Blackmun, J., joined by Brennan and Marshall, JJ., dissented, expressing the view that the opinion of the court took three major strides backwards in the battle against racial discrimination by (1) upsetting the long-standing distribution of burdens of proof in Title VII disparate-impact cases; (2) barring the use of internal work force comparisons in the making of a prima facie case of discrimination, even where the structure of the industry in question rendered any other statistical comparison meaningless; and (3) requiring practice-by-practice statistical proof of causation, even where such proof would be impossible.

Questions

1. Are the canneries' hiring practices discriminatory? If so, what company policies should be adopted?
2. Is there a correlation between the hiring practices for cannery workers and noncannery workers? Should the practices be the same or separate, even though the positions are different?
3. Is it an acceptable practice for the cannery to rehire skilled noncannery workers it has worked with previously? Is it acceptable even if the noncannery workers are predominantly white?

CASE 4. *Weber and the Kaiser Aluminum Steelworkers Plan*

In 1974 the United Steelworkers of America and Kaiser Aluminum & Chemical Corp. established an employment agreement that addressed an overwhelming racial imbalance in employment in Kaiser plants. Of primary concern was the lack of skilled black crafts workers. This concern arose because of an ongoing exclusion of black crafts workers. In an attempt to remove the disparity and create a fair employment policy, an affirmative action plan ("the plan") was agreed to,

> whereby black craft-hiring goals were set for each Kaiser plant equal to the percentage of blacks in the respective local labor forces . . . [and] to enable plants to meet these goals, on-the-job training programs were established to teach unskilled workers—black and white—the skills necessary to become craftsworkers (443 U.S. 198 [1979]).

Under the guidelines of the plan, 50 percent of those selected for the newly instituted training program were to be black employees *until* the goals of the plan were accomplished, after which the 50 percent provision would be discontinued.

Such a plan was instituted at the Gramercy, Louisiana, plant from which the major problems had arisen and where blacks constituted less than 2 percent of the skilled craftsworkers, although they were approximately 39 percent of the Gramercy labor force. Subsequently, thirteen trainees, of which seven were black, were selected in accordance with the guidelines of the plan. The black trainees had less seniority than many white production workers who were denied training status. Brian Weber, one such production worker, argued that he and others had been unduly discriminated against. He thought the plan was a violation of Title VII of the Civil Rights Act of 1964. A District Court and a Court of Appeals held that Title VII had been violated. The U.S. Supreme Court then addressed the issue of whether employers were forbidden from enacting such affirmative action plans to alleviate racial imbalances.

The Supreme Court held that forbidding such affirmative action plans under Title VII would be in direct contradiction to its purpose, because the statutory words call upon "employers and unions to self-examine and to self-

This case was abstracted from Supreme Court materials by Katie Marshall and Tom L. Beauchamp.