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"MAKE SURE YOU TOP IT OFF REAL GOOD ... I'VE GOT A LOT OF STOPS PLANNED!"

BRET FURTWANGLER | GRAPHIC ARTIST

■ In my opinion

## The selective screening rift



TRAVIS WILLSE  
RIVALLESS WIT

The Sept. 11, 2001, terrorist attacks resulted in many casualties: at least 2,917 lives, uncountable economic damages, an immeasurable psychological toll and a lost national sense of (relative) innocence.

These losses are so terrible and wrenching that they obfuscated some of the nation's less visible sufferings, including a swollen intolerance of people of Arab descent. An Oct. 11, 2001, Zogby poll commissioned by the Arab American Institute revealed that 20 percent of Arab Americans had personally experienced discrimination since the attacks. An ABC News/Washington Post poll reported that 58 percent of those surveyed said that Arabs should undergo special security checks before boarding planes.

Trouble found some Arab Americans outside the polls, too: some 1,147 Arabs and Arab Americans were detained (anonymously) between Sept. 11 and December 2001, but charges were only eventually brought against one of them. Since, discrimination against Arabs — from delays at airports to detentions — has grown into an ugly scar on the worn body of America's racial history. These stories bother us for a good reason: To root out a few would-be criminals, the government inconveniences thousands of people and arguably violates their civil, if not human, rights.

Worse, these people are picked out for this treatment on account of their race (and maybe gender and, in some cases, nationality, too). Our country is racially diverse but has yet to come to terms with how race affects our daily lives.

This sociological immaturity only further tangles discussions of what to do about this apparent conflict between individual liberties and collective security. Fortunately, the Supreme Court has long since specified a strict criterion for when the government can

consider race. Because considering race can so easily slip into violations of the 14th Amendment — which grants equal protection under the law — the government can't consider race, except when the classification is intended to accomplish a "compelling state interest" with methods "narrowly tailored" to achieve that interest.

Justice Sandra Day O'Connor gave the most interesting (and probably most embattled) recent example of a sufficiently compelling state interest — that of a diverse student body in a state sponsored institution — in her majority opinion in *Grutter v. Bollinger*. (Obligatory plug: See my June 26, 2003, column, "Affirmative re-action," and my June 24, 2004, piece, "Affirmative actions" for more discussion). The corresponding "narrowly tailored method" in this case is the qualitative consideration of race in deciding who's accepted at a given school and who isn't.

Whether a diverse student body is a sufficiently compelling state interest to justify unequal treatment of college applicants — it's probably not — is beyond the scope of this column. But because the legality of affirmative action in college admissions is constitutionally predicated on a fuzzy notion of diversity — rather than, say, remuneration for past discrimination — what schools mean by diversity is critical. Often this turns out to include, among other considerations, being a member of a racial minority, as is evident in the oft-employed language of the

necessity of a "critical mass" of students of various racial identities. In other words, when perfect, detailed information isn't available (always), race is sometimes used as a coarse, and presumably partial, substitute for a more subtle and ill-defined quality: the potential to enhance campus diversity.

But using race as an incomplete, and presumably statistically correlated, substitute for a priori unknowable information is very much what happens in devoting disproportionate attention to Arab-looking people in the name of staving off terrorism. Imprisonment without charges probably violates even pragmatic moral codes, even if its ostensible goal is preventing attacks on innocents; delaying people according to racial appearance before they board flights with the same goal in mind is a subtler ethical issue. Regardless, the latter at least passes constitutional muster: If something as ill-defined and objectively immeasurable as campus diversity makes for a compelling state interest, then certainly so do securing the blessings of liberty and protecting the life and limb of its citizens.

Without more discussion of the underlying ethics, these facts say little about the legitimacy of the role of race in either context. However, supporters of considering race in the admissions process (at least, those who support it in the legal framework mandated by the Supreme Court) thus have little room to argue against the legitimacy of the more benign and narrowly tailored considerations of race in the war on terrorism. Likewise, those who categorically oppose discrimination at the airport on account of human or civil right sensibilities have little room to support affirmative action as presently legally constructed in the collegiate world.

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■ Editorial

## Bush trying to avoid being held accountable

After President Bush won re-election in November, he explained that with his win came "political capital" and he made it clear that he intended on spending it. The statement was brazen to say the least, considering Bush had the lowest job approval rating of any re-elected president in recent memory. But did we really expect something different from our cowboy president?

Since then, Bush has extrapolated further on his theory of political capital: "We had an accountability moment, and that's called the 2004 election. The American people listened to different assessments made about what was taking place in Iraq, and they looked at the two candidates and chose me, for which I'm grateful." Reading between the lines, by "accountability moment" the president means the election results clear his administration of accountability for the mess it has created in Iraq. He feels like a man absolved of all his sins by the American people, and now, on the day of his inauguration, he can move forward with a clear mandate to execute the war in Iraq his way.

But maybe not. A Washington Post/ABC News poll this week shows that 55 percent of Americans feel the war was not worth fighting. Furthermore, 58 percent of those polled objected to how Bush handled the war in Iraq and 57 percent did not believe Iraqi elections would lead to a stable government.

Other polls have produced similar results. A USA Today/CNN/Gallup poll suggests that 52 percent of Americans believe it was a mistake sending troops to Iraq in the first place. Some mandate.

Bush's talk of "political capital" and his "accountability moment" illustrates his main failing as a president: his inability to recognize a losing strategy and make the necessary adjustments at halftime. Rather than viewing the election as a mandate, he should see it as an opportunity to change course and fix the mistakes he has made. That would truly be an accountability moment.

■ Out loud

"I do agree that the tsunami was a wonderful opportunity to show not just the U.S. government, but the heart of the American people, and I think it has paid great dividends for us." — **Condoleezza Rice**, at her confirmation hearing, looking at the bright side of the catastrophe that claimed some 168,000 lives.

"We didn't have the right skills, the right capacity, to deal with a reconstruction effort of this kind." — **Condoleezza Rice**, again at her confirmation hearing, looking at the dark side of the catastrophe in Iraq, finally.

"You, those who wear our uniform, have given much, and much more will be asked of you in the months and years ahead." — **President Bush**, kicking our military when they are down, at a ball celebrating his re-election. He has obviously been taking lessons on morale building from Donald Rumsfeld.

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