

THE NEW YORK NEWSDAY INTERVIEW WITH LANI GUINIER

# 'Quota Queen' Was Her Crown of Thorns

**Q.** You grew up in New York, didn't you?

**A.** I went to Andrew Jackson High School and graduated third in a class of 1,447. I got a full-tuition scholarship to Radcliffe. It was a scholarship for outstanding Negro students, sponsored by the National Merit Corporation and The New York Times. My father had worked for [the Times] as an elevator operator back in the '30s. The publisher of the Times had come to an assembly of all the editors of their high school newspapers who were attending Harvard at the time. The publisher invited any of them to come to New York, and [he'd give] them a job. My father took him up on this. However, they didn't have any black people at the time who worked above the first floor. The publisher said, "Well, you're right, I did make an offer, but in your case it's as a freight elevator operator. And you have to go back down to the basement." So he went back down and ran the elevator for The New York Times and put himself through City College. He had to drop out of Harvard because they had already given a full-tuition scholarship to one black from Cambridge.

**Q.** When did you start thinking about a legal career?

**A.** In many ways it was in 1962, when I first saw Constance Baker Motley, a strong black woman, playing such an important role in helping James Meredith get into the University of Mississippi. I've always been something of a do-gooder. I used to love to trick-or-treat for UNICEF rather than collect the candy.

**Q.** How formative were your years at Radcliffe and then at Yale Law School?

**A.** I went to a dinner party once in Detroit and somebody discovered that I'd gone to Yale Law School and Radcliffe, and they said something like I was the most aristocratic person they'd ever met. I was really shocked. I did not and still don't think of myself as defined by my Ivy League connections. I think of myself as defined by growing up in Queens.

**Q.** After law school you went to clerk in Detroit



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## PROVOCATIVE PROFESSOR

*Lani Guinier is a professor of law at the University of Pennsylvania. Her nomination for assistant attorney general for civil rights was withdrawn by President Clinton. David Garrow, author of the Pulitzer Prize-winning 'Bearing the Cross,' spoke with her for New York Newsday.*

**Q.** Was it a difficult transition, after working for the Carter administration and the NAACP Legal Defense Fund, to become a professor at the University of Pennsylvania?

**A.** It was a transition I made pretty easily — to the

The reason we're still worried about voting discrimination is not that blacks can't register and vote — they can — but that they [can't] elect people who will be responsive to their interests. It was that notion that a bloc-voting, racially organized majority could consistently elect its own candidates, who then had no reason to worry about the interests of the common good, that enabled the courts to focus on this phenomenon called "vote dilution."

**Q.** I sense, too, that to some degree you feel one of the movement's primary hopes circa 1965 was to produce a politics that was transformative, rather than simply a somewhat larger pork barrel.

**A.** I think there's a tension in democratic theory between pluralism and republicanism. The republican — small 'r' — notion of the common good and having people who deliberate beyond their special interests for the common good co-exists with the democratic — again, small 'd' — pluralist view that you have different groups that are negotiating in their own self-interest, and that part of the democratic process is to ensure that those groups are all playing on a level playing field. It is that tension I've tried to work with in my writing. I think

that people need to be able to talk to each other, they need to have conversations that go beyond their own narrow interests. We need to work toward consensus rather than up-and-down voting in which everything is "I win, you lose."

It's in part because of that that I started looking at simple majority voting rules, where 51 percent decides the outcome. [What] if that 51 percent is not admitting — or is acting to shut out — the 49 percent in a way that's inconsistent with the notion of democratic fair play? When that 51 percent have, essentially, a monopoly of decision-making authority and are acting not in the interest of the larger group, but in their own narrow interest, then I suggest we may want to re-examine the decisional rule which we're using. It's really not about anti-majoritarianism — it's about a different kind of majoritarianism. It's really about perfecting the Madisonian bargain so that shifting co-



sembly of all the editors of their high school newspapers who were attending Harvard at the time. The publisher invited any of them to come to New York, and [he'd give] them a job. My father took him up on this. However, they didn't have any black people at the time who worked above the first floor. The publisher said, "Well, you're right, I did make an offer, but in your case it's as a freight elevator operator. And you have to go back down to the basement." So he went back down and ran the elevator for The New York Times and put himself through City College. He had to drop out of Harvard because they had already given a full-tuition scholarship to one black from Cambridge.

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**Q.** After law school you went to clerk in Detroit.

**A.** The irony is that I knew only one person in Detroit other than the judge, but after the second year I did not want to leave Detroit. I found the Midwest so welcoming and much less neurotic, in some ways, than certainly the Ivy League. I ended up as a referee in juvenile court in Wayne County, which is like a quasi-judicial position. While I was there, I got a call from Drew Days, who invited me to Washington to be his special assistant. He was then assistant attorney general for civil rights.

**Q.** Was this your first encounter with Voting Rights Act enforcement?

**A.** Yes. I had worked with the first integrated law firm in North Carolina between my first and second years at law school. We worked out of some hotel because their offices had been firebombed. I worked on a number of civil rights cases, and then the following year, I got a grant to work at the NAACP Legal Defense Fund on a number of civil rights cases, but none of them involved the Voting Rights Act. I had an historical, television awareness, but I hadn't yet read the statute. And I don't recall studying it in law school.



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**Q.** Was it a difficult transition, after working for the Carter administration and the NAACP Legal Defense Fund, to become a professor at the University of Pennsylvania?

**A.** It was a transition I made pretty easily — to the surprise, I might add, of many of my colleagues, who thought they were getting another civil rights advocate. In some of my evaluations for tenure, my colleagues had to observe my classes, one of which is about the Voting Rights Act. They reported that I did not present the material as an advocate or even as a former litigator who had personally litigated many of these cases, but as a teacher trying to educate the students.

**Q.** What is the main concern of your law journal articles?

**A.** To conceptualize the problem of voting discrimination in a way that is consistent with the original vision of the civil rights movement in 1965. My sense is that Dr. Martin Luther King and others were committed to voting rights not just because they wanted to have an integrated legislature — they certainly did, and I certainly do — but because they wanted to have an integrated legislature in which the members worked together to pass laws in the interest of the common good, laws that were directly responsive to the concerns of the people who were voting for these representatives.

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**Q.** Did the Phillips County, Arkansas, case — *Whitfield v. The State Democratic Party* — loom particularly large for you?

**A.** Yes. That was a situation in which you had extraordinary racial polarization. We had testimony in that trial that no white person publicly would support a black candidate. The black candidate, who had come in first, went to Kenneth Stoner, the defeated candidate, and asked for his support in the run-off, and Stoner said, "I can't support you. I am a white farmer who lives in this county. My wife is a teacher, and we just can't support a black candidate." And so he had no chance of proceeding. There would be a run-off to make sure that someone [white] got a majority. That was the majority-vote requirement that we were challenging. It was a requirement, by the way, that John Dunne [assistant attorney general for civil rights in the Bush administration] has called an electoral steroid for white candidates, because it can be used to enable a particular majority to gang up and shut out can-

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didates supported by a minority.

So it's in that context, which, unfortunately, and in some ways, horrifyingly, is what is happening in this country — not South Africa, but in this country right now — that I started thinking about the limits or the need to investigate the limits of majority rule as it plays out in Phillips County. I thought I made it clear in my writings that this was not a manifesto for revamping American democracy, but a specific response to a specific set of extreme circumstances which, unfortunately, I found to be present in my litigation.

**Q.** How do you think people could read your articles about voting rights and come away with the impression that you're pro-quota?

**A.** I think that was just a political fabrication. There's nothing in there about quotas. "Quota Queen" was a headline looking for a person, and I walked in. The reason I could be tagged with that headline is that I was writing about race. If you write about race, you must be writing about racial preferences, and therefore you're writing about quotas. When, indeed, the remedies I was proposing as alternatives to be considered in response to proven violations of the statute are race-neutral remedies. None of the remedies are even as race-conscious as some of the existing remedies that the Reagan/Bush administration has been advocating and that the Supreme Court has endorsed.

**Q.** When the piece by Clint Bolick appeared in The Wall Street Journal the day after your nomination, what did you think?

**A.** I perceived him to be on a hobby horse that really had little to do with who I was. What alarmed me is when his views were recycled over and over again and Newsweek published a piece crowning me the quota queen, and made reference to this headline in a paragraph in which they were also talking about the welfare state — as if, conveniently enough, as a black woman, I wasn't a welfare queen, so I must be a quota queen.

My position was that it was important to respond immediately. But it's the administration's

policy that nominees should not speak to the press before they speak to the Senate, that the opportunity would come for me to defend my views and explain who I was at my confirmation hearing.

I believe President Clinton said that my articles were subject to interpretations that he could not agree with. And that may be true. I am, as a scholar, not responsible for other peoples' interpretations of my writing, just as I don't think I'm responsible for The New York Times suggesting that I called Douglas Wilder "inauthentic" when I did no such thing. The only way I would be responsible is if people made those allegations and then I didn't respond. That's why I was so committed to the notion that I have a hearing — because I had been asked not to speak to the press, not to defend my views, so perhaps some people interpreted my silence as acquiescence, but it was not.

**Q.** You sound as if you've come through this with quite remarkable strength.

**A.** I certainly am committed to vindicating my

reputation, to pursuing a public debate not only about my ideas but about issues of racial justice and racial healing. I do not think I was treated fairly. I have been committed to fundamental fairness and issues of democratic fair play all my life. So, in that sense I think the treatment of my nomination is an opportunity to pursue those very issues I attempted to address in my writing. I suggested in my writing that sometimes, when black representatives are elected, immediately thereafter the rules are changed. In some ways that's what happened to me. I was nominated and then the rules of the game were changed. All of a sudden, a nominee who has been accused of no particular indiscretion or character flaw or criminal activity is denied a public forum in which to respond to personal and sometimes vicious attacks on her reputation. I [would like] to ensure that other scholars are not put in jeopardy or disqualified from public service in the future because they have dared to commit to paper thoughts or provocative ideas about issues of contemporary relevance.

## POINT OF VIEW | Where's the Perspective, Media?

**W**E'VE BECOME FAMILIAR with a lack of perspective from media outlets in New York City, which routinely cover local politics and important political and government budget stories as if they had no access to a clipping file or an electronic index of their own stories of last week, last month or last year.

Virtually since the first day he took office, our own mayor, David Dinkins, has been on the receiving end of the same kind of media coverage Bill Clinton is drawing in Washington. What we've seen here may make for lively reading and a lot of Page One flavor, but it definitely mis-informs the public because of the same missing perspective. The mayor, like this president, is covered in the media, graded and evaluated though there was an expectation of some kind of parliamentary vote of confidence coming up in the not-too-distant

future that would sweep him from our lives.

If you believed what you saw or read . . . at this time in 1990, for example, David Dinkins was already a failure and it was all over for him as mayor . . . It's a new race now in New York City with a genuine November election contest ahead. With such serious stakes and the broadest spectrum of the electorate energized to participate in the choice, we look forward to more serious coverage of the process from the city's media.

Also ahead is three more years-plus of Bill Clinton as president. Beating him over the head relentlessly does a disservice to him, to ourselves, and to the very press wielding the club. Everyone, the president, the Congress, the people and the press, must do a better job than we have experienced these past few months.

— From an editorial in The Phoenix, a community newspaper in Brooklyn