of low-paid, dead-end jobs." Being voluntarily "concentrated" in certain jobs is far different from being forcibly segregated. The law protects every woman's right to seek any job she wants and protects her right to the same pay as men for equal work. There is ample evidence that women voluntarily choose so-called women's jobs in large numbers, resulting in de facto job segregation. They do so to a great extent because of their paramount commitment to family. Comparable worth proponents may have fallen victim to what Wellesley College sociologist Brigitte Berger calls "an exaggerated ideology of work." Radical feminists may deplore women's choices and what they consider a sexist social structure, but it does not follow that job segregation is the result of discrimination.

There is an odd logic--harmful to women's interests--in suggesting that the solution to job segregation is to raise wages in female job categories. If they are truly dead-end jobs, feminists should be encouraging women to get out of them, not trying to increase their pay and thereby to lower the incentives for leaving such jobs. Labelling female-dominated job categories dead-end, moreover, betrays the condescending attitude of radical feminists to most women. Most women in such professions as teaching, nursing, or secretarial work would not have chosen such careers if they viewed them as dead ends.

4) "It was clear...that the wage disparities between female and male workers would not disappear with time or as more women moved into male-dominated occupations." In other words, the Equal

Cited in Robert E. Williams, "Comparable Worth: Legal Perspectives," Submitted to the U.S. Commission on Civil Rights, Washington, D.C., May 11, 1984, p. 5.

¹⁶ Ibid., abstract.

Snowe, Congressional Record, p. H7314.

Brigitte Berger, "Occupational Segregation and the Earnings Gap, Comparable Worth at Odds with American Realities," Prepared for the June 6-7, 1984 Meeting of the U.S. Commission on Civil Rights.

Federal Pay Equity and Management Improvement Act of 1984, House Report 98-832, p. 6.

Pay Act of 1963 and the Civil Rights Act of 1964 are insufficient to protect women against sex discrimination and therefore comparable worth legislation is supposedly necessary.

This is simply not true. Feminists point to the fact that the average woman earns only 62¢ to the average man's dollar, only a few cents more than several decades ago, as proof that no progress is being made in spite of the law. June O'Neill of the Urban Institute has pointed out, however, that this figure is misleading, because "the annual earnings measure is not adjusted for differences in hours worked during the year, and men are more likely than women to work overtime or on second jobs." Actual average female earnings, computed as the ratio of women's to men's hourly pay, are typically about 72 percent of those paid to men. And it is noteworthy that for "younger groups the ratio is higher (and pay gap smaller)—a ratio of 89 percent for 20-24 year olds and 80 percent for the age 25-34 years old."²⁰

In short, the 1963 and 1964 laws are having precisely the effect intended. Without disrupting the wage structure of America's advanced industrial society, they are enabling women to achieve the necessary skills and choose higher-paying jobs. Though older women, like older men, are less adaptable, the younger generations, with improved skills, are steadily changing the complexion of the wage structure.

One study has found that:

Enforcement of Title VII has effectively narrowed both occupational segregation and the earnings gap... In fact, occupational segregation by sex declined nearly three times as fast during the seventies as during the sixties and women entered nearly all male white-collar occupations at an increasing rate over the decade.²¹

While the author points out that at those rates it could take more than 75 years to achieve a completely integrated occupational distribution, one might ask (1) whether a completely integrated occupational distribution is the goal, given the physical differences and differing social preferences of the majority of men and women and (2) whether, if it is the goal, this is not a reasonable and orderly time frame, given the necessity to change widespread social attitudes to accomplish it.

5) "Establishing true pay equity, or comparable worth," says Rep. Michael Lowry (D-WA), "is an important part of the continu-

June O'Neill, "Statement at the Consultation on Comparable Worth at the Civil Rights Commission," June 7, 1984, p. 6.

Andrea H. Beller, "Occupational Segregation and the Earnings Gap," University of Illinois, Urbana, May 1984. Prepared for the U.S. Commission on Civil Rights' Consultation on Comparable Worth, Washington, D.C., June 6-7, 1984.

ing effort to ensure equal opportunity and treatment for all citizens under the law."22 On the contrary, the history of civil rights policy application indicates that comparable worth would open a Pandora's box. Questions of reverse discrimination would arise. What will happen when raising wages for women results in relatively lower wages for blue-collar workers or blacks, or fewer jobs? In spite of claims by comparable worth advocates that no wages would be reduced, it is plainly ridiculous to contend that the billions of dollars that comparable worth enforcement would cost employers, assuming no wages were cut to compensate for increases, would just materialize from nowhere. There will be no magical increase in the resources available for wage payments and the income mobility of many black workers relative to female workers will be reduced. Cautions Cornell University political scientist Jeremy Rabkin:

There will be equally painful conflicts among different groups of women. As mandated wage increases inflate an employer's overall labor costs, he may often respond by cutting back on the size of his work force or deferring expansion. What if the resulting layoffs or shrinking opportunities fall most heavily on women—as, from the employer's point of view, the jobs dominated by women have become most overpriced? On the other hand, what if mandated pay increases attract more men to compete for jobs traditionally dominated by women? What if this has the effect of actually reducing job opportunities and aggregate earnings for women as a whole?²³

Comparable worth does not mean equal treatment and equal opportunity. It means special treatment for women, with the probable perverse result of increased discrimination against them.

6) The "continuing increase in the number of women and children who live at, near, or below the poverty level..." asserts H.R.5092, "is largely the result of such employment discrimination on the basis of sex." From 1972-1982, the number of single-female-headed households with children, both poor and non-poor, increased 48 percent. And indeed, the number of such families in poverty in 1982--3,059,000--reflects a 59 percent jump. But the personal life choices of women to divorce, to bear children out of wedlock, or to drop out of school, made easier by increased social permissiveness and welfare entitlements, can hardly be blamed on labor market discrimination. Only 213,000 of these more than 3 million women even worked full-time year-round. There is no doubt that raising children in the inflationary 1970s and recession-wracked

²⁴ H.R. 5092, p. 3.

Congressional Record, op. cit., p. H7306.
 Jeremy Rabkin, "Comparable Worth as Civil Rights Policy: Potentials for Disaster," Prepared for the Consultation on Comparable Worth, U.S. Civil Rights Commission, June 6-7, 1984, p. 11.

1981-1982 was difficult for single parents of both sexes. Witness the 20.6 percent poverty rate in 1982 of single male householders with children.

The labor force participation rate for women rose from 43.9 percent in 1972 to 52.7 percent in 1982. In spite of that rapid rise, the adult women's unemployment rate was lower in both the recession year of 1982 and the recovery year of 1983 than the adult men's rate.

7) Marketplace discrimination is "artificially depressing wages for women's jobs," says Rep. Geraldine Ferraro (D-NY). This assertion simply makes no economic sense. If women are really underpaid, in the sense of being paid less than their real worth to the firm, other firms (perhaps female-owned) would soon hire them away. Competition would quickly bid up wages of "artificially underpaid" workers. Indeed, there is clear evidence that many barriers to women's economic advancement come from government regulations, tax policies and other restrictions, which lead to unequal opportunity. Forces restricting market competition create incentives for inefficient behavior, and discrimination is economically inefficient. Thus comparable worth would only exacerbate discrimination.

* * *

The wage differentials between men's jobs and women's jobs can be explained by many factors--personal choice, labor force attachment, geographic mobility, age and skill factors, motivational differences, working conditions, and others. Proponents of comparable worth have never been able to prove discrimination. They simply infer discrimination from the existence of a differential. This makes as much sense as accusing society of favoring Jewish-Americans or Japanese-Americans simply because the average wages of these minorities are higher than the general population's average.

Geraldine Ferraro et al., Letter to the Editor, Washington Post, June 25, 1984.

Catherine England and Robert J. Valero, "Working Women: Is Uncle Sam the Solution...or the Problem?" Heritage Foundation Backgrounder #263, May 2, 1983; Solomon William Polachek, "Women in the Economy: Perspectives on Gender Inequality," State University of New York, Binghamton, New York, Prepared for U.S. Commission on Civil Rights Conference, June 6-7, 1984.

Economists Michael and Judith Finn point out that even the National Academy of Sciences study Women, Work and Wages, often cited by comparable worth proponents, does not prove that discrimination hypothesis. None of the studies reviewed in this report measured discrimination directly, but simply assumed discrimination from the residual remaining after accounting for the variables the studies measured. But there is no certainty that all relevant variables were, or can be, measured. "Comparable Worth: 'Women's Issue' or Wage Controls?" The State Factor, Vol. 10, No. 5, American Legislative Exchange Council, Washington, D.C., pp. 10-11.

CONCLUSION

The concept of comparable worth makes no economic or social sense. It is not a step toward women's rights, but a step backward. It does not provide women with equal opportunity but would make women a protected special interest whose wages would reflect not market value but arbitrary bureaucratic edict.

"Pay equity" sounds like a fair goal. But the so-called Pay Equity Acts of 1984 are not about equity. They are about special treatment and will hurt both men and women by making the economy less efficient.

This is the real danger and tragedy of believing Alice-in-Wonderland-like "impossible things." Just as the command economies of Eastern Europe, China and--to a lesser extent--France are recognizing their failures and attempting to emulate U.S. market mechanisms, liberal feminists would have us believe that a command economy will provide a fairer wage system, that government bureaucrats, pressured from all sides by special interests, can make better and more dispassionate judgments about economic worth than the participants.

There is no question but that enactment of the comparable worth principle would result in federal wage controls for the entire economy. Warns Professor Charles Fried of the Harvard Law School:

Substituting a standard of intrinsic worth [for market forces] would not only ask an impossible (and meaningless) question but give the decision-maker--once again, the federal bureaucracy--exactly that power which characterizes a command economy...the federal government would gain direct control over the most intimate and crucial part of the economy: the employment relation.²⁸

Between 1974 and 1983, the American economy created nearly 16 million jobs. And as economic columnist Robert Samuelson explains in the Washington Post, jobs "result from private firms hiring workers in order to make a profit.... Jobs don't material-ize out of thin air. They flow mostly from what's wrongly disparaged as 'the market'.... It's a process difficult to program."²⁹ If the price of female labor goes up without an increase in women's productivity, people will still value their work subjectively and make hiring decisions accordingly. The result? Many women will be priced out of jobs altogether. It is as simple as that.

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Charles Fried, "When the Government Says Who Gets Hired," <u>Washington Post</u>,
January 27, 1983

Robert J. Samuelson, "Hold the Accolades for the Job Machine," Washington Post, June 27, 1984, pp. Cl-2.