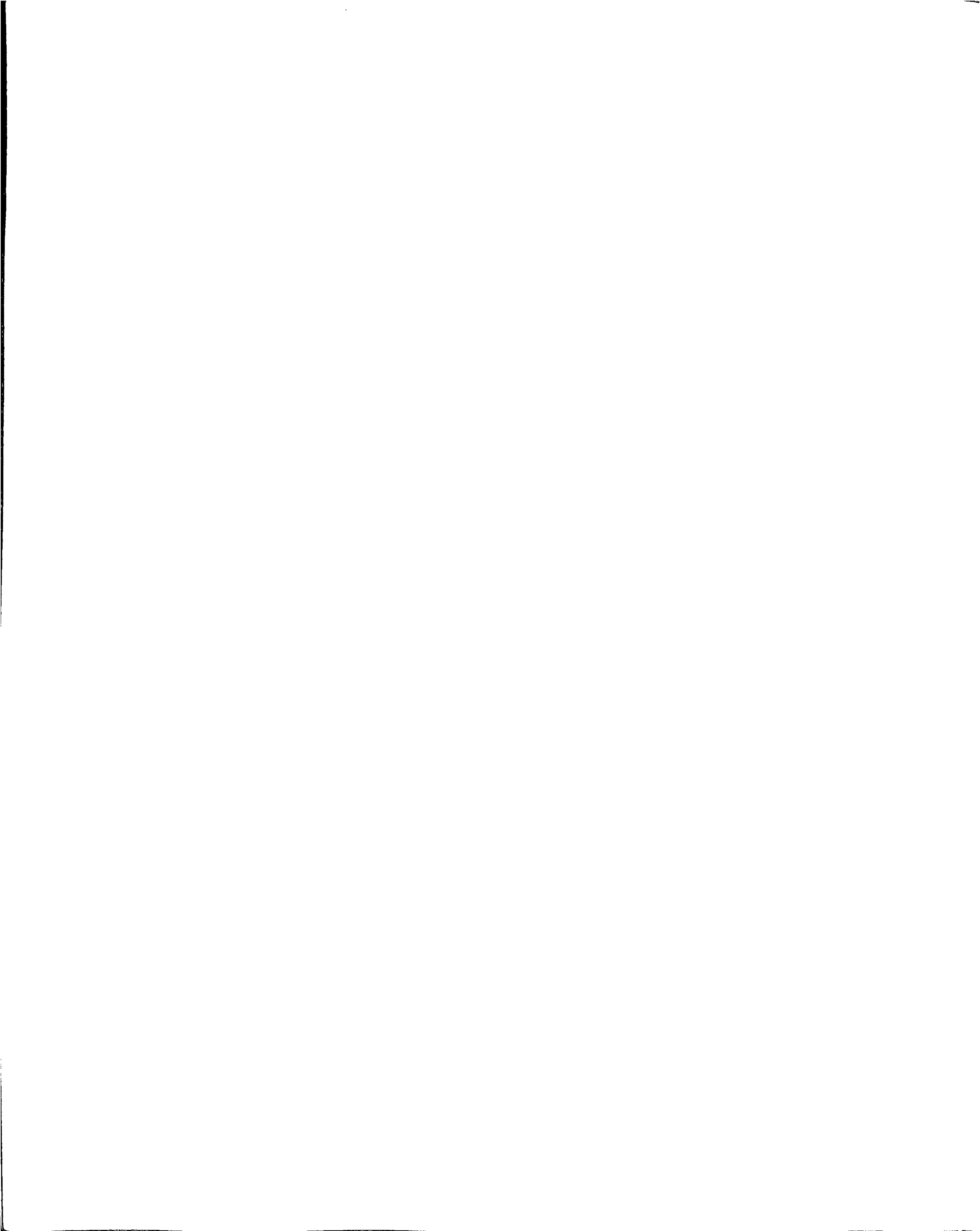
Illinois Consultation: Focus on Affirmative Action

Illinois Advisory Committee to the
United States Commission on Civil Rights

March 1998



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From the Chairman:

The Illinois Advisory Committee to the U.S. Commission on Civil Rights releases this report, *Illinois Consultation: Focus on Affirmative Action*, as part of its statutory responsibility to examine critical civil rights issues and inform the citizens of the State of its findings in such matters. The Illinois Advisory Committee is politically bipartisan and independent of any Federal, State, or local administration or policy group, and the Committee was duly authorized by the U.S. Commission on Civil Rights to undertake this study of affirmative action in Illinois.

In releasing this report, the Illinois Advisory Committee opines that affirmative action programs are still necessary to address the racial, color, gender, and disability-based discrimination that persists in this country. We remain a color-conscious society. For equal opportunity to become a reality it is essential that employers, educators, lenders, and contracting agencies take specifically designed actions, such as affirmative action, both to counteract the consequences of past discrimination and to insure nondiscrimination in current practices.

Affirmative action programs — either government mandated or voluntary — consist of activities to identify, recruit, promote and/or retain qualified women and members of minority groups in hiring and in education. Most affirmative action programs are forms of deliberate outreach to formerly excluded segments of society — not programs of preferences or quotas. The premise of affirmative action is that simply removing existing impediments is not sufficient for changing the relative positions of women, people of color, and individuals with a disability.

To explore the issue of affirmative action in a diverse and bipartisan manner, members of the Illinois Advisory Committee invited individuals to present their positions and perspectives regarding affirmative action at a public hearing in Chicago, Illinois, on January 18, 1996. Invitees included numerous individuals from the business, community, public, and academic sectors. A balanced and diverse discussion on affirmative action resulted. This publication is one in a series of six similar reports on affirmative action completed in 1996 and 1997 by the States of the Midwestern Region, the other States being: Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

The Illinois Advisory Committee found widespread support for the continuation of affirmative action programs in view of continuing inequities in employment, education, and income along race, gender, and disability lines. The Illinois Advisory Committee similarly heard an expressed intention by participating employers that affirmative action policies now in place will continue, regardless of current and prospective changes in the law and government policies, because of its value as a management tool.

Affirmative action programs are often misunderstood, and this misunderstanding has led to some of the contention surrounding the subject. Such misunderstanding is present in Illinois, as a survey of Illinois adults by the University of Illinois-Chicago showed most whites in the State mistakenly believe all affirmative action to be a program of preferential treatment for less qualified and less deserving minorities.

A major theme that emerged from this study is the relationship between affirmative action and education. Testimony and papers presented to the Committee pointed to this connection. Presenters with divergent views on affirmative action came together on this connection and talked with urgency about this issue.

The Illinois Advisory Committee also reports there is no effort in Illinois to undo affirmative action initiatives, as witnessed in other parts of the country. A bill introduced in the 89th General Assembly (1995-96), sponsored by State Senator Walter Dudycz (R-Chicago) to prohibit the State or any of its political subdivisions from using race, color, ethnicity, gender, or national origin as a criterion for preferences in public employment, public education, and public contracting, was never referred out of committee. Affirmative action programs at the Federal, State, and local level remain in place in this State with little challenge. In Illinois there is no furor, nor even a public debate, to end affirmative action programs.

The reader is advised that this report is being published independently of the U.S. Commission on Civil Rights and at no expense to the Federal government. The concurrence of a majority of commissioners is necessary for the release of a report, and the U.S. Commission deadlocked at four yes votes and four no votes for public release. Believing that the public has a right to the information and findings of all State Advisory Committee work, the Illinois Advisory Committee releases this report.

The mission of the U.S. Commission is to appraise the laws and policies of the United States with respect to discrimination or denials of equal protection because of race, color, religion, sex, age, disability, or national origin. Pursuant to section 105(c) of the Civil Rights Act of 1957 and section 3(d) of the Civil Rights Commission Amendments Act of 1994, State Advisory Committees are established in each of the 50 States and the District of Columbia to advise the U.S. Commission on Civil Rights of all relevant information concerning their respective States on matters within the jurisdiction of the Commission.

Based on the U.S. Commission's authorizing legislation, as well as the Federal Advisory Committee Act and the Freedom of Information Act which govern its responsibilities with regard to the dissemination of information, the Illinois Advisory Committee believes the U.S. Commission on Civil Rights has a duty to accept and provide to the public all reports from the State Advisory Committees. We believe there is no justification for the Commission to exclude from the public any State Advisory Committee report, and that information provided by the State Advisory Committee is, by law, public information, and the U.S. Commission on Civil Rights has a statutory duty to make such information public, and to erect barriers to preclude such dissemination is an abrogation by the Commission of its responsibility.

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Chairman, Illinois Advisory Committee
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Introduction

I. The Illinois Advisory Committee

The Illinois Advisory Committee feels that as part of its obligation to advise the Commission on relevant information within the jurisdiction of the Commission, it could not ignore the issue and debate on affirmative action. The essential purpose of the Advisory Committee's examination and report on affirmative action is both to clarify the arguments and to illuminate the debate in a nonpartisan manner.

The Advisory Committee engaged in this study is structured to be politically, philosophically, and socially diverse. It includes representation from both major political parties and is independent of any national, State, or local administration or policy group. For purposes of this discussion, the Advisory Committee uses the United States Commission on Civil Rights definition of affirmative action:

> A contemporary term that encompasses any measure beyond simple termination of a discriminatory practice that permits the consideration of race, national origin, sex, or disability along with other criteria, and which is adopted to provide opportunities to a class of qualified individuals who have either historically or actually been denied those opportunities and/or to prevent the recurrence of discrimination in the future.[1]

In exploring the issue of affirmative action, Advisory Committee members carefully sought presenters in a genuine spirit of openness and bipartisanship. Each member of the Advisory Committee was to invite two participants to present a position and/or a perspective paper on affirmative action, with the invited individuals known to be knowledgeable in the principles of equal opportunity, nondiscrimination, and civil rights.

Twenty-three papers were received from individuals and organizations. These are collected in five sections: (1) Affirmative Action and Its Implementation, (2) Academic Examinations of Affirmative Action, (3) Community Perspectives Regarding Affirmative Action, (4) Community Organization Positions on Affirmative Action, and (5) Position Statements on Affirmative Action from National Organizations.

This consultation is one of a series of six projects in 1996 on affirmative action being conducted by the Midwestern State Advisory Committees to the United States Commission on Civil Rights.[2] Presenters and authors are residents of Illinois and their focus is on affirmative action.

II. Background

In the 1960s government entities at Federal and local levels began taking an active role to eliminate discrimination on the basis of race, color, religion, sex, and national origin. These initiatives included antidiscrimination measures in areas such as employment, housing, and education. Some efforts also included affirmative action.

The preeminent antidiscrimination legislation of the civil rights era is the Civil Rights Act of 1964.[3] Title VII of that act prohibits employment discrimination, but it neither requires nor prohibits affirmative action measures.[4] The most

1 *See generally* U.S. Commission on Civil Rights, Statement on Affirmative Action, p. 2 (October 1977).

2 The other States are: Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

3 Pub.L.No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. §§ 2000a et seq. (1988 & Supp. 1994)).

4 42 U.S.C. §§ 2000e-2000e-17 (1988 & Supp. 1994).

recent Federal civil rights legislation, the Civil Rights Act of 1991,[5] expressly preserves lawful affirmative action plans, leaving the courts to decide the proper parameters of such plans.

The principal legal requirements of affirmative action at the Federal level include Executive Order 11246,[6] as amended, the Rehabilitation Act of 1973,[7] and the Vietnam Veterans Era Readjustment Assistance Act of 1974.[8] Executive Order 11246, was signed by President Lyndon B. Johnson in 1965 and amended in 1967 to include gender as a protected status. It is considered the defining authority of affirmative action for Federal contractors, ordering the inclusion of an equal opportunity clause in every contract with the Federal government.

> All Government contracting agencies shall include in every Government contract hereafter entered into the following provisions: During the performance of this contract, the contractor agrees as follows: (1) The contractor will . . . take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.[9]

Similarly, the Rehabilitation Act of 1973 and the Vietnam Veterans Readjustment Act of 1974 contain affirmative action language mandating that firms with Federal contracts to undertake personnel actions to employ and advance qualified handicapped individuals and veterans of the Vietnam era and disabled veterans. Section 503(a) of the Rehabilitation Act of 1973 reads:

> Any contract . . . entered into by any Federal department or agency . . . shall contain a provision requiring that . . . the party contracting with the United States shall take affirmative action to employ and advance in employment qualified handicapped individuals.[10]

The Vietnam Veterans Era Readjustment Assistance Act of 1972 contains an affirmative action requirement identical to section 503(a) of the Rehabilitation Act.

At the Federal level, the affirmative action obligation of firms with Federal contracts to provide equal employment opportunity to minorities and women is monitored by the Office of Federal Contract Compliance Programs (OFCCP) of the U.S. Department of Labor. The OFCCP considers affirmative action as the active effort by employers to eliminate existing barriers to equal employment opportunity. Specifically, the OFCCP defines affirmative action as:

> In the employment context, affirmative action is the set of positive steps that employers use to promote equal employment opportunity. . . . It refers to a process that requires a government contractor to examine and evaluate the total scope of its personnel practices for the purpose of identifying and correcting any barriers to equal employment opportunity.[11]

In September 1996 the Indiana Advisory Committee to the U.S. Commission on Civil Rights released a report on the enforcement of affirmative action in Indiana by the U.S. Department of Labor. The Committee found that the OFCCP, the Federal Government enforcement agency, proscribes (1) preferences on the basis of race or gender and (2) quotas, which require consideration of abilities and qualifications be subordinated in order to achieve a certain numerical position.[12] The Advisory Committee also found

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5 Pub. L. No. 102-166, 105 Stat. 1076.

6 Exec. Order No. 11246, 3 C.F.R. § 339 (1964–65), *reprinted in* 42 U.S.C. § 2000e note (1988).

7 Pub. L. No. 93-112, 87 Stat. 55.

8 Pub. L. No. 92-540, § 503(a), 86 Stat. 1074, 1097 (codified at 38 U.S.C. §§ 2011-2013 (1988)).

9 Exec. Order No. 11246, § 202(1), 3 C.F.R. 339 (1964–1965 *reprinted in* 42 U.S.C. 1000e note (1988)).

10 Pub. L. No. 93-112, 87 Stat. 355.

11 OFCCP, U.S. Department of Labor, "OFCCP Defines the Terms!," released March 1995.

the program to be a useful tool in promoting equal employment opportunity.

> The enforcement of affirmative action compliance by the OFCCP in Indiana has helped to ensure that employers take more responsibility in seeking, recruiting, and hiring women, minorities, and individuals with disabilities than might otherwise have been the case. OFCCP audits bring the issue of equal employment opportunity to the attention of the highest levels of company management, making . . . equal employment opportunity a company priority.[13]

The Indiana Advisory Committee further found that affirmative action—as enforced by the OFCCP in Indiana—does require hiring goals. These goals are distinct from quotas in that in those particular job groups where minorities and/or females are underutilized according to their availability in the relevant labor pool Federal contractors must undertake a specific affirmative recruitment of qualified minorities and females so that such individuals would be included as applicants in the selection pool.

In addition to the affirmative action obligations on Federal contractors, the Federal Government has also issued regulations calling for affirmative action in apprenticeship programs and programs serving migrant and seasonal farmworkers. Federal regulations set out affirmative action requirements for apprenticeship programs administered by the Department of Labor,[14] and Federal regulations require State agencies participating in the administration of Services for Migrant and Seasonal Farmworkers to develop affirmative action plans.[15]

Although not specifically referred to as "affirmative action," government efforts to increase minority and female participation in contracting and government assisted programs is also considered, by some, to be affirmative action initiatives. Under these programs "set-asides" or "participation goals" for members of racial or ethnic minorities and businesses owned or controlled by these or other disadvantaged persons have been implemented at the Federal, State, and local levels.

The legality of such initiatives were recently scrutinized by the U.S. Supreme Court in *Adarand Constructors, Inc. v. Pena*.[16] Although upholding the constitutionality of set-asides, the Supreme Court's decision requires strict scrutiny of the justification for, and provisions of, a broad range of existing race-based affirmative action programs, limiting the authority of government entities to adopt and implement race and gender conscious measures in the absence of specific findings of discrimination. The strict scrutiny standard requires that such "affirmative action" efforts by government entities be narrowly tailored to meet a compelling governmental interest. [These efforts must be: (1) supported by a pattern and/or practice of discrimination, (2) narrowly tailored in application, temporary in duration, and not intended to achieve or maintain a specified gender or racial balance, and (3) not trammel unnecessarily on nonminorities.]

III. Affirmative Action and Economic Opportunity

At the beginning of this century, historian and novelist W.E. Dubois, identified the problem of the 20th century as that of the color line. As the Nation and the State approach the 21st century

12 *See* "The Enforcement of Affirmative Action Compliance in Indiana Under Executive Order 11246," report of the Indiana Advisory Committee to the United States Commission on Civil Rights, August, 1996 (hereinafter referred to as *Indiana SAC Affirmative Action Report*).

13 *Indiana SAC Affirmative Action Report*, p. 76.

14 19 C.F.R. §§ 30.3-30.8.

15 20 C.F.R. § 653.111(a),(b)(3)(1994).

16 115 S.Ct. 2097 (1995).

the problem persists. In February 1996 Chicago United held its first annual leadership series and made affirmative action its inaugural topic.[17]

The leadership series, *Affirmative Action As a 21st Century Concept*, included a moderated panel discussion. A fact sheet was developed with information pertinent to a discussion of affirmative action. Three sections were on population, the work force, and education.

(1) Population

Chicago United reported on the increasing proportion of the American citizenry that was nonwhite.

In 1960, 10 percent of Americans were people of color. In 1990, 25 percent were people of color. Projections say that by the year 2050, it will be at least 45 percent. Before the year 2080, people of color will be more than 50 percent of America.[18]

(2) The work force

The fact sheet noted differences among the racial and ethnic groups in the work force.

- White men are 47 percent of the work force (41 percent of the population), own 64 percent of the Nation's businesses and have most of America's highest paying jobs, including:
  - 70% of judges
  - 71% of air traffic controllers
  - 73% of lawyers
  - 75% of police detectives and supervisors
  - 84% of construction supervisors
  - 94% of fire company supervisors
  - 95% of senior managers

- According to the Glass Ceiling Commission's CEO survey, the glass ceiling exists because of the perception of many white males that as a group they are losinglosing the corporate game, losing control, and losing opportunity. Many middle and upper level white male managers view the inclusion of minorities and women as a direct threat to their chances of advancement. They fear they are losing their competitive advantage.

- In 1995 white unemployment was 4.7 percent. Black unemployment was 10.1 percent. The unemployment rate among Hispanics was 9 percent.

- Between 1982 and 1992 the percentage of African Americans who held the title of vice president or above increased from 1 percent to 2.3 percent.

- Between 1982 and 1992 the percentage of Hispanic top managers increased from 1.3 percent to 2 percent; the percentage of Asian senior managers increased from 0.4 percent to 1.89 percent.[19]

- In 1994 there were 58.4 million women in the labor force. They represented 45.6 percent of the total labor force or 57.9 percent of all women. Two women are CEOs in Fortune 1000 companies. Women hold 3–5 percent of the senior-level jobs in major corporations. Five percent of the women who hold those senior-level jobs are from a minority group.[20]

(3) Education

- the average spending per pupil in the United States in 1992–93 was:

Suburban schools	$6,370
Nationwide	$5,962
Rural schools	$5,881
Large urban schools	$5,837

17 Chicago United, Inc., is "a corporate membership organization whose mission is to improve relations among Chicago's diverse racial and ethnic groups in order to create a climate of cooperation and maintain Chicago as a place where every citizen has equal access to the City's resources and opportunities."

18 Chicago United, "At-A-Glance Stats & Facts," February 1996, p. 1 (hereinafter referred to as Stats & Facts).

19 Stats & Facts, p. 2.

20 Ibid., p. 3.

• Nationwide, the 1991–92 school year was the most segregated since 1968 with 66 percent of black students attending predominantly minority schools.

• In 1992 Illinois was the fifth wealthiest State in terms of personal income, yet it was tied for last place in expenditures for public school education.

• The State of Illinois' education funding has fallen from 48 percent in 1975 to 32 percent in 1995.

• Historically black colleges have only 17 percent of the Nation's black students, yet they produce almost 40 percent of the graduates.

• African-American men with professional degrees earn 79 percent of the amount of the white male counterpart.

• The median earnings of college graduates working year-round and full-time:

White male	$46,857
Black male	$35,853
White female	$32,499
Black female	$31,157[21]

Access to technology, the incidence of welfare, and Spanish as a primary language also received attention in the fact sheet.

In an age where technological competence is key to obtaining employment, as estimated 37.5 percent of Whites are using computers, compared with 25 percent of Blacks and 22 percent of Hispanics. Income levels prevent many families from owning a computer. Only about 6.8 percent of households earning less than $10,000 have home computers; 80 percent of families with household incomes above $75,000 own one.[22]

More whites than Blacks receive welfare. While 5.05 million Blacks were AFDC recipients in 1992, 5.3 million Whites received assistance. . . . Five percent of the Nation's population received welfare in 1993; 17 percent of African Americans received such aid (83 percent did not).[23]

Sixty percent of United States Hispanics watch television in English; 40 percent watch in Spanish. Sixty-four percent of Hispanics are either English dominant or bilingual moving toward English, while 36 percent are still dependent on Spanish.[24]

IV. Present Controversy

Affirmative action has moved beyond provincial legal and academic inquiries and into open public and political discussion. The 1995 hearing on affirmative action before a subcommittees of the House of Representatives Judiciary Committee was described as "tense and sometimes rancorous" as House Republicans considered purging sex and race preferences from Federal laws.[25] Emotions surrounding affirmative action have been chronicled by the press. In 1995 a cover story of *Newsweek* was devoted to affirmative action in which Howard Fineman wrote:

But the most profound fightthe one tapping deepest into the emotions of everyday American lifeis over affirmative action. It's setting the lights blinking on studio consoles, igniting angry rhetoric in state legislatures and focusing new attention of the word "fairness."[26]

In 1995 President William J. Clinton directed Federal agencies to review existing affirmative action programs.

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21 Ibid., p. 4.

22 Ibid.

23 Ibid.

24 Ibid.

25 Nancy E. Roman, "Affirmative action spurs exchanges tinged with rancor," *The Washington Times*, Apr. 4, 1995, p. A10.

26 Howard Fineman, "Race and Rage," *Newsweek*, Apr. 3, 1995, p. 24.

Let us trace the roots of affirmative action in our never ending search for equal opportunity. Let us determine what it is and what it isn't. Let us see where it has worked and where it has not, and ask ourselves what we need to do now. Along the way, let us remember always that finding common ground as we move toward the 21st century depends fundamentally on our shared commitment to equal opportunity for all Americans. . . .

The purpose of affirmative action is to give our nation a way to finally address the systemic exclusion of individuals of talent on the basis of their gender or race from opportunities to develop, perform, achieve, and contribute. . . . This review concluded that affirmative action remains a useful tool for widening economic and educational opportunity. . . . Let me be clear about what affirmative action must not mean and what I won't allow it to be. It does not mean—and I don't favor—the unjustified preference of the unqualified over the qualified of any race or gender. It doesn't mean—and I don't favor—numerical quotas. It doesn't mean—and I don't favor—rejection or selection of any employee or student solely on the basis of race or gender without regard to merit.[27]

Critics argue that affirmative action is not working and is moving the society to a position at odds with the original intent of recent civil rights legislation-a color blind society. Senator Robert J. Dole (R, KS), the former Senate majority leader, introduced the Equal Opportunity Act of 1995, legislation designed to end race and gender preferences. Commenting on the need for a new civil rights agenda in the *Wall Street Journal*, Senator Dole wrote:

We are now engaged in a contentious and difficult debate over the merits of affirmative action and the role of preferential policies in our society.

Perhaps the most striking aspect of this debate is not its passion or its complexity, but its irrelevance. The simple truth is that preferential policies don't mean anything to the millions of Americans who each day evade bullets,send their kids to substandard schools, and wade through the dangerous shoals of our nation's underclass.

Making government policy by race only diverts us from the real problems that affect all Americans of whatever race and heritage. Rather than having a potentially divisive argument over affirmative action, our most pressing need is to develop a civil rights agenda for the 1990s, one that is relevant to the needs and challenges of our time.[28]

In Illinois, State Senator Walter Dudycz (R-Chicago) has sponsored the Illinois Equal Opportunity Act to prohibit the State or any of its political subdivisions from using race, color, ethnicity, gender, or national origin as a criterion for preferences in public employment, public education, and public contracting.[29] The senator held hearings in the summer of 1995 on the proposed legislation. At the hearings there was a strong debate on the merits and efficacy of affirmative action.

Dudycz is quoted as claiming he is not opposed to affirmative action, but only the reverse discrimination that can result from affirmative action efforts.

Affirmative action is not something which I object to. Discriminatory practices that are being utilized under the guise of affirmative action, causing reverse discrimination, is something which I am fighting.[30]

An article in the *Chicago Sun Times*, however, reports that at least in Illinois State government whites continue to fare well. Whites hold at least 85 percent of the jobs in 50 State agencies, and at least 90 percent of the jobs in 29 agencies. In addition, whites hold 86 percent of the jobs that pay $60,000 or more.[31]

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27 Remarks by the President on Affirmative Action, The White House, Office of the Press Secretary, July 19, 1995.

28 Bob Dole and J.C. Watts, Jr., "A New Civil Rights Agenda," *The Wall Street Journal*, July 27, 1995.

29 Illinois S.B. 1104, 89th General Assembly.

30 See Michael Hawthorne, "Affirmative Action: The Dividing Line," *Illinois Issues*, November 1995, p. 12. Senator Dudycz was invited by the Illinois Advisory Committee to present a paper on affirmative action for inclusion in this report.

31 Tim Novak and Jon Schmid, "State's Minority Hiring Dismal," *Chicago Sun-Times*, May 20, 1996, p. 1.

All of this comes 16 years after Illinois lawmakers passed affirmative action laws to diversify every state agency from top to bottomsomething none of them has achieved.... No agency has diversified its staff from top to bottom to mirror the work force in Illinois.... "The status quo continues to be maintained,... affirmative action has never been practiced," said Anthony Sisneros, a professor at the University of Illinois at Springfield who heads the Illinois Association of Hispanic State Employees.... Overall the state work force reflects the Illinois labor pool except that Hispanics are overwhelmingly underrepresented....

The statistics are no surprise to John Lambert, executive director of the Illinois Association of Minorities in Government.... Lambert said Dudycz has convinced many people that the laws are no longer necessary. "I would like for [people] to know the truth of what is happening," Lambert said. "It's just the opposite of what Mr. Dudycz and others are claiming, that there's reverse discrimination. The numbers just don't show that....[32]

In Chicago the Builders Association of Greater Chicago filed suit in Federal court to eliminate set-aside programs in the construction industry established by the city of Chicago and Cook County for minorities and women. In the Spring of 1996 a coalition of six groups joined the city of Chicago and Cook County in a petition defending the set-aside programs. Chicago's rules for awarding construction contracts require that 25 percent of public construction dollars be awarded to minority contractors and 5 percent to women-owned firms. Cook County targets 30 percent for minorities and 10 percent for women.[33]

The Advisory Committee's consultation evoked varying sentiment on different aspects of affirmative action. In listening to a variety of presenters on affirmative action, the Advisory Committee heard the current debate on affirmative action as another chapter in this country's history dealing with issues of opportunity, diversity, and equality in America.

No individual that spoke before the Advisory Committee opposed the principles of equal opportunity and nondiscrimination. Nor did anyone express the sentiment that affirmative action was not an attempt to remedy discrimination. But although the concept of equality of opportunity received universal support, the question of how to achieve this in a heterogeneous society was discussed, specifically, can equal opportunity for some be enhanced without diminishing equal opportunity for others?

Affirmative action was initially a program to increase opportunities for African Americans. It eventually became a vehicle to also enhance opportunities for women and other minority and ethnic groups. Few deny that discrimination on the basis of race, color, religion, ethnicity, gender, and disability still exist in this society, and continue to act as barriers to equal opportunity. This society has made a commitment to eliminate such artificial barriers, and for 30 years affirmative action has been one of the tools employed in this effort. Now this society is engaged in an active discussion deciding whether affirmative action programs should be retained, expanded, or amended.

32 Ibid., p. 2.

33 *See* Jorge Oclander, "Coalition Fights Suit Against Minority Set-Asides," *Chicago Sun Times*, May 30, 1996, p. A2.

I. Affirmative Action and Its Implementation

Affirmative Action and the Practical Realities Confronting Employers

By J. Stuart Garbutt

Affirmative action is an important subject, with which I first became professionally involved more than 20 years ago, when I was the General Counsel of the Illinois Fair Employment Practices Commission and its successor, the Illinois Department of Human Rights, and we developed the regulations which still exist requiring affirmative action by Illinois State agencies and public contractors.

Many questions were raised then about the propriety of those affirmative action requirements, and whether they were faithful to the laws which were intended to end discrimination and foster equality of opportunity. Many critics then felt, and evidently still do, that affirmative action IS unlawful discrimination, even though legally defensible affirmative action plans merely set goals or targets, not rigid quotas.

Despite that distinction, however, many still feel that affirmative action planning necessarily interferes with equality by forcing employers to focus on numbers rather than on individual merit and qualifications. It is this notion that affirmative action is at fault for encouraging employers to be "numbers-conscious," that I think warrants closer inspection.

Although I left the Illinois Department of Human Rights more than 10 years ago, I continue as a private attorney to be regularly involved with employers affirmative action programs. My law practice at Bates Meckler Bulger & Tilson primarily involves advising and representing employers, both public and private, in labor and employment matters. Many of the clients of my firm have affirmative action plans which we have helped them to design or implement. But, interestingly, many of them—particularly the human resources professionals who are actually responsible for hiring and firing employees—seem to care relatively little about the debate over affirmative action as public policy. They are much more concerned about the *practicalities* of running an organization and effectively managing human resources in an increasingly demanding and litigious environment.

Like many of those human resources professionals, it strikes me that, as so often seems to be the case, the heated political debate has tended to obscure some legitimate *practical* reasons, wholly apart from any affirmative action requirements, why employers practice "numbers consciousness." Because there are independent pragmatic reasons for such behavior, there is good reason to believe that prudent employers will continue to be numbers-conscious regardless of what becomes of affirmative action requirements. If so, to this extent the raging political debate may be somewhat irrelevant.

First of all, we should not overlook one of the key reasons why, years ago, governments came to embrace affirmative action in the first place. The early affirmative action programs were not conceived purely as instruments of social welfare policy. There was a significant element of defensive self-interest. Governments were being sued, or threatened with suits, for allegedly ignoring discrimination within their own work forces and the workforces of those whom they favored with government contracts. And so-called "statistical evidence," that is, evidence of significant numerical imbalances in the proportions which various racial, ethnic or gender groups comprised of a particular work force, often was cited as graphically reflecting such discrimination.

Obviously, if numerical evidence was competent to suggest unlawful discrimination, defending or avoiding such lawsuits required close attention to those numbers. In fact, for a variety of reasons, requiring those who are responsible for employment and contracting decisions to closely

scrutinize the numbers was—and still is—one of the surest ways to head off costly lawsuits and damage awards.

Recall that, before there were affirmative action regulations, there was title VII of the 1964 Civil Rights Act (42 U.S.C. sec. 2000e, et seq.), and a multitude of State fair employment laws, including in Illinois. Under those laws, almost from the beginning, it was recognized that an unexplained numerical imbalance, if it arose to the level of "statistical significance," could go a long way toward proving a violation. (See, e.g., *Teamsters v. United States*, 431 U.S. 324 (1977); *Hazelwood School District v. United States*, 433 U.S. 299 (1977).) In fact, at least since 1973, when the U. S. Supreme Court decided *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, it has been doctrinal title VII law that an employment practice need not even be deliberately discriminatory to be unlawful. A practice may be unlawful if it merely has the unintended but unnecessary effect of disproportionately penalizing persons who are protected by the law. And, not surprisingly, it is statistical evidence which inevitably proves or disproves the existence of such a disproportionate effect.

In cases challenging affirmative action programs, the courts also have recognized the crucial role played by statistical or numerical evidence. In the landmark case of *United Steelworkers of America v. Weber*, 443 U.S. 193 (1979), the Supreme Court held that a collectively-bargained training program for skilled craft jobs at Kaiser Steel Company did not violate title VII, even though half of the training slots in the program were reserved for minority-group employees. The Supreme Court reached that conclusion in large part because statistical evidence revealed a striking, historical underrepresentation of racial minorities in the skilled craft ranks at Kaiser, thus indicating that minorities had been excluded discriminatorily from those positions. Accordingly, the Court in *Weber* reasoned that the training programs racial preference was statutorily permissible because (1) it was designed to remedy evident past discrimination; (2) it was "narrowly tailored" to address only the discrimination suggested by the evidence; and (3) it did not "unduly trammel" the interests of nonminority employees, since at least half the training slots remained open to them.

With a few refinements along the way, this three-pronged analysis unveiled by the Supreme Court in *Weber* has continued to guide the determination of whether race- or gender-conscious affirmative action programs pass legal muster. For example, in *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616 (1987), the Supreme Court approved a program that preferred females for promotion to craft jobs, based on evidence similar to that in *Weber* demonstrating a marked exclusion of women from such jobs in the past. Likewise, in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), the Court applied such an analysis to conclude that a municipal set-aside ordinance ran *afoul* of the law, primarily because it was *not* narrowly tailored to remedy only the prior discrimination suggested by the statistical evidence.

In a real sense, then, the affirmative action cases, and affirmative action programs themselves, simply reflect the importance which numerical evidence has in proving or disproving unlawful discrimination. Like it or not, where there exists a statistically significant and otherwise unexplained absence of certain class members from certain jobs, it is powerful evidence that discrimination has been at work. According to our courts, that is an essential predicate for a legitimate race- or gender-conscious affirmative action program. At least as important, however, such a statistical disparity may also be the well-spring for costly and disruptive discrimination claims.

In this regard, numerical evidence certainly has become no less ominous since the time of the early cases I have mentioned. On the contrary, it may have taken on even greater importance. Obviously, the numbers remain *all*-important in "disparate impact" cases where, as we have seen, evidence of a numerical imbalance is *the* basis for establishing that an employers practices have a discriminatory effect. But even in the much more common "disparate treatment" or intentional discrimination cases, numerical evidence can have critical importance.

For example, even in a "garden variety" discrimination case involving the treatment of a single person, numbers which reflect how others have fared in comparable circumstances may ultimately prove dispositive. Indeed, relatively recent events, totally apart from the affirmative

action controversy, have tended to enhance the significance of numerical evidence in such cases.

The first such factor is the 1991 amendments to title VII, known as the 1991 Civil Rights Act. Those amendments for the first time made juries, and compensatory and punitive damages, available in all cases alleging intentional discrimination under title VII.

When a jury will decide whether an employer has committed unlawful discrimination, and whether that discrimination justifies "big money" damages, employers who are concerned about their exposure must take effective measures to defend themselves. Obviously, among the most effective such measures are programs which permit an employer to avert or identify incipient discrimination before it can do damage. Inevitably, however, such procedures involve attention to numerical disparities which may suggest that discrimination is afoot. An employer that is constantly alert to such evidence can address problems before they become the grist for lawsuits. And if sued, such an employer can point to the efforts it makes to avoid discrimination as evidence of its overall fair-mindedness. Such a demonstration can help to dispel an inference that its treatment of the individual plaintiff was the product of callous indifference. This is the formula for avoiding or minimizing big money damages.

Notice, however, that procedures of this sort are practically indistinguishable from the "workforce analyses" required of governmental employers and contractors under affirmative action programs like those mandated by Executive Order 11246. Thus, whether or not the executive order or affirmative action are deemed to be good things, at least part of the exercise they require of employers is essential for other reasons.

Another factor increasing the importance to employers of numerical analyses is the pressure which employers experience as a result of todays constant technological advances, global competition and generally tough economic times. Private and public employers alike increasingly find it necessary to re-engineer their work forces in order to eliminate real or perceived inefficiencies, satisfy investors and adapt to rapidly changing demands of the marketplace.

When such restructurings necessitate layoffs of other massive shifts in an employers work force, the prospects of perilous litigation increase dramatically. Each such event brings the possibility of *multiple* or class-based lawsuits. Worse, unlike in the traditional discharge case, where the employer can rely on evidence of the employees own misconduct as justifying the firing, in reduction-in-force cases an employer risks litigating with employees who, by definition, would *not* have been fired but for events beyond their control.

Consequently, employers must redouble their efforts to prevent discrimination from infecting such transactions. They also must take all possible measures to persuade a jury that they acted responsibly and lawfully, if they are sued. In practice, this again means that employers must scrutinize the "numbers," since those numbers could reveal possible discrimination and thus condemn them at trial. In other words, once again, employers are compelled to invoke "work force analysis" techniques, regardless of whether they are subject to affirmative action regulations.

In short, the practical realities confronted by todays employers, both public and private, compel the very sort of attention to numbers which affirmative action critics frequently decry. But for this, "affirmative action" should not be the whipping boy. The simple fact is that "bad" numerical evidence both invites and helps to prove liability in discrimination litigation.

As a result, employers who ignore their numbers increase their exposure and risk their bottom lines. Curtailing affirmative action cannot and will not alter that reality. Responsible employers, even purely self-interested ones, will continue to practice "numbers-consciousness" and take steps to address statistical imbalances in their work forces, regardless of the outcome of the current debate.

Affirmative Action as Good Business

By Roland C. Baker

I address the subject of affirmative action from the experience-base of a corporate employee, former small business owner, and today, a senior executive of one of the largest publicly owned financial services enterprises in our country. My personal objective is to make three points.

I. Affirmative Action Is Good Business

First, affirmative actions that bring into our free enterprise system all qualified individuals that reflect the increasing diversity of our society is good business. By the year 2000:

- one in four Americans will be of African, Asian or Hispanic decent;
- two-thirds of the worlds migration will be to the United States;
- African, Asian, and Hispanic Americans will have annual purchasing power of greater than $650 billion, exceeding the gross national product of Canada;
- English will no longer be the majority language in California, with Texas and Florida not too far behind;
- from a 1990 base, the Asian American, African American, and Hispanic American population are projected to increase by 67 percent, 35 percent, and 23 percent, respectively; the European American population is projected to increase by only 2 percent; and
- two-thirds of new entrants into the work force will be women.

No matter the segment of our business economy—capital goods, consumer products, financial services or recreation and entertainment—enterprises that do not take into consideration and capitalize on the diversity in our society will be materially disadvantaged. Throughout the entire chain of business activity, from recruiting of human resources to distribution of product, to shareholder and community relations, businesses should today be moving aggressively to reflect these changes in our social and business environments. And should there be unenlightened, backward, or steadfast individuals or firms that refuse to recognize our developing socioeconomic phenomenon—even to their long-term detriment—their failure to facilitate and to practice equal employment opportunity must be severely and swiftly punished based on clear, definite, nonnegotiable processes and penalties. Cant the long, drawn-out negotiations we read about following adjudicated violations be eliminated, saving taxpayers those assumed material monies?

II. Affirmative Action and the "Quota Issue"

My second point relates to affirmative action and what I call the "quota issue." My employer, the Lincoln National Corporation, views affirmative action as good, sound business practice because it is how we effect equal employment opportunity. It is policy to administer all aspects of employment without regard to race, color, age, religion, or physical disability.

Affirmative action is "action"-oriented, involving specific processes to recruit, employ, develop and advance *all* of our employee associates based on their skills and abilities; especially in areas where a balanced work force (including women and minorities) does not exist.

We feel that a companys work force should mirror the communities in which they reside or the customers they serve. Affirmative action is *not* a quota system, it is a "goal" oriented process. Goals are voluntary and flexible. Quotas are rigid and inflexible. Goals allow organizations to voluntarily exercise good faith efforts to address the issue of a balanced work force.

The goal of affirmative action programs is to bring women and minorities to positions in companies where they might maximize their potential as participants in our socioeconomic system. Accordingly, in my company, the program encompasses more than nondiscrimination. Our program is designed to provide positive action to guarantee that equal opportunities are given to all minorities and women who are employed or seeking employment within the corporation. Emphasis is on location and encouraging placement of these persons where their respective groups are underrepresented through recruiting from all types of sources, public and private, that may have knowledge of qualified available individuals.

We are to fully utilize and develop previously underutilized and underdeveloped potential

human resources. We set our specific objectives to:

- identify and remedy underutilization of minorities and women;
- establish realistic goals and timetables to correct identified underutilization of minorities and women;
- pledge "good faith efforts" to maintain a balanced work force through all hiring activity;
- provide an auditing system to evaluate the effectiveness of the plan;
- make a reasonable effort to accommodate the known physical or mental limitations of any employee or applicant unless:
  1. no accommodation would enable the individual to effectively perform the essential functions of the job.
  2. employment of the individual in the specific job would endanger his/her safety or health or the safety or health of co-workers or customers.
  3. such accommodation would impose undue hardship on the conduct of the corporations business.

I reject the hard-and-fast counting of heads and calculation of percentages as the sole basis in determining the providing of equal opportunity. **Thats a quota system!** Thats a scheme that is faulty on two grounds. First, our businesses are not made more successful by mandating certain numbers of employees of certain ethnicity. Businesses must be committed to employing the highest quality of human resource available.

Surely historical racism has severely limited the pool of qualified women and minorities—victims of denial of access to quality educations and high potential training and development programs. But many firms, including my own, are committed to finding quality associates of great diversity and developing them to their highest potential. Thats good business. It is good for all stake-holders—employees, management, shareholders, and community.

Only ill-will, incompetence, and perhaps failure can result from companies hiring less than qualified persons to meet a rigid goal, based on absolute numbers or percentages. Qualified women and minorities do not want to carry that stigma along a career path. And who would want to be that most qualified woman or minority that shows up just after the closet-bigot who secretly resists practice of equal opportunity has met his quota and still has an opening? A quota-based system will eventually work against minorities and women.

Equal opportunity statutes and affirmative action programs should not be administered by numbers or by the percentages. That smacks of quotas. Such programs, however, should be scrutinized in terms of stated objectives, and their progress monitored in terms of pursuit of those objectives. Assess these programs in terms of their:

- developing and administering affirmative action and diversity strategies and objectives for effective affirmative action/equal employment opportunity planning and administration;
- staff profiles so as to identify problems and areas of underutilization;
- achievement of goals and timetables and identifying those qualified minorities and females who could be upgraded or moved into areas where underutilization exists;
- researching developments in the area of affirmative action, equal opportunity and diversity;
- providing equal employment opportunity and affirmative action compliance reporting and filing all government-required equal employment and affirmative action reports;
- directing the corporations fair employment compliance audits;
- providing counsel to management on a corporate wide basis regarding cost-effective methods in complaint resolution;
- providing equal employment opportunity and affirmative action consultative expertise and consulting to all levels of management and employees regarding all aspects of highly sensitive and complex equal employment opportunity and affirmative action issues;
- providing equal employment opportunity and affirmative action training, including designing, developing and facilitating affirmative action awareness training and compliance workshops; and
- providing expert equal employment opportunity and affirmative action services by developing and designing effective equal employment opportunity, affirmative action, and diversity strategies and policies to be used in the affirmative action planning process.

Each of our business units is charged with active involvement and participation in the goal-setting process for women and minorities. Specific instructions for completion of the utilization analysis and for establishment of goals and timetables is furnished to each operating department. These instructions and completed utilization analysis, goals and timetables become a part of the affirmative action plan.

A routine audit of business units is conducted in order to evaluate progress toward achievement of affirmative action goals and objectives. The quarterly audit includes:

a. applicant flow data.
b. hires.
c. transfers.
e. terminations.
f. underutilization.

Utilization analyses are done on a routine basis. The purpose of these analyses is to identify areas of underutilization to aid management in setting annual goals and to assist the affirmative action/diversity office in the development of programs to achieve company objectives and monitor the progress toward full compliance.

Periodic audit summaries are presented to the corporations chief executive officer and chief operating officer. These summaries indicate attained goals and deficiencies, and will assess the need for future affirmative action compliance.

Employment efforts are directed toward attracting qualified women and minorities. These include the development of relations with those community and professional groups concerned with the special interest of minorities and women. When job openings are referred to outside applicants, priority will be given to locating and hiring women and minorities in managerial and nonmanagerial jobs where underutilization exists. Where underutilization does not exist, applicants of all classes are considered.

Openings for nonexempt levels and exempt positions are posted except where manifest underutilization exists. This program is designed to encourage all employees to explore career opportunities within the corporation. All such positions are available to employees before referral to outside sources, except those positions where manifest underutilization exists. Postings include a formal position description and job qualifications.

Managers are to review their employee personnel in terms of the number of women and minorities in each job group. Particular attention is given to those employees with potential for upgrading and promotion.

Individual job counseling, which includes career-path planning, is available upon request.

All of our associates are actively encouraged to take advantage of company-sponsored educational and training programs.

III. Affirmative Action and the Employment of the "Less Qualified"

So, to my third and final point. No where in this presentation have I mentioned nor have I cited my company as recruiting, promoting, or otherwise placing other than eminently qualified persons in our company.

Affirmative action programs can and must be practiced without placing unqualified persons in positions to the detriment of other employees, the firm, its shareholders, and its customers.

Affirmative action must not be practiced with that ugly, unacceptable notion of a quota system.

Our governments executive and legislative arms must first look to good faith development and implementation of comprehensive programs to bring minorities and women to full participation in our free enterprise system. Then when discrimination is found to exist, must insist that the judicial system be charged to act explicitly based on well-defined law and penalties for violation.

A representative of Lincoln National Corporations human resource division participates on a grass roots study committee which recently submitted three key recommendations to President Bill Clinton, regarding affirmative action policies. The committee, formed by the U.S. Department of Labor, was charged to review current Federal laws and policies affecting affirmative action programs. The committees three recommendations serve as summary of my remarks today, recommending that the President:

1. direct the Secretary of Labor to enforce all Federal employment laws fairly and use those companies that are successful in their affirmative action efforts as benchmarks;
2. direct the Department of Labor to establish a collaborative effort with corporate America through educational seminars to provide a

better understanding of Office of Federal Contract Compliance Programs; and
3. instruct the Department of Labor to become more user friendly by reducing the paperwork and layers of bureaucracy for required Federal labor reports and affirmative action reporting.

I concur.

Affirmative Action at Ameritech

By Douglas L. Whitley

Affirmative action is important at Ameritech. It requires that the company and its managers take positive steps to assure that the full range of the labor pool is somehow represented at all levels of the company. Only by doing this will we be assured that we have a team composed of the most talented people.

Additionally, the workplace still remains the place where we are most likely to encounter people of different ethnic backgrounds and experiences. We must use the workplace to encourage improved interaction and understanding among all people. The collective knowledge and experience of a diverse work force helps us make better decisions. It is as simple as that.

At Ameritech it is our strong belief that our commitment to diversity will help enable us to meet and exceed our business objectives. Because of our diversity, we are more productive, have stronger teams, better managers, and more skilled employees.

In defining diversity, we do not look just at race. We look at gender, veteran status, disability, national origin, age, and religion. Additionally, we include sexual orientation.

The communications industry has become extremely competitive. Although we used to be a monopoly, those days are long gone. Now, the cable-TV industry, long distance companies, competitive access providers, even local phone companies have announced their intention to take market share away from Ameritech. Competition has made us a stronger company, and made us more aware of our strengths and weaknesses.

One of our greatest strengths is our commitment to diversity—diversity in our work force and diversity in the companies we do business with. In fact, our diversity is proving to be a competitive advantage.

We serve nearly 12 million customers in the Midwest. Beyond that, we have business interests in Hungary, Poland, New Zealand, Norway, and elsewhere. We are a global company, and our customers come from every age group, nationality, sex, religion, and ethnic group. As far as we are concerned, diversity is not an option, it is a necessity for survival.

There has been a lot of speculation in recent months about what will happen if the government backs away from affirmative action. As far as Ameritech is concerned, our commitment to diversity will remain unchanged.

As a major player in a competitive business, we need to have the input, talent, ideas, and the brainpower of a wide range of people. We need this to best serve our customers.

We need to understand our markets, all of our markets. Therefore we need people who understand those markets—the people, the culture, the language, geography, politics, interests, and so on. One of our strategic advantages is having people who understand and relate to our various markets. When diversity works, it creates a stronger work force that results in a healthier bottom line.

Diversity is about inclusion. At Ameritech we support employee advocacy groups. Currently, we have employee advocacy panels that represent blacks, Hispanics, Asians, women, gays, lesbians, and bisexuals. They are fully supported by the company. They review corporate policy on such things as promotions, pay treatment, and work to improve diversity throughout the company.

Externally, we spent more than $100 million last year with minority and women-owned business. This year we are on track to increase that number by 15 percent to 20 percent. We even established a minority and women's business advisory panel, which includes both employees and business owners, to help us do even better.

We are not doing this simply because we are a caring company or because of government mandates. We are doing it because it enables us to build relationships with all segments of our market place. It enables us to do business with the communities we serve. And the better we understand the needs of our diverse customer base, the more we will be the company of choice.

Our commitment to diversity also enables us to be the employer of choice. It is a tremendous competitive advantage to attract talented people.

One quarter of our work force is minority. One n five managers is minority. There are members of minority groups at every job level, including the senior executive level. Our challenge now is to reach wider and farther in our recruitment efforts and to continue to set the example by promoting diversity from the top down.

Our work is not yet done. The whole subject is very dependent upon commitment, perseverance, and follow-through.

We are constantly searching for ways to foster a more diverse environment. While we currently partner with the educational community in a variety of ways, we are searching for ways to intensify that effort . . . to prepare students for the types of jobs we offer and will offer in the future.

There are some remarkable success stories at Ameritech. But our job will only be done when everyone truly values diversity . . . when everyone understands that diversity means better decisions, new perspectives, and bottom line results.

To summarize, Ameritech values diversity. Seeking diversity is a business decision.

Diversity gives us better and higher quality decisions, wider perspectives, more insight, more creativity and quicker problem-solving techniques.

Ameritech has been a leader in equal employment opportunities, affirmative action and creating a diverse work force.

Ameritech is supportive of efforts by employees to improve their skills. We support these efforts through tuition aid, development and training programs, and coaching and monitoring programs.

We have an active Minority and Women's Business Enterprise Program. And externally we support community betterment efforts in the area of affirmative action through grants, sponsorships, and memberships.

Some of the programs we have supported include the United Negro College Fund, NAACP, National Urban League, U.S. Hispanic Chamber of Commerce, National Action Council for Minorities in Engineering, and many others on a more local level.

Earlier this year the Gifford Elementary School in Elgin awarded Ameritech its Martin Luther King diversity award. This was because of a committed group of Ameritech employees who volunteer their time to tutor at the school. Who knows, some of those students could very well end up working at Ameritech one day because he or she was tutored by some Ameritech employee.

Does diversity work? Absolutely!! Do we believe the entire business community should continue or strengthen its diversity efforts? Once again, absolutely.

II. Academic Examinations of Affirmative Action

Racial Disparity and Employment Discrimination Law: An Economic Perspective

By James J. Heckman and J. Hoult Verkerke

The basic facts of black economic progress are well known.[1] Since 1940, black wages and occupational status have improved, approaching the higher levels that whites enjoy.[2] Beginning in 1965, the rate of improvement in black relative wages and occupational stats accelerated. However, since 1975, relative black economic status has not advanced and may have deteriorated slightly. The South is the region of the United States where blacks have made the most dramatic gains in relative wages and occupational status.

Since 1964 both the legislative and executive branches of the Federal Government have made substantial efforts to eliminate racial disparity in employment and wages. Congress enacted title VII of the Civil Rights Act of 1964[3] in response to a growing national consensus that racial discrimination perpetuated the economic, political, and social subordination of black Americans.[4]

Title VII expressed a broad congressional objective to prohibit employers from making employment decisions on the basis of race.[5] In 1965, President Lyndon Johnson issued Executive

1 For more technically sophisticated surveys of the economic literature relating to employment discrimination and racial disparity, see Donohue and Heckman, "Continuous Versus Episodic Change: The Impact of Affirmative Action and Civil Rights Policy on Economic Labor Market Discrimination: A Survey," in 1 *Handbook of Labor Economics* (1986).

2 References to "relative" characteristics, such as earnings or years of education, are to the black/white ratio of these characteristics unless otherwise noted.

3 Pub. L. No. 88-352, 78 Stat. 241, 253-66 (1964) (codified as amended at 42 U.S.C. § 2000e to 2000e-17 (1982). In 1972, Congress broadened the coverage of title VII to include educational institutions, State and local governments, and firms with 15 to 25 employees. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (1972).

4 Supporters of title VII offered a variety of political, economic, and moral arguments for outlawing employment discrimination. However, one aphoristic excerpt from the House Report on the bill captures the essential character of these arguments: "The right to vote . . . does not have much meaning on an empty stomach." Additional Comments of McCullough et al., H.R. Rep. No. 914, 88th Cong., 2d Sess., *reprinted in* 1964 U.S. Code Cong. & Admin. News 2487, 2513.

5 Section 703(a) provides: It shall be an unlawful employment practice for an employer

"(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. (42 U.S.C. § 2000e-2(a) (1982))"

See also 42 U.S.C. § 2000e-2(b),(c) (1982) (parallel prohibitions for employment agencies and labor organizations). Other titles of the act prohibited racial discrimination in voting, public facilities and education, and in the provision of hotel and restaurant accommodations. Civil Rights Act of 1964, Pub. L. No. 88–352, 78 Stat. 241.

The Supreme Court has translated the general statutory prohibition of title VII into two basic theories of liability—disparate impact and disparate treatment. A disparate treatment case alleges that an employment decision involved intentional racial discrimination. The order and allocation of burdens of proof in disparate treatment cases is explained in Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-60 (1981). For the original statement of the disparate treatment theory, see

Order 11246 prohibiting racial discrimination by Federal contractors and imposing affirmative action obligations upon them.[6] Where title VII focuses on unlawful employment practices, Executive order enforcement efforts emphasizes direct monitoring of minority representation in the work forces of government contractors.

This article attempts to evaluate the role of these Federal antidiscrimination policies in eliminating the economic disparity between black and white Americans. Economists are divided in explaining the observed improvements in black relative wages and occupational status. One group of economists emphasizes the role of long-run trends in migration and education, and minimizes the importance of Federal policy. A competing group claims that Federal pressure has reduced labor market discrimination, producing a concomitant increase in demand for black workers. Evidence exists to support both groups' positions.

Migration and education were important factors in the long run improvement of black economic status, but they do not explain the post-1965 increase in the rate of improvement. Rather, the coincidence of increased Federal antidiscrimination pressure in the 1960s with the acceleration in the rate of black progress beginning in 1965 makes it plausible that Federal pressure caused the improvement in black status. In addition, black wage and occupational gains were concentrated in the South, where employment discrimination was most severe, and where Federal enforcement activity was most vigorous during the period 1965 to 1975. This suggests that the Federal Government's effort to reduce southern employment discrimination influenced the improvements in black relative economic status.[7]

The southern concentration of black gains also provides some insight into the mechanism by which the law achieved its effects. Prior to Federal intervention, many southern labor markets, like much of society and politics, were segregated. White employers excluded black workers from important sectors and occupations. State and local governmental officials often disregarded or interfered with the civil rights of blacks, but only one State, South Carolina, had laws mandating employment segregation, and those regulations applied only to the textile industry.[8] In most southern States, however, informal social codes

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McDonnell Douglas v. Green, 411 U.S. 792 (1973). In contrast, if an employer's selection criterion disqualifies a disproportionate number of black candidates and does not serve, in a significant way, the legitimate employment goals of the employer, it is unlawful under the disparate impact theory, regardless of whether the employer's motivation was racially discriminatory. For the original statement of the disparate impact theory, see Griggs v. Duke Power Co., 401 U.S. 424 (1971); Albermarle Paper Co. v. Moody, 422 U.S. 405, 425 (1975).

6 Exec. Order 11,246, 3 C.F.R. 339 (1964–1965 compilation) (issued Sept. 24, 1965). President Johnson's antidiscrimination order was by no means the first executive action condemning employment discrimination. In fact, the Federal contract antidiscrimination program began in 1941. For further discussion of early Executive orders, see infra notes 65–69 and accompanying text.

7 Although black relative wages have improved, reported wage statistics overstate the magnitude of the improvement. The most compelling statistical evidence of black economic progress is based only on the labor market experience of employed blacks. Black unemployment rates have been historically, and remain, roughly twice the rates for whites, and the labor force participation rate for black men has fallen significantly since the mid-1960s. Since a greater proportion of low wage black workers than of low wage white workers has dropped out of the labor force, declining participation rates have raised the average wage of employed black workers relative to whites. Such wage growth is spurious. Thus, not only has relative black labor supply diminished-a disturbing development in its own right-but also the relatively greater proportion of black labor market dropouts has manufactured some fraction of black relative wage growth as a statistical artifact. Butler and Heckman, "The Government's Impact on the Labor Market Status of Black Americans: A Critical Review," in *Equal Rights and Industrial Relations* 235 (1977); see also Heckman, "The Impact of Government on the Economic Status of Black Americans," in the *Question of Discrimination: Racial Inequality in the U.S. Labor Market* 50 (1989) (estimating that labor market dropouts account for 15 to 25 percent of black relative wage growth); Brown, "Black-White Earnings Ratios Since the Civil Rights Act of 1964: The Importance of Labor Market Dropouts," 99 *Q.J. Econ*, 31, 38 (1984) (suggesting a figure of 60 percent).

8 See Heckman & Payner, "Determining the Impact of Federal Antidiscrimination Policy on the Economic Status of Blacks: A Study of South Carolina," 79 *Am. Econ. Rev.* 138 (1989); see also Butler, Heckman, & Payner, "The Impact of the Economy

effectively regulated individual conduct and severely constrained employers' conduct.[9] The massive Federal intervention of the mid-1960s eliminated the overt effect of covert private violence, of governmental indifference to black civil rights, and of a white, southern system of shared values that severely oppressed blacks.[10] Viewed in these terms, the law protected the basic civil rights of blacks by the only means available—regulation of voting, public accommodations, schooling, and employment; the law overturned both private consensus and State legal constraints on the labor market.

The available evidence broadly supports the hypothesis that Federal law improved black relative wages and occupational status. However, one most be cautious in interpreting the relationship between specific legislation and black economic progress. Existing studies use relatively crude measures of the law. More precise measurement of the effects of legal pressure depends on understanding and modeling the process by which law achieves its impact. The subtle evolution of legal interpretation and enforcement determines what business practices the law prohibits or mandates. These legal obligations should be expected to vary across industries, occupations, regions, and time. Regrettably, neither the legal nor the economic literature contains a careful specification of the evolving requirements of Federal employment discrimination law.[11]

Although the available economic evidence cannot distinguish the effects of specific Federal policies or legal doctrines, it does support some conclusions. Federal employment discrimination policy—measured as the combined effect of title VII and the Executive Order 11,246—contributed to the post-1964 improvement in black relative wages and occupational status. The influence of Federal pressure was most pronounced between 1965 and 1975, and the South where black wages and integration into manufacturing jobs improved most rapidly. However, it is unlikely that the success of the first decade of enforcement will be repeated in the 1990s. The earlier period was a historically unique opportunity to eliminate the blatantly discriminatory practices that pervaded southern labor markets. There is also evidence that many firms benefitted from the new laws and so willingly complied with them. In this environment, the law was easy to enforce and the potential gains from enforcement were substantial. While employment discrimination law remains an important aspects of society's commitment to individual justice and equal treatment in the labor market, legal pressure is unlikely to significantly reduce racial disparity in the 1990s.

The plan of this article is as follows. Section I discusses the available evidence on changes in the relative economic status of blacks. Section II asks whether Federal antidiscrimination policy explains the decline in racial disparity. Section III argues that existing economic studies employ

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and the State on the Economic Status of Blacks a Study of South Carolina," in *Markets In History: Economic Studies of the Past*, 240 (D. Galenson ed. 1989).

9 The role of government in enforcing these codes of behavior was extremely limited. The southern code was enforced primarily through social and economic pressure, with the threat of private violence should less severe sanctions fail. The consequence of these restrictions was that employment in the South was highly segregated. See Dewey, "Negro Employment in Southern Industry," 60 *J. Pol. Econ.* 279 (1952).

10 Social science research on antidiscrimination law has largely ignored the role of this system of shared values in reinforcing southern segregation. It is extremely difficult to make precise the notion of community norms, but the segregationist norm pervaded southern life and undoubtedly exerted a powerful constraint on southern labor markets.

11 For one effort to analyze the process by which employment discrimination law changes business practices, see Blumrosen, "The Law Transmission System and the Southern Jurisprudence of Employment Discrimination," 6 *Ind. Rel. L. J.* 312 (1984); see also Culp, "Federal Courts and the Enforcement of Title VII," 76 *Am. Econ. Rev. Papers & Proc.* 355 (1986); Culp, "A New Employment Policy for the 1980s: Learning from the Victories and Defeats of Twenty Years of Title VII," 37 *Rutgers L. Rev.* 895 (1985). Although it is beyond the scope of this article to offer a detailed characterization of the evolution of the law, one of us has begun research on this problem. *See* Verkerke, "The Evolution of Employment Discrimination Law: A Legal and Economic History" (1990) (unpublished manuscript on file with the authors).

imprecise and limited measures of the law. The conclusion summarizes the policy implications of existing work on the role of law in reducing racial disparity.

I. The Contours of Black Economic Progress

To assess the contention that Federal employment discrimination law has reduced economic disparity between blacks and whites, one must first determine whether the relative status of black Americans has in fact improved since significant Federal efforts began in the mid-1960s.[12] The pattern of black progress across time, geographic regions, occupations, and industries reveals important clues about the effects of Federal antidiscrimination pressure.

The basic measure of racial differences in economic opportunities in the labor market is the wage that a person with a given set of productive characteristics (schooling and experience, for example) can expect to earn. This wage measures how much the labor market values a unit of that person's time. It avoids the confounding influences of decisions concerning labor force participation and hours worked. Economic comparisons based on income or earnings are less useful than wage-based comparisons because they implicitly value time spent away from market work at zero rather than recognizing that an hour of home work or leisure is normally worth as much or more than the wage that could be earned in that hour.[13] In addition, comparisons based on earnings combine the effects of employment discrimination policies with the effects of various other employment policies. The market wage, particularly after adjusting for differences in productive characteristics, measures possible labor market discrimination more precisely.[14]

Whether measured by income, wages, or adjusted wages, the economic gap between blacks and whites has narrowed. In 1964, the median income of nonwhite males was 57 percent of the median white male income. By 1985, the income ratio had risen to 66 percent.[15] The wage gap between black and white workers has also declined. In 1939, the average wage of black male workers was only 43 percent of the average white wage; by 1979, this wage ratio had improved to 73 percent.[16] Adjusted wage figures show somewhat less improvement because gains in measurable productive characteristics produced much of black economic progress. Black relative weekly earnings,[17] adjusted for the influence of region of residence, urban status, age, and education, rose from 75 percent in 1963 to 93 percent in 1984.[18]

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12 It is understandable that economic studies of Federal antidiscrimination policy have focused on the post-1965 period since both title VII and Executive Order 11,246 became effective in 1965. However, both the wartime Committee on Fair Employment Practices and President Kennedy's Committee on Equal Employment Opportunity may have produced measurable improvements in black employment. See *infra* 65–69 and accompanying text.

13 If individuals are not free to choose their hours of work, an hour of home work or leisure may be worth less than the prevailing wage rate.

14 The wage is not without problems as a policy measure. If discrimination induces low wage black workers to drop out of the labor force, then relative wage statistics will understate the level of labor market disparity between blacks and whites. Moreover, since pure wage discrimination by race is quite rare, relative wage statistics are an indirect measure of hiring and promotional discrimination. Indices of occupational status offer more direct measures of exclusion from desirable positions. The available occupational statistics, unfortunately, distinguish only a few extremely broad occupational categories, making it impossible to determine if blacks are being relegated to inferior jobs within these broad categories.

15 See U.S. Bureau of the Census, Current Population Reports, Series P-60, No. 159, *Money Income of Households, Families, and Persons in the United States: 1986* at 106-7 (1988).

16 Smith & Welch, "Black Economic Progress After Myrdal," 27 *J. Econ. Lit.* 519, 522 (1989) [hereinafter Smith & Welch, Black Progress], see also, J. Smith & F. Welch, "Closing the Gap: Forty Years of Economic Progress for Blacks" 6 (1986) (hereinafter J. Smith & F. Welch, Closing the Gap); U.S. Commission on Civil Rights, *The Economic Progress of Black Men in America*, 12 (1986). All of these studies rely on reported weekly wage and salary income for their comparisons.

17 Weekly earnings statistics are not strictly comparable to wage figures, but their movements are closely related.

Other measures of black relative economic status also show significant improvement. The proportion of black men working as professionals or managers relative to the proportion of white male professionals or managers has doubled from 32 percent in 1964 to 64 percent in 1986.[19] A simple index of the similarity of black and white occupational distributions, which equals 100 when the distributions are completely dissimilar and zero when the distributions are identical, improved from 37.1 in 1964 to 21.4 in 1988.[20] The convergence of black and white income distributions offers further evidence of black economic progress. One measure of the degree of similarity between the two income distributions is the proportion of black men whose income exceeds the median white income; this figure tripled from 8 percent in 1939 to 29 percent by 1979.[21]

In contrast to the optimistic picture of wage and occupational advances for employed blacks, the black unemployment rate has remained approximately twice the level of whites, and the black relative labor force participation rate has fallen since the mid-1960s.[22] These data suggest that antidiscrimination pressure has not solved the economic problems of low-income blacks. Now the greatest difference between the labor market experiences of blacks and whites is whether blacks will be employed at all.[23]

A closer examination of the data by time, region, occupation, and industry reveals important details within the general pattern of wage improvement.

A. Time

First, there is little doubt that significant black economic progress occurred over a relatively short period of time. The rate of black progress accelerated between 1965 and 1975, then leveled off after 1975. Studying aggregate statistics on the relative income and occupational position of blacks, Richard Freeman found that the post-1964 rate of improvement significantly exceeded the pre-1964 rate.[24] Subsequent studies by Freeman and others using more recent data have confirmed the existence of this post-1964 acceleration.[25]

A detailed study of the South Carolina textile industry demonstrates stable patterns of racial exclusion over the period 1910 to 1964. During this period the mills employed only a few blacks,

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18 Bound & Freeman, "Black Progress: Erosion of the Post-1965 Gains in the 1980s?" in *The Question of Discrimination: Racial Inequality in the U.S. Labor Market* 32, 38 (1989). The values of the adjusted earnings ratio for the census years of 1969 and 1979 were 86 percent and 95 percent respectively.

19 Ibid. at 34.

20 U.S. Department of Labor, Bureau of Labor Statistics, Handbook of Labor Statistics 78 (1989); *Handbook of Labor Statistics* 44, 47 (1983). The index equals the sum of the absolute differences between the percentage of black workers and the percentage of white workers in each occupational classification divided by two.

21 Smith and Welch, *Closing the Gap*, *supra* note 16, at 10.

22 Butler and Heckman, supra note 7, at 238.

23 There is as yet no generally accepted explanation for the decline in labor force participation rates of blacks and whites; Bound & Freeman, *supra* note 18 (using individual rather than aggregate data); W. Vroman, "Industrial Change and Black Men's Relative Earnings" (1989) (unpublished manuscript presented at Yale University Micro-Economics Workshop on Labor and Population, Sept. 19, 1989) (using Social Security earnings data).

24 Freeman, "Changes in the Labor Market for Black Americans," 1948–1972, 1 *Brookings Papers on Economic Activity* 67, 100-5 (1973)[hereinafter Freeman, *Changes in the Labor Market*].

25 Freeman, "Black Economic Progress after 1964: Who Has Gained and Why?" in *Studies in Labor Markets* (S. Rosen ed. 1981) (longer time series) (hereinafter Freeman, Black Progress]; Brown, supra note 7, at 38 (1984) (correcting for changes in relative labor force participation rates of blacks and whites); bound & Freeman, supra note 18 (using individual rather than aggregate data); W. Vroman, "Industrial Changes and Black Men's Relative Earnings" (1989) (unpublished manuscript presented at Yale University Micro-Economics Workshop on Labor and Population, Sept. 19, 1989) (using Social Security earnings data).

who performed janitorial or menial outdoor work. After 1964, however, blacks made dramatic breakthroughs in employment and wages.[26] Even studies that emphasize the role of gradual historical forces in generating black progress support the view that the rate of change accelerated in the 1960s and 1970s.[27] But since 1975 black relative wages have stagnated. The adjusted weekly earnings ratio, which had reached approximate parity in 1975, deteriorated slightly through 1984.[28]

B. Region

Second, regional data reveal that black progress was most pronounced in the South. In the South the adjusted relative wage rose from 60 percent in 1964 to 88 percent in 1984. The increase in the North during the same period, from 88 percent to 97 percent, was considerably less dramatic.[29] Moreover, the fact that more than half of the black population lives in that region magnifies the South's importance.[30]

Other studies document the concentration of black progress in the South. For example, the strongest post-1964 relative wage gains were in the South.[31] There is also evidence of rapid desegregation of Southern firms.[32] Richard Butler, James Heckman, and Brook Payner report that two-thirds of the black economic advances between 1959 and 1969 occurred below the Mason-Dixon line.[33] Southern wages for both blacks and whites have historically been less than those for other regions, and the wage penalty for southern residence was greater for blacks.[34] Between 1969 and 1979 blacks and whites converged in this measure of southern inequality.[35]

C. Occupation and Industry

Examining black economic progress by occupation and industry reveals other interesting facts. First, blacks employed in higher level managerial and professional jobs experienced the *greatest advances in relative wages*.[36] Second, the largest movement of blacks workers into new and higher paying occupations came in unskilled and low-skilled, blue-collar job classifications such as manufacturing operatives.[37]

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26 Heckman and Payner, *supra* note 8; see also Butler, Heckman & Payner, *supra* note 8.

27 Smith and Welch, *Black Progress*, *supra* note 16, at 528.

28 Bound and Freeman, *supra* note 18 at 38. For further confirmation of the post-1975 slowdown in black progress, see Juhn, Murphy & Pierce, "Accounting for the Slow-down in Black-White Wage Convergence" (1990) (unpublished manuscript presented at Yale University Micro-Economics Workshop on Labor and Population on May 1, 1990); Kasarda, "Urban Change and Minority Opportunities," in *The New Urban Reality*, (P. Peterson ed. 1985)

29 Bound and Freeman, *supra* note 18, at 38.

30 In 1970 and 1980, 53 percent of blacks lived in the South. U.S. Department of Commerce, *State and Metropolitan Area Data Book* (1986) at 504.

31 Freeman, *Black Progress*, *supra* note 25, at 277; Butler & Heckman, *supra* note 7; Freeman, *Changes in the Labor Market*, *supra* note 24, at 105.

32 Ashenfelter and Heckman, "Measuring the Effect of an Anti-Discrimination Program," in *Evaluating the Labor-Market Effects of Social Programs* (1976).

33 Butler, Heckman, and Payner, *supra* note 8, at 262; *see also* Heckman & Payner, *supra* note 8; Butler & Heckman, *supra* note 7.

34 The wage penalty for southern residents refers to the amount by which the wages for residents of the South are lower than the wages of otherwise comparable nonsoutherners.

35 J. Smith and F. Welch, CLOSING THE GAP, *supra* note 16, at 48.

36 Many studies have found greater wage gains for black workers with higher skill and education. *See, e.g.*, Freeman, *Changes in the Labor Market*, *supra* note 24; Freeman, Black Progress, *supra* note 25; Smith & Welch, *Affirmative Action and Labor Markets*, 2 J.LAB. ECON. 269 (1984). This feature of the change has come to be known as the "pro-skill bias" of affirmative action pressure.

The large relative wage movements at the upper end of the occupational distribution are signs of progress. The vast majority of black workers, however, work at lower level jobs, a pattern that was even more pronounced in 1964 than it is today. Thus, developments in blue-collar and lower skill labor markets have a disproportionately strong influence on black economic status. The rapid movement of large numbers of black workers into higher paying occupations such as manufacturing operatives accounts for a far larger portion of black progress than do the wage gains for higher level occupations.[38] In contrast to the relative deterioration of the position of unskilled black workers, highly educated blacks now appear to earn salaries comparable to whites with equal education and experience.[39] These relative wage gains are likely to be permanent since the demand for highly skilled workers continues to grow.

The importance of the manufacturing sector to black workers has influenced the degree to which the gains of the post-1964 period were maintained into the 1980s. A significant decline in the unskilled labor market appears to have caused the post-1975 stagnation in relative black status.[40] The South Carolina textile industry illustrates how the manufacturing industry's decline diminished blacks' relative status. During the 1960s and early 1970s large numbers of black workers were hired in the southern textile industry, an industry from which they had been largely excluded.[41] However, in the early 1980s, due to increasing competition from foreign textile mills, many southern mills closed and blacks lost their past employment gains.[42] A similar pattern has been repeated in other manufacturing industries throughout the country.

In summary, the important finding on the contours of black economic progress is that the gap between the wages of blacks and whites has narrowed substantially. However, the improvements in black relative wages are quite different across time, regions, and occupations. In particular, black relative wage gains were most pronounced in the South during the period 1965 to 1975, and black employment grew most rapidly in low-skill, blue-collar occupations. black relative wages have stagnated since 1975, most likely due to the collapse of the U.S. manufacturing industry and the attendant loss of many relatively high-paying, low-skill jobs. At the upper end of the occupational and skill distribution, highly educated blacks appear at present to earn wages similar to those earned by whites of similar measured skills.

II. Identifying the Role of Employment Discrimination Law

Although the statistics on black progress are reasonably uncontroversial, economists are divided about how to interpret these facts. In particular, they disagree over the degree to which Federal civil rights policies contributed to improving black economic status. One view, which we will call the "continuous change" hypothesis, holds that long-term trends in black migration and relative education are most salient to the observed improvements in black economic

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37 See Heckman and Payner, *supra* note 8; Butler, Heckman and Payner, *supra* note 8; Freeman, *Changes in the Labor Market, supra* note 25; Vroman, *supra* note 25.

38 Heckman and Payner, *supra* note 8.

39 R. Freeman, *Black Elite: The New Market for Highly Qualified Black Americans* (1977); Freeman, "Black Progress," supra note 25.

40 See sources cited *supra* note 7. There has been an increase in the relative premium for skilled labor. The wages of unskilled workers have fallen as jobs for these workers largely disappear, leaving a large pool of unskilled workers to compete for relatively few jobs. As a result, blacks, who are disproportionately concentrated in low-skill jobs, have fared poorly since 1975. See Kasarda, *supra* note 28; Juhn, Murphy & Pierce, *supra* note 28.

41 See Heckman and Payner, *supra* note 8.

42 Employment in the textile mill products industry grew by 8 percent between 1964 and 1974, but diminished by 23 percent between 1974 and 1984. U.S. Department of Labor, Bureau of Labor Statistics, *Handbook of Labor Statistics* (1989) p. 295.

progress. Another view, which we will call the "discontinuous change" hypothesis, emphasizes the temporal coincidence of Federal civil rights law and the post-1964 acceleration in black progress. Any effort to evaluate the competing theories of black progress should focus on the comparative ability of the theories to explain the pattern of black economic advance, in particular the central role of black improvement in the South and the acceleration of black economic progress during the period 1965 to 1975.

A. The Continuous Change Hypothesis

Continuity theorists emphasize the role of long-term trends in migration and educational attainment in their explanation of black progress. Adherents to this view thus minimize the importance of antidiscrimination efforts. James Smith and Finis Welch, the foremost proponents of the continuous change hypothesis, believe Federal law and other antidiscrimination programs have had a marginal impact:

> The racial wage gap narrowed as rapidly in the 20 years prior to 1960 (and before affirmative action) as during the 20 years afterward. This suggests that the slowly evolving historical forces we have emphasized— . . . education and migration—were the primary determinants of the long-term black economic improvement. At best, affirmative action has marginally altered black wage gains around this long-term trend.[43]

Despite an emphasis on "historical forces" that evolved slowly over the entire period under study. Smith and Welch's own work undermines the continuity hypothesis. Their results show that the sources of black improvement differed dramatically across decades. black migration out of the South, for example, played an important role, but declined in importance after 1965.[44]

An even more severe problem for continuity theorists is how to explain the rapid acceleration of black progress after 1964. Proponents of the continuity hypothesis argue that the relative improvements in black schooling explain black progress after 1960.[45] However, the convergence in years of schooling completed does not explain this progress. Rather it is improvement in the return to black schooling relative to white schooling;[46] more than 80 percent of the estimated contribution of education to black progress comes from this source.[47] Proponents of the continuity hypothesis argue that as the quality of black schools improved relative to the quality of white schools, hence the market payment for black schooling increased relative to that for white schooling.

There is some historical evidence to support this claim.[48] Aggregate data on relative term length and schooling expenditures in segregated southern schools markedly improved during the mid-1940s. Black children educated in these schools appeared in the labor market in the mid-1960s. It is possible, therefore, that improvements in the quality of schooling account for much of the black economic advance in the South in the 1960s.

There are, however, several important reasons to treat this interpretation with some skepticism. First, there is no direct evidence linking increased black school quality to improvements in the return to schooling. In fact, even the aggregate evidence on relative schooling quality is somewhat ambiguous. Although term length at black schools converged toward levels found in white schools during the period in question, the rapid growth in the other important measure of school quality, school expenditures, may not signal an improvement in school quality. Much of the growth in school expenditures for black schools came from a

43 Smith & Welch, *Black Progress, supra* note 16, at 555.

44 Donohue and Heckman, *supra* note 1.

45 Smith and Welch, *Black Progress, supra* note 16.

46 Ibid. The return to schooling measures the increase in wages produced by an additional year of schooling.

47 Donohue and Heckman, *supra* note 1.

48 This evidence is reviewed in greater detail in Donohue and Heckman, *supra* note 1.

relative increase in the salaries of teachers in black schools, which resulted from an NAACP salary equalization drive. At least in the early years after equalization, the same teachers were simply paid more.[49] Finally, all age groups, even those who had completed their schooling before the 1940s, experienced post-1960 increases in their estimated returns to schooling. If schooling quality improvements were an important determinant of increased returns, only those workers who could have benefited from enhanced school quality should have received higher returns. The relative improvement in the return to schooling for blacks of all age groups is more consistent with a decline in market discrimination than with an improvement in school quality.[50]

B. The Discontinuous Change Hypothesis

Because the discontinuous increase in black relative wages, the passage of title VII of the Civil Rights Act of 1964, and the adoption of affirmative action requirements for Federal contractors all occurred at the same time, many scholars believe government policy played an important role in improving black economic status. Despite the fact that the evidence for the continuity hypothesis suffers from several internal contradictions there should be caution about embracing the discontinuity hypothesis.

First, the correlation between the Federal intervention and the acceleration of black progress might be purely spurious. One could argue that changing attitudes about employment discrimination sparked both the adoption of new Federal policies and the rapid improvement in black status.[51] An additional problem for those who claim that Federal policy was important is that enforcement agency budgets were small and their powers were weak during the period of greatest black relative wage gains.

The warning that "correlation is not causation" applies with particular force to the attempt to infer from aggregate time series data that employment discrimination laws caused a change in the labor market. It is possible that the attitudinal changes that made the legislation and executive action possible merely expressed underlying changes in attitudes, which themselves produced a decline in discrimination. Ironically, the shift in national attitude that made possible the enactment of title VII was in part produced by the persistence and virulence of southern racial discrimination.[52] Southern attitudes undoubtedly changed to some extent during this period, but the desegregated statistics on southern labor markets reveal a stable and persistent patter of exclusion. Hence, the primary aim of title VII was the elimination of a characteristically southern pattern of occupational segregation.[53] Southern political leaders resisted vigorously, and yet it was in the South that the law had its greatest effect.

Critics of the discontinuity hypothesis emphasize administrative agencies' poorly coordinated enforcement efforts during the first years of concerted Federal antidiscrimination activity from 1965 to 1975—the decade that witnesses dramatic black relative wage gains.[54] For example, they point to the remedies available to agencies against Federal contractors who discriminated.

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49 Ibid. It is possible that higher salaries inspired black teachers to improve their teaching. However, to the extent that schooling quality improvements depend on attracting more highly qualified teachers, the effects of salary equalization would be felt only after potential teachers had time to adjust their expectations and plans.

50 This point is conceded in Smith & Welch, *Black Progress, supra* note 16; *see also* Donohue & Heckman, *supra* note 16; *see also* Donohue & Heckman, *supra* note 1.

51 *See, e.g.*, Freeman, *Black Progress, supra* note 25; Freeman, *Changes in the Labor Market, supra* note 24.

52 *See, e.g.*, C. Whalen & B. Whalen, *The Longest Debate: A Legislative History of the 1964 Civil Rights Act*, xviii–xx (1985) (recounting the brutality of Birmingham's "Negro-baiting police chief, Bull Connor" and its role in leading President Kennedy to submit a civil rights bill to Congress).

53 Ibid., at 212 (complaints of Senator Strom Thurmond that the Civil Rights Act was targeted exclusively at the South).

54 *See, e.g.*, Ahart, "A Process Evaluation of the Contract Compliance Program in the Nonconstruction Industry," 29 *Indus. Lab. Rel. Rev.* 565 (1976).

These remedies include debarment, but very few Federal contractors have been debarred under the Executive order.[55] The EEOC did not have authority to sue employers until 1972, and its funding for investigations remained at a low level well into the 1970s.

To focus only on the funding and effectiveness of the enforcement agencies, however, is to neglect the crucial role private litigation plays in enforcing employment discrimination law. Title VII initially limited the EEOC to conference, conciliation, and persuasion, but in 1965 private parties obtained the right to challenge discriminatory practices in Federal court.[56] The threat of private litigation provided immediate incentives for employers to comply with title VII. Even before it gained the right to sue, the EEOC exerted influence by pressing the expansive interpretations of the law through its issuance of administrative guidelines. The Supreme Court, for example, referred to EEOC's Guidelines on Employment Testing Procedures in its landmark decision in *Griggs v. Duke Power Co.*[57] The EEOC's impact during this early period thus appears to have been greater than its meager budget would indicate.

By adopting a broader view of the scope of the Federal attack on discrimination, one also can see how various aspects of the Federal antidiscrimination programs were mutually reinforcing. During the same period in which title VII was enacted, Congress and the Federal courts challenged other facets of the southern pattern of racial subordination. Voting rights, school desegregation, and public accommodations were important noneconomic areas in which Federal pressure increased.[58] The simultaneous Federal attack on discrimination in employment, voting, schooling, and public accommodations was far more likely to succeed than a law limited to just one of these areas.

For many southern employers, the prohibition of employment discrimination dramatically expanded the pool of available workers. Private entrepreneurs' earlier attempts to integrate southern textile plants in isolated mill villages had failed.[59] Butler, Heckman and Payner document that employing blacks slowed the growth of labor costs and kept the South Carolina textile industry competitive in the face of foreign competition.[60] The law provided social and economic excuse to engage in nondiscrimination and thereby created a powerful leverage effect for the law. This fact helps to explain why black employment prospects improved, despite weak enforcement of the law.

However, it would be a grave mistake to attribute all of the post-1964 black progress in relative wages and blue-collar employment to civil rights laws. Social activism in the South, improvements in schooling quality, and southern industrial growth also played significant roles. However, the record from the South demonstrates that the labor market for blacks improved in a way that can convincingly be explained by assigning a major role to Federal civil rights policy.

III. Measuring the Impact of the Law

Quantifying the law in order to measure its impact is a troublesome problem. One common approach analyzes the timing of black economic progress in relation to the advent of Federal antidiscrimination pressure. When improvement in

55 Other penalties include adverse publicity, injunctive relief, fines, backpay awards, and contract suspension or cancellation. Exec. Order No. 11,246, 3 C.F.R. 339, 343-44 (1964-1965).

56 42 U.S.C. § 2000e-5(f) (1) (1988).

57 401 U.S. 424, 433-34 (1971).

58 See Brown v. Board of Education, 347 U.S. 483 (1954); Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634; Civil Rights Act of 1960, Pub. L. No. 86-449,74 Stat. 86; Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241; Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

59 B. Wright, "Segregation and Racial Wage Differentials in the South Before World War II" (Stanford University) (1988) (unpublished manuscript); Butler, Heckman, and Payner, *supra* note 8.

60 Butler, Heckman and Payner, *supra* note 8; Heckman, *supra* note 7.

black relative status coincides with the enactment of Federal laws prohibiting discrimination and mandating affirmative action for Federal contractors, the claim that the law caused the improvement is more credible. Alternative approaches to the measurement problem study specific measures of enforcement activity, rely on anecdotal and survey evidence concerning changes in employment practices, or compare minority employment growth for Federal contractors with that of noncontractors.

A. Timing

Understanding the timing of changes in black relative economic status is an important first step toward establishing a casual relationship between Federal policy and black progress. The strongest evidence of Federal policy effects is the acceleration of the rate of black economic progress after 1964. However, this trend variable is an inherently limited measure of the law.[61] A post-1964 trend variable measures the influence of both title VII and the Executive order program along with any other concurrent events that affected the labor market. For the purposes of policy analysis, a trend can reveal, under the best of circumstances, whether the net effect of all Federal policies intended to improve black status worked toward the desired result. However, a trend cannot distinguish the effects of simultaneous legal interventions, or the influence of doctrinal innovations, such as the disparate impact theory under title VII or the use of goals and timetables under the Executive order program.

There also are ambiguities concerning the appropriate starting date for measuring Federal antidiscrimination pressure. Economic studies of antidiscrimination policy effects have uniformly adopted 1965 as the date at which the impact of Federal policy should become discernible. Two important legal events that occurred in 1965 support this choice: the provisions of title VII, which went into effect on July 2, 1965, and Executive Order 11,246, which became effective on October 24, 1965. Each will be discussed below.

The practical effects of title VII depended on administrative and judicial interpretation of the statute. Important doctrines such as the disparate impact theory and the rules for awarding back pay were not established until many years after 1965.[62] Far from establishing a well-defined and fully developed system of law, the effective date of title VII marked the beginning of an uneven, and often unpredictable, pattern of doctrinal development. By failing to disentangle the disparate elements of this doctrinal pattern, existing studies incorrectly conflate early developments with later ones.

Nor is it clear that 1965 marked the advent of Federal antidiscrimination pressure on Federal Government contractors. Executive Order 11,246 was only part of a complex historical pattern of antidiscrimination pressure on Federal contractors. Beginning in 1941, President Franklin D. Roosevelt's wartime Executive Order 8802 established a Committee on Fair Employment Practice to ensure nondiscrimination in the defense industries.[63] This Order and its immediate successor, Executive Order 9346, appear to have only temporarily reduced employment discrimination against blacks, the committee was dissolved in 1946.[64] Subsequent orders issued by Presidents Truman and Eisenhower produced little more than studies of the problem.[65]

The first Order to have serious enforcement provisions was President Kennedy's Executive

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61 A trend variable takes the value 1 in the first year, 2 in the second year, and so on. It measures the average change from year to year after controlling for the other variables in the regression. This variable is a statistical synonym for time.

62 Griggs v. Duke Power Co., 401 U.S. 424 (1971) (disparate impact; 6 years later); Albermarle Paper Co. v. Moody, 422 U.S. 405 (1975) (backpay doctrine; 10 years later).

63 3 C.F.R. 957 (1938–1943 compilation) (issued on June 25, 1941).

64 3 C.F.R. 1280 (1938–1943 compilation) (issued on June 25, 1941).

65 *See, e.g.*, M. Sovren, *Legal Restraints on Racial Discrimination in Employment*, 9-17, 254-58 (1966).

Order 10,925, issued in 1961.[66] This Order established the President's Committee on Equal Employment Opportunity, which initiated the Voluntary Plans for Progress program and processed many more complaints far more expeditiously than did its predecessors.[67] Executive Order 11,246, issued in 1965, largely incorporated the provisions of the Kennedy Order, but transferred administrative responsibility from the President's Committee to the Secretary of Labor. The Secretary of Labor established the Office of Federal Contract Compliance (OFCC) to carry out his responsibility to administer the Order and to adopt the necessary rules and regulations.[68] Each contracting agency retained responsibility for obtaining compliance with the Order. The transfer, coupled with increasing budgets for the OFCC, appears to have increased enforcement activity such as compliance reviews and the issuance of formal regulations. However, the OFCC continued to emphasize the same methods of conference and conciliation that had characterized the work of the President's committee. Beginning in 1968, the Office of Federal Contract Compliance (OFCC) required contractors to prepare written affirmative action plans designed to eliminate "underutilization" of black workers.[69] Thus, it would be most accurate to say that antidiscrimination pressure on Federal contractors increased in the early 1960s and then increased again in the late 1960s as the OFCC became more active.

B. Specific Measures of Enforcement

Because trend variables are of limited usefulness for analyzing legal interventions, it is important to recognize that variables with other labels are often little more than the functional equivalent of trend variables. For example, some studies of black economic progress have used cumulative EEOC expenditures as an indicator of Federal enforcement activity.[70] Since EEOC expenditures variable is equivalent to a post-1964 trend variable, other measures of specific enforcement activity can be distinguished from a trend variable. Among these alternative measures are variables such as the number of discrimination claims filed, the percentage of plaintiff victories, the percentages of favorable appellate rulings and finally, and the presence of an EEOC regional office.[71]

An intuitively appealing approach to the problem of measuring specific enforcement activity is to count the number of claims filed under the relevant law. One difficulty with this approach is that claim counting measures legal *flows* without accounting for the effect of the *stock* of legal rules.[72] To the extent that prior cases have established clear legal standards, the existing stock of legal rules governs behavior without the need for further litigation. An equally important problem

66 3 C.F.R. 448 (1959–1963 compilation) (issued on Mar. 6, 1961).

67 M. Sovren, *supra* note 67 at 106. The Committee's jurisdiction was, like that of its successor the OFCC, limited to employers with Federal contracts.

68 Exec. Order 11,246, 3 C.F.R. 339 (1964–1965 compilation) (issued Sept. 24, 1965).

69 The initial OFCC regulations were issued on May 1, 1968. Subsequent elaborations of the affirmative action requirement were Order No. 4, issued Feb. 7, 1970, and Revised Order No. 4, issued in 1971. See 41 C.F.R. §§ 60-1 to 60-4, 60-20, and 60-50.

70 *See, e.g.*, Freeman, *Black Progress*, *supra* note 25.

71 See Beller, "The Economics of Enforcement of an Antidiscrimination Law: Tile VII of the Civil Rights Act of 1964," 21 *J.L. & Econ.* 359 (1978) (number of charges filed with EEOC in each State, presence of EEOC regional office); Burstein, "Equal Employment Opportunity Legislation and the Income of Women and Nonwhites," 44 *Am. Soc. Rev.* 367 (1979) (percentage of plaintiff victories); Culp, *A New Employment Policy*, *supra* note 11 (percentage of favorable rulings, percentage of procedural as against substantive rulings); Freeman, *Black Progress*, *supra* note 25 (percentage of favorable rulings); Leonard, "The Effectiveness of Equal Opportunity Law and Affirmative Action Regulation," in 8 *Research in Labor Economics*, 319 (S. Rosen ed. 1986) (number of Title VII class action law suits).

72 For a simple model of law as a capital stock, *see* Landes & Posner, *Legal Precedent: A Theoretical and Empirical Analysis*, 19 J. LAW & ECON., 249 (1976).

is that claim counting ignores the composition of the flow of legal cases. As the law evolves, the nature of litigated cases varies for a variety of reasons unrelated to the amount of legal pressure applied.[73] Finally, it is quite conceivable that the regions, industries, or occupations with more claims are simply those more resistant to complying with the law. Cases filed could indicate the extent of the problem, rather than the amount of legal pressure applied. As long as one considers voluntary compliance part of the law's effects, fewer cases do not necessarily mean the law has exerted little influence. If voluntary compliance is widespread than counting claims is perverse. The number of claims filed is then more a measure of resistance to compliance than an accurate index of the influence of the law.

Similar problems arise in using the percentage of plaintiff victories, the percentage of favorable appellate rulings, or the mix of procedural and substantive rulings to measure the degree of legal pressure. The percentage of plaintiff victories at trial depends on both the prevailing legal standard and the distribution of disputes that come to trial.[74] Plaintiffs and defendants must weigh the competing costs and benefits of litigating a case to final judgment or settling their dispute. The factors that determine which disputes are settled and which are litigated (such as, the stakes to the parties and the amount of uncertainty) bear little, if any, relation to amount of legal pressure felt by employers. The decision to appeal involves similar considerations. As a result, the distribution of appellate cases is even less likely to represent the overall distribution of disputes. Since an appellate court's ability to render favorable rulings is largely determined by the distribution of cases that appealed, the proportion of favorable rulings is unlikely to bear any systematic relationship to the level of legal pressure. Similarly, the distribution of appellate cases largely determines the proportion of substantive and procedural rulings.

C. Anecdotal and Survey Evidence

A more direct approach to measuring the effects of the law on employment practices is to rely on surveys of businesses and anecdotal evidence concerning changes in personnel practices. In 1976, the Bureau of National Affairs (BNA) surveyed personnel executives about their companies' responses to Federal employment discrimination law. Of the companies responding, 86 percent had formal equal employment opportunity policies,[75] while 60 percent reported that they had changed their selection procedures in response to Federal law.[76] In addition, more than half of the firms surveyed had special minority recruiting programs to help achieve their equal employment opportunity goals.[77] A series studies sponsored by the Conference Board documented the dramatic changes in personnel practices since the enactment of title VII, as well as the importance of Federal policy in altering employer's personnel policies.[78]

Economists are generally suspicious of anecdotal and survey evidence. They prefer to observe directly the choices that individuals and firms

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73 For a discussion of the changing composition of Title VII claims filed, see J. Donohue & P. Siegelman, "The Changing Nature of Employment Discrimination Litigation" (April 1989) (unpublished manuscript on file with the authors).

74 *See, e.g.*, Priest & Klein, "The Selection of Disputes for Litigation," 13 *J. Legal Stud.* 1 (1984).

75 Bureau of National Affairs, *Equal Employment Opportunity: Programs and Results*, 15 (1976).

76 Ibid., at 4.

77 Ibid., at 2. Richard Freeman has characterized the BNA survey results as documenting "the far-reaching impact of the federal equal employment pressures on corporate labor market behavior." Freeman, *Black Progress, supra* note 25, at 281. See also Blumrosen, *supra* note 11; Blumrosen, "Strangers in Paradise: Griggs v. Duke Power Co. and the Concept of Employment Discrimination," 71 *Mich L. Rev.*, 59, 107 (1972) (further anecdotal evidence of changes in personnel practices by Federal pressure).

78 R.G. Shaefer, *Nondiscrimination in Employment: Changing Perspectives, 1963–1972* (1973); R.G. Shaefer, *Nondiscrimination in Employment: A Broadening and Deepening National Effort, 1973–1975* (1975); R.G. Shaefer, *Nondiscrimination in Employment and Beyond* (1980).

make in the market. While this stance does not guard against the selective citation of supportive anecdotes, a broader conception of admissible evidence may be appropriate in this difficult inquiry. At the very least, anecdotal and survey evidence could generate hypotheses to be tested by more conventional means.

D. Minority Employment Growth in Government Contractors

Part of the economic literature on employment discrimination focuses on the effects of a specific program—the Executive order contract compliance program. By comparing the rate of growth of relative minority employment and occupational status in firms with government contracts to the rate of minority employment growth in firms without them, these studies purport to measure the effects of the Executive order's affirmative action obligations.[79] The increase in the rate of growth for contractors is compared to the rate of growth for noncontractors, who are covered by title VII. These studies attempt to capture the incremental effect on contractors' employment decisions from the imposition of affirmative action obligations in addition to title VII's nondiscrimination requirement.

Although economic studies consistently find higher minority employment growth in contractor firms, the interpretation of these results remains somewhat ambiguous.[80] One possible interpretation of differential rates of minority employment growth is that the affirmative action obligations cause a shift of black workers into the covered sector. If minority workers are highly responsive to improved employment opportunities, the observed higher rate of growth could represent little more than black workers moving into the protected sector, with little or no overall effect on black wages or employment.[81]

In an attempt to measure the wage effect directly, James Smith and Finis Welch compared black relative wages in industries that sold high proportion of total output to the government.[82] Smith and Welch found little relative wage difference between the two sectors. From this result, the authors concluded that the Executive order program had minimal effects.[83] Such an interpretation is unwarranted, however, because of an ambiguous feature of the wage comparison. The large movement of workers into the covered sector would be expected to reduce the supply of black workers in the noncontracting sector. This supply restriction could cause noncontractor employers to bid up the relative wages and may therefore significantly understate the true wage effect of the Executive order program. In short, comparing wages rates across sectors may reveal even less about the effects of the Executive order than does comparing rates of black employment growth.

* * * *

At this point, it should be clear that existing measures of Federal antidiscrimination policy suffer from serious interpretive problems. Chief among these problems is the fact that existing measures are ill-suited to distinguish the effects of specific policies. Although strong evidence indicates that Federal employment discrimination policies improved blacks' relative wages and occupational status, this conclusion provides little guidance as to the costs and benefits of introducing new programs and doctrines or changing existing ones. Only evidence concerning the effects of specific policies can guide policy formulation.

79 *See e.g.*, Heckman & Wolpin, "Does the Contract Compliance Program Work? An Analysis of Chicago Data," 29 *Indus. & Lab. Rel. Rev.* 544 (1976); Ashenfelter & Heckman, *supra* note 32; Goldstein & Smith, "The Estimated Impact of the Antidiscrimination Program Aimed at Federal Contractors," 29 *Indus. & Lab Rel. Rev.*, 523 (1976); Leonard, *supra* note 73.

80 For further elaboration of these ambiguities, see Donohue & Heckman, *supra* note 1.

81 Ibid.

82 A more appropriate comparison would be between industries with a large proportion of employment in contractor firms and those industries with low proportions.

83 J. Smith and F. Welch, *Race Differences in Earnings: A Survey and New Evidence*, 49-50 (1978).

For instance, which was responsible for the rapid black progress of 1965 to 1975—the Executive order or title VII? What role did the disparate impact doctrine play in accelerating the transformation of business practices? Were the nondiscrimination provisions of the law sufficient to produce the observed improvements, or did numerical goals and timetables involve significant preferential treatment for black workers? Existing studies cannot answer these questions.

IV. Conclusions

The article considers current economic research on the role of Federal law in reducing economic disparity between blacks and whites. The available evidence demonstrates that Federal employment discrimination law played a significant role in accelerating the rate of improvement in black relative wages and occupational status during the period 1965 to 1975, particularly in the South. This is not, however, cause for optimism about the future role of employment discrimination law in eliminating racial economic disparity.

Although the law succeeded in the South between 1965 and 1975, it appears to have had little aggregate effect since. Eliminating the South's overtly discriminatory practices explained a great deal of the improvement in black economic status. The prohibition of blatant discrimination was reasonably easy to enforce and led to significant advances for black workers. In fact, many employers, particularly southern manufacturing firms, probably welcomed the larger supply of workers. It is unwise, though, to extrapolate from the achievement of the first decade of Federal intervention to the potential for improvement in the 1990s. The earlier period presented a historically unique opportunity to eliminate blatantly discriminatory practices without serious danger of impinging on the overall efficiency of the labor market. The remaining targets for employment discrimination law are considerably less clear and appear to offer smaller potential gains.

Employment discrimination law remains an important aspect of our commitment to individual justice in the labor market. The law continues to protect individual blacks from both the economic loss and the personal indignity of being rejected from employment on racial grounds. However, the available economic evidence strongly suggests that the law is unlikely to have a major influence on aggregate racial disparity in the 1990s. Basic economic forces such as the decline of manufacturing industries and the increasing return for skilled labor relative to unskilled labor will play a much more prominent role in shaping black relative economic status.

The Impact of Affirmative Action on Opportunities in Illinois: Beliefs Versus Realities

By Cedric Herring

A common analogy used to illustrate the principle of affirmative action is that of a long distance relay race: Initially, both teams are equal in every respect except that one has runners who have to carry 100 pound weights as they run. As the race progresses and the unencumbered runners woefully outdistance the others, it is finally acknowledged that the unburdened team has an unfair advantage. The logic of affirmative action suggests that letting the disadvantaged runners discard their weights so that they might attempt to catch up with their competitors would not be enough. Rather, it suggests that the fairer race would allow the disadvantaged runners time to recuperate and an opportunity to catch up with the front-runners, even if at this point it means altering the rules of the contest in favor of the team that was initially disadvantaged.

Most residents of Illinois believe that it *is* enough just to cast off the weights. A statewide, random digit dialing telephone survey of Illinois adults, with a margin of error of less than 3 percent, shows that there are serious differences of opinion regarding the justice of affirmative action and other policies designed to enhance racial equity and diversity. The survey was cosponsored by the University of Illinois' Institute of Government and Public Affairs and the University of Illinois at Chicago's Department of Political Science, Office of Social Science Research, and the Public Policy Analysis Program.[1] Results from the survey show that there is a chasm between the views of African Americans and whites concerning the merits of affirmative action programs. Most whites see altering the rules as tantamount to letting disadvantaged groups win (unfairly). And as the competition for education and jobs that secure middle-class status has become stiffer, equal opportunity (affirmative action) programs find little support even among those whites who concede the persistence of discrimination.

Affirmative action is a government-mandated or voluntary program that consists of activities specifically to identify, recruit, promote and/or retain qualified members of disadvantaged minority groups in order to overcome the result of past discrimination *and* to deter employers from engaging in discriminatory practices in the present. While it has come to mean several different things to the public, it is based on the premise that simply removing existing impediments is not sufficient for changing the relative positions of women and people of color.[2] And it is based on the idea that to be truly effective in altering the unequal distribution of life chances, it is essential that employers take specific steps to remedy the consequences of discrimination. I will discuss some of the beliefs about affirmative action versus some of the realities of the program in more detail below.

Beliefs About Affirmative Action

When the economy is expanding and good jobs are plentiful, the argument is often made that a rising tide lifts all boats, and that the smallest boats will rise the most. Nevertheless, research

1 For more information about this and other surveys referenced in this chapter, please see Herring, forthcoming, "African Americans, the Public Agenda, and the Paradoxes of Public Policy: A Focus on the Controversies Surrounding Affirmative Action," in *African Americans and the Public Agenda: The Paradoxes of Public Policy*, C. Herring (ed.), Thousand Oaks, CA: Sage Publications; Herring and Collins, "Retreat From Equal Opportunity?: The Case Of Affirmative Action," in *The Bubbling Cauldron*, M.P. Smith and J. Feagin (eds.), Minneapolis: University of Minnesota Press (1995); Herring, "Who Represents the People? African Americans and Public Policy During the Reagan-Bush Years," in *African Americans and the New Policy Consensus: Retreat Of the Liberal State?*, M.Lashley and N. Jackson (eds.), New York: Greenwood (1994).

2 Paul Burstein, *Discrimination, Jobs, and Politics: The Struggle for Equal Employment Opportunity in the United States Since the New Deal*, Chicago: University of Chicago Press (1985).

continues to document that without "catch-up" measures, *even in the best of economic times*, minorities will continue to trail their white counterparts for several generations. Such forecasts become even gloomier when one considers the effects of economic recessions and downturns in the economy.

The evidence that African Americans and Hispanic Americans still occupy disadvantaged economic positions in Illinois is abundant. In addition, according to the Illinois survey data, nearly three out of four Illinoisans (74 percent) believe that discrimination against minorities is still a problem in this country. Nevertheless, about 60 percent of the residents of Illinois reject the idea that "because of past discrimination, minorities should be given special consideration when decisions are made about hiring applicants for jobs."

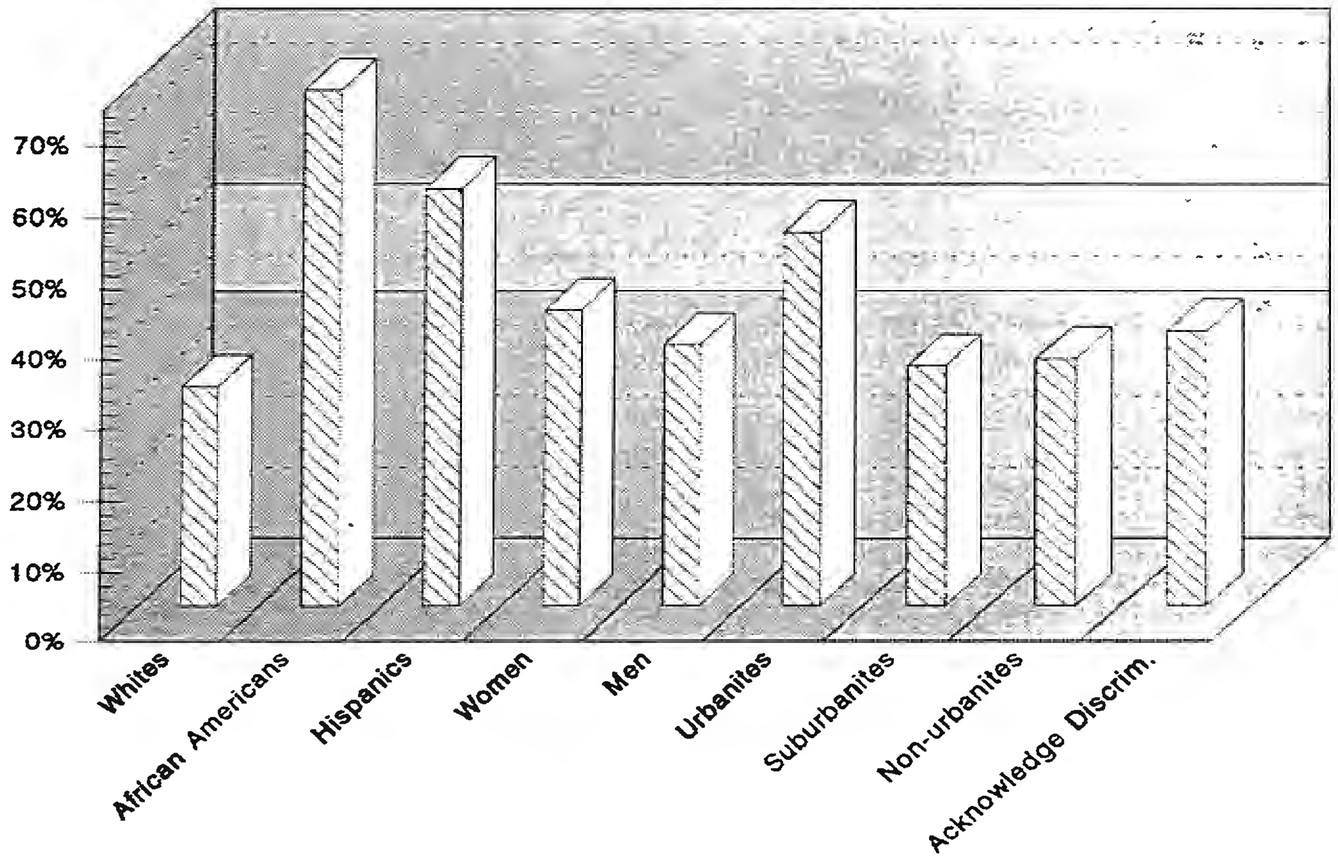
When we look at levels of support for affirmative action programs, we find vast differences among various sociodemographic groups. The gap is greatest when the groups are divided according to race. But there are also differences by gender, as women are more supportive of affirmative action programs than are men. Also, city dwellers are more likely to support such initiatives than are those from smaller towns and suburbs. (See figure 1.)

The survey also demonstrates that levels of support for affirmative action also vary by income, education, party identification, and whether a person planned to vote for Jim Edgar for Governor. The results indicate that as income increases, support for affirmative action decreases. However, when respondents are grouped according to education, the result is a U-shaped curve: People with a high school diploma or less and those with at least some graduate school education are more likely to show support for affirmative action than those in the middle with some college but no graduate school training. In terms of party, about twice the proportion of those who think of themselves as Democrats support affirmative action compared with those who identify themselves as Republicans. Indeed, party identification is second only to race in revealing division among Illinoisans on this issue. But, those who said that they planned to vote for Jim Edgar for Governor fall between these two extremes. (See figure 2.)

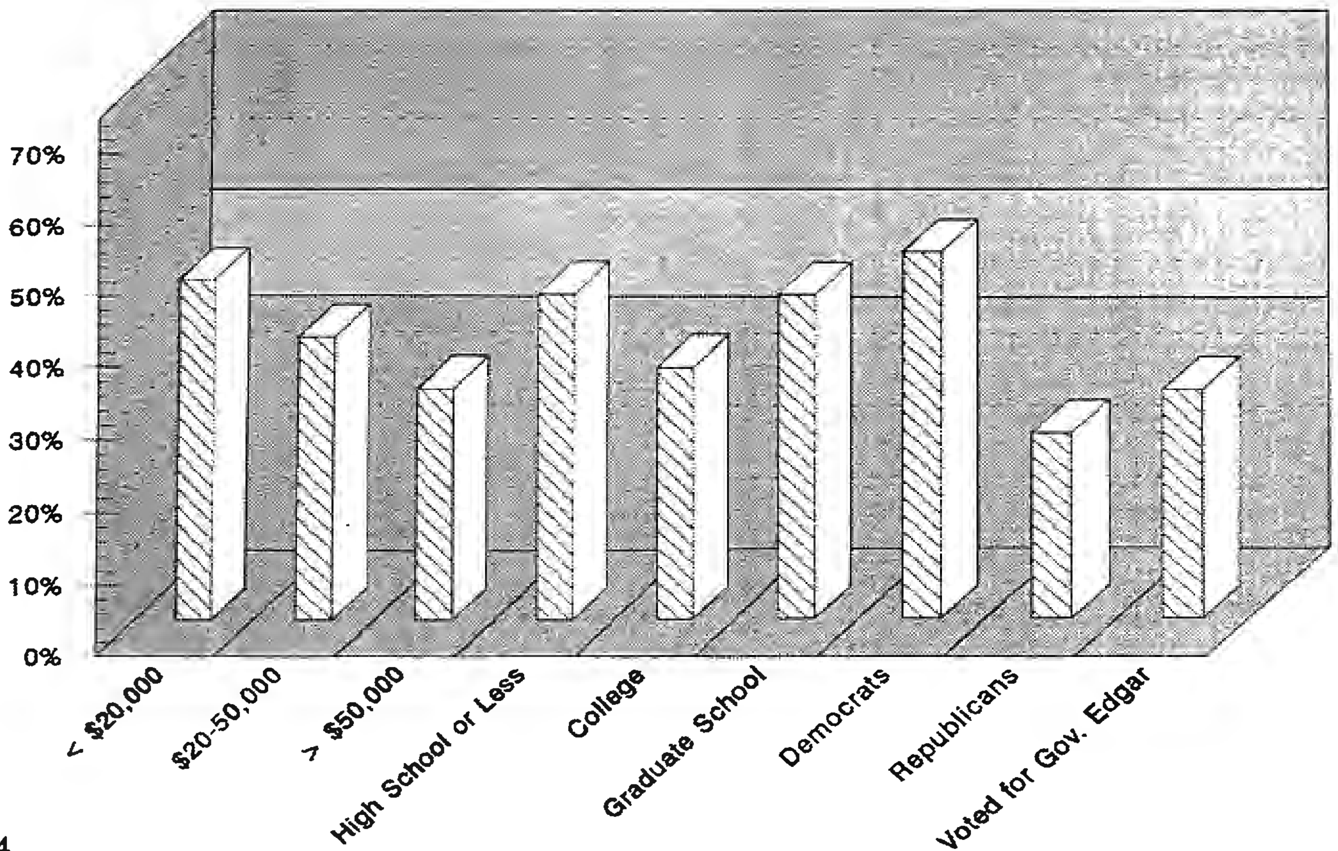
Many opponents of affirmative action say it is unnecessary because discrimination is only a thing of the past and does not hamper the opportunities of women and people of color in the present. But research by the Legal Assistance Foundation of Chicago, the Fair Employment Council of Greater Washington, the Urban Institute, and others provide clear and convincing evidence of job discrimination in Chicago, Washington, Denver, San Diego, and other locations across the country. In these studies, black, Latino, and white job seekers with matched credentials, job experience, and other labor market relevant characteristics were sent to apply for the same positions. Blacks, Latinos, and women were treated significantly worse than identically matched white males more than 20 percent of the time at every stage of the employment process. In some industries, especially in high profile occupations, even when minority candidates were presented with credentials *superior* to those of their white competitors, they experienced discrimination in more than one out of three job openings. It is clear that discrimination does still exist in the labor market and that it continues to affect minority job seekers adversely.

Despite wishes to the contrary, educational credentials clearly do not translate into the same kinds of socioeconomic rewards for everyone. In the past five decades, for example, African Americans and other racial and ethnic minorities have steadily increased their levels of educational attainment. The educational attainment gap between whites and blacks dwindled to less than half a year's difference by 1990. Still, in 1990, blacks had personal earnings that were less than two-thirds (62 percent) as much as those of whites. Earnings differences persist even after one takes educational attainment into consideration, as earnings gaps occur for each educational attainment level. For example, a high school diploma is worth more than $8,000 more for a white man ($19,109) than it is for a black man ($11,096). Similarly, a college degree translates into less than half as much in terms of personal earnings for a black woman ($19,384) as it does for a white man ($39,487). Still, there is the perception that affirmative action is not needed because discrimination is only an historical legacy.

Percentage of Illinois Residents Supporting Affirmative Action by Selected Characteristics



Percentage of Illinois Residents Supporting Affirmative Action by Selected Characteristics



Other Objections to Affirmative Action

Affirmative action has come under siege not only for being politically unpopular and unnecessary, but also it has been characterized as being unfair. It has also been argued that affirmative action is ineffective in reducing levels of inequality for targeted groups. Some opponents have also challenged affirmative action because it purportedly does little for those who are among the "truly disadvantaged" at the same time that it unfairly stigmatizes qualified minority candidates who must endure the perception that they were selected or promoted only to fill quotas. Some have derided affirmative action policies as "reverse discrimination," and still others claim that affirmative action is a drag on the resources of employers and the economy. Below, I provide an overview of some of these other criticisms of affirmative action. I then turn to data from the 1990 General Social Survey and a 1992 survey of Chicago adults to provide evidence about the effectiveness of affirmative action as a strategy for bringing about more racial and gender equality. In particular, I examine the degree to which affirmative action practices redistribute life chances, nurture negative stereotypes of minorities workers, and erode the economic well-being of white male workers. I explore these claims by examining the relationship between the presence of affirmative action programs and the income, proportional representations, occupational rankings, and work-related interracial perceptions and attitudes of minority and nonminority workers.

1. Affirmative Action Is Ineffective

Objections to affirmative action programs often incorporate the idea that such programs are politically unpopular *because* they are not effective. Variations of this view suggest that affirmative action policies simply have had no noticeable effect on the economic standing and representation of minority group members.[3] For these opponents, affirmative action constitutes just another example of costly but ineffective government regulation. Given that such programs are expensive but unsuccessful in enhancing the positions of women and people of color, they should be dismantled.

Other variants of this argument suggest that affirmative action leads to a situation in which the wrong victims and the wrong beneficiaries are identified. These opponents argue that well-off minorities are likely to be preferred over poor minorities since poor minorities are less likely to qualify for skilled employment. Wilson explicitly argues that "race-specific" policies such as affirmative action cannot succeed in helping the "underclass" nor in reducing inequality.[4] Such policies, he argues, while beneficial to more advantaged minorities, do little for those who are "truly disadvantaged" inasmuch as the effects of race and class subordination passed from generation to generation are disproportionately present among the poor. These people lack the resources and skills to compete effectively in the labor market. Thus, policies based on preferential treatment of minorities linked to group outcomes are insufficient precisely because the relatively advantaged members of racial minority communities will be selected and will reap the benefits to the detriment of poor minorities. Moreover, those whites who are rejected due to preferential programs might be the most disadvantaged whites whose qualifications are marginal because of their disadvantages.

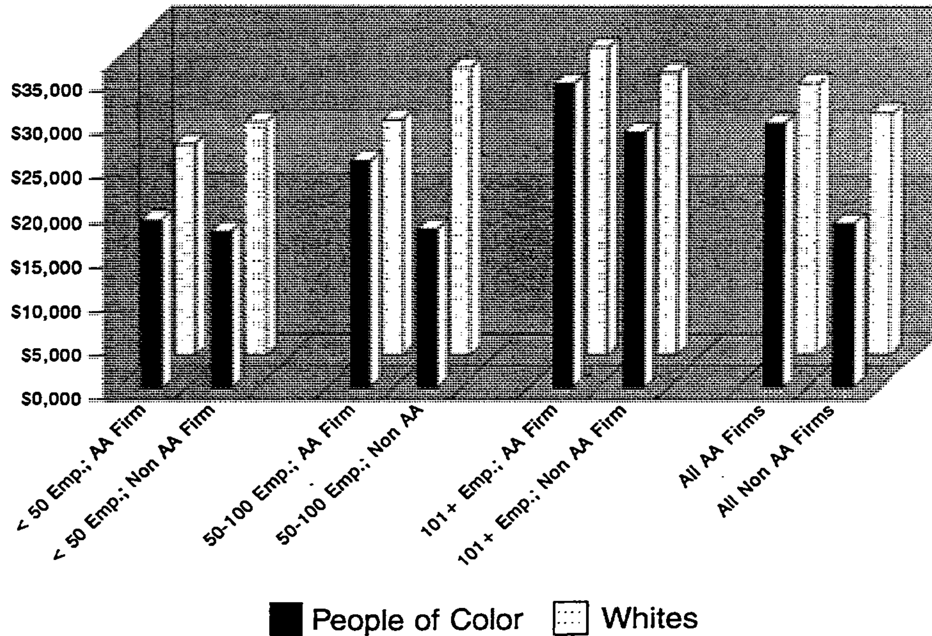
2. Affirmative Action Stigmatizes Minorities

A second kind of objection raised by opponents of affirmative action is that because whites often believe women and people of color are less qualified than white males (or even that no qualified candidates from those groups exist), it will stigmatize all minority workers. Those minorities and women who are qualified and can make it in society will be looked down on as having been favorites of the law who did not really make it on their own. In addition, this could have the effect of a self-fulfilling prophecy: Because employers believe that minority workers are less likely than

3 James P. Smith and Finis Welch, "Affirmative Action and Labor Markets," *Journal of Labor Economics*, 1984, 2: 269-299.

4 William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*, Chicago: University of Chicago Press, 1987.

Mean Incomes of Chicago Residents by Company Size, Whether Firm Is an Affirmative Action Employer, Race of Respondent



are white male workers to be qualified for employment, they set lower standards in order to satisfy affirmative action requirements. In turn, minority workers have less incentive to perform at higher levels, as better performance will do little to enhance their chances of meeting company standards that have been lowered. Performances by minority workers that do not *exceed* the employers' lowered expectations serve to confirm the employers' initial beliefs about minority workers' lower levels of preparation and qualification. In other words, legally preferred groups realize that less is expected of them, and therefore, perform at a lower standard. This lower accomplishment, in turn, substantiates the stereotypes that reluctant employers and coworkers held initially.[5]

3. Affirmative Action Is Reverse Discrimination

Another kind of objection to affirmative action is that it is tantamount to "reverse discrimination."[6] To the degree that affirmative action seeks to provide compensatory justice for past wrongs, it is laudable. Some critics would argue, however, that affirmative action programs are zero-sum undertakings: Under such plans, to the degree that minorities and women make economic progress, white males will suffer. Moreover, they would argue, some innocent white males who have never discriminated against minorities or women might be punished unfairly while some chauvinists and bigots might be spared. This objection to affirmative action makes the judgment (as an empirical fact) that whites lose to minorities. This empirical fact, per se, should disallow affirmative action according to these critics.

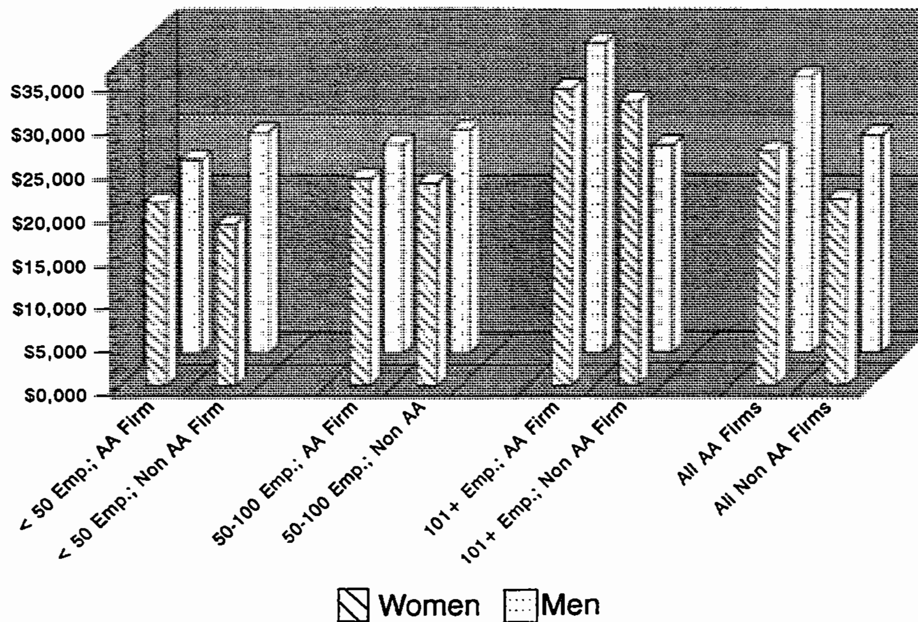
Does Affirmative Action Make a Difference to Economic and Employment Outcomes?

How valid are the objections to affirmative action programs raised by opponents of such policies? Do such programs increase incomes of racial minorities? Do they reduce the incomes of whites? Figure 3 presents the mean incomes of workers

5 Glenn C. Loury, "Affirmative Action as a Remedy for Statistical Discrimination," paper presented at a colloquium at the University of Illinois at Chicago, 1991.

6 See Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy* (New York: Basic Books, 1985).

Mean Incomes of Chicago Residents by Whether Employer Is an Affirmative Action Firm and Gender of Worker and Firm Size



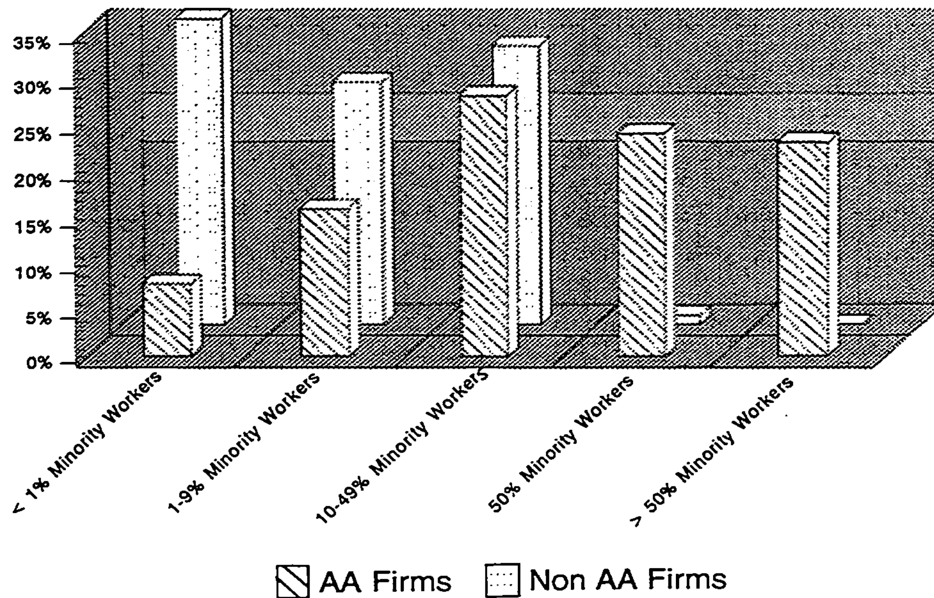
employed by affirmative action and nonaffirmative action firms for whites and nonwhites by firm size. This graph shows that when people of color work for affirmative action firms, their average incomes are higher. This holds true, regardless of the size of the firm. Nonwhites working for small firms receive over $1,200 more if their firms are affirmative action employers. Racial minorities in medium sized affirmative action firms earn $7,000 more than nonwhites in comparable nonaffirmative action companies. And in large firms, people of color with affirmative action companies earn more than $6,000 more than do racial minorities in nonaffirmative action settings. Because more than 10 times as many people of color who work for large (higher paying) firms are with affirmative action employers, and more than 65 percent of all nonwhite affirmative action employees are in large firms, the overall earnings differences between racial minorities in affirmative action companies and other nonwhites exceed $11,000 per year! Needless to say, affirmative action has a substantial impact on the earnings of nonwhite workers.

For white workers, the picture is a bit more complicated: whites in small and medium-sized firms earn between $2,400 and $5,900 more on average if they are not employed by affirmative action firms. Whites with large firms, however, earn more than $2,800 more when working for affirmative action employers. Again, because more than six times as many white workers at the larger (higher paying) employers are with affirmative action firms, and because nearly 60 percent of whites in affirmative action firms are with larger firms, on average the presence of affirmative action programs corresponds to boosts in their average incomes of more than $3,000.

The income increments associated with affirmative action employment are substantial, especially for racial minorities. Does this, then, mean that affirmative action provides reverse discrimination? On this point, we should point out that the incomes of racial minorities do not eclipse those of whites. This holds true for all sizes of firms and irrespective of the presence or absence of affirmative action programs. Indeed, it is only in the case of large firms that people of color approach parity with whites in comparable settings.

Figure 4 illustrates similar patterns with respect to the relationship between affirmative action employment and income by sex and firm size. For women, employment in an affirmative action setting is associated with an increase in income for firms of all sizes. These gains range from a little more than $500 in medium sized firms to over $2,500 in small firms. For men, affirmative action employment is associated with higher incomes only in large firms. In these cases, however, the income differences exceed $11,000. Again, for both men and women, the overall income

Percentage of Chicago Residents Working for Companies with Given Amounts (Proportions) of Minority Workers by the Presence of Affirmative Action Programs



differences are substantial. In none of these settings do women earn more than men.

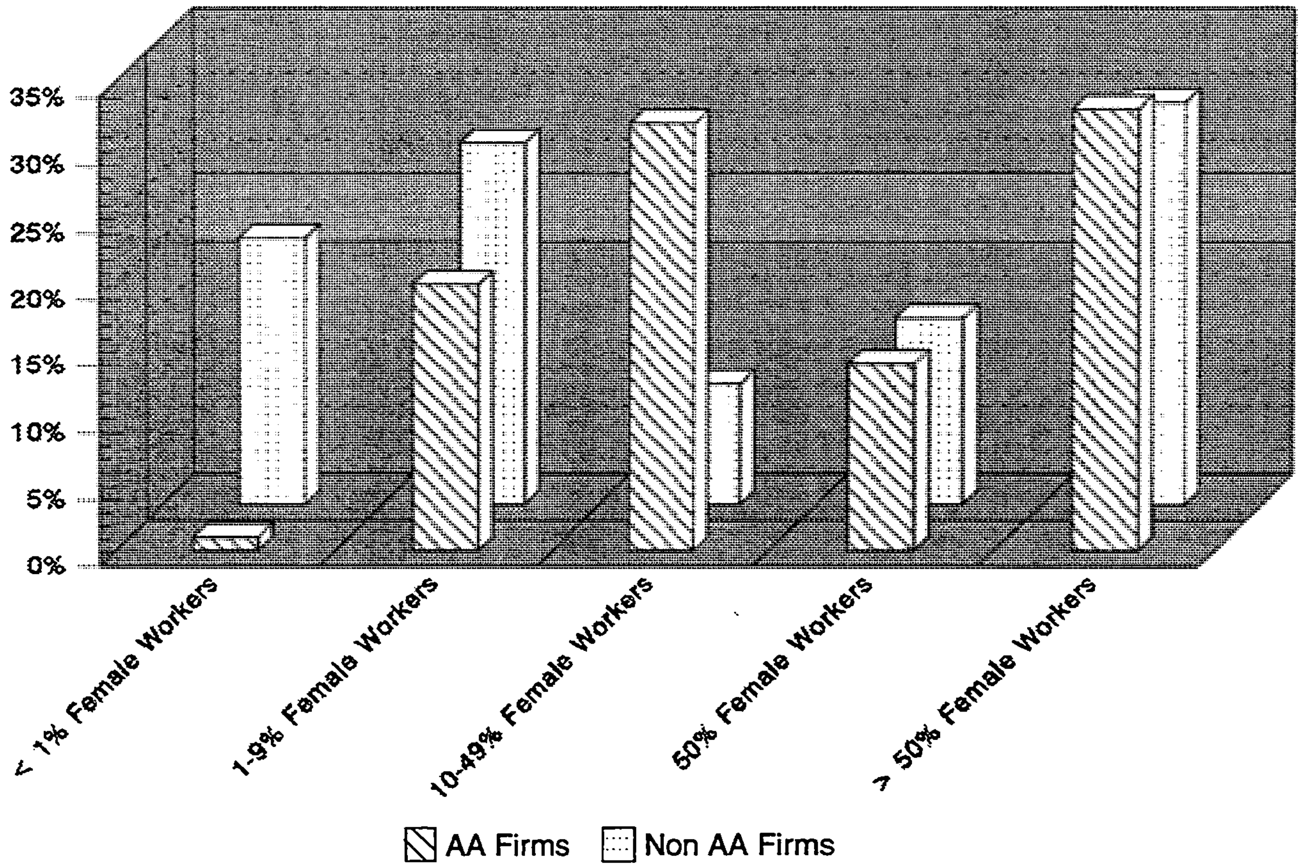
Is affirmative action related to higher proportions of blacks and women working in companies? Figures 5 and 6 present some answers to this question. Figure 5 shows that only 7 percent of workers employed by affirmative action companies say that their firms employ no blacks. This compares with 33 percent of those employed by nonaffirmative action firms. Similarly, while 16 percent of those working in affirmative action companies say their companies employ few blacks, 26 percent of those in nonaffirmative action companies report that their companies employ few blacks. Almost half of those working for affirmative action companies report that their firms have work forces that are at least 50 percent black. In contrast, less than 12 percent of those in nonaffirmative companies say their companies' work force is 50 percent or more black workers.

Figure 6 depicts similar patterns with respect to the proportion of female workers employed by affirmative action and nonaffirmative action companies. This chart shows that less than 2 percent of people working for affirmative action companies report that their companies employ no women, and 20 percent of them report that their companies hire few women. In contrast, 20 percent of those in nonaffirmative action settings report that their companies have no female employees, and 27 percent report few female employees. Again, these patterns for affirmative action and nonaffirmative action companies reverse when the proportion of female workers approaches or exceeds half.

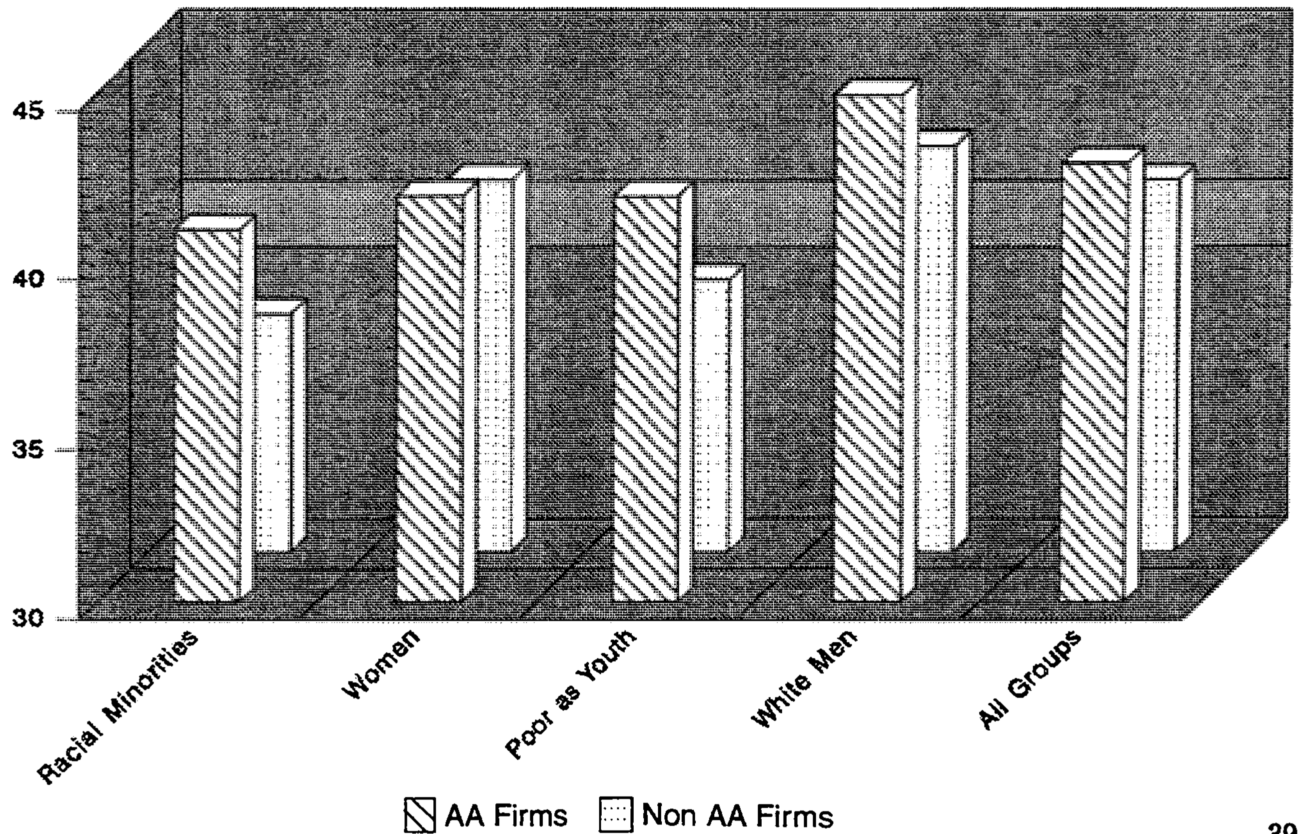
But is affirmative action associated with higher level employment for people of color and women? Figure 7 illustrates that affirmative action employment is associated with higher occupational prestige. On average, racial minorities, women, and people who grew up poor, and white men all have more prestigious occupations in settings that have affirmative action programs. These groups gain about four occupational prestige points under affirmative action. This is about the difference between a plumber and an insurance agent, or between a public school teacher and a banker. The gains are greatest among those who were poor as youths and among racial minority workers. This chart shows, however, that women and white males in affirmative action firms also hold an advantage over women and white males who work for employers without affirmative action policies.

So, the results suggest that affirmative action is associated with higher incomes for people of color and women. Also, such programs are related to higher proportions of women and minorities in companies, as well as higher occupational prestige. Moreover, the findings indicate that whites

Percentage of Chicago Residents Working for Companies with Given Amounts (Proportions) of Female Workers by the Presence of Affirmative Action Programs



Mean Occupational Prestige of Selected Groups by the Presence of Affirmative Action Programs



and men are not greatly penalized by the existence of such programs. But what about perceptions and attitudes? Are affirmative action programs correlated with any work-relevant beliefs? Figure 8 suggests that despite evidence showing that groups other than racial minorities also benefit from affirmative action programs and previous research suggesting that few cases of "reverse discrimination" actually occur, the presence of affirmative action programs is associated with the expectation that "reverse discrimination" is likely to occur.[7] This pattern is in keeping with Loury's (1991) prediction that the qualifications of racial minority workers who occupy affirmative action positions would become suspect. Not surprisingly, this wariness is more pronounced among white men than other groups. But affirmative action is related to anticipation of reverse discrimination among racial minorities, women, and people who grew up poor.

But is affirmative action associated with less positive impressions of minority workers as Loury (1991) suspects? Figure 9 shows that there is a slight tendency for affirmative action to be associated with racial minorities and women having lower appraisals of black workers' work efforts. At the same time, the presence of affirmative action corresponds with the tendency for white men and those who were poor as youths to hold more favorable images of blacks' work efforts. It should be noted that white men who work where there are no provisions for affirmative action are the least favorable in their impressions of blacks' work efforts.

Summary and Conclusions

Affirmative action was instituted to improve the employment opportunities for groups which historically had suffered discrimination in the labor market. Most Americans are well aware that women and people of color have been victims of discrimination. Yet, as I pointed out at the outset, few are willing to acknowledge the need for affirmative action. This is despite several arguments that could be invoked to justify the existence of affirmative action: (1) the need for compensatory justice and reparations for the victims of past discrimination; (2) the need to truly equalize opportunity so genuine merit can be demonstrated; (3) the need for proportionality and representation so that women's and people of color's collective needs, interests, and sensitivities can be better served; and (4) the need to monitor and guard against current and future discriminatory behavior. From the less lofty perspective of "enlightened self-interest," better minority representation can also enhance marketing savvy vis-a-vis minority consumers, help to pacify minority challenges to the policy decisions of predominantly white male governments or agencies, and in general help to keep a lid on a volatile bubbling cauldron.

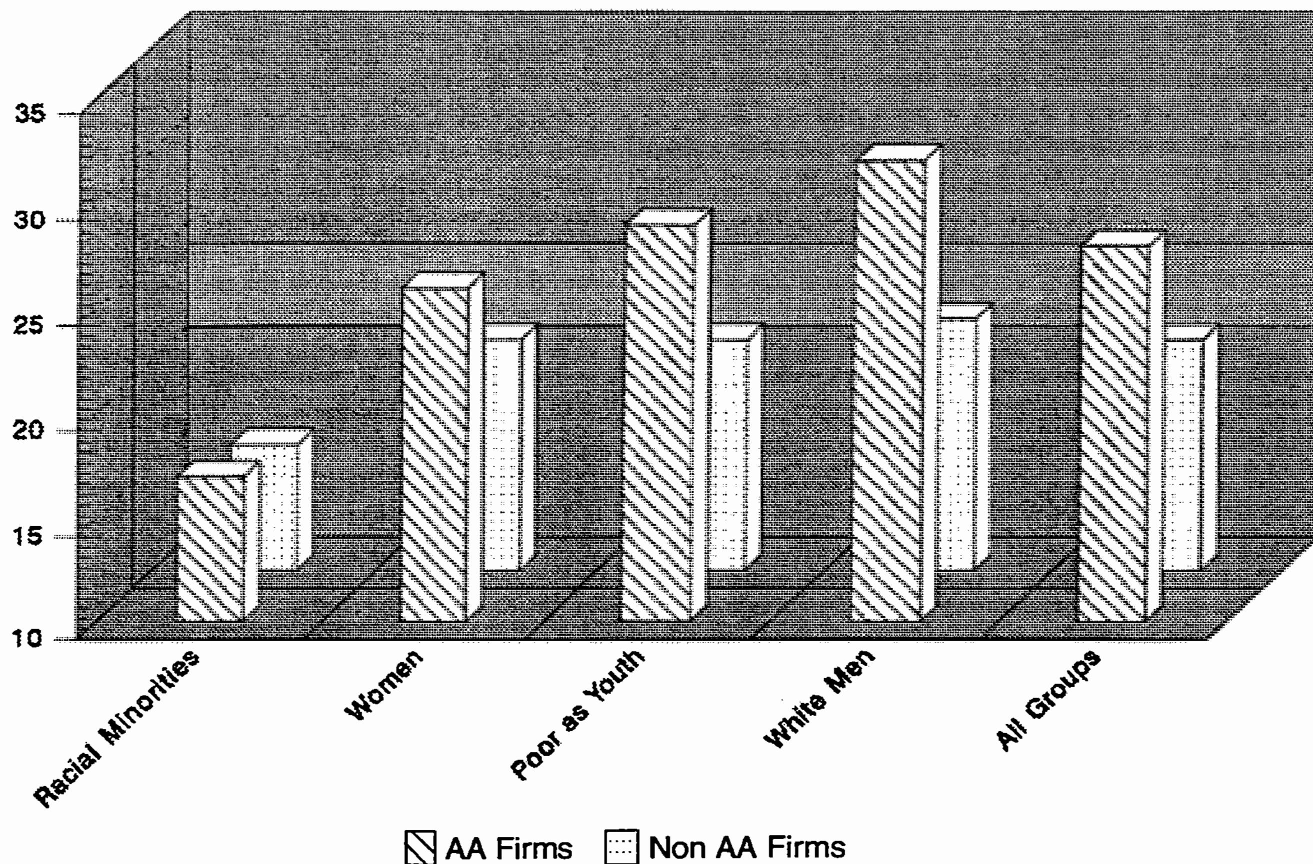
Policies aimed at economic expansion, development, and job training are far more politically popular than programs that involve direct government intervention in the hiring and promotion practices of employers. Such programs do not, however, provide real solutions to sex and race inequality. They are of limited use when there are recessions and a growing scarcity of jobs. And in the face of economic downturns, these policies will do little to prevent women and people of color from being the "last hired and the first fired" or to guarantee that these groups will make progress.

But despite the heated debates, not much light has been shed on the effectiveness of affirmative action as a strategy for improving the life chances of those groups that historically have been the victims of employment discrimination. In this chapter, I have attempted to delineate some of the effects of affirmative action.

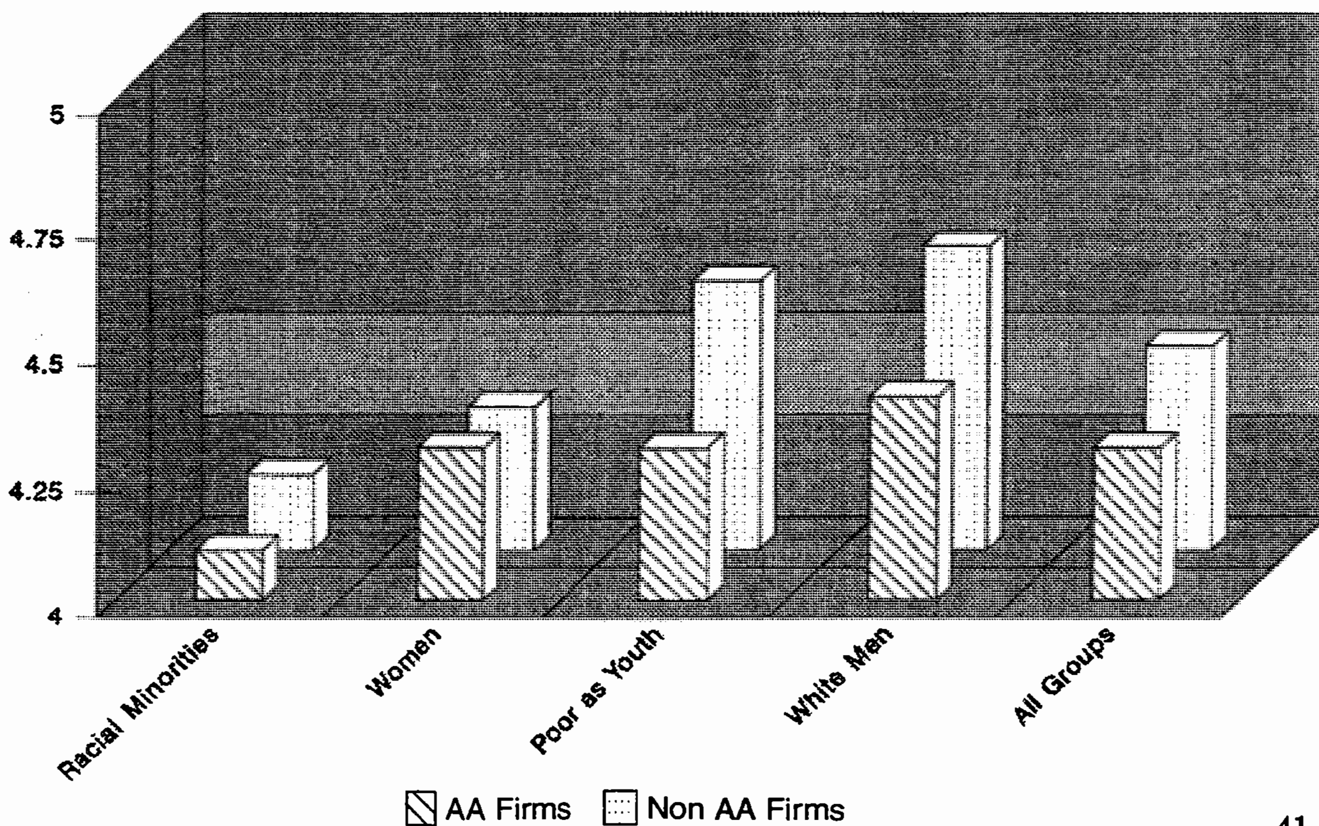
Affirmative action has different, complex effects on various subpopulations. One clear-cut result, however, suggests that affirmative action programs in the work place are associated with higher incomes for those they were intended to help. Indeed, they are correlated with higher incomes for racial minorities, women, and people from low-income backgrounds without appearing to do significant harm to the economic well-being

7 Paul Burstein, "'Reverse Discrimination' Cases in the Federal Courts: Legal Mobilization by a Countermovement," *The Sociological Quarterly*, 1991, 32: 511-28.

Percentage of Selected Groups Who Believe that "Reverse Discrimination" is Very Likely to Occur by the Presence of Affirmative Action Programs



Selected Groups' Assessments of Blacks' Work Habits by the Presence of Affirmative Action Programs (1 = Hard Working; 7 = Lazy)



of white males who work in such settings. Another rather clear result, however, is that affirmative action is related to increased perceptions that reverse discrimination occurs. But affirmative action, per se, is not responsible for negative assessments of blacks' work efforts. Indeed, such programs are correlated with more positive assessments of these work-relevant traits.

Unfortunately for proponents of affirmative action, the current debate about the merits and demerits of affirmative action is taking place in a context involving two apparent complications that have made the case for affirmative action more difficult to promote: (1) periodic economic stagnation which provides real threats to the very existence of good jobs and (2) new antiminority sentiments that couch prejudice in terms of abstract ideological symbols and symbolic behaviors. Indeed, it has been argued that the Reagan and Bush Administrations actively promoted antiaffirmative action policies and fostered misleading information about such policies.[8] Moreover, as a public policy and strategy for social change, affirmative action faces many peculiar dilemmas: to bring about a "color-blind" and gender-equal society, it must be color and gender conscious; to deliver equality of opportunity, it calls for greater efforts to educate, recruit, train, employ, and promote only some citizens; to determine whether progress is being made, it must measure present-day employment practices against some standard of what has occurred in the past and what might be achieved in the future; and to monitor the progress of women and people of color, it must subject itself to allegations that it is nothing more than "quotas" that promote "reverse discrimination" and the selection of people who are less qualified than their white male counterparts.

Proponents of affirmative action are confronted with a tricky political process that revolves around the obstacles and dilemmas mentioned. As Hochschild points out, there are [f]our rules of thumb [that] can help to shape [a] tricky political process. First, do not expect people to do more than they can—that road leads simply to frustration and rejection of the whole enterprise. Second, do not easily allow people to do much less than they can—that road vitiates the basic principle and demoralizes the full contributors. Third, give people direct, even self-interested, incentives to take action—few people will participate for long in a program that asks them to sacrifice themselves or their resources to an unknown other. Fourth, give people reasons beyond direct incentives for taking action—Americans have a long history of acting to help others if they believe that their actions will be efficacious, are morally right, and are not evidence of being a sucker.[9]

In other words, selling affirmative action will require (1) demonstrating to white males that it does not cost them much, (2) convincing America that it can and should do much better by women and people of color, (3) showing employers that it is in their best interests to pursue equal opportunity policies, and (4) establishing for the nation that affirmative action is a policy that will strengthen rather than weaken its international competitiveness and general welfare. But proponents of affirmative action will also need the help of public leaders who are concerned about helping disadvantaged groups realize equal opportunity and not just interested in using affirmative action as a political symbol. If these public leaders are sincere in their concerns about assisting minorities realize equal access, they will need the courage to push for strategies that are effective but not necessarily popular.

If affirmative action has been ineffective in helping those from disadvantaged backgrounds, there should be little opposition to dismantling such plans among those who support it because it is supposed to enhance the opportunities of the disadvantaged. But by the same token, if as the analysis presented here suggests, affirmative action has been successful in providing relief to

8 Cynthia A. Wilson, James H. Lewis, and Cedric Herring, *The 1991 Civil Rights Act: Restoring Basic Protections*, Chicago: The Chicago Urban League, 1991.

9 Hochschild, Jennifer, "The Politics of the Estranged Poor," paper presented at the annual meeting of the American Political Science Association, Atlanta, GA, 1989, p. 29.

those who have historically suffered discrimination, those who ostensibly oppose affirmative action because of its ineffectiveness should reexamine their views.

Affirmative Action and Asian Americans: Lessons from Higher Education

By Yvonne M. Lau

Introduction

In preparing comments on how Asian Americans have fared under affirmative action programs, particularly in higher education, I am motivated to highlight some of the substantive issues because of the public misperception related to Asian Americans and this public policy area. Some of this confusion occurs because of how this controversial subject is debated and framed—that is, largely through a black-white lens. Within the commonly discussed arenas of affirmative action: government contracts, jobs in public sector, and college admissions, being "minority" means usually black, sometimes Hispanic, and rarely Asian American.

Worst than this neglect, in the politics of affirmative action opponents against this policy use Asian Americans as evidence of why affirmative action does not promote equal opportunities for racial minorities and women. The Right and other conservatives pose themselves as champions of the community, claiming that Asian Americans have been harmed by affirmative action and do not need such programs. The Right and others feel that individual mobility is key, and that minorities can rise through merit, which they argue can be defined objectively through grades, tests, etc. In the most publicized cases within higher education—admissions to elite schools—these defenders of Asian Americans argue that schools have used "racial preferences" to admit African Americans and Hispanic Americans, and limit highly competitive Asian Americans. The Right and others have used Asian Americans as a wedge to attack African Americans.

Given these recent politics, should we be surprised then, when Asian Americans find little support from whites or blacks for issues related to race? Once again subjected to being held up to other minority communities and the larger society as "model minorities," Asian Americans are being disenfranchised from both minority and majority coalitions surrounding this debate. While this essay is focused on a limited review of policies and practices related to affirmative action and their impact on Asian Americans in higher education, it is important to bear in mind how the politics of affirmative action shape public sentiments over race and gender-conscious remedies.

Rationale for Affirmative Action—Persistent Inequality

Although this essay argues for the legitimacy of affirmative action programs, it raises questions about whether Asian Americans have been full participants of such programs, much less beneficiaries.

As I will argue in the later section on higher ed, Asian Americans are often excluded, formally and informally, from race-conscious affirmative action programs. Consequently, to argue for the status quo or combination of current policies as they exist now, may contribute to the exclusion of Asian Americans from race-conscious initiatives. Federal affirmative action programs and local voluntary efforts may need to be reviewed for their effectiveness and their impact on different groups.

Yet despite the need for review and revision, affirmative action represents a crucial vehicle for advancing civil rights. For Asian Americans in particular—a group representing diverse communities that have been rewarded and penalized by affirmative action—we still need affirmative action measures to counteract persistent inequalities. Discriminatory barriers still exist in the public and private sectors; Asian Americans continue to be subjected to the historic legacy of discrimination.

The Asian American experience reflects a history of institutionalized discrimination and a contemporary status of being underrepresented, underutilized, and underpaid. While we can only provide a brief overview in this discussion, during the past 150 year history of Asians in America, Asian Americans have faced anti-Asian sentiments and violence, discriminatory immigration, education, and work-related laws, and the worst extremes of institutionalized racism including incarceration.

While affirmative action programs have significantly enhanced opportunities for women and minorities, equal opportunities have yet to be attained. As national statistics indicate, while white men represent almost half (48 percent) of the college educated work force, they represent 90 percent of officers in American corporations, 90 percent of the top jobs in the media, 86 percent of partners in major law firms, 80 percent of management level jobs in advertising, marketing, and public relations, and 85 percent of tenured college professors.[1]

For Asian Americans, representation in various occupational niches, particularly in decisionmaking and management roles, remains severely limited. Last year's Federal Glass Ceiling Commission reported that from a survey of senior-level male managers in Fortune 1000 industrial and Fortune 500 service industries, 97 percent were whites, 0.6 percent were African Americans, 0.4 percent were Hispanics, and 0.3 percent were Asians. Moreover, Asian American men felt that they have more than sufficient educational credentials but are still kept under the ceiling because they are viewed as superior professionals, but not management material.[2] Asian American men (U.S.-born) were between 7 and 11 percent less likely to be in managerial occupations than white men with the same education, work experience, region, English ability, and other variables.[3]

While Asian Americans have disproportionately invested in education as the sole mobility path—seeking higher degrees and more education—the returns on their investments are not commensurate. Comparing those with college degrees, whites earn 11 percent more than Asian Americans; comparing high school graduates, whites earned more than 26 percent more than Asian Americans. In fields where Asian Americans are lauded for high achievements, U.S.-born Asian Americans are lauded for high achievements, U.S.-born Asian American doctoral scientists and engineers earn only 92 percent of that of white doctoral scientists and engineers earn only 92 percent of that of white doctoral scientists and engineers.[4]

Asian Americans are also largely invisible from public sector jobs. In this country, only 1.4 percent of public school teachers are Asian Americans.[5] From local anecdotal sources, Asian Americans are rarely in key arenas including law enforcement, firefighting and teaching. For instance, in the Chicago school system, out of about 560 principal, only one is Asian American. In the Illinois State Board of Education, an agency with 773 employees, minorities make up 15 percent of the staff; Asian Americans represent 2 percent of the staff. In the Illinois Board of Higher Education, an agency with 35 employees, there are no Asian Americans on staff.[6]

Extending these issues into higher ed, it is difficult to assess the progress of Asian American students, staff, and faculty. Unfortunately, general data about Asian Americans in higher ed is scarce, much less affirmative action-related data. This reflects public confusion about the status of Asian Americans, especially their legitimacy as minority group members. In minority reports compiled by local institutions or State agencies like the State of Illinois Board of Higher Education, Asian Americans are generally excluded from analyses.

Some overall data available include aggregate numbers of Asian American students and faculty. In 1994, the national estimate for Asian American

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1 Karen Narasaki, "Discrimination and the Need for Affirmative Action Legislation," *Perspectives on Affirmative Action*, Los Angeles: LEAP Asian Pacific American Public Policy Institute, 1995, p. 6.

2 Federal Glass Ceiling Commission, *Making Full Use of the Nations Human Capital*, 1995, p. 9.

3 *Civil Rights Issues Facing Asian Americans in the 1990s*, U.S. Commission on Civil Rights, p. 133.

4 Narasaki, p. 7.

5 Ibid, p. 6.

6 Illinois Board of Higher Education, Agency Workforce Report, 1995.

student enrollments is close to 650,000.[7] In the same year, Illinois Asian American enrollments total 38,494 or 5.3 percent of all students.[8] Nationally, Asian American faculty represent about 5 percent of all full-time faculty.[9]

Recent studies point to the significance of desegregating data for Asian Americans by ethnicity, nativity, generation, language, and class. For example, to understand the demographic profile of Asian American faculty, it is important to recognize subgroup distinctions by noting that among full-time Asian American faculty, Asian nationals constituted 42 percent. Of all higher education faculty, less than 3 percent are Asian Americans with U.S. citizenship. A study of minority doctorates reveal that disproportionately fewer doctorates are awarded to Asian Americans in the social sciences, humanities, and education.[10]

The status of Asian American faculty and administrators is increasingly overshadowed by the highly publicized accounts of phenomenal rates of growth within the Asian American student population. Despite the major increases in student enrollments across the country, figures for faculty and professional staff positions have risen at much slower rates. Moreover, the gains that have occurred within full-time faculty slots have been disproportionately in nontenure track positions—positions less secure, less prestigious, and lower in pay.[11] Another aspect of this issue focuses on the severe underrepresentation of Asian American administrators. Studies have found that only 1 percent of managerial and executive positions in higher education are held by Asian Americans.[12] This restricted access to upper administration with few Asian Americans in the managerial pipeline contributes to the exclusion of Asian Americans from major institutional decisionmaking and to the absence of Asian Americans and their concerns in race-related dialogues on campus.

Two types of discrimination are commonly experienced by Asian Americans in higher ed. First, despite Asian Americans representing significant segments of many student bodies, there is not a corresponding increase in Asian American faculty, administrators, or support staff. While Asian Americans do outnumber other minority faculty, they remain underrepresented in specific disciplines, and Asian American faculty are commonly found teaching in science and math departments. One of the few studies to include tenure rates for Asian Americans in the Chicago area indicated that Asian American faculty also have the lowest tenure rate (47 percent) of all faculty.[13]

Secondly, affirmative action programs designed for all minorities often overlook Asian Americans. The continuum of affirmative action programs in higher ed ranges from: special minority grants and graduate fellowship programs aimed at facilitating the transition of students of color into fields where their participation has been discouraged or has been underrepresented. On the faculty/staff side, affirmative action could include targeted opportunity programs or targeted recruitment and outreach efforts to ensure that qualified professionals of color would be part of the candidate pool.

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7 Kenyon Chan, Presidential Address delivered at the Association for Asian American Studies Annual Meeting, University of Michigan, 1994.

8 State of Illinois Board of Higher Education, *Data Book on Illinois Higher Education*, 1994, p. 52.

9 Deborah Carter and Eileen O'Brien, "Employment and Hiring Patterns for Faculty of Color," *ACE Research Briefs*, vol. 4, no. 6, 1993, p. 3.

10 Cecilia Ottinger, et. al, "Production of Minority Doctorates," *ACE Research Briefs*, vol. 4, no. 8, 1993, p. 1.

11 Eugenia Escueta and Eileen O'Brien, "Asian Americans in Higher Education: Trends and Issues." *ACE Research Briefs*, vol. 2, no. 4, 1991, p. 1.

12 Ibid.

13 Diane Reis, "Minorities on slow tenure track at Chicago universities," *The Chicago Reporter*, vol. 16, no. 5, 1987, pp. 3–5.

Because of the high percentages of Asian Americans on college campuses and the relatively high numbers of all Asian American faculty members, there are prevailing perceptions that Asian Americans are excelling in higher ed and that discrimination does not exist against Asian Americans. These perceptions are untrue. Asian Americans are still encountering real discrimination on campuses. Asian American faculty and staff are commonly funnelled to lower mobility tracks. Students with an Asian ancestry are often held to a higher standard than other students because of their race. Stereotyped as genetically gifted and as high academic achievers, they are usually excluded from special support services developed for students of color.

This neglect by institutions continues during this period of major demographic changes in the Asian American population. Far from being a homogeneous group, Asian American students vary significantly as previously discussed. To overlook the rising differences in English language proficiency or past educational and immigrant or refugee experiences, relegates them to a false status of being uniformly members of the model minority. This occurs in both the education and employment sector, so that both Asian American students and faculty are affected.

Overall, many institutions do not view Asian Americans as disadvantaged minorities. Anecdotal evidence suggest that while there are few explicitly stated documents that deny "minority" status to Asian Americans, informal practices reveal that Asian American applicants or candidates are seldom part of targeted recruitment efforts. At the University of Illinois at Urbana-Champaign (UIUC), for example, affirmative action programs for students are limited to admission policies alone. Using proportional representation models comparing regional population statistics with student enrollments, Asian American undergraduates at UIUC are considered over-represented. Asian American students are not part of any targeted recruitment plans.

Hence, while they conveniently include Asian Americans numbers in their minority reports for government and other sources, institutions seldom, in practice, acknowledge the needs of Asian Americans. The paucity of national longitudinal studies on Asian Americans and their status in higher education again leads us to rely on anecdotal evidence which imply that an increasing number of today's students are facing troubling retention rates, and growing dropout rates compared to Asian American cohorts of academically at-risk students are found among Asian Americans. The relatively smaller ratios of Asian American faculty and administrators, especially in the undergraduate divisions, exacerbates the problem of accessibility to role models and mentors for Asian American faculty and administrators, especially in the undergraduate divisions, exacerbates the problem of accessibility to role models and mentors for Asian American students; they may be deterred from seeking help from those who are culturally sensitive to their problems.

Affirmative Action Programs and Faculty

Affirmative action programs which were developed to dismantle institutional employment barriers, are now being used as a barrier to Asian American employment. Part of this discrimination stems from the model minority myth. Individuals with Asian ancestry are assumed to have achieved the American dream and to have been "assimilated" by mainstream culture.

Affirmative action is an action-oriented effort by employers and institutions to increase minority representation. Such attempts come with the recognition of the historical barriers of racial, ethnic, and gender discrimination which have precluded equal opportunities for minorities. If institutional changes are to be achieved through affirmative action programs, then more women and minorities need to be in key faculty/administrative positions. If Asians are excluded from administrative positions and positions of power, them both the recognition of discrimination and the elimination of such biases in higher education is curtailed. Asian Americans are too often excluded from administrative positions, and viewed immune from discriminatory practices in higher ed. Consequently, Asian Americans face dual barriers in higher ed. First they face the institutional discrimination experienced by other minorities. Secondly, they face the perception that there is no discrimination directed at Asian Americans and are, thereby, excluded from programs to overcome discrimination.

The University of Illinois at Chicago (UIC) has engaged in a program to exclude Asian Americans

from affirmative action programs and to give non-Asian minorities preferential work conditions. UIC has established a minority recruitment pool of " $ 635,000 annually in recurring salary support for minority faculty" specifically earmarked to enhance salary offers to minority candidates. In a memorandum written by the executive associate vice chancellor of academic affairs, it states that "the campus will match, on a dollar-for dollar basis, up to $ 20,000 share of recurring salary money for tenured or tenure-track faculty who are African American, Latino, or Native American.... [14] In an earlier memorandum on this same program in 1990, Asian Americans are specifically excluded as a targeted minority: "For the purposes of this pool, the classification of minority will be based on ethnicity rather than gender.... Further, Asians will not be considered minorities; only blacks, Hispanics, and Native Americans."[15]

The efforts by UIC and other institutions to attract minority faculty are laudable, but such efforts may have discriminatory impact on Asian faculty candidates. It appears that Asian Americans, because of their race, are being excluded from additional funding by the university for salary and other benefits.

Summary and Recommendations

Because of the confusing and sometimes contradictory criteria underlying who's eligible for various affirmative action programs, the impact of such programs on Asian American students, faculty and staff should be carefully assessed and monitored. Flexible goals and timetables may be needed to fight discrimination, though these are not quotas. Because of the diversity of Asian American communities, studies should also include analyses of affirmative action policies and practices and their differential impact on distinct Asian American groups along dimensions of nativity, ethnicity, occupational specialty or language proficiency. Within higher ed for example, affirmative action programs may have different repercussions for Asian Americans in liberal arts colleges or in professional schools, for native-born or refugee students, and for faculty or staff positions. All of these variables would have to be considered before we can fully rely on affirmative action programs as vehicles for advancing civil rights.

As commented earlier, while affirmative action programs should be continued and supported, some of them may not be fulfilling their objectives or advocating inclusively for members of underrepresented groups; such programs may have to be reassessed and restructured. Race and gender should be used as criteria in those areas where minorities and women continue to be underrepresented. Affirmative action does not imply quotas or the lowering of hiring or selection standards. Similarly, Asian Americans should not be held to higher standards than majority members nor cast as "preferred" minority members. Affirmative action programs and policies should seek to promote diversity, remedy past or current discrimination, and restrict future discrimination.

Asian Americans should not suffer discrimination because of their race on the campuses of higher education. Affirmative action programs that provide preferential treatment to individuals because of their race and exclude Asian Americans because of their race and "success" should be reexamined for their legality and fairness. Faculty and staff special recruitment and hiring programs must be evaluated for their inclusiveness and equity.

Higher education institutions should review their tenure and promotion practices to address the relatively lower tenure rates of Asian American faculty, their disproportionate numbers in nontenure-track positions, and the glaring underrepresentation among high-level administrators.

To ensure access and equity for Asian American students, higher education institutions should conduct longitudinal studies to review admissions procedures and to ascertain admission rates by race for undergraduate, graduate, and professional divisions.

14 John Wanat, executive associate vice chancellor for academic affairs, UIC memorandum, June 24, 1994.

15 James Stukel, executive vice chancellor and vice chancellor academic affairs, UIC memorandum, Feb. 14, 1990.

Plurality and Affirmative Action: The Social Requirement of Diversity

By H. Paul LeBlanc III

Introduction

Recent national[1] and international[2] events, State referendums[3] State and Federal court rulings,[4] and Federal legislative actions[5] demonstrate how issues of civil rights are at the forefront of the American debate. Recently the University of California Board of Regents voted to eliminate race-based preferences in hiring, contracting, and student admissions. Even in academia where the richness of diversity is highlighted, the debate on politically correct speech and affirmative action is loud.[6] In *U.S. News and World Report's* annual guide to U.S. colleges and universities, a poll reports considerable differences in opinion between student editors and administrators on what constitutes equal rights in affirmative action programs.

A large percentage of students are reported to believe that preferences should not be based solely on race, but economic disadvantage should be demonstrated in preferential hiring or admission.[7] Yet, there is a larger issue here than simply preferential hiring. The totality of debate on civil and human rights seems to point to concerns over the American ideal of "cultural" integration, the great melting pot, and the social need for diversity. As Americans watch cultural and ethnic clashes which occur in foreign lands, we question our role in promoting tolerance and diversity.[8]

I, as a South Louisianian with an Acadian ethnic heritage, watched with great interest the Quebec referendum for independence. However, the referendum was not simply about the desire of one group to separate themselves from another group. The referendum was about 400 years of history and a desire for a sense of identity that would be recognized by the world. Throughout the world, like in Chiapas, Mexico, groups of people are struggling for recognition of their ethnic identity and their right to live according to their own sense of value to the degree that others are. The United States has a unique history in that peoples from many parts of the world immigrated to its shores to obtain that right. These people came with their own sense of identity and own set of cultural values to a land that promised that freedom.

Yet, not all of the peoples who came to this shore came of their own volition. Some peoples were brought here for the economic advantage of

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1 Such as the Million Man March on Washington and civil unrest in Los Angeles and other cities following police and court actions with racial overtones.

2 Such as ethnic cleansing in Bosnia-Herzegovina, Rwanda, Somalia, Guatemala (which have been referenced through recent foreign policy initiatives).

3 Such as the State of Maine's referendum on limiting the number of groups that can apply for minority status, and Colorado's referendum to eliminate "special rights" for homosexuals.

4 Such as Colorado Court ruling to overturn Colorado's referendum (see footnote 3), and the Supreme Court ruling reinterpreting the constitutionality of the numerical basis for affirmative action enforcement.

5 Such as the Republican House sponsored Equal Opportunity Act, which seeks to eliminate the numerical basis for enforcement of affirmative action.

6 See Kit Lively, Jeannie Wong, Jack McCurdy, Patrick Healy, and Stephen Burd, "California Students Rally for Affirmative Action," *Chronicle of Higher Education*, vol. XLII, no. 8., Oct. 20, 1995, pp. A28–A29.

7 See Mortimer B. Zuckerman (ed.), "America's Best Colleges: The 1996 Directory of Colleges and Universities," *U.S. News and World Report*, (1995), Washington, D.C., p. 9.

8 See also Christopher Shea, "New Students Uncertain About Racial Preferences," *Chronicle of Higher Education*, vol. XLII, no. 18, Jan. 12, 1996, p. A33.

others, and other peoples who lived on the land previous to the great migrations were removed from their ancestral homes for the "progress" of others. Internal migrations occurred for groups who sought a better life and freedom to practice religious beliefs and values. Even groups of people who migrated to these shores from Europe were forcibly removed from the new lands they called home.[9]

The history of the United States provides examples of strife based on differences in cultural values. The ideal of integration is in dialectical opposition to the needs of cultural identity. And, this conflict is demonstrated in the United States today. An example of this can be found in House Speaker Newt Gingrich's response to the Quebec referendum, "This demonstrates the dangers of bilingualism." Gingrich (and Senate Majority Leader Bob Dole) continued by calling for the constitutional establishment of English as the official language of the United States, which is not unlike various States (including Illinois) moves to establish "English only" laws.[10]

Given this historical context, this paper seeks to demonstrate the connection between cultural identity and civil rights, and between the social requirement of diversity and the promotion of equality through proactive measures such as affirmative action. To accomplish these goals, the paper will offer an interpretation of the first amendment to the U.S. Constitution which implies protection of cultural values.

The Social Requirement of Diversity

Many metaphors of common usage pay tribute to the history of this country as a land of immigrants. However, in our need to become "One Nation," many ethnic groups have attempted to mainstream into the "American" way of life by forgetting the old ways and languages. Our common history is rife with examples of ethnic groups immigrating into large city ghettos, particularly European immigrants of the early 20th century, and moving out. To be sure, this has not been the experience of all ethnic groups. Nor is it true that all ethnic groups maintain a sense of community with each other. Yet, in the present generation, there appears to be renewed interest among some groups to reestablish ethnic self-identity. In the universities, multicultural awareness has become a major theme in the core curriculum. Indeed, interest in the "other" has paralleled increase in ethnic strife both here and abroad.

Yet, with that increased interest in ethnic self-identity, has come stressors in our country regarding our attempts to ensure equality. The civil rights movement which ultimately started with the founding of this country, and struggled through the centuries to the signing into law the Civil Rights Act of 1964, is currently under attack. Causes for this can be as obvious as economic strife or as pervasive as a weariness of our collective guilt for not meeting the ideals we, as a nation, profess to believe. When a group of people feel threatened by another group, one possible reaction is protectionism, "a retreat into the fortress instead of openness, association, interaction and harmony."[11] Herein lies our responsibility to recognize the importance of our diversity, and how equality requires tolerance and promotion of that diversity.

Thomas Jefferson, and those who helped compose the Declaration of Independence, and ultimately the Continental Congress recognized the inalienable right of the citizen to pursue his or her individual course. It became apparent with the birth of the new nation, that governance should be "for the people," and so a constitution was drafted to protect the individual from the possibility of the tyranny of the government. The Bill of Rights

9 Acadians were deported from Acadia by the British into the middle to late 1700s even though the Acadians had been living there for over 150 years. At the time, laws existed in some colonies prohibiting the settling of Catholics, and a great distrust of persons of French descent existed all along the Atlantic seaboard. See James H. Dormon, *The People Called Cajuns: An Introduction to and Ethnography*, Lafayette, LA: The Center for Louisiana Studies, Southwestern Louisiana University.

10 That is, Illinois and 21 others. See Brian Lee, "Immigration: An Illinois Portrait," *Illinois Issues*, vol. XXII, no. 1, January 1996, pp. 17–21.

11 See Federico Mayor, "Unfettered Freedom," *UNESCO Courier*, May 1995, p. 38.

which sought those protections became the first amendments of the U.S. Constitution. The most essential of those rights became the first amendment. "The first amendment enables that pursuit (to follow one's own course specified in the Declaration of Independence) by reserving the right to the individual the option to believe or not believe, to speak, to write, to assemble, and to criticize the government."[12] "The American Government is premised on the theory that if the mind of man is to be free, his ideas, his beliefs, his ideology, his philosophy must be placed beyond the reach of the government."[13] This amendment assured citizens the right to choose to believe (freedom of religion) and express those beliefs (freedom of speech) without fear of repression. It also allowed for individuals to assemble, for whatever purpose, without government interference. These rights were not granted unconditionally, but provided for the possibility of limitation on the grounds that the rights of others where not unduly fettered by the actions of an individual or group. That is, the First Amendment provided for equality by requiring the allowance of a diversity of beliefs and expressions: One voice would not be allowed to silence others.

Some constitutional scholars have argued that the community, whether local or national, maintains the right to limit speech which it deems harmful. The example of pornography and other forms of mediated communication come to mind. The argument of social harm was also used to silence the American Communist Party in the early part of this century. The basis for this argument is the notion that a democracy progresses through the competition of ideas, and that the majority will come to the best conclusions about the direction of their community and what constitutes harm. Therefore, those ideas which are rejected by the majority can be limited. This collectivist notion places the responsibility for making the determination regarding which ideas will be allowed clearly with the majority, or with those responsible for enforcing the wishes of the majority. However, the [Meiklejohnian] notion that government can and should "distinguish between speech that is worth hearing versus speech that is not worth hearing" was questioned in *Cohen v. California* (1971): Public discourse occurs to ensure that differing opinions are heard.[14] Indeed, as we shall see below, meaning, understanding and knowledge itself is gained through discourse.

Yet, the freedom of speech clause should be internally consistent with the freedom of religion clause. The framers of the Constitution placed these two freedoms within the same amendment presumably due to their relatedness. The freedom to express a belief is inextricably tied to the freedom to have a belief. And, the freedom to have a belief is an inalienable human right (see following argument). "The "establishment of religion" clause of the first amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."[15] In other words, the first amendment specifies a strict separation of church and State. What is the purpose of this separation? This separation allows the individual to believe as he or she sees fit without interference from the government.

Although the freedom of religion clause uses the term "religion," it implies, and has been widely interpreted to mean, the freedom to choose one's beliefs. It may also be interpreted to mean the freedom to choose one's own values since values are often considered a product of religious socialization. Yet, value systems are not merely a product of religious socialization but also a product of cultural and ethnic identity. Religion, culture and ethnicity often correlate, though not necessarily always, in highly predictable ways.

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12 John Frohnmeyer, "Freedom, Order, and the Right to Speak," *The Masthead*, vol. 47, no. 1, Spring 1995, p. 18.

13 William O. Douglas, "Interview," *New York Times*, Oct. 29, 1973; cited in George Seldes, *The Great Thoughts*, New York: Ballantine Books, p. 113.

14 Jeffrey Rosen, "Democracy and the Problem of Free Speech," *The New Republic*, vol. 210, no. 6, Feb. 7, 1994, p. 35.

15 Emerson v. Board of Education, 330 U.S. 1, 15 (1947).

Religion and culture, to be sure, are defined by systems of values. Although religion may be recognized by its formal institutions, what differentiates one religion from another are the shared symbols of its practitioners, not unlike a culture. Ethnicity is also recognized by its shared symbols. The main example of shared symbol systems which distinguish ethnic groups is language.

"Language and culture are inseparable."[16] Indeed, social history is revealed through language, and individuals are socialized through language. It is in this sense that language produces knowledge.[17] Michel Foucault argued that knowledge is created through discourse which is dependent upon the rules of the community of communicators (the culture).[18] Values create expectations (or rules) by which meaning is constructed by participants in their discourse. Meaning is a function of interpretation,[19] which is dependent upon the already existing rules of the culture. It is the dialogic process which fertilizes thought.[20]

Values, constituted through and by language, are also inextricably linked to culture. If the freedom to choose one's values is implied by the first amendment, then also implied by the first amendment's protection of religion is protection of culture. Although this connection between religion and culture, and between beliefs and values, has not been made formally through judicial interpretations, it can be shown that the ideals of freedom and equality otherwise require attention to culture and value.

It has been observed by philosophers, such as Thomas Aquinas, that the individual has an essential freedom of will, which is the ability to choose and to interpret. This essential freedom to choose allows the individual to construct a self-identity. However, this self-identity is not completely self-imposed. Self-identity, as is language, is constructed through discourse with the other. Ruesch and Bateson offered a model for describing the development of self-identity through discourse.[21] They argued that the individual develops self-identity not only through private interpretation, but also through interpersonal interaction with another and the discourse which occurs at the social and cultural level. Ultimately the individual has to choose which messages will describe his or her self-identity, and these acts of will make the self.[22] It is the ability to act upon the will that allows for the construction of self-identity. In this way the connection between essential and effective or existential freedom is necessary. The expression of one's belief about self, and the attendant values that make up the self, is necessary for the development of the self. Discourse allows for the development of self and a sense of identity. Without such discourse, the project of the development of self-identity would be difficult, if not impossible, to maintain.

If the self is developed through discourse with one's own culture, then the culture, as well as the self, must be granted the same freedoms. The presence of one culture does not negate others, although the presence of many cultures, in one society, may necessitate the need for tolerance and protection of all of those cultures. Tolerance and protection of a culture may appear as restric-

16 See Patricia Bizzell and Bruce Herzberg's discussion of the rhetorical theories of Henry Lous Gates, Jr., in *The Rhetorical Tradition: Readings from Classical Times to the Present*, Boston: Bedford Books of St. Martin's Press, (1990), p. 1186.

17 Giambattista Vico, *On the Study Methods of Our Times*, (1709); edited and translated by Elio Gianturco, New York: Macmillan (1965).

18 Michael Foucalt, *Archaeology of Knowledge*, (1969); translated by A.M. Sheridan Smith, New York: Pantheon Books (1972).

19 I.A. Richards and C.K. Ogden, *The Meaning of Meaning*, London: Routledge & Kegan Paul, Ltd. (1923).

20 Giambattista Vico, *On the Study Methods of Our Times*, (1709); edited and translated by Elio Gianturco, New York: Macmillan (1965).

21 Jergen Ruesch and Gregory Bateson, *Communication: The Social Matrix of Psychiatry*, New York: W.W. Norton (1951).

22 See Bernard Lonergan, *Understanding and Being: An Introduction and Companion to "Insight," the Halifax Lectures*, New York: Edwin Mellon Press; see also, Frithjof Bergman, *On Being Free*, Notre Dame, IN: University of Notre Dame Press.

tions upon other cultures. However, " . . . true freedom is not . . . an absence of restrictions but a real opportunity to make projects and to carry out those projects in one's life."[23] Such projects include the development of self-identity. As Thomas Paine observed, "He who would make his own liberty must guard even his enemy from oppression; for if he violates this principle, he establishes a precedent that will reach himself."[24]

As argued above, some scholars maintain that the public good (collectivist) principle should be applied to interpretations of the first amendment. A widely held idea which has often been termed "cultural imperialism" concludes that the homogenization of American culture is necessary for progress. Adherents to this notion call for "English Only" laws as well as an adherence to an orthodoxy of learned texts. The problem of who gets to choose what constitutes the important texts of the American culture is never addressed beyond the conclusion that the majority shall decide. What is ignored in the discussion is the fact that " . . . the first amendment absolutely protects individual conscience from majority rule."[25] If the individual is defined by the discourse in which he or she engages, then the individual is not truly free when the discourse is determined by majority rule.

Although the individual may choose to participate with the mainstream culture, unwanted homogenization of self-identity amounts to forced cultural assimilation, which is an imposition of values on the individual: Homogenization is clearly not in the spirit of the Constitution and Declaration of Independence as interpreted through the centuries. Such imposition misses the value of the other, and interprets the value of the other without consideration of the context of self-identity within one's own culture, therefore limiting the individual's ability to exercise his or her essential and existential freedom. Furthermore, such imposition devalues the importance of the dialogic process, which is necessary for social progress.

If society espouses the ideals of freedom, it must allow for the diversity of values. In a pluralistic society, great care must be taken to safeguard such diversity.

Plurality and Affirmative Action

If it is the case that promotion of equality is a social and constitutional requirement of our society, then our society must take measures to achieve such equality by allowing diversity. The reality of inequality based on the intolerance of diversity demands proactive measures. As John F. Kennedy requested,[26] as a nation we must make equality a reality in voluntary and legislative action. Affirmative action is one such measure.

However, the implementation of affirmative action must take in a wider scope of individual characteristics then the simplistic and reductionistic sociological category of race in order to ensure ethnic and cultural diversity which may exist within and between racial groups. The taxonomic category of race pertains to physical characteristics of descention. These characteristics of race are often associated, and therefore confused, with ethnic and cultural identity because of historical tendencies of individuals to associate and therefore marry within their own communities. This argument does not purport to deny the history and present existence of race-based discrimination. Yet, the reality of our American experience is that through the exchange of ideas and values, individuals of varying racial characteristics have been allowed to choose, in more or less restricted ways, the cultural community with which they wish to associate. If the goal of

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23 Julian Marias, cited in Federico Mayor, "Unfettered Freedom," *UNESCO Courier*, May 1995, p. 38.

24 Thomas Paine, cited in John Frohnmeyer, "Freedom, Order, and the Right to Speak," *The Masthead*, vol. 47, no. 1, Spring 1995, p. 18.

25 Ibid.

26 Civil rights message of June 11, 1963, transcribed and published in James R. Andrews and David Zarefsky, *Contemporary American Voices: Significant Speeches in American History, 1945–Present*, New York: Longman, (1992), pp. 73–77.

affirmative action is to promote the equality of persons in a diverse society, then it must take into consideration that diversity.

The promotion of the ideals of equality require diversity. Calls for limiting the number of groups that can apply for minority status, as per the Maine and Colorado initiatives, work against such ideals in the name of the "public good" or by ascribing to a criteria of equality which ignores the historical and present exigencies. Tendencies to reduce issues of equality to a binary opposition between members of opposing classes, whether it be by gender, race or any other classification, ignore the complexities of self-identity and the resulting personal experiences of individuals and communities. The documents upon which the governance of this country are based, the Declaration of Independence and the Constitution, demand adherence to the ideals of equality for all. As Justice Harlan stated, "our Constitution is colorblind and neither knows nor tolerates classes among citizens."[27] It is the responsibility of the citizenry, and those elected to represent the citizenry, to assure through voluntary acts and through legislation that the ideals of equality for all are protected, maintained and ultimately reached. For in the often quoted words of Thomas Paine, "We hold these truths to be self evident; that all men [sic] are created equal . . . "[28] there lies our responsibility.

Recommendations

1. Promotion of the goals of affirmative action requires attention to the historical and present exigencies of inequality and diversity, whether they be racial, cultural, or of some other sort.

2. Attention to the connection between the protections guaranteed by the first amendment of the Constitution and the promotion of diversity, must be forthcoming in policy statements regarding legislation insuring equality, such as affirmative action.

3. The implementation of programs promoting equality must be uniformly applied so as not to "silence some for the benefit of others," but rather to give voice to all for the benefit of all.

27 Plessey v. Ferguson, 165 U.S. 537 (1896), J. Harlan dissenting.

28 Submitted to Thomas Jefferson by Thomas Paine and ultimately embodied in the *Declaration of Independence*.

Affirmative Action: Still Needed After All These Years

By Samuel Rosenberg

Affirmative action in employment is extremely controversial. The most vocal critics argue that it is no longer needed. Labor market discrimination has disappeared. As a result, today's beneficiaries of affirmative action may not, themselves, have ever experienced employment discrimination. And white males today who may not, themselves, have ever benefited from the existence of racial discrimination in the labor market are being forced to pay for the sins of their forebears. Affirmative action in employment is tantamount to reverse discrimination.

Not only is affirmative action said to be an inappropriate policy for a nonexistent problem, it is also thought to interfere with economic efficiency. Requiring employers to use racial criteria in hiring and promoting workers likely leads to less qualified individuals being hired and promoted.

The critics of affirmative action are wrong. Labor market discrimination along racial lines still exists, thereby necessitating affirmative action policies to remedy current discrimination. Furthermore, such discrimination interferes with the overall efficiency of the economy. Thus, affirmative action is still needed on both equity and efficiency grounds.

There are three main sections to this paper. In the first section, results of audit studies, employer interviews, and large-scale statistical analyses are presented documenting the continued existence of discrimination. With these data as a base, the second section provides theoretical support for affirmative action as a policy for remedying discrimination and improving economic efficiency. The third section presents evidence that many African-Americans have benefited from affirmative action policies.

Racial Discrimination in the Labor Market

Labor market discrimination occurs when two equally qualified individuals are treated differently solely on the basis of, for example, their race. If discrimination did not occur, an individual's race would not be taken into account in company personnel decisions. Rather, all that would matter would be the individual's skills and capabilities. Where discrimination exists, however, equally productive African Americans and white men and women (that is equally productive in the absence of discrimination) would not hold the same jobs or receive the same pay. Instead, African Americans would receive less pay or be in worse occupations than whites.

Audit studies, employer interviews, and large-scale statistical analyses have been utilized to investigate racial discrimination in the labor market. Taken as a group, they provide clear and convincing evidence that racial discrimination has not been eradicated from our society.

Some of the most well-known audit studies have been performed by the Urban Institute in Chicago and Washington, D.C. They were designed to investigate the job opportunities facing young African American men and white men. The subjects in the audit studies were pairs of men, aged 19–24, similar in terms of physical characteristics, personality and speech but varying in race. They were given false resumes stating they had similar educational backgrounds and work experience and were sent out to apply for the same jobs advertised in newspapers. Would both the African American member and white member of the pair be similarly treated in the interview process and would they be equally likely to receive a job offer?

In both cities, a majority of the employers gave equal treatment to both members of the pair in the process leading to the interview. But where racial differentials existed, they more often than not favored the white applicant. White men in Chicago received better treatment in 17 percent of the audits and blacks in 7 percent. The racial difference was more pronounced in Washington, D.C. There whites received more favorable treatment in 23 percent of the audits and blacks in 7 percent. However, if an interview was eventually granted, African Americans in Chicago were favored slightly more often than whites while in

Washington, D.C., African Americans received distinctly worse treatment than did whites.[1]

The bottom line in applying for a job is gaining an offer of employment. Here, once again, in a majority of cases there was no disparate treatment by race. But if only one member of a pair was offered a position, more often than not it was the white applicant. Where this occurred in Chicago, it was the white applicant 10 percent of the time and the African American applicant 5 percent of the time who received the offer. The racial differential was wider in Washington, D.C., where the white applicant was hired 19 percent of the time and the African American applicant only 6 percent of the time.

Furthermore, looking at the results of each audit pair individually, in virtually all cases the white member of the pair was more likely to be hired where there was differential experience by race. This was the case for each of the five audit pairs in Washington, D.C., and four of the five audit pairs in Chicago.[2] It was the higher paying, higher status positions and those requiring customer contact where African Americans were more likely to experience unfavorable treatment.

The audit study has its limitations, particularly the small number of audit pairs. Nevertheless, while many employers treated African American and white men the same, there is strong evidence that racial discrimination in hiring still occurs in Washington, D.C., and, to a lesser extent, in Chicago.

Employer interviews in the Chicago area provide supporting evidence of the important role being played by racial discrimination in the hiring process. However, Kirscheman and Neckermann find that while race is of primary concern, it is not just race but rather race combined with social class that limits the employment opportunities of African Americans. And, they "were overwhelmed by the degree to which Chicago employers felt comfortable talking with us . . . in a negative manner about blacks."[3]

The audit studies are relatively small-scale and minimal statistical analysis can be done with the findings from the interviews of Chicago area employers. Large-scale statistical studies provide further evidence of the continued existence of racial discrimination in the labor market. Racial wage differentials widened for both men and women in the 1980s.[4] There is a large literature attempting to explain the racial wage differentials which remain after taking account of available measures of individual "productivity" characteristics. And, at least a portion of the "unexplained" remaining differential, if not the entire "unexplained" remaining differential, can be attributed to racial discrimination.

Yet, what accounts for the discrimination? Is it unequal pay for equal work? This is less likely. Rather, a more plausible explanation is unequal access to better paying entry-level positions and, thereby, unequal access to promotion possibilities.

In contrast to the many large-scale statistical studies of racial differentials in compensation, there are fewer large-scale statistical studies of racial discrimination in hiring and promotion de-

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1 W. Zimmermann, "Appendix: Summary of the Urban Institute's and the University of Colorado's Hiring Audits," in *Clear and convincing Evidence: Measurement of Discrimination in America*, (1993) M. Fix and R. Struyk, eds., Washington, D.C.: The Urban Institute Press, p. 407.

2 James Heckman and P. Siegelman, "The Urban Institute Audit Studies: Their Methods and Findings," in *Clear and Convincing Evidence: Measurement of Discrimination in America*, (1993) M. Fix and R.J. Struyk eds., Washington, D.C.: The Urban Institute Press.

3 J. Kirscheman and K. Neckermannn, "We'd Love to Hire Them . . . But: The Meaning of Race for Employers," in *The Urban Underclass*, (1991) C. Jencks and P. Peterson, eds., Washington, D.C.: The Urban Institute Press, p. 207.

4 See D. Anderson and D. Shapiro, "Racial Differences in Access to High-Paying Jobs and the Wage Gap Between Black and White Women," *Industrial and Labor Relations Review*, vol. 49, no. 2, January 1996; J. Bound and R.B. Freeman, "What Went Wrong? The Erosion of Relative Earnings and Employment Among Young Black Men in the 1980s," *Quarterly Journal of Economics*, vol. 107, no. 1, February 1992; E. McCrate and L. Leete, "Black-White Wage Differences Among Young Women," *Industrial Relations*, vol. 33, no. 2, April 1994.

cisions. But the analyses which have been done do support the continued need for a strong affirmative action policy.

Gill analyzes the relative importance of measured "productivity" characteristics, differences in job preferences, and differential access to preferred jobs (taken as a measure of discrimination) in explaining the differences in occupations held by African American and white men. Hiring discrimination was the primary explanatory factor, accounting for three-quarters of the observed differences in occupational attainment across racial groups.[5]

Using 1984 data, Baldwin and Johnson find that African American men are more likely to be employed in low-skill occupations than white men and receive lower wages.[6] Differences in individual productivity explain only a small portion of the racial differentials in earnings. Rather, approximately two-thirds of the racial differentials reflect employer discrimination. Given this result, they speculate that racial differentials in occupational attainment are also likely affected by discrimination.

Differential access to jobs and promotion possibilities may help to explain the recent widening of racial pay differentials among women. Power and Rosenberg examine the occupational mobility patterns of African American and white women clerical workers from 1972–1980. African American women were concentrated in lower-paying clerical positions and were less likely to leave clerical work for better paying jobs in other areas, as compared with white women. Even those African American women working in relatively good clerical jobs tended not to rise any further and even experienced some difficulty in maintaining their occupational status. One manifestation of discrimination faced by African American clerical workers is that education and training aided occupational mobility less for them than for white women clerical workers.[7]

A similar story can be told for women in service work. Power and Rosenberg investigate the occupational mobility patterns of African American and white female service workers from 1972–1988. African American women experienced considerably less occupational mobility than white women and were more likely to get stuck in low-paid service positions over the long-term.[8]

Clerical and service jobs are generally low-paying. There are also racial differences among women in access to higher paying positions. In 1988, African American women who completed college suffered less racial discrimination than African American women at lower educational attainment levels. Holding education constant for levels of schooling below college graduate, a greater percentage of white women than African American women held better paid white collar occupations and a greater percentage of African American women than white women held lower paying operative and service jobs. Overall, more than two-thirds of the racial difference in occupational attainment can be attributed to racial discrimination. That African American women are disproportionately found in lower paying occupations is a major factor in explaining the racial wage gap. This gap widened after 1980 and Anderson and Shapiro (1996) hypothesize that an increase in labor market discrimination, consistent with the Reagan administration's deemphasis in fighting discrimination, was an important factor in the recent decline in the relative economic standing of African American women.

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5 A. Gill, "Incorporating the Causes of Occupational Differences in Studies of Racial Wage Differentials," *Journal of Human Resources*, vol. 29, no. 1, Winter 1994.

6 M.L. Baldwin and W.G. Johnson, "The Employment Effects of Wage Discrimination Against Black Men," *Industrial and Labor Relations Review*, vol. 49, no. 2, January 1996.

7 M. Power and S. Rosenberg, "Black Female Clerical Workers: Movement Toward Equality with White Women?," *Industrial Relations*, vol. 32, no. 2, Spring 1993.

8 M. Power and S. Rosenberg, "Race Class, and Occupational Mobility: Black and White Women in Service Work in the United States," *Feminist Economics*, vol. 1, no. 3, Fall 1995.

Equity, Efficiency, and the Need for Antidiscrimination Policy

There is strong evidence that African Americans continue to experience worse treatment in the labor market than equally qualified whites. This constitutes racial discrimination and should be ameliorated via appropriate government policy, on grounds of improving equity in the labor market.

But the argument for antidiscrimination policy goes beyond just equity considerations. Rather racial discrimination interferes with the overall efficiency of the economy. Furthermore, the negative economic effects of invidious discrimination may be long-lasting. Baldwin and Johnson (1996) provide evidence that current wage discrimination by employers reduces the employment rate of African American men relative to white men. Furthermore, they argue the lower wages available to African American men, today, reduce their incentives to undertake training or education, thereby reducing their productivity in the future.

Their work raises the entire issue of the influence of labor market discrimination or the perception of such discrimination, both currently and in the past, on the current skills and qualifications of the work force. To what degree are differences in individual productivity across racial groups, today, related to earlier labor market discrimination or decisions made by individuals in response to perceptions of discrimination? For example, take the case of an employer sponsored training program, or on-the-job training. An African American man today may not be as qualified or as productive as a white man if the white man had earlier access to positions providing the opportunity for training and, thereby, occupational advancement while the African American did not, due to discrimination. It is economically rational, today, for an employer to pay a higher wage to the white employee than the African American employee or to hire the white man rather than the African American man. The racial wage differential or the differential likelihood of employment would not be considered discriminatory under the conventional definition of the term. Nevertheless the racial wage differential or differential likelihood of employment would be the legacy of past discrimination.

In addition, decisions taken by individuals prior to entering the labor market may be influenced by the perception or the reality of racial discrimination. African Americans may choose to leave school earlier or refuse to participate in vocational training programs due to a belief that they will be unable to find suitable employment opportunities. As a result, their employment options will, in fact, be limited. Such minimal employment prospects are often viewed as being due to their minimal qualifications. But it is often forgotten that their decisions were taken in a context colored by discrimination.

The indirect negative feedback effects hurt the overall efficiency of the economy. Many African Americans will not undertake as much education or training as they might in an environment where racial discrimination did not exist. Thus, society loses a valuable resource. Government intervention in the form of antidiscrimination policy is thereby required and, if properly implemented, will be economically efficient as well as socially desirable.

The Economic Impact of Affirmative Action

While there are several facets to Federal antidiscrimination policy, the particular program discussed in this paper is affirmative action. Since 1961, the Federal Government has required firms with Federal contracts to use "affirmative action" in hiring minorities and women. The Executive order under which affirmative action is currently enforced is Executive Order 11,246 issued by the Johnson administration in 1965 as amended by Executive Order 11,375 issued by the Nixon administration in 1974. The order imposed two obligations on Federal contractors. First, they must not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Second, whether or not they have been found to discriminate, they must take affirmative action not to discriminate. Taking affirmative action has come to mean developing affirmative action plans, including goals and timetables to provide a benchmark for good-faith efforts for improving the hiring of minorities and women. Technically, this is what affirmative action refers to. However, in everyday parlance affirmative action has come to mean all efforts to

improve job opportunities for minorities and women.

The most carefully constructed evaluations of the impact of affirmative action, in its more narrow sense, on the employment opportunities of African Americans are those comparing the relative presence of African Americans in the labor forces of firms which are Federal contractors compared with their relative presence in the labor forces of firms which are not Federal contractors. The evidence clearly shows that affirmative action policies, when relatively strongly enforced, have a positive impact on the employment of African Americans.

The Federal Government more effectively enforced affirmative action after 1973. The more aggressive enforcement was curtailed in 1981 when the Reagan administration took office. Between 1974 and 1980, African American male and female employment increased significantly faster in contractor establishments than in noncontractor firms. Furthermore, the relative rate of increase was even faster in contractor firms which experienced governmental compliance reviews than in contractors which did not face such governmental pressures. Overall, Leonard finds that affirmative action increased the employment growth rate of African American men by 0.84 percent per year and of African American women by 2.13 percent per year.[9]

In addition, a rapidly growing economy makes it easier for affirmative action to work. Affirmative action was more successful in firms experiencing rapid employment growth than in firms with lower rates of net job creation. Where there are more job openings, it is easier for employers to respond to Federal pressure to diversify their work forces.

Increased access to jobs is one goal of affirmative action. A second goal is to improve promotion possibilities for African Americans. Investigating occupational advance between 1974 and 1980, using broad occupational categories, Leonard (1990) finds that African American males' share of employment increased faster in contractor than in noncontractor firms in every occupation except laborers and white-collar trainees. Where compliance reviews occurred, there was a greater increase in demand for African American men in the more highly skilled white-collar and craft occupations. African American women increased their employment share faster in contractor enterprises than in noncontractor firms in all occupations, except technical, craft, and white-collar trainee.

Leonard's work indirectly approaches the influence of affirmative action on promotion possibilities. A more careful investigation of this issue would require a longitudinal study of individual workers over their careers to determine the long-term benefits to African Americans of gaining access to employment opportunities which may have otherwise been closed to them in the absence of affirmative action. To my knowledge, such a study has not yet been done.

Leonard's work represents a very positive evaluation of affirmative action. But his study ends in 1980 and during the first half of the 1980s both African American male and female employment grew more slowly among Federal contractors than noncontractors. To the extent that this pattern continued in the second half of the 1980s, it would point to the need for vigorous enforcement of affirmative action to make the policy work.

But even when vigorously enforced, affirmative action had only a limited impact on employment opportunities for African Americans. Throughout the 1970s, African Americans were more than twice as likely as whites to be unemployed. The racial unemployment differential did widen somewhat in the 1980s. Nevertheless, the size of the racial differential in unemployment rates, even in the 1970s, points to the possibility that all that affirmative action accomplished was to shift African American employment from noncontractors to Federal contractors rather than open up jobs for African Americans throughout the economy.[10]

9 Jonathon Leonard, "The Impact of Affirmative Action Regulation and Equal Employment Law on Black Employment," *Journal of Economic Perspectives*, vol. 4., no. 4., Fall 1990.

10 See F. Bloch, *Antidiscrimination Law and Minority Employment*, Chicago: University of Chicago Press (1994).

However, there is not any firm evidence that this, in fact, occurred.

Conclusion

It is now more than 30 years after the passage of the Civil Rights Act of 1964. Many African Americans continue to experience discrimination in the labor market. A governmental anti-discrimination policy is still needed to attempt to assure equal treatment for all participants in the labor market. And affirmative action, strongly enforced, should play a central role in any anti-discrimination policy.

Affirmative action is not a panacea for the barriers many African Americans face in gaining full-time, long-term jobs paying decent wages and providing chances for advancement. Its economic effects, while positive for many African Americans, have been limited. Nevertheless, if remedies such as affirmative action are eliminated, existing race-based inequalities in the labor market will continue to be reproduced. And the society will continue to pay the costs associated with not utilizing the potential skills and capabilities of the labor force to their fullest.

Affirmative Action: Equality of Opportunity and the Politics of Change

By Robert T. Starks

Affirmative action is commonly understood as a collection of programs initiated by the Federal Government in the mid-1990s directed towards giving historically disadvantaged racial, and ethnic groups and women the ability to compete on an equal basis with white Americans. The initial thrust of the program was to address the tragic and savage inequalities between African Americans and whites as a part of the overall civil rights thrust of the 1960s.

It was Lyndon B. Johnson's administration that made the decision to put together and implement the first set of programs that later became known as affirmative action following his bold sponsorship and passage of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the National Fair Housing Act of 1968. The Civil Rights Act of 1964 laid the basis for all of the subsequent affirmative action policy and programs. Title VII of this act forbade employment discrimination on the basis of race, sex, religion, and national origin. This legislation also established the Equal Employment Opportunity Commission (EEOC) to investigate complaints of employment discrimination. In 1965 President Johnson, in Executive Order 11246, forbade Federal contractors from discriminating on the basis of race, religion, or national origin.

The Office of Federal Contract Compliance (OFCC) was set up in the Department of Labor to perform the delicate job of monitoring contract compliance in 1966. In 1968 the OFCC directed large Federal contractors (50 employees or more) to draw up affirmative action plans. After years of protest and outrage over the exclusion of blacks from the construction industry, 1969 saw the culmination of these protest efforts in a national movement for the inclusion of blacks in the construction industry. The Nixon administration responded by establishing a contract compliance policy that required major construction companies to set goals and timetables for the hiring of black and other minority workers.

In 1977 the next major affirmative action step took place, i.e., set-aside policy. The local Public Works Capital Development and Investment Act of 1976 was amended by Congress in its Public Works Employment Action of 1977 to require a minimum of 10 percent of all Federal funds going to local or State public works projects for the purchase of supplies and services be set-aside for minority business enterprises (MBEs).

This specific designation of set-asides for minorities was perhaps the single most important triggering mechanism for the devastating anti-affirmative action movement that began in the mid-1970s and culminated in the 1995 Supreme Court decision *Adarand v. Pena*. *Adarand v. Pena* ultimately forced government affirmative action programs, especially set-asides, to be held to a much stricter and tougher standard than the original intent as a way of eventually eliminating the policy altogether. "The first major effects are being felt with the recent scrapping of a Department of Defense (DOD) program that had been extremely lucrative for minority contractors for nearly a decade."[1]

The elimination of the Department of Defense set-aside program was clearly a major blow to the efforts of blacks and other minorities to share in the Federal Government's largest single spending program. Many believe that the elimination of DOD set-aside programs was an opportunistic act precipitated by the Supreme Court decision because the DOD has not replaced those programs with any other programs that will allow for continued minority participation. Specifically, the set-aside program was based upon a "rule of two" policy which allowed DOD to reserve and award contracts to small disadvantaged minority companies contracts when there are two or more of them available and qualified. Under this

1 Smith 1996, 24.

program, minority companies have received almost $5 billion in contracts since 1987. With an annual goal of 5 percent set-aside to minorities, the DOD minority companies had $1 billion set-aside for them in 1994.[2]

The DOD decided to end the "rule of two" set-aside program because they were advised by the Justice Department that it might be unconstitutional using the standards set by the *Adarand v. Pena* decision. While DOD still retains some other affirmative action programs, including the SBA 8(a) Program, subcontracting requirements and the 10 percent price preference program; the most advantageous program is no longer in existence and there is no comparable program to replace it at this time.

Clearly, then, the Federal Government should repair and make changes in affirmative action programs where they are required by law. However, at the same time, it should change and amend laws, propose new ones, and institute new and amended programs and policies as a matter of course in order to preserve, protect, and maintain a strong commitment to affirmative action.

While set-aside programs may be offensive and objectionable to many white Americans, the only way in which many African American contractors can get a foot in the door in contracting with government is through affirmative action programs and a strong policy that mandates real measurable progress. Until a reasonable and workable alternative is found, we are left with affirmative action. The goal of *equal opportunity* that leads toward equality of results is unalienable, the means to that end is negotiable. Thus, the policy of this administration should be to repair and not retreat until a more effective alternative is found and/or *equality of opportunity* and results are achieved.

Perhaps the most damaging blow to affirmative action since the Supreme Court's decision in *Adarand v. Pena* occurred when Governor Pete Wilson abolished the affirmative action programs within the University of California system and gave his support to the California Civil Rights Initiative that will be on the November 1996 ballot. Governor Wilson added insult to injury by using a black businessman, Ward Connerly, who serves on the University of California Board of Regents, as the point man in the fight to eliminate affirmative action. Mr. Connerly agrees with the Governor in pushing the notion of a "color-blind" society by instituting "color-blind" laws, policies, and regulations.

So called "color-blind" policies are based upon the fiction that the absence of affirmative action programs will pave the way for social order based upon merit and equality of opportunity. On the other hand, the supporters of anti affirmative action in California claim that unqualified minorities are preventing well qualified white contractors and vendors from receiving contracts because of the set-aside provisions in the State's programs. Yet, upon close examination, one can only conclude that the State of California must have been doing something else that it has not revealed that constitutes discrimination against white contractors. According to the California Senate Office of Research as reported in the November issue of *Black Enterprise Magazine*:

- In 1991–92, only 4.23 percent of all State contracts went to minorities and 2.13 percent to women;
- The State spent $1.9 billion on construction projects in 1991–92. Of that amount, minority contractors received about $225 million, or 12 cents of every dollar.
- The Department of Transportation, the State's largest builder, commonly referred to as Caltrans, spent $1.1 billion on roadway construction in 1991–92. About 15 cents of every dollar went to minority contractors.
- The California State University system in 1991–92 spent $262.5 million on construction projects, of which about 9 cents of every dollar went to minority-owned construction companies. Of the $830.6 million the University of California system spent on construction in 1990–91 and 1991–92, minority contractors received about 10 cents of each dollar.[3]

2 Ibid.

Thus the angry white male mantra of "reverse discrimination" remains the cover for one of the biggest frauds in American history, i.e., *that affirmative action has resulted in billions of dollars going to thousands of undeserving black and minority persons and this "undemocratic" and "unconstitutional" practice does irrefutable harm to poor defenseless white males.* The reality is that white men have benefited more from affirmative action programs at the Federal, State, and local levels than black people through the use of white women front companies. Many of these companies are, in fact, owned and controlled by white men who use their wives as fronts to secure the contracts. This fraudulent practice is conveniently overlooked and rarely mentioned by the opponents of affirmative action. Even when we subtract the fraudulent cases of women front businesses, white women on their own end up being bigger beneficiaries of affirmative action than African Americans. Yet time and time again these programs are painted as black preferential programs that practice "reverse discrimination."

"Reverse discrimination" is a gross fallacy and a cruel hoax being played upon the American people. Since the 1976 publication of Nathan Glazer's book, *Affirmative Discrimination*, and the coinage of the phrase "reverse discrimination," there is still no serious formal legal definition of the concept. There is no evidence of any serious case log of incidents of "reverse discrimination" reported by the U.S. Department of Justice or the EEOC. On the other hand, there are thousands of cases each year of racial discrimination based upon real, measurable, and documented incidents reported by black Americans.

The only rational conclusion that can be reached after logical examination of the evidence in this argument is that "reverse discrimination" is a purely fictional political construct used by antiaffirmative action advocated to bludgeon affirmative action into oblivion purely on political and propaganda grounds. This amounts to "color-blind racism," i.e., a policy in which decisions are made in a manner that is "color-blind" only in the case of African Americans. In the case of African Americans, color is not considered when policy decisions are made because blacks are not considered in any manner. This is the cancerous side of Daniel Pat Moynihan's 1969 notion of "benign neglect." It is cancerous neglect in that it turns a blind eye to the persons who need the most help. "Color-blind racism" is real and evident.

One last argument that is used by the anti-affirmative action movement is that affirmative action has outlived its usefulness. This argument is boldly stated in the face of the reality that is has only been in existence for 30 years. Ward Connerly equates affirmative action with two aspects of slavery, i.e., a dependency and domination. While he accuses black supporters of affirmative action of believing that they are unable to succeed without special consideration and help from government, he admonished African Americans to adopt the thriftiness and scholarship of the Vietnamese and other Asians.

However, Connerly concurrently neglects to point out that the businesses of many Asian groups are sheltered and incubated by Federal Government affirmative action programs that are targeted to refugee populations. Further these groups in some cases, for example from Korea and India, have available to them the protection and favorable trade arrangements of their countries of origin. This amounts to affirmative action on both ends of the spectrum.

It is improper to compare these cases and conclude that African Americans are dependent and lack initiative when in the words of Herbert Hoover, "the business of America is business." It is the United States government and its affirmative action on behalf of the Fortune 500 companies in the international and domestic market places that has allowed for the world wide dominance of American industry in the 20th century. U.S. government affirmative action big business ranges from the Department of Commerce information services to tax write offs and special incentives and old fashioned "gun boat diplomacy." No one has ever accused the Fortune 500 of having a slave mentality. Trade association lobbyists are

3 *Black Enterprise Magazine*, November 1995, p. 138.

the affirmative action hustlers for American business.

Since Asia is the most serious rival to America's continued dominance of world trade in the 21st century and they are the supreme practioners of affirmative action for their major industries by providing everything from planning to legislative protection and subsidies, America will probably have to increase its affirmative action in major industries in the 21st century in order to be able to compete in the world market. At the same time I know of no economists who advocate an antiaffirmative action movement directed towards business. Instead, they see the continued existence of such programs as necessary to the existence and growth of American commerce and industry.

Affirmative Action and a Just Society

Affirmative action is compatible with a just and democratic society. Indeed, it is the only available and workable remedy for inequality in society at the moment. Until a reasonable alternative is found, this is the remedy. MIT economist Lester Thurow, in his 1980 book, *Zero Sum Society*, defends affirmative action as follows:

> If a fair race is one where everyone has an equal chance to win, the race is not fair even though it is now run with fair rules. To have a fair race, it is necessary to (1) stop the race and start over, (2) force those who did not have to carry weights to carry them until the race has equalized, or (3) provide extra aid to those who were handicapped in the past until they catch up.[4]

A "fair race" should be the ultimate goal of any democracy. America has never been without affirmative action, quotas, discrimination, and all of the very "evils" attributed contemporary affirmative action as a solution.

4 *Zero Sum Society*, MIT Press (1980), p. 230.

III. Community Perspectives Regarding Affirmative Action

Affirmative Action in Multiracial America

By Jeryl Levin

The United States has always had its dueling narratives. At one end is the powerful symbol of the Statue of Liberty, her torch extended, welcoming the European masses to the land of opportunity; at the other sits the narrative of the slaves, uprooted from homelands and brought over in chains 400 years ago. This is the black and white narrative of America; a narrative yet to be reconciled amid all the other narratives of 250 million Americans, five racial orders, more than 100 ethnic groups, and shifting racial and ethnic identities that continuously define and redefine the Nation's demographics.

It is impossible to separate affirmative action from the history of the United States and its people; women and men, black and white and pretty much every color and combination under the sun who believe in its democratic institutions and fought heroically to strengthen them. Yet affirmative action has to be placed in the context of the civil rights revolution, a revolution propelled by the demands of African Americans for social justice. It was not until a decade later that women, Latinos, and Asian Americans were able to organize themselves as protected classes or minorities in the United States social order. In fact, prior to 1971, Mexican Americans were considered "white," and Arab Americans are still considered so by the United States government.

So on one hand, affirmative action was the concession made by the United States government to black groups vocally demanding the 40 acres and a mule promised but not delivered. My sense is that civil rights groups are still waiting for America to make good on that promise. Up until several years ago, one often hear the claim made by civil rights leaders that affirmative action was woefully inadequate. The policy now under scrutiny and attack, these same leaders have muted their voices, afraid that the gains they have made will be lost altogether. Unfortunately, muted voices do not proffer solutions.

It was not until well after black Americans had raised the Nation's consciousness in the 1960s that women and other minorities found their niche under that vast umbrella of affirmative action. As a consequence, affirmative action expanded to include them too, becoming diluted in scope, purpose, and definition.

The term affirmative action first entered the public lexicon in 1961 under Executive Order 10,925, which established President John F. Kennedy's Commission on Equal Opportunity. Its language is very precise. Referring to contractors who did business with the Federal Government, Executive Order 10,925 stipulated that "The contractor will take affirmative action to ensure that applicants for employment and employees are treated during their employment, without regard to their race, creed, color, or national origin." The Civil Rights Act of 1964 appropriated this same language and according to Nicolaus Mills, editor of the book, *Debating Affirmative Action*, this was the last time affirmative action would have such a clear and circumscribed meaning.

Contemporary discussion of affirmative action cannot be limited to the language contained in E.O. 10,925. Various Supreme Court decisions and legislative rulings have so muddied the waters that when we talk about affirmative action, we cannot even agree on our terms. Is affirmative action simply the agreement not to discriminate against any individual based on race, creed, color or national origin; or is it goals and timetables, quotas, equality of results, adverse impact, disparate impact, race norming, institutional racism, discrimination, reverse discrimination, minority set-asides, etc.? Or does it simply mean a commitment to diversity, to make America's public and private institutions look like America? And if the

latter vocabulary is more acceptable than quotas, how do we insure that good will and motivation are enough. In other words, how do you have effective affirmative action without counting heads.

I do not believe there can be effective affirmative action without careful monitoring of hiring practices. But the problem with counting heads is that America is a mixed up place that promises to become even more racially mixed up as Americans intermarry across racial and ethnic lines. The end result is that we are caught between dueling realities. One treats race as a purely political concept, i.e., physical characteristics as defined by the black-white history of the country, and the other as a biological construct, whose meaning becomes increasingly complex as millions of Americans intermarry across racial and ethnic lines.

I believe that the powerful and omnipresent threat of urban unrest dictated how various United States presidents would use affirmative action as a bargaining chip to keep the peace — to avoid addressing increasing class stratification and the loss of traditional jobs that provided a stepping stone to the middle class for virtually every ethnic group including African Americans. How else to explain the expansion of the Philadelphia Plan under a Republican President whose opposition to civil rights was well documented. Nixon's administration also strengthened compliance reviews, sued Bethlehem Steel for age and racial discrimination, and won major concessions from AT&T—all against the backdrop of urban riots and joblessness, particularly among young blacks. Nixon's reaction to urban unrest is an interesting contrast to California Governor Pete Wilson's response to the 1992 Los Angeles riots, whereby Wilson joined by Ward Connelly, an African American, have led the State in opposing affirmative action.

Affirmative action in its present form is a generic policy covering a range of multifaced social programs that are intended to benefit an arbitrary range of disadvantaged groups or protected classes: women and minorities (many of whom are immigrants) and the physically disabled. It is a policy that has served both Republican and Democratic administrations fairly well—that is, until the last decade. Despite claims that affirmative action is expensive, it has been a relatively cheap alternative to addressing economic realities that affect virtually everyone regardless of race. So what if a few white males think they are getting burned under affirmative action? White males do not burn cities down, do they? So while it appears that women, minorities, immigrants of the protected classes and so on enjoy the fruits of so-called preferential treatment, CEOs of major corporations are pocketing unprecedented salaries, stock options and perks, and the gap between rich and poor, black and white, continues to grow.

Adding to the uncertainty is the call for less government and the elimination of jobs that have been the African American community's stepping stone to the middle class. As one writer to the op-ed page of the *Chicago Sun-Times* put it shortly after it was discovered that postal workers were burying or destroying U.S. mail: "White Americans may look at the post office and see a bloated and inefficient bureaucracy; black Americans look at the post office and see jobs."

But topics like *Brazilianization* or the downsizing of America are issues for other papers. The role of women in the affirmative action debate also is a separate issue, although the women's movement and the African American quest for social justice converged to create at least a temporary coalition between white women and minorities. University of Colorado scholar William Wei has also written about this convergence in regard to Asian Americans, who are increasingly finding their collective voice in the thicket of identity politics. What cannot be addressed in this paper is whether affirmative action is solely responsible for producing the black middle class, or if in its absence more cities will burn, or whether it and it alone opened up opportunities for women and others, be it on construction sites or in the board room.

What I hope to address is the conflicting way I and others I know feel about a policy that try as we may cannot be summed up neatly; cannot be naively dismissed as reparations for slavery; has no foreseeable closure, and reinforces race as a permanent feature of American life, while at the same time race and ethnicity undergo vast transformations because people are doing what they have been doing since time immemorial—falling in love and marrying across racial and ethnic lines.

Looking toward the future I think about the growing number of Americans who refuse to identify racially, even though they may feel very much a part of a culture or an ethnic group. These are not just white Americans, many who scoff at the idea of a new social order that would label them European Americans, but biracial and multiracial Americans as well. It is the later group, ironically, who may for the first time in American history, have the freedom to openly celebrate their identities, identities which not so long ago branded people mongrels, oreos, bananas and so on. I do, however, understand African American opposition to intermarriage and frustration with the politics of the biracial movement. The shameful legacy of race, the exploitation of black women at the hands of white slaveowners and the white racist contention that intermarriage with blacks was biological treason speak for themselves.

But stay with me as I fast forward to the next census and beyond. We currently have five categories of racial ordering. They are African American, white, Hispanic, Asian American and American Indian.

The collective voices of each identity movement reflects their numbers, numbers which differ vastly from State to State. Each state, furthermore, has a distinct historical relationship with its peoples. Mexican Americans in Texas, Asian Americans in California or Puerto Ricans in New York City, for example, carry with them different historical memories than, say, these same groups who may have migrated to the middle west generations ago. Patterns of social and political mobility and assimilation do differ from State to State.

Intermarriage or amalgamation has often been defined by sociologists as the final step in becoming American. Interestingly, most sociologists characterize amalgamation as minority/majority intermarriage. Deconstructed, these theories clearly reveal the thinking that America is indeed a white country and to assimilate means to become white. Intermarriage between and among American minorities, many of whom predate the Mayflower, is rarely characterized in the same terms. In the last three decades, this thinking has been challenged by people of color, as well as whites. In many respects this battle illustrates the fault lines between multiculturalists and their adversaries. Aspects of this battle also underscore the difficulty of affirmative action in its present form.

Intermarriage across racial and ethnic lines has been on the rise for decades and many mixed race Americans, i.e., the offspring of white/minority parents, are pushing for an expansion of the racial ordering to include a biracial or multiracial category on the United States census.

Expansion of the racial ordering will present further challenges to the constitutionality of affirmative action, a policy that is based on the current racial ordering of majority/minority populations in the United States. Queens College anthropologist Roger Sanjek, who has studied intermarriage among racial populations in New York City reports, "It is well documented that Hispanics and Asians become more likely to marry whites with each generation of residence in the United States, and as income and education levels increase." Sanjek points to a similar scenario that has historically applied to white ethnic intermarriage, a factor he attributes to the small but growing number of whites who identify only as American when ethnicity is posed. Sanjek attributes this racial intermixing to social networks that are more inclusive, i.e., relaxed integration standards in housing and more liberal social mixing between whites and Asians and Hispanics. The field of potential marriage partners increases exponentially as discrimination against these groups decreases. Greater incidences of intermarriage between Asians and Hispanic and whites groups produces wider kinship networks, which in turn facilitate what Sanjek calls the "transmutation of race into ethnicity." I interpret this as a transmutation of race into culture, and culture into hybrid culture.

According to the 1990 census, black-white intermarriage was 3 percent nationwide, compared to 17 percent among Asians and Latinos. The low rate of intermarriage between blacks and whites can be attributed to a number of factors not limited to but surely inclusive of persistent racism. Blacks also live in highly segregated neighborhoods and experience as a result limited interaction with other ethnic groups, and hence, opportunities to meet potential marriage partners that are racially or ethnically different.

Given the racial social order reflected in affirmative action, what are we to make of the high rates of intermarriage between Asians and whites

and Hispanics and whites and the legitimacy of their offspring to identify as a protected class? Will the male offspring of such unions be excluded from affirmative action if white characteristics dominate? Will female offspring, regardless of characteristics be eligible for affirmative action? And what of black-white marriage? Small as it may be it is rising and as social and economic barriers erode, it will continue to increase. Will blackness continue to determine the political identity of offspring of interracial unions? What category will the white-looking offspring choose on the census form. If "other" or biracial is a choice, are biracial or multiracial people eligible for affirmative action? Will the categories of racial identity continue to expand as intermarriage between protected classes (many of whom are immigrants) and whites increases? How many categories and subcategories will be listed on the census before the Nation cries **ENOUGH**!

I believe that affirmative action was once a necessary remedy for the times. It forced America to look at itself and demand that it do the right thing in regard to African Americans. But affirmative action is not and has never been adequate reparation for slavery, even if President Lyndon B. Johnson fancied it so when he stood before his audience at Howard University in 1965, the year the Voting Rights Act became law. Johnson's words are often repeated: "You do not take a person who for years has been hobbled by chains and liberate him, bring him up to the starting line of a race, and then say, 'You are free to compete with all the others,' and still believe you have been completely fair."

It is difficult to make that leap and assume that Johnson's chain metaphor was all inclusive. It was not. That is the problem with affirmative action and, more broadly speaking, underscores the persistent, urgent, and largely ignored dilemma of race in America.

Affirmative Action: A Proactive Approach to Equality and Equity in Employment

By Thelma T. Crigler

An understanding of the history of our own culture gives some inkling of the categories of possibilities within which for the time being we are born to live.

By Winthrop D. Jordan, in *The Whiteman's Burden*

Introduction

In November 1981 the United States Commission on Civil Rights wrote a paper entitled *Affirmative Action in the 1980s: Dismantling the Process of Discrimination.* The paper sought to guide those "who must carry out national civil rights law and policy" by providing a discourse on the "dynamics of discrimination." As stated in the introduction "affirmative action is based on the nature and extent of race, sex and national origin discrimination . . . the problem it was created to remedy." Any discussion of affirmative action must not divorce this remedy from the historic problem of discrimination against minorities and women.

Today white males argue that they are victims of "reverse discrimination" and should not have to suffer for what their forefathers have done in the past. The truth is that one cannot ignore the history of discrimination. Yet the current debate on affirmative action ignores the fact that the present is still affected by past discrimination.

It is clear from history that the institution of slavery began because of economic reasons (the need to cultivate tobacco, sugar, and later cotton). The rationalization for slavery was based on the assumption that Africans were savages, and thus an inferior race. Whites, on the other hand, were Christians and thus, a naturally superior race. Africans were brought to this country against their will, were forced to be submissive and subservient, were denied education, their families were separated, and their women raped. The slave, if slavery was to be successful, had to *believe* he was a slave. Each slave was taught that he was inferior to the lowest white man, and that he had to obey every white man without thinking or questioning.[1] The black male was the most humiliated individual by slavery and segregation. Keeping the Negro "in his place" meant keeping the black *male* in his place.[2]

Maintenance and Perpetuation of Inequality

The United States has historically embarked on policies that have resulted in the oppression of African Americans. During the American Revolution George Washington forbade the enlistment of blacks. Bennett writes in his book, *Before the Mayflower*, that racism made high-ranking American officers doubt the fighting ability of slaves and they feared black involvement because England would also use black troops.[3] George Washington later relented and blacks fought valiantly and helped in the struggle between the British and the colonies. However, when the colonies declared independence on July 4, 1776 and the Declaration of Independence was signed, blacks were not included. The statement that "All men are created equal and endowed by their Creator with natural and inalienable rights no man or government can bestow or take away" was not meant for the black race.

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1 Lerone Bennett, Jr., *Before the Mayflower: A History of Black America*, 6th ed. (Penguin Books, New York, New York, 1988) p. 109.

2 Dye, Thomas R., *The Politics of Equality* (The Bobbs-Merrill Company, Inc., Indianapolis and New York, 1971) p. 8.

3 Lerone Bennett Jr., p. 65.

In fact, the Supreme Court seemed to agree that all men are not created equal. In 1857, with the *Dred Scott* decision, Chief Justice Taney ruled that blacks were not "people of the United States."[4] To justify his assertion Taney referred to the Declaration of Independence saying "the general words above quoted [All men are created equal] would seem to embrace the whole human family . . . but it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted the declaration. . . . "[5]

During the Civil War, in 1862, three generals organized black regiments without waiting for approval. The regiments, however, were not officially recognized until January 1863.[6] Also occurring in 1862, was the official recognition of the First Louisiana Native Guards formed by General Butler and composed of free blacks.[7] Bennett indicates that although blacks were paid less (reportedly seven dollars a month, while whites were paid thirteen dollars a month), black soldiers fought courageously defending the Union and black freedom in many battles.

Prior to the signing of the Emancipation Proclamation, abolitionist and proslavery advocates engaged in much debate about equal rights for blacks. Most whites believed that blacks were savage, lazy, and incapable of learning. "The alleged immorality, dishonesty and untruthfulness of the Negro were cited by proslavery propagandists as additional proofs of his inferiority."[8] With the impending prospect of emancipation, proslavery advocates roused themselves "to . . . show that bondage was the normal and only possible condition of the Negro."[9]

Lincoln's signing of the Emancipation Proclamation in 1863 was by no means a policy based on social consciousness and concern for equality. For it has been noted that Lincoln has professed he was not in favor of "social and political equality of the white and black races."[10] Lincoln was merely interested in the restoration of the government and the preservation of the Union. However, once the slaves were freed the question arose as to what to do with them. Lincoln grappled with the idea of deporting the ex-slaves, while Thaddeus Stevens, a Pennsylvania congressman said "give him forty acres of land and a mule."[11]

How were the freed slaves to become a part of American society for they "had no tools, they had no shelter, they had no cooking utensils; and they were surrounded by hostile men who were determined to prove that the whole thing was a monstrous mistake."[12] In 1865, America believed it had the answer and Congress approved the Freedman's Bureau, considered by Bennett to be the first Federal welfare agency which " . . . stood between the freedmen and the wrath of their former slave masters."[13] The Freedmen's Bureau gave direct medical aid, established hospitals and social agencies and distributed rations to the freedmen, as well as impoverished whites.[14] During the operations of the Freedman's Bureau

4 Dred Scott v. Sanford, 393 (1857).

5 John A. Rohr, *Ethics for Bureaucrats: An Essay in Law and Values*, Marcel Dekker, Inc., New York and Basel, (1989) p. 102.

6 Lerone Bennett Jr., p. 196.

7 Ibid., p. 197.

8 James M. McPherson, *The Struggle for Equality*, (Princeton University Press: Princeton, New Jersey, 1964) p. 152.

9 James M. McPherson, p. 135.

10 Thomas R. Dye, p. 6.

11 Lerone Bennett Jr., p. 217.

12 Ibid., p. 218.

13 Ibid.

14 Ibid.

many schools were formed to educate the former slaves. However, the Bureau could not meet the multitudinous needs of the millions of freedmen and was ended in 1872.

In 1865 and 1866 black codes were enacted in the South, which was an indication that the South intended to "reestablish slavery under another name."[15] "The codes restricted the rights of freedmen under vagrancy and apprenticeship laws . . . South Carolina forbade freedmen to follow any occupation except farming and menial service and required a special license to do other work . . . the legislature also gave 'masters' the right to whip 'servants' under eighteen years of age. . . . In other states blacks could be punished for 'insulting gestures,' 'seditious speeches' and the 'crime' of walking off a job. . . . Blacks could not preach in one state without police permission."[16] Bennett also notes that into the 1870s hundreds of freedmen were massacred because of the vindictive attitudes of Southerners. In 1867, the first national meeting of the Ku Klux Klan took place with a plan to "reduce blacks to political impotence . . . by stealth and murder, by economic intimidation and political assassinations, by the political use of terror, by the braining of the baby in its mother's arms, the slaying of the husband at his wife's feet, the raping of the wife before her husband's eyes . . . by fear."[17]

During the Reconstruction era blacks were being educated, and blacks were allowed to vote and even serve in Congress. In 1875, a Civil Rights Act was passed which declared that all persons were entitled to the full and equal enjoyment of all public accommodations in inns, public conveyances, theaters and other places of public amusement. However, in 1883 the Supreme Court declared the 1875 act unconstitutional. In the *Civil Rights Cases* of 1883 the Court held that Congress had no expressed or implied power in the Constitution to pass a law prohibiting discrimination practiced by private individuals—in this case, the owners and managers of these accommodations.[18] The Court's reasoning was that the Constitution was not extended to discrimination practiced by individuals, only discrimination practiced by the State.

The 14th amendment was ratified in 1868. It states, in part, that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." However, the Supreme Court upheld discriminatory actions by the state by promulgating that the Fourteenth Amendment is not intended to enforce social equality. In 1890, Louisiana had passed a law that required railroads "to provide equal, but separate, accommodations for the white and colored races by providing two or more passenger coaches for each passenger train or by dividing the passenger coaches by a partition so as to secure separate accommodations." Plessy, who is black, refused to leave his seat which was reserved for whites when ordered by the conductor to "take a seat in another coach assigned to persons of the colored race. He was then fined and imprisoned. In *Plessy v Ferguson*, the court upheld the imprisonment of Plessy arguing that " . . . in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either."[19]

It is not surprising that the Supreme Court took this direction, for during the 1890s the white supremacy movement had begun. The movement sought to disenfranchise blacks by developing devices such as "the literacy test, the poll tax, the

15 Ibid., p. 224.

16 Ibid., pp. 224–25.

17 Ibid., p. 231.

18 Thomas R. Dye, p. 17.

19 John A. Rohr, p. 105.

white primary and various forms of intimidation.[20] During this time the Klu Klux Klan was "revived to assist in the propagation of rigid segregationist policies with a "virtual reign of terror . . . that extended to the beginning of World War I."[21]

There were approximately 977 lynches during the 1890s, and Bennett points out that "only a small percentage of the 1217 persons lynched between 1890 and 1900 were accused of rape."[22] He also indicates that "others—the overwhelming majority—were charged with the 'crimes' of testifying against whites in court, seeking another job, using offensive language, failing to say 'mister' to whites, disputing the price of blackberries, attempting to vote and accepting the job of postmaster."[23] It must be noted that according to Bennett's recapitulation there were an approximate 2,807 reported lynches of blacks in the United States between 1882 and 1923. "By 1901 Jim Crow was a part of the marrow of America . . . a desire to avoid assimilation and to limit or eliminate competition for scarce values . . . also a desire to discipline, control, punish, humiliate."[24]

Bennett also states that by use of a subsystem of educational discrimination, discrimination was guaranteed in other areas. In the educational arena tax monies and legal structures were manipulated in "a largely successful effort to destroy or limit the effectiveness of the school system created by the Reconstruction regimes."[25] Then there was economic exploitation like that of the sharecropping system. In sharecropping, blacks were forever in debt to the planter because the account books were kept by the planter.

The Black Employment Situation

The first blacks to arrive in what is now the United States were not slaves, but indentured servants where they sold their services for a stipulated number of years. According to Bennett the first "black settlers accumulated land, voted, testified in court and mingled with whites on a basis of equality."[26] Bennett also indicates that after the Revolutionary War, when slavery began to die in the North, the "Black Pioneer" period began. A period when "postwar blacks turned inward and formed their own social institutions, and in the process, created themselves."[27] The free blacks of the North were mostly former slaves and in this period, as in the nineteenth century, most free blacks were confined by racism to low-paying jobs; and most of them lived for the same reason, in cellars and shanties on narrow streets.[28] However, there were black artisans and merchants during this period of time and the founding of schools to teach blacks.

"Between 1830 and 1860 more than five million immigrants settled in American cities, depressing wages and driving blacks from traditional black preserves . . . in some cities this contest approached that of an open war. . . . "[29] The struggle between Irish immigrants and black workers was particularly acrimonious at that point and for several decades thereafter, the Irish were considered "white niggers" and were subjected to the same indignities as blacks.[30] Instead of lining up

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20 Thomas R. Dye, p. 17.

21 Ibid., p. 18.

22 Lerone Bennett Jr., p. 271.

23 Ibid.

24 Ibid., p. 256.

25 Ibid., p. 257.

26 Ibid., p. 35.

27 Ibid., p. 77.

28 Ibid.

29 Ibid., p. 179.

with black workers, the white immigrants joined the oppressors of both groups. The grand outcome was not only the disappearance of traditional black jobs but the strengthening of white workers at the expense of black workers. Year by year, decade by decade, black workers were forced out of occupation after occupation.[31] Blacks were being displaced in such jobs as house servants, porters, brick-makers, and blacks were being barred from trade unions.

During the Jim Crow years "jobs had a name and a color . . . 'Negro' jobs were dirty, hot and heavy. White jobs were clean, light, and well-paid."[32] But the line between these categories shifted with each business crisis. When whites were hungry, "Negro" jobs were reclassified. Crisis by crisis, recession by recession, job by job, blacks were displaced as waiters, porters, draymen, cooks, caterers and artisans.[33] Bennett indicates that at the end of the Civil War only 20,000 of the 120,000 artisans were white in the South, but by 1900 they were eliminating their black competition.

Blacks were determined to overcome these setbacks. Blacks began pyramiding the nickels and dimes of dues and assessments into impressive economic empires, which included retail stores, banks, hotels, newspapers, and insurance companies.[34] Bennett states that by 1900 the black professional class had grown tremendously with blacks being teachers, ministers, doctors, dentists, journalists, lawyers, actors and showmen, artists and photographers. By the time of World War I, blacks were owning homes, operating farms, and managing businesses. But oppression and discrimination were still the order of the day. Lynching was on the rise and the Federal Government, in 1913, decided to segregate black and white employees in the Federal Government. However, during World War I there were jobs to be found in the north. Bennett states, "Without preamble, without plan, without leadership . . . blacks left the South for the North where they found jobs in wartime industries and sent letters to a cousin or an aunt or a sister or a brother, saying: 'Come.'"[35] Bennett indicates that between 1910 and 1920, 300,000 blacks left the south for the north. In 1910, 656,000 or 12.6 percent of employed blacks worked in manufacturing and industrial occupations. Twenty years later 1,025,000 or 18.6 percent of employed blacks were working in manufacturing and industrial jobs.[36]

Bennett writes that the 1920s was a boom period for blacks. Stimulated by the business hysteria of the age, blacks moved into the mainstream of money, founding import and export houses, chain stores and steamship lines. This boom, which lasted until the 1929 crash, was perhaps the historic high point of black business in America.[37] With the crash, however, came unemployment. By 1937, 26 percent of black males and 32 percent of black females were unemployed. By 1935 about one out of every four blacks was on relief.[38]

As World War II enters, black unemployment was still at a Depression level but defense industries almost without exception, turned away black workers.[39] Although in 1941 President Roosevelt

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30 Ibid.

31 Ibid.

32 Ibid., p. 258.

33 Ibid.

34 Ibid., p. 287.

35 Ibid., p. 344.

36 Ibid., p. 345.

37 Ibid., p. 356.

38 Ibid., p. 359.

39 Ibid., p. 365.

issued an Executive order banning discrimination in war industries and apprenticeship programs and appointed a Fair Employment Practices Committee, there was no change in employment practices. Yet despite this, by 1944 black workers constituted 8.3 percent of the war production work force and by 1950 blacks had made substantial gains as skilled and unskilled operatives and white-collar workers.[40] However, black America was still an artificially impoverished colony of white America, and its citizens were sitting ducks for the series of recessions which began in 1952 and became progressively worse.[41]

In 1964, President Lyndon Johnson signed into the law the Civil Rights Act of 1964 which included public accommodations and fair employment sections. Blacks began breaking through the racial barriers and making gains. From 1965 to 1969 the proportion of blacks at the lower end of the income spectrum (below $3,000) was markedly reduced while the proportion at the upper end ($10,000 and above) rose dramatically.[42] However, during the Nixon years, Bennett states . . . "the overall income position of black families . . . declined . . . and . . . even more alarming was the rise in black unemployment.[43]

Government Intervention

Why does the past history of African Americans affect their present condition? Because, as Andrew Hacker states in his book *Two Nations: Black and White, Separate, Hostile, Unequal*, "the recollections of the past that remain in people's minds continue to shape ideas about the character and capacities of black citizens."[44] While African-Americans have made many gains since the enactment of the Civil Rights Act of 1964, these gains have come with a price. The price of having to assimilate into white society, to embrace the white culture. But no matter how successful blacks have assimilated, they still are not wholly accepted by the American mainstream.

The gains made by African Americans however, would not have occurred to the degree they have if it had not been for the Civil Rights Act of 1964. The legislation, introduced in 1963, had the support of major civil rights organizations. Those organizations had formed a Leadership Conference on Civil Rights to lobby for passage of the bill. An organization, A Coordinating Committee for Fundamental American Freedom was formed in 1962, for the purpose of defeating the civil rights bill.[45] The organization distributed great quantities of materials, but in no way could match the intensity or effectiveness of lobbying activities of the Leadership Conference on Civil Rights.[46] On February 10 the House passed the historic bill by a vote of 290–130, and on June 19 the Senate passed the Civil Rights Act by a 73–27 roll-call vote.[47]

Title VII of the Civil Rights Act of 1964 established the Equal Employment Opportunity Commission. The act further mandated nondiscrimination in Federal programs. In his book *The End of Racism*, Dinesh D'Souza states "today a large fraction of middle-class blacks work for the government."[48] Citing various sources, D'Souza indicates that "although blacks make up 10 percent of the civilian labor force, about 24 percent of blacks (compared to 14 percent of whites) are employed

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40 Ibid., p. 367.

41 Ibid., p. 374.

42 Ibid., p. 432.

43 Ibid., p. 437.

44 Andrew Hacker, *Two Nations: Black and White, Separate, Hostile, Unequal* (Ballantine Books: New York, 1992) p. 17.

45 Thomas R. Dye, p. 127.

46 Ibid.

47 Ibid., pp. 128–29.

48 Dinesh D'Souza, *The End of Racism* (The Free Press: New York, 1995), p. 495.

at the Federal, State, and local governments."[49] D'Souza also states and cites an article from *The Economist*, "according to sociologists Bart Landry, about half of black professional males and two-thirds of black professional females work for some arm of the state."[50]

Blacks have also sought and gained employment in corporate America. These institutions did not readily accept that nondiscrimination and equal employment opportunity was the law. American institutions begin with an initial bias against black applicants, since the presumption that most blacks cannot or will not meet the standards the organization has set.[51] But blacks have made gains in the private sector, which was largely due to the 1965 Executive Order 11,246, as amended in 1976 to prohibit discrimination on the basis of sex. The Executive order prohibits businesses that contract with the Federal Government from discriminating on the basis of race, sex, and national origin; and requires them to take affirmative action to ensure the employment of minorities and women. Originally applying to Federal construction contractors, the order today requires businesses and institutions that choose to contract with the Federal Government to have an affirmative action program, the objective of which is equal employment opportunity.[52]

Title VII did not automatically make most American corporations and institutions embrace its mandate. In 1972, Title VII was amended to give the Equal Employment Opportunity Commission the authority to bring suit against corporations who did not open opportunities to minorities,[53] and courts could require affirmative action measures as a means of redressing and compensating minorities for the past effects of discrimination. In fact, the authors of *Black Life in Corporate America* point out that AT&T had to pay $38 million to people it had discriminated against.[54]

The Department of Labor's Office of Contract Compliance Programs, which oversees Executive Order 11,246, also has its authority. It can declare a company ineligible to receive Federal contracts if it fails to follow the mandate of Executive Order 11246. When it was established the Office's power was a threat to corporations and institutions. This threat was a nuclear warhead in the antidiscrimination arsenal.[55] The government was seeking vengeance against both the poor multibillion-dollar multinational corporations and the white man for past sins.[56]

Present Effects of Past Discrimination

Earlier it was stated that the rationalization for maintaining slavery was based on the assumption that blacks were savages. It was also based on assumptions that blacks were incapable of learning, were lazy, sloven, and immoral. These assumptions have led to the maintenance and perpetuation of racist attitudes and discriminatory behavior. Overt acts of discrimination, such as newspaper advertisements that state a job is

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49 Ibid. Cited by D'Souza from Robert L. Boyd, "The Allocation of Black Workers into the Public Sector," *Sociological Focus*, 27. No. 1 (1994), p. 36; see also Equal Employment Opportunity Commission, EEO Profile of Private and Public Employers, summary of findings, March 1991/ Richard Zweigenhaft and G. William Domhoff, *Blacks in the White Establishment* (Yale University Press: New Haven, 1991) p. 175.

50 D'Souza, p. 495. D'Souza cites this from a cite in "Have Capital, Will Flourish," *The Economist*, Feb. 27, 1993, pp. 33–34; see also Alphonso Pinkney, *The Myth of Black Progress*, p. 171.

51 Andrew Hacker, pp. 25–26.

52 U.S. Commission on Civil Rights, *Affirmative Action: Dismantling the Process of Discrimination*, Clearinghouse Publication 70, November 1981, p. 19.

53 George Davis and Glegg Watson, *Black Life in Corporate America: Swimming in the Mainstream* (An Anchor Book, Doubleday: New York, 1982), p. 36.

54 Ibid.

55 Davis and Glegg, p. 56.

56 Ibid., p. 56.

for "whites only" are not evident today. Yet, discrimination has become more subtle, and is often based on the belief of the aforementioned assumptions. These assumptions become negative stereotypes which tend to categorize people into undesirable characteristic traits.

Take the stereotype that blacks are less intelligent than whites. The authors of the *Bell Curve*, Richard Hernstein and Charles Murray say that blacks score lower than whites on IQ tests and that the reason is mainly due to heredity. What is known of the book by this author appears to reinforce the 19th century beliefs of ethnologists and anthropologists that the various races of mankind constituted separate species with the Negro at the bottom of the scale.[57]

In his book, *The Heavenly City Revisited*, Edward C. Banfield espouses that the problem blacks face is not racial but a class problem. He professes that "the lack of education that in large measure accounts for the Negroes handicaps is itself to be explained largely by discrimination past and present."[58] African Americans lack of education is the result of post-Civil War efforts to cut back and/or eliminate funding for schools that predominately teach blacks. There are many who do not believe the difference in levels of intelligence is genetically inherited. The differences in intelligence is mainly rooted in the history of the black race. Specifically, a history of limited or nonexistent resources to educate them.

In *Two Nations* Andrew Hacker analyzes Alexis DeTocqueville who visited the United States during the 17th century, and made predictions of America's future. "If I were called upon to predict the future, I should say that the abolition of slavery, will, in the common course of things, increase the repugnance of the white population for the blacks."[59] By law, discrimination against blacks is prohibited, not only in employment, but in voting, housing, and public accommodation. The law, however, cannot, and has not changed white America's feelings and beliefs about the African American. That white males believe they are victims of reverse discrimination is ludicrous. For if the white male is such a victim, blacks would be the CEOs in the Fortune 500 companies.

The truth is that white males, after a period of relative prosperity, are now faced with layoffs, downsizing and right-sizing. Corporations are restructuring and blacks who have been the last hired, are not necessarily being let go. Worsening economic conditions have hurt everyone, but if reverse discrimination is occurring what is the explanation for the disparities between whites and blacks.

No amount of civil rights law can change the still existing disparities between black and white America. Blame it on recession and other economic factors, but history has indicated that as conditions for whites get bad, conditions for blacks worsen. Disparities exist in the rates of unemployment, median income and income as it pertains to educational level, and levels of poverty. Take the following statistics in educational attainment for persons completing 4 or more years of college:

Race	1960	1970	1980	1990
White	8.1	11.3	17.1	22.0
Black	3.1	4.4	8.4	11.3

Source: 1995 Statistical Abstract of the United States.

Educational institutions have set standards for admission, such as acceptable SAT scores. These admission policies are, as Andrew Hacker states, based on varied views of merit and equity.[60] But why are the above disparities occurring in educa-

57 James M. McPherson, p. 136.

58 Edward C. Banfield, *The Heavenly City Revisited* (Little Brown & Company: Boston and Toronto, 1974), p. 80.

59 Andrew Hacker, p. 242.

60 Ibid., p. 139.

tional attainment? As Andrew Hacker indicates, it can be attributed to the fact that black Americans spend more of their lives apart from other groups and "grow up with less sustained exposure to the rules of linear reasoning that are expected on the SAT and IQ tests."[61] He further adds, "the result is that black modes of perception and expression become impediments to performing well on the official menu of standardized tests."[62] But for those blacks who do obtain degrees from college, what is the explanation for the disparities in the mean monthly incomes between blacks and whites?

According to the U.S. Census Bureau's Survey of Income and Program Participation, the 1993 median monthly income for whites with a Bachelors degree is $2,682, while for blacks it is $2,333, a difference of $349.00. The mean monthly income for whites with a master's degree is $3,478 and is $2,834 for blacks, a difference of $644.00; and for those earning professional degrees, the mean monthly income for whites is $5,590, while that of blacks is $3,445, a whopping difference of $2,145.[63]

What are the explanations for the income differences among white and black households? In 1993, the percentage of households earning $35,000 - $49,999 was 17.0 percent for white households and 12.0 percent for black households.[64] As income levels rise, the gap between the two races also rises. For households with incomes of $50,000 to $74,999 the percentage of whites was 17.7 percent and for blacks it was 9.3 percent.[65] In addition, is there an explanation for the fact that the median income for whites in 1993 was $32,960, while the median income for blacks was $19,533?

How do we explain the unemployment rates of those who have attended some college. In 1993, for those with less than a Bachelor's degree the unemployment rate for whites was 6.5 percent, while the unemployment rate for blacks was 12.4 percent.[66] Or take the percentage of those unemployed in general:

Race	**1970**	**1980**	**1990**	**1993**
White	4.5	6.3	6.0	6.0
Black	14.3	15.1	12.4	12.9

Source: 1995 Statistical Abstract of the United States.

Andrew Hacker states that "[black] labor, like that of other Americans [is] subject to the vagaries of a market economy, but white America has ensured that the unemployment imposed on blacks will be approximately double that experienced by whites."[67]

There are some explanations for these disparities, however, the following facts must also be considered: white households are more apt to have both a husband and wife present, which raises the likelihood of multiple incomes.[68] In addition, among married couples, a smaller percentage of white wives work and among black families the husbands and wives wages are often of equal value.[69] Furthermore, more black families are headed by single females, [which means]

61 Ibid., p. 151.

62 Ibid.

63 Data taken from the Statistical Abstract of the United States, 1995 edition, 158.

64 Ibid., p. 469.

65 Ibid.

66 Ibid., p. 422.

67 Andrew Hacker, p. 108.

68 Ibid., p. 100.

69 Ibid. (Hacker also points out that the earnings of black men tend to be lower.)

a higher proportion of their households must make do with only one income. Moreover, when black single mothers work . . . it is generally at a job paying relatively low wages.[70]

Finally, what can explain the poverty level between whites and blacks. In 1993, 9.4 percent of white families were below the poverty level, while a staggering 31.3 percent of black families were below the poverty level. The percent of children living below the poverty level in 1993 is also staggering. Specifically, there were 17.0 percent white children below poverty level and 45.9 percent black children below poverty level.[71] The percentages are just alarming when one looks at family size:

Size of family	White	Black
2 persons	7.5	26.6
3 persons	9.7	29.7
4 persons	9.1	30.6
5 persons	13.2	41.3
6 persons	18.0	40.2
7 persons	28.6	52.9

Source: 1995 Statistical Abstract of the United States.

Andrew Hacker states that sociologists have not "shown much interest in depicting poor whites as a class, which in large measure . . . is racial . . ."[72] "For whites, poverty tends to be viewed as atypical or accidental. Among blacks, it comes close to being seen as a natural outgrowth of history and culture."[73] Disparities, such as the aforementioned exist between whites and blacks because as Andrew Hacker states, "no matter how degraded their lives, white people are still allowed to believe that they possess the blood, the genes, the patrimony of superiority. No matter what happens, they can never become "black." White Americans of all classes have found it comforting to preserve blacks as a subordinate caste."[74]

Recommendation

Some politicians have indicated that they are opposed to affirmative action mainly because they view it as a system that calls for measures that deprive white males of equal rights. It is believed that white males are victims of reverse discrimination. Most African Americans do not view affirmative action as falling short of its intended goal and needing to be changed, or being totally abolished. The debate on affirmative action for most African Americans is not a policy stance of correcting its perceived shortcomings. For them, it is a policy that states white Americans are still not willing to accept blacks as equals, as competent beings. It is a statement by white America that they are still not able to accept blacks as fellow citizens and Americans.

There is no need to change or eliminate affirmative action programs. Affirmative action is a means of ensuring equal employment opportunity. It is also a means for assuring an even playing field and access to the employment process. Furthermore, it is a way to address the systemic exclusion of blacks that have deprived them of the opportunity to develop, perform, achieve and contribute in this society.

The result of affirmative action efforts has not been the hiring or promotion of unqualified and incompetent blacks. That is a myth born out of the assumptions and stereotypes of white America. Many whites can be just as unqualified and incompetent as blacks. In addition, hiring or promotion preferences for blacks is no different than having preferences for the son of a white school

70 Ibid., p. 101.

71 Data taken from the Statistical Abstract of the United States, 1995 edition, 484.

72 Andrew Hacker, p. 106.

73 Ibid.

74 Ibid., p. 244.

friend, or for a white fraternity or club member. Whites have been given preferred status since the inception of the United States of America. The affirmative action debate holds one question for white Americans and Andrew Hacker states it as "... essentially moral: is it right to impose on members of an entire race a lesser start in life and then to expect from them a degree of resolution that has never been demanded of your own race?"[75]

If there is a recommendation to be made regarding affirmative action it is that American corporations and institutions develop diversity management programs which teach employees and managers that cultural differences bring new ways of communicating and interacting in the workplace. Diversity awareness and diversity management is essential for competing in today's global economy. It has been historically demonstrated that white America is not willing to give up the "status quo," but this stubbornness will eventually result in worsening economic conditions in America. United States businesses must accept that there is a changing and diverse pool of future workers comprised of more minorities and women. They must be made to understand that America is no longer the "melting pot."

Changes in the North American workplace are so sweeping that it is no longer possible, necessary, or desirable (if it ever was) to try and eliminate cultural differences of individuals and groups entering the mainstream; assimilation is a dead end.[76]

But perhaps Justice Thurgood Marshall said it all in *Regents of the University of California v Bakke*:

> At every point from birth to death the impact of the past is reflected in the still disfavored position of the Negro. ... In light of the sorry history of discrimination and its devastating impact on the lives of the Negroes, bring the Negro into the mainstream of American life should be a state interest of the highest order. To fail to do so is to ensure that America will forever remain a divided society.[77]

In other words, there is still work to be done in getting equality for African Americans. The Federal Government is obligated to continue the task of dismantling the process of discrimination.

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75 Ibid., p. 245.

76 George F. Simons, Carmen Vazquez, and Philip R. Harris, *Transcultural Leadership: Empowering the Diverse Workforce* (Gulf Publishing Company: Houston, 1993) p. 6.

77 Regents of the University of California v Bakke, 438 U.S. 265 (1978).

Civil Rights Issues Facing American Muslims in Illinois and the Lack of Affirmative Action Inclusion

By Moin "Moon" Khan

Introduction:

An estimated 6 million Muslims call the United States of America their home. The diversity that exists in the world's population of 1 billion Muslims is proportionately reflected in this country as well.

Because Muslims are an ethnic and immigrant group like dozens of other ethnic groups or "ethnorities" of the United States, they face similar problems as others do. However, their agonies and pains are harsher and go unrecognized in most affirmative action programs by virtue of being religiously associated with people in the Middle East.

Demographics of American Muslims:

Around 400,000 Muslims live in Illinois. According to Ilyas Ba-Yunus, professor of sociology at State University of New York, who did a sociological survey on American Muslims of Illinois in 1995, 40 percent of the Illinois' Muslim population is of the African American heritage, 25 percent are of Arab ancestry, 20 percent are Indians and Pakistanis (or South Asian origins), 4 percent are of Turkish heritage, and 11 percent are of other origins.

In his study, Ba-Yunus found that American Muslims are generally in elite professions such as engineering, business administration, medicine, finance, accounting, education, and research. According to Ba-Yunus, 49.4 percent of Muslims are in engineering professions and computer science; 11.6 percent are in medicine and healthcare fields. About 11 percent are in business administration, banking, and finance; 8 percent of Muslims are in university teaching; 6 percent are in legal, correctional, and administrative justice.

A large number of Muslims are successful small entrepreneurs. Muslims own businesses related to restaurant, real estate, transportation, wholesale supplies, import and export, and electronics products, especially on the West coast.

Historical Perspective

Many blacks brought into this country as slaves from Africa were of Islamic faith. According to Allen Austin in *African Muslims in Ante-Bellum America: A Source Book*, and Larry Poston in *Islamic Dawah in the West*, at least 12 percent to 13 percent of the African slaves brought to North America were Muslims. Likewise, Muslim names can be traced in slave documents as early as 1717. Thus, African slaves were the first Muslims to set their feet on this part of the world. Alex Haley's book, *Roots*, is based on similar records. However, there are no records to illustrate how many of them came to Chicago and remained Muslim. In the absence of those records, the arrival of Muslims are traced back from the 19th century.

According to Dr. Asad Husain, professor of political science at Northeastern Illinois University, the first group of Muslims who came to Chicago during the late 19th century were from Middle Eastern and East European countries and they were farmers, laborers, and peddlers.

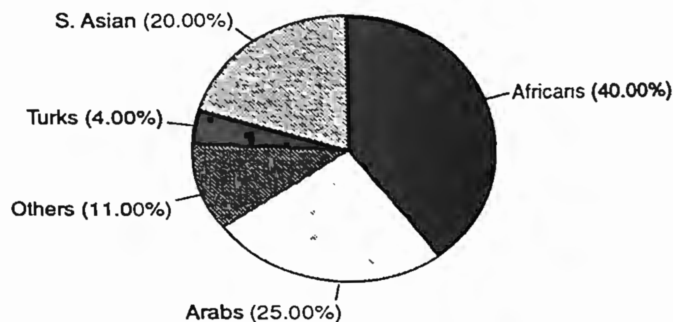
The second wave of Muslim immigrants came during 1917 and 1945. As a result of disarray of the Ottoman Empire, many Muslims from this empire drove toward the United States. With the advent of communism in Russia, a lot of Muslims came from Central Asia also.

The Post World War II period witnessed the third wave of immigration of Muslims. With the creation of Israel, the partition of India, and establishment of several new countries and dictatorial regimes in Asia and Africa, affluent Muslims started arriving in America. A large number of Muslim students came to study in the United States, many of whom remained.

The Immigration Act of 1965 opened the door to a great influx of immigrants. At this time, Muslims came from all over the world.

American Muslim Organizations

There are more than 200 organizations representing various American Muslims. Organizations have been created to handle religious, social,



and cultural needs of this mostly immigrant group. To address religious needs, more than 60 religious centers have been established all over Illinois. The Council of Islamic Organizations was set up a couple of years ago to coordinate activities of various religious centers. More than 40 religious centers are members of this council. Dozens of associations have been formed to address various issues pertaining to their native countries. They have also set up several social service organizations. About a dozen newspapers, radio programs, and television shows cater to their needs.

Local Muslims have established several parochial schools and colleges, which include Islamic Foundation Full Time School, Universal School, and American Islamic College. Several religious publishing companies have also been set up, and books published here are sent all over the world. Prominent companies are Iqra and Sound Vision. A group of Muslims have established a nonsectarian university in the Chicago downtown—East West University.

Contributions of American Muslims

Like other immigrant groups, American Muslims have greatly contributed in the development of Illinois. Very few people know that the world famous Sears Tower was designed by a local Muslim architect—the late Fazlur Rahman Khan. When WLS TV channel 7 conducted its survey of prominent physicians in 1994, two prominent Muslim physicians were part of it.

Bears' player Rashaan Salaam, Wild Cat's football player Hudhaifa Ismail, are the local Muslim athletes. It would not be out of place to mention the names of prominent Muslim sports people—Muhammad Ali, Kareem Abdul Jabbar, Hakim Alajowan, Mahmoud Abdul Rauf, and Ahmad Rashad as the prominent American Muslims.

Myth of Notoriety

American Muslims have been frequent victims of inferences, insinuations, allusions, suggestions, conclusions, implications, and references. How the major news media and prominent policy experts unfairly blamed Muslims for the Oklahoma bombing is a flagrant example. But once people knew the real suspects, nobody mentioned even the religious affiliation of the accused and other militia people who came out supporting such acts.

Interestingly enough, the subversive acts of South American drug cartels and fatal attacks of IRA also do not automatically infer any ties between perpetrators and their religious orientations that spring up when suspects are presumed to be Muslim. And American Muslims are constantly tied to overseas negative accidents.

Due to near obsession with the Middle East politics, the news media and so-called foreign policy experts or yo-yo experts suffering from analysis paralysis syndrome, figuratively speaking, forecast rain in the United States and sometimes advise their compatriots to pull out their umbrellas as well, if they anticipate storm in the Middle East.

Muslims are unfairly tied to anti-American acts and terrorism. According to FBI's Terrorist Research and Analytical Section Report of 1995, radicals from Muslim background carried out only one terrorist attack in the United States—the World Trade Center bombing. In contrast, the following figures on domestic terrorist attacks are reported by the FBI in the period of 1982-1992: Puerto Ricans, 77 attacks; left wing groups, 23 attacks; a prominent religious group, 16 attacks; anti-Castro Cubans, 12 attacks; right-wing groups, 6 attacks. The same conclusion can be made with regard to anti-U.S. terrorist attacks overseas. According to the U.S. Department of State document, "Patterns of Global Terrorism Report," a majority of 44 anti-U.S. attacks in 1994 took place in Latin America. In contrast only eight were carried out in the Middle East, five in Western Europe, and four in Africa. If we analyze American economic data, we will find Muslim countries are more loyal customers of American products and high-tech military equipment than any other religious groups living overseas.

Since Muslims come from all over the world and they can fall in various ethnic categories like African, Asian, Arab, European, it is extremely difficult to count discrimination cases against them unless their religious centers are burned down or they are attacked while praying. According to U.S. census categories, a person is either a white, black, Hispanic, or Asian. Thus, American Muslims can be a victim in a real sense but in terms of legal classification their pain can be either lumped together with other communities or declared imaginary altogether, and as a result many Muslims can be excluded from any consideration with respect to affirmative action programs that redress discrimination.

The U.S. Commission on Civil Rights gathers data on all kinds of discrimination that includes discrimination on the basis of religion. It would be interesting to explore how many cases of discrimination against American Muslims have been registered in the last decade with the Commission. If Jews are discriminated against and their synagogues are desecrated several dozen times a year, it stands to reason that atrocities against Muslims must be much higher due to the constant bias and negative coverage against them in the news media. Since the Oklahoma bombing, American Muslims have established several civil rights agencies on the pattern of the Anti-Defamation League. These agencies, however, lack financial and technical resources.

Anti-Muslim Sentiment and Anti-Muslim Violence

An imaginary illness is worse than a real one. Complaints of discrimination against Muslims are real. Within hours of terrorist attack on the Murrah Federal Building in Oklahoma City on April 19, 1995, media reports and self-proclaimed "terrorism experts" linked Muslims, Arabs, and 'Middle Eastern-looking men' to the blast. This unsubstantiated linkage prompted stereotyping, harassment and actual attacks on American Muslims all over America.

More than 200 cases of stereotyping, harassment, assault, property damage, and the lost of life were reported. These incidents mainly took the form of: (a) numerous threatening phone calls, including bomb threats, to mosques and Islamic centers; (b) verbal abuse directed at Muslims who appeared in public; (c) harassing behavior by co-workers; (d) direct physical attacks such as rock-throwing, beatings, and shootings; (e) two mosques were set on fire; one of these incidents has been officially ruled arson by fire investigators; (f) publication of numerous editorials, op-ed articles, political satire and cartoon, including a column by Mike Royko, who recently wrote a column satirizing Mexican Americans, which received vigorous and heated protest from the local Hispanic community.

When Harry Carey blurted out some racial slurs against Asian Americans, it was debated in the news media, and protests against him was aptly justified. For Muslims, nobody apologized. There can be acts and remarks that can be declared anti-Semitic, racist, xenophobic, sexist, or anti-gay, but it appears that there is no term like anti-Muslim because all such acts fall in the jurisdiction of freedom of expression.

Ironically, when American Muslims are trashed by members of the news media, the film industry or sometime elected officials, they justify their hate as a case of freedom of speech. However, sometimes, even a half truth can be a whole lie.

* In September 1995, vandals spray-painted obscenities and graffiti on the windows, outside walls and trees at the Islamic Center of Passaic County in Paterson, New Jersey. A flammable liquid was also reported found on the floor of an out building.

* In the same week, Masjid Al-Momineen in Clarkston, Georgia, reported an attack by vandals who desecrated the mosque with satanic symbols.

* *The New York Times* reported above incidents in a comprehensive front-page article on August 28, 1995.

* On October 21, 1995, a fire destroyed the Islamic Center and Masjid of Greenville, South Carolina. According to Wade Hampton Fire Chief Gary Downey, the fire was an act of arson.

* Again, in October 1995, vandals spray-painted an obscene anti-Islamic message (an extremely offensive sexual reference using the name of Allah) on the exterior of Flint Islamic Center/Genesee Academy in Michigan.

* There is not a single year passes by when the American film industry does not make a couple of films, explicitly portraying Muslims as terrorists, and all are done under the guise of artistic expres-

Stores Damaged in 1992 and 1993 in the Aftermath of the Chicago Bulls Championship:

Ethnicity	# of stores in 1992	# of stores in 1993
Arab American	89	33
Asian American	55	9
African American	56	37
European American	33	7
Hispanic American	4	7
Unknown	101	104

Source: Chicago Police Department.

sion and freedom of expression. Recent films with anti-Muslim themes, scenes or overtones are "True Lies," "The Sheik," "Protocol," "Bloody Sunday," "Not Without My Daughter," and "Executive Decision." This Yiddish proverb puts these films in a proper perspective, "One lie is a lie, two lies are lies, but three is politics."

* According to author and columnist Jack Shaheen, movies and television producers have historically portrayed Muslims and Arabs as one of the "3Bs,"—billionaires, bombers, or belly dancers. The seductive Arab/Muslim "Sheik" of Rudolph Valentino's day became the greedy, oil rich "Sheik" of the 1970s and 1980s. Today's "Sheik" has been transformed into a wild-eyed "fundamentalist" terrorist leader. None of these portrayals come close to describing the rich mosaic of Islamic culture.

* Advertisements and commercials denigrating Islamic values and traditions are common. Anheuser-Busch produced a beer commercial last year printing an Islamic religious phrase on the tank-top of a model. Consumption of alcohol is prohibited in Islam. A New York-based company designed a postcard featuring a photograph of the bare chest of woman with one breast encircled by verses from the Quran, Islam's sacred book. Hallmark produced a greeting card denigrating Muslim women. Nike produced a billboard portraying a picture of a basketball player with the headline, "They called him Allah."

* A Muslim teenager in Northern Virginia was fired from her job with Sears, Roebuck and Co., when she refused to take off her scarf to begin work after her initial orientation.

For a complete list of incidents occurred after the Oklahoma incident, please consult "A Rush to Judgement," a special report on Anti-Muslim stereotyping, harassment and hate crimes following the Oklahoma bombing. This report has been put out by the Washington, D.C. based, Council on American-Islamic Relations (CAIR).

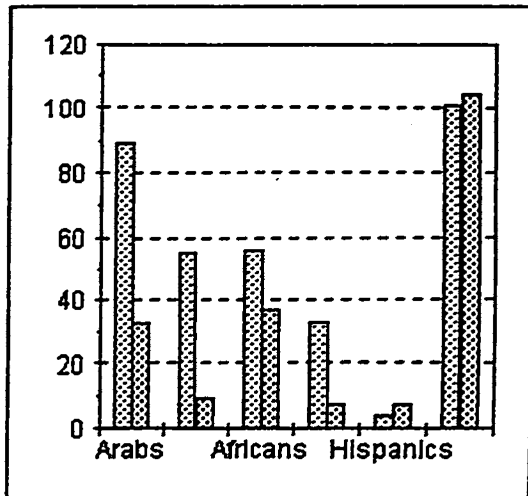
Illinois Connection:

* A Muslim woman in Chicago, wearing the hijab, was reportedly shot at while walking on the sidewalk in her neighborhood.

* A mosque in Springfield was burned down last year, and the local police authorities confirmed it an act of arson.

* Before the Oklahoma tragedy, the local American Muslim community experienced more than its share of looting and destruction when the Chicago Bulls won the National Basketball Association championship in 1991, 1992, and 1993. Data pertaining to 1991 are very sketchy. However, following statistics from 1992 and 1993 will reveal how Muslim businesses were hurt along with members of other "ethnorities."

It would not be out of place to mention that majority of Arab Americans are of Islamic orientation, and a large number of Indian and Pakistani store owners who are lumped together in the Asian American category are of Islamic heritage. This graph also illustrates that when the government takes precautionary measures to curb the



anticipated troubles, incidents of hate crimes go down.

Rays of Hope

According to a Chinese proverb, "The man who removes a mountain begins by carrying away small stones." Local American Muslims have started reaching out to the news media, which, in the past, maligned all ethnic groups and earned money by sensationalizing issues. Other communities have set exceptional examples in terms of making the news media accountable and sensitive to the diverse heritage and culture of the local population. Muslims have an abundance of examples on hand to emulate. Three years ago, the Council of Islamic Organizations of the Chicagoland area formed a media relations committee, of which this writer is a coordinator. This committee arranged several luncheon meetings with the top journalists of the local news media and discussed issues of negative coverage. The journalists complained that they did not have access to any database of local community leaders and they do not have any mechanism of getting feedback. The media relations committee has started working as a liaison between the news media and the local Muslim community, providing them a pool of scholars and community leaders whom they can contact for their stories.

Results have been phenomenal. This year during the month of Ramdan, a month of fasting, which Muslims celebrated from January 22 to February 18, more than 15 positive articles were published in several local newspapers, television stations covered several events, and radio programs were also devoted to Ramdan. Since last year, the *Chicago Sun-Times* did exceptionally well in printing Islamic activities. As a result, the Council of Islamic Organizations gave an award of fair reporting to the *Sun-Times* and honored its religious reporter, Andrew Herman.

In the last week of February, the *Sun-Times* published an article on Ramdan and Muslims written by the First Lady, Hillary Rodham Clinton, whose husband invited more than 185 Muslims to the White House to celebrate the end of the fasting month, which is called Eid-ul Fitr. This was a milestone in outreach efforts.

Several groups are working to reach out to Christian and Jewish communities. Aside from interfaith forums, first created under the auspices of the Council for a Parliament of the World's Religions and later picked up by various other voluntary organizations, Muslims have openly supported several Jewish political candidates.

Getting upset over what type of positive coverage and positive identity American Muslims don't have is to waste what we do have.

Respect cannot be learned, purchased, or acquired - it can only be earned. As Dolly Parton put it, "If you want the rainbow, you gotta put up with the rain."

Balkanization of the American Muslim Community

The U.S. Constitution puts far reaching emphasis on individual liberty and pursuit of happiness, but when it comes to declaring a person's or group's identity, it is very myopic and insular. If a person speaks Spanish as his or her native language, he will be a Hispanic. Here language certifies his ethnicity. People whom emigrated from the Asian continent determine their ethnicity on the basis of geography. African Americans and European Americans inherit their identity in terms of colors. Jewish Americans are classified on the basis of their religion and race. On the other hand, American Muslims are lumped together in various ethnorities while at the same time they are a separate and distinct group. Their children are as Americans as apple pie, and they often resent being lumped together in their parents' categories. Muslims have their own festivals, a common heritage, universal dietary codes and social mores.

In the absence of their own separate identity, it is hard to track down cases of discrimination

against Muslims. They are always an African American, European American, Albanian, Bosnian, Palestinian, Jordanian, Indian, Pakistani, or else. If they want to do some political work, they will always face this atomization process. Because U.S. Census does not provide any data on the religious basis, American Muslims cannot establish any local social service organization and expect a fair amount of funding from government or private agencies.

I read several books on the Chicago history and its ethnic groups, and I was shocked to find out that none of them wrote a single paragraph on local American Muslims. It is like a taboo to acknowledge the existence of Muslims in the Chicagoland area, where their numbers are claimed to be around 400,000. In the May 1995 handbook of the U.S. Commission on Civil Rights that discussed civil rights issues pertaining to Asian Americans in metropolitan Chicago area, a writer detailed various communities and their activities on and around Devon Avenue of Chicago, but she, who also lives on Devon Avenue, left out any allusion to the Muslim community whose numbers will be only second to Jews in that area. That author explicitly wrote about Assyrians, Christians, Hindus, and Jews; about their festivals; about their traditions. In that part of the City of Chicago, which combines 49th and 50th aldermanic wards, Muslims have established about six religious centers and dozens of grocery stores as well as restaurants. Muslims have overwhelmingly supported local incumbent aldermen. For the readers' information, a large number of Asian Americans who emigrated from Afghanistan, Bangladesh, India, Indonesia, Malaysia, Pakistan, and Sri Lanka, are of Muslim heritage.

Conclusion

It is easy to criticize or blame others but it is extremely difficult to govern, plan, execute, and coordinate. As John Wilmot put it, "Before I got married I had six theories about bringing up children; now I have six children and no theories." American Muslims are experiencing the same dilemma. They have to work hard and find points of commonality with other ethnic groups.

Policy Recommendations:

* Communication is very important. If one soldier knew what the other thinks, there would be no war. To an average American, Islam or the Muslim community is like an elephant first touched by seven blind people. Muslims have to invite non-Muslims to their social events frequently. This year, the Council of Islamic Organizations invited more than 500 elected officials, school authorities and academicians to attend Muslim's Eid-ul Fitr celebration organized at various locations. The largest congregation was at McCormick Place, where more than 15,000 people gathered on February 19.

*Work together. If a person is an anti-Semite, he or she will also be an anti-Christian and an anti-Muslim. Two beggars cannot afford to prepare for one Sabbath. It does not cost anything to promise and to love. The Jewish community has set a higher standard of reaching out various groups. Muslims don't have to look further to find examples. Instead of always fighting for their own causes, Muslims ought to fight with others and establish a common heritage. A single log does not warm the fireplace. It would not be out place to mention that Jews and Christians are Muslims' cousins in terms of blood and traditions.

* Instead of blaming the news media, Muslims ought to join them. They should encourage their children to become journalists as well as engineers and physicians. Work closely with the news media. When they write good things for Muslims, praise them; when they go out of their ethical boundary, deplore them with courtesy and logical arguments. In this country the news media set the agenda of social debate.

* Muslims have to establish their own political groups representing the two major political parties. They should invite elected officials frequently to their social events.

* They should start their own voter registration drive and publicize it. Once Muslims start voting, public officials will begin addressing their issues.

* If they don't have their own candidates, they should support candidates of other groups. Muslims should be visible in political campaigns.

* Ask the U.S. President and local Governor, city or village officials to declare a month or week as American Islamic Week and use this period to create awareness of the Muslim community and its contributions to the larger America.

* Lobby State and the Federal Governments and their agencies to classify American Muslims

as a separate category like Asians, blacks, Hispanics, and Jews.

* Work closely with the U.S. census so that Muslims are counted accurately and they are classified as American Muslims.

* Volunteer for those non-profit organizations that adhere to Islamic values like MADD—Mothers Against Drunk Driving, AA—Alcoholic Anonymous. They should reach out to agencies working to stop teenage pregnancy and encourage abstinence.

* Establish and aggressively support their own civil rights agencies on the pattern of the Anti-Defamation League. When the eyes don't see, the heart doesn't ache.

* Learn more about the historic work of African and American and Jewish communities against prejudice and hatred. Appreciate their works and join in their projects. Mountains cannot meet but leaders can; troublemakers and hate mongers cannot meet but troubleshooters and tolerant people can sit together and do pow wow.

* Speak out against all kinds of fundamentalism, terrorism intolerance, and discrimination. The ocean of hatred cannot be emptied with a can. An environment of fairness and tolerance will help Muslims as well as other communities.

* Join existing groups that fight against discrimination, hate crimes, and intolerance. Invite those groups to Muslims' religious and social center and involve Muslim youths in spreading the message of love and respect.

* Lobby the U.S. Commission on Civil Rights to gather data on the basis of religious discrimination and also on American Muslims. Instead of putting this agency on the spot, cooperate with them and provide them with accurate information.

* Request the U.S. Commission on Civil Rights to appoint an American Muslim to its local State Advisory Committees.

* Let public policy analysts and agencies know that when they develop issues and appoint or nominate people pertaining to the Asian and African American communities, they ought to include Muslims and their issues and point of view also until American Muslims are classified as a distinct category.

* Advise the Justice Department and various law enforcement agencies to conduct sensitivity workshops and educational sessions at State and national levels.

* To combat institutional racism, lobby law enforcement agencies to hire more Muslims and obtain their inputs in developing policy strategies. Generally Muslim viewpoints are ignored because very few Muslims work for government agencies or they are considered as part of other ethnic groups. The Midwestern Regional Office of the U.S. Commission on Civil Rights must be commended for reaching out to the Muslim community.

* With the help of U.S. Commission on Civil Rights and other civil rights agencies, Muslims should develop a standard hate crime complaint paper, which should be filled out if any such case occurs. Send its copies to various appropriate agencies. After getting approval or inputs from various government agencies, make available this complaint paper at all Islamic centers.

Note: The author expresses his deep appreciation to Dr. Asad Husain, professor of political science at Northeastern Illinois University, Ilyas Ba-Yunus, professor of sociology at State University of New York—Cortland, Dr. Peter Minarik, senior research analyst in the Midwestern Regional Office of the U.S. Commission on Civil Rights, and the Council on American-Islamic Relations, Washington, D.C., for providing invaluable data and information for this article.

Affirmative Action Programs in Not-For-Profit Human Service Organizations

By Karen Johnston

As debate on affirmative action continues both in Washington and in States struggling with earlier-enacted civil rights legislation, private and not-for-profit organizations are, necessarily, reviewing their affirmative action programs and implementation plans.

Affirmative action programs throughout the United States are being reviewed and, with this review comes renewed debate over a critical issue: What commitments does an employer make when enacting, as have many private, not-for-profit human service organizations, voluntary affirmative action programs?

In examining affirmative action programs in several not-for-profit human service organizations, special emphasis on reviewing recruitment, selection, and retention of minorities and women was undertaken along with a review of affirmative action programs currently in place.

Affirmative action involves organizations, as employers, making a specific effort to recruit individuals on the basis of classifications such as race, sex, religion, national origin, or disability along with other criteria and taking action to insure that such individuals, when employed, have an equal opportunity for benefits and promotions.

Historically, affirmative action has been a United States program to overcome the effects of past discrimination by giving some form of preferential treatment to ethnic minorities and women. The term is usually applied to those plans that set forth goals and time tables, required since the early 1970s of government contractors and universities receiving public funds.[1]

A recent survey of five not-for-profit human service organizations in northern Illinois reflected that most organizations undertook to develop voluntary affirmative action plans as a result of government contracting and receipt of Federal grants and to increase the diversity among their work force in order to be more appropriately reflective of those they serve. Most agreed that court-ordered affirmative action programs, action plans which imposed rigid quotas on hiring and promotion of minorities and women as in corporate companies, only served to increase dissension among their employees. However, establishing goals that promote diversity helped ease the tensions of their changing work force and assisted them in recruiting and retaining more minorities. All five organizations stated, however, that inspite of strong commitments to affirmative action, minorities, especially Hispanics, are still difficult to recruit and retain in not-for-profit human service organizations. Reasons cited for this include the following:

1. failure of educational institutions to promote careers for minorities in Human Service organizations,
2. traditionally low pay among all job classifications in the professional Human Service arena,
3. competition with public sector agencies, particularly those with strong union representation,
4. the stress of the profession is perceived as a negative incentive to seeking employment and, finally,
5. the inability of most not-for-profits to have Human Resources departments who actively recruit from larger pools of qualified and diverse applicants.

Most individuals willing to participate in this discussion pose the question that many in this country are posing: Has affirmative action met the law of diminishing returns?

Most would agree with an article in the April 3, 1995, issue of *Newsweek* which quotes Larry

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1 *The Concise Columbia Encyclopedia*, Columbia University Press (1995).

Huggins, who affirms the belief that we have a "... moral responsibility to train people from the community..." and that "your best work force is a diverse work force."[2] Most argue this is not an easy task. Why is that?

A *Washington Post* article on March 16, 1995, highlights reports from the Glass Ceiling Commission, a study growing out of the Civil Rights Act of 1991 and chaired by Labor Secretary Robert Reich. In this study, the Commission cites three "artificial barriers" to the hiring and advancement of minorities and women:[3]

> 1. societal barriers restrict the supply of qualified women and minorities as a result of the nation's education system,
> 2. internal structural barriers such as recruitment policies and cultures that alienate and isolate women and minorities, and
> 3. governmental barriers which fail to monitor employment law and identify problem areas.

Given people's belief that these barriers do in fact exist, employers in not-for-profit human service organizations believe that affirmative action programs warrant further study and review. Certainly, there is agreement that affirmative action has had less impact on their organizations than specific laws such as the Americans with Disabilities Act, title VII or the Equal Pay Act, and none of the organizations surveyed for this discussion had ever been seriously challenged in lawsuits alleging reverse discrimination or other discriminatory practices.

Surprisingly, many of these organizations' directors also were unaware of what the current debate over affirmative action was about, knew little about highly profiled challenges to affirmative action, e.g., California and Gov. Wilson, *Bakke v University of California Board of Regents*,[4] and had not recently reviewed or reevaluated their affirmative action program.

Not unlike other human service organizations, Catholic Social Services, as an agency affiliated with the Catholic Diocese of Rockford, voluntarily developed an affirmative action policy which states:

> It is the practice and policy of the Diocese of Rockford to provide equal employment opportunity to all people without regard to race, color, creed, sex, age or national origin and to promote the full realization of that policy through a positive, continuing program to be known as the Diocese of Rockford's affirmative action program. The Diocese of Rockford will accomplish its equal opportunity objective through the implementation of this plan which also assures that minorities and women will be recruited, employed and promoted for staff positions at every level, and similarly members will be recruited for the various board of directors and committees.
>
> The executives, directors, and other administrative personnel, under the direction of the Bishop of the Rockford Diocese, will be responsible for implementing the plan. Each administrator will report progress and results to the Bishop or his designate on a regular basis.[5]

This policy has been made a part of the personnel policies and practices of our agency. It is discussed at staff meetings. It is posted on office bulletin boards. A copy of the affirmative action plan is distributed to employees and made a part of new staff orientation. The basic premise of our organization, like others polled, is a belief that individual potential comes in a variety of shapes and colors and that, as an employer, we recognize and value these differences.

Human service organizations in our community have committed themselves to voluntarily promoting diversity. Organizations polled for this consultation have carefully and forcefully articulated policies that indicate that, as employers, illegal discrimination is not tolerated. They indicate that managers and supervisors are trained in

2 H. Fineman, "Race and Rage," *Newsweek*, Apr. 3, 1995, p. 32.

3 F. Swoboda, "Glass Ceiling Firmly In Place, Panel Finds," *The Washington Post*, Mar. 16, 1995, p. A18.

4 438 U.S. 265, 336, 98 S.Ct. 2733, 2771, 57 L.Ed.2d 750 (1978).

5 Affirmative Action Program, (Catholic) Diocese of Rockford, 1987, p. 1.

employment law. Their organizations' policies are applied consistently and fairly and written documentation of complaints are required of most managers. Employees are informed of the organization's commitment to diversity and participate in goal setting. Quotas are *not* utilized and goals are regularly reviewed and considered time-limited. All five organizations have expanded their recruiting practices and have encouraged opportunities to advance by offering on-the-job training and, in at least three of these organizations, tuition reimbursement. Regular meetings with employees to assess progress are conducted and used to offer recognition to employees within the organization.

As human service providers, several organizations have come together in quarterly meetings designed to discuss recruitment of Human Service professionals. This network, known commonly as the "Recruitment of Human Services Professionals Network," began meeting 4 years ago in 1992 to explore ways to encourage the recruitment of individuals of diverse backgrounds and academic credentials to human services organizations. At these meetings, providers of service discuss recruitment and retention of staff in their organizations and review the impact of laws that control workplace diversity issues.

Summary

As the debate regarding affirmative action continues, voluntary plans developed by Human Service organizations are being reviewed. Organizations agree that a thorough review of their affirmative action plans must be completed and reviewed with their employees.

We commend the United States Commission on Civil Rights continued study of affirmative action and welcome further dialogue and direction in this important debate.

Southern Illinois: A Case for Affirmative Action

By Don E. Patton

It has been forecast that 85 percent of the entrants into the workplace will represent changing demographics, consisting mainly of women, minorities, and legal immigrants. The United States will need to achieve its mission to train skilled workers for the 21st century. Work force education is critical to reaching the outcomes predicted.

Ninety percent of job openings are not advertised. These practices have resulted in overt discrimination at many of our institutions. According to a government report, white males make up only 29 percent of the work force, but they hold 95 percent of senior management positions.[1]

In view of this fact, affirmative action programs have been extremely important to mitigate the impact of institutional racism. Many times the lack of access to good jobs and opportunity to a good education on a persistent basis can lead to lower self esteem among those individuals not given the chance to compete in the job market and education.

Without a doubt, educational institutions are vital gatekeepers if we are to meet the challenges of the 21st century. Historically, affirmative action has been practiced throughout the United States, e.g., hiring veterans, admitting to colleges and universities women and children of alumni, and providing special economic incentives for the purchase of United States made products. Therefore, the concept and the practices of affirmative action have been with us long before 1965. Today, however, there is a well-planned effort to dismantle affirmative action programs.

Description of the Five-County Area in Southern Illinois

The five-county region of Southern Illinois constitutes the geographic area served by Shawnee College. It consists of Alexander, Johnson, Massac, Pulaski, and Union Counties. The region is situated at the confluence of two rivers, the Mississippi and the Ohio. Shawnee College is a community college with an enrollment of 3,864, of which 550 are minority students. The population of the region is approximately 57,000. The college is heralded by many residents as the hub of opportunity to improve one's quality of life. The board of trustees made a concerted effort in 1990 to widen the participation of minorities at the instructional and support level. During this time, the college witnessed significant growth in enrollment, revenues, and educational programs and received a wider acceptance from the community as an institution about positive change.

Recent Literature

The nature of the affirmative action debate has been altered over the past several years. It appears that the opponents of affirmative action are confident that they can destroy the program by framing the issue as "preferential treatment."

> When a cross section of whites are asked if affirmative action is really preferential treatment which gives one race of group an advantage that they do not deserve, a majority of whites (62 percent) rejects such definition.[2]

Further, a closer view of discrimination cases filed with the U.S. government shows that 3.6 percent were filed by white men charging they were victims of discrimination, while 96.7 percent were filed by women and minority group members.[3]

An important, but sometimes rarely mentioned fact in the debate on affirmative action is that the economy is much worse than it was 30 years ago. As a result, there are many more families finding

1 1990 United States census.

2 Louis Harris poll.

3 Paul Kivel, 1996.

it necessary to achieve two incomes by both the husband and wife working. In the opinion of some, this has hardened the views of many. Wealth in this country has become more concentrated, widening the gap between the "haves" and "have nots." One percent of the richest people in the United States account for 48 percent of the private wealth in the country, compared with 26 percent twenty years ago.[4] Therefore, much of the debate has always been centered around economics and compounded by the issues of race, gender, and class.

Impact of Affirmative Action

Affirmative action programs were initiated to redress racial inequality and injustice by the Executive Order issued by President John F. Kennedy in 1961. The Civil Rights Acts of 1964 and 1991 made discrimination illegal and established equal employment opportunities for all Americans regardless of race, national origin, color, or religion. Later, in September 1965, President Lyndon B. Johnson mandated affirmative action programs for all federally funded programs.

The intent of affirmative action has always been concerned with correcting institutional discrimination where decision policies are not explicitly discriminating but negatively impacting those who have been excluded.

As noted earlier, the percent of wealth and the number of discrimination cases filed each year are good indicators that the mission of affirmative action has not been accomplished.

At one community college in the southernmost region of Illinois, affirmative action strategy has brought a significant challenge to Shawnee College to provide all students with a quality education that prepares them to live and function successfully in a multiethnic, multicultural, and rapidly changing world.

At Shawnee College the decision was made to renew the mission to improve employment patterns by approving an affirmative action program that was inclusive in developing a pool of applicants that depicted their service area. Except for the part-time faculty, the college has seen substantial growth in hiring minorities. The part-time faculty numbers were slightly down because some part-time staff were hired full-time. Below are the employment numbers at the school for 1990 and 1996. Over these years the college has shown a steady growth in the rate of minority employment.

1990	Number of minorities employed	24 of 229 (10%)
	Minorities employed part-time	18 of 159 (11%)
	Minorities employed full-time	6 of 70 (9%)
1996	Number of minorities employed	32 of 277 (12%)
	Minorities employed part-time	15 of 146 (10%)
	Minorities employed full-time	17 of 131 (13%)

Policy Information

Affirmative action was important a few years ago and is still important today. Some critics of the program portent that affirmative action programs have served their usefulness. Others are attempting to redefine affirmative action as preferential treatment. Critical analysis of the data suggest this nation is far from reaching its mission of equal opportunity. A suggested format to analyze the policy of affirmative action programs should entail the following:

1. How is the problem being defined? Who is defining the problem? Who is not part of the discussion?
2. Who is being blamed for the problem? What racial or other fears are being appealed to?
3. What is the core issue?
4. What is the historical context for this issue?
5. What is being proposed as a solution? What would be the actual results of such a proposal?
6. How would this proposal affect people of color? How would it affect white people?
7. How would this proposal affect the rich?

4 1990 U.S. Census.

8. How would it affect women? Young people? Poor and working people?
9. What are other options?
10. How are people organizing to address this problem in a more progressive way? How are people organizing to resist any racial backlash this issue might represent?
11. What is one thing you could do to address this problem?

Achieving a multicultural society that is antiracist and antidiscrimination is critical to the nation's effectiveness. Complex issues in the areas of social, political, economic, and interpersonal changes require diverse participation of its citizenry. Affirmative action, in the writer's mind, is part of the solution, not the problem, if the United States is to continue to strive to combat racism in institutional settings and public policy.

Affirmative Action: Time To Rethink Antidiscrimination Strategy

By Lee H. Walker

Affirmative action may now be the most controversial issue in America, but the debates tend to degenerate into finger pointing and competing claims of who is the bigger victim, blacks, white women, angry white males, Hispanics, and others. The irony of these competing claims is that affirmative action was initially established for blacks, the one competing group who has received the least from the concept after three decades. That is not my opinion, it is the conclusion of a recent report of the Federal Glass Ceiling bipartisan commission, based on 1990 U.S. census data.

Let me begin by directly responding to the central question at hand, my view of the concept of affirmative action. The recent Supreme Court decision in the *Adarand Constructors v. Pena* made it clear that it is time to rethink this exclusive antidiscrimination strategy, a concept most people can no longer define. I argue that for blacks in particular, it is time for us to seek what was originally intended in 1961. The intent was to ensure equal opportunity from recruitment and hiring through upward mobility, based on merit. Unfortunately, what we are calling affirmative action today is not what was originally intended and has run its course. It is time for us to seek what was originally intended; that is, ensuring affirmative opportunity and managing diversity in the workplace. Affirmative action allowed many of us both black and several ethnic whites, to get a fair representation of entry level jobs in the corporate structure in the 1960s. No one can argue the merits of affirmative action at its inception, but the program changed and broadened.

The debate has been going on for roughly 30 years, or since President John F. Kennedy signed Executive Order Number 10925 in 1961. It was the first time the Federal Government required that employers take affirmative action to assure nondiscrimination in employment. In 1963, another Executive order extended coverage of Executive Order 10925 to construction contractors. These Executive orders resulted from intense community pressures on the President by the late Roy Wilkins of the NAACP, the late Whitney Young of the National Urban League, and A. Philip Randolph, representing the black independent labor movement (Brotherhood of Sleeping Car Porters). The Executive orders stipulated that employers and government contractors, in addition to accepting an obligation not to discriminate, must take affirmative measures to ensure that such discrimination does not occur. The measures outlined included announcing their new nondiscrimination policy, publicizing employment opportunities to minority communities, notifying labor unions of the employment commitment, and furnishing information and records for compliance reviews.

Although passage of the Civil Rights Act of 1964 was considered a supreme victory by most, in 1965, President Lyndon B. Johnson signed Executive Order 11246, which then made the Secretary of Labor, rather than a presidential committee, responsible for administering the affirmative action program. The Federal establishment of the affirmative action cycle was basically completed in 1967, with Executive Order 11375, adding gender as a prohibited basis of discrimination.

As we enter the 21st, whether or not one agrees with the proposition that it is time to rethink affirmative action, as I argue, one conclusion is very clear:

> Affirmative action as we knew it three decades ago has changed. It is no longer focused on racial discrimination. Nobody is really talking seriously about what happens to blacks once they are hired as it relates to upward mobility.

No better example of that is the February 1996 discrimination charge against a Holiday Inn franchise in Oak Lawn, Illinois. The hotel was hiring blacks and Hispanics; the problem was they never had the opportunity to work the front desk and meet the public. Thus, the hotel was an equal opportunity employer, they had minority employees. According to the EEOC investigation, the hotel management told employees who questioned the hiring practice that the hotel was "not ready" for blacks. After this case was headlined for two days, press reports stated that the Clinton

administration was launching a new strategy and filed suit against the Holiday Inn franchise so as to send a message to the hospitality industry! My question is, if affirmative action is as good as its supporters say it is and only needs mending, why launch a new strategy? For I agree that we need a new strategy. Again, the irony of this case is that if one of those blacks had spilled hot coffee on one of the guests, the franchise would have paid out millions of dollars.

The next question is, and where I think the solution lies, is how much will the hotel pay out for such intentional racial discrimination. As painful as it might be to acknowledge, I urge that we vigorously analyze the continuance of racial discrimination and its one remedy, affirmative action. While this debate has finally moved out into the open, it has also created a political quake, which is splitting the country and shaking apart friendships, family members, and political parties.

As the racial divide appears to be widening, we could not be at a better location than the U.S. Commission on Civil Rights Commission to discuss this national issue of race and color. Furthermore, I consider it a personal responsibility to contribute to this public debate. This is my first address to the United States Commission on Civil Rights, and may God grant me the wisdom to speak with positive and constructive thoughts. I believe I do have a somewhat empirical perspective on this topic, having spent over 33 years in the corporate world. In addition to my corporate experience, I have always been a civil rights activist. My activist days began with the Montgomery bus boycott, and my corporate career days began prior to affirmative action in New York City. I was chairman of a newly founded national nonprofit organization of volunteer executives, predominately black, whose mission was to integrate corporate America during the early 1970s. It is fitting that after 30 years of living in the corporate world, I believe the field of employment is one of the most important in the field of civil rights. Outside of government, the corporate world is probably the largest employer. I can remember when AT&T alone had a payroll of one million people, however, that was 30 years ago. Today, in 1996, AT&T has a very different situation. As we discuss the evolution and impact of affirmative action and blacks, hopefully, you will understand that the original intent is no longer what it was 30 years ago.

As I recall, the first few years of affirmative action in New York City were exciting times for blacks. We were being recruited into the corporate world, as well as government service. Qualified, college trained blacks and Hispanics were responding to all employment ads that read "equal opportunity employer." Our expectations were high. Affirmative action was our new American Express card. This new strategy of hiring, recruiting and training was good for us and good for America. Yes, we benefited, and worked very hard at being the best we could be. We also received help from the major civil rights organizations. The late Roy Wilkins of the National NAACP and the late Whitney Young of the National Urban League were the two major black Americans best known to corporate heads during the 1960s and 1970s. Whitney Young helped a small group of us establish the first national group of black executives under the title of Council of Concerned Black Executives (CCBE) (We held our monthly meetings at the National Headquarters of the Urban League).

The mid-1970s began to resemble Dicken's *Tale of Two Cities* with respect to the application of affirmative action. The exciting times were turning into frustrating times. Expectations were no longer high. We were discovering that our American Express cards had a lower limit than those of white males; and it didn't matter whether you had graduated from Harvard or Howard. It was at that point that I knew affirmative action needed to be reviewed and replaced by something else. What we thought was positive action was turning into concrete signs of negative action or stagnation. We needed something with stronger enforcement to ensure real opportunity beyond just getting hired and never being promoted to manager and senior level. Years later, I began calling that new remedy, real or affirmative opportunity. However, at the time we did not have a name for what was happening to us other than racial discrimination. Today it is called the glass ceiling, and the perception of real opportunity.

Yes, others also suffer from the glass ceiling syndrome but I am set aside solely because of race and color, which is a gift received from God. I should not have to explain such a gift. I should not be penalized for such a gift, and I do not expect to

receive extra points because of my gift. The affirmative opportunity I'm describing was best expressed with the words, "We hold these truths to be self-evident, that all men are created equal." Yes, black men as well as white men. "They are endowed by their creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." Whether you are an American by birth or law, those words were to be true for all.

When I speak those words, I am aware that without the 13th amendment, the original Constitution permitted slavery. Without the 19th amendment, women also did not have the right to vote, and without the first amendment, there was no protection for religious beliefs. But that was yesterday. Today we all can agree with those words. The late congresswoman and professor, Barbara Jordan, expressed it best when she said in 1974 arguing for the impeachment of President Nixon . . . " I felt somehow for many years that George Washington and Alexander Hamilton just left me out by mistake. But through the process of amendments, interpretation and court decision, I have finally been included in 'We the people.' My faith in the Constitution is whole, it is complete, it is total, and I am not going to sit here and be an idle spectator."

However, reality still necessitates an affirmative remedy to ensure opportunity until society and color-blind law is much closer. If affirmative action is doing what some say it is, why has it produced less for those it was intended to benefit, as evidenced by the 1990 Federal Glass Ceiling Report. Racial discrimination is not the same as other forms of discrimination. It has a peculiar history in America. This is not to separate blacks from others, but as painful as it might be to acknowledge, America, and blacks in particular need to be focused on the most effective solution. We need to vigorously analyze the impact of discrimination and its one remedy that has not been reviewed for 30 years.

Having said that, what do I mean when I use the term affirmative action, or maybe the question should be, "What is affirmative action anyway?" A footnote in the recently released 100-page presidential (Clinton) report on affirmative action highlights a comment, and I quote, "Affirmative action enjoys no clear and widely shared definition." Unfortunately the phrase, "affirmative action" has lost its original meaning. That's the central problem in the current debate, the term means different things to different groups. For what we are presently calling affirmative action is a long way from the original intent in 1961, when Hobart Taylor, Jr., an African American attorney first used the phrase with President Kennedy. Taylor was Special Counsel to President Kennedy's Commission on Equal Employment Opportunity.

Affirmative action was to be a hiring, recruitment, training, and promotional remedy, which also included making such known to the minority communities. "The contractor was to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, with regards to their race, color, or national origins." In short, with the best of intentions, it was an employment program of "voluntary pledges" to hire a greater proportion of blacks. You may remember the slogan, "Plans for Progress—Equal Opportunity Employer."

The week of April 17, 1995, I argued through my column in *Crain's Chicago Business*, that affirmative action over the past 30 years has been a successful outreach strategy for hiring minorities and women. I had benefited from such strategy, but after 30 years experience including all of the controversy, I believe affirmative action today is an idea that has run its course. It is time to focus less on affirmative action and more on affirmative opportunity, at least for blacks.

In my experience and observations, there is a difference between affirmative action and real or affirmative opportunity. To a limited extent, minorities have been hired, but they have not moved up the ladder. Once you are in the door, there has not been real opportunity for upward mobility. The Federal Glass Ceiling Commission report shows that, in 1990, black females held only 4 percent of total management positions, while black males held only 3 percent. This is after three decades of affirmative action. Can this be called the most effective remedy, and needs no reviewing? We have to stop playing the numbers game in terms of hiring. This is not 1965.

The sheer demand for good workers means minorities are being hired and will continue to be hired. Hiring minorities 30 years later is no longer just a social issue. It is now good business within a competitive marketplace, both domesti-

cally and internationally. A recent report on major corporations showed that they plan to continue their present hiring patterns regardless of what Congress decides about affirmative action. The fact of the matter is that corporate America, without government or civil rights pressure, has already bypassed the concept of affirmative action and has moved into diversity in the marketplace. Yet, discrimination continues to deprive blacks of potential opportunity for promotions, which is a challenge that goes beyond the present vision of affirmative action.

I mentioned earlier about having a stronger and more enforceable remedy. Let me give you an example, the mailbox where you receive your mail. It is a Federal crime to tamper with that box. However, an employer or manager can impede your career without fear of consequences. Even in the military, if one does wrong, there is a consequence of demotion or dishonorable discharge. Another example is sexual harassment. Such claims have severe consequences, yet the careers of too many blacks continue to be damaged without consequence. "Discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society." When it happens someone should be fined as well as spend time in jail.

Over 10 years ago, economist Thomas Sowell, currently a senior fellow at Stanford's Hoover Institute, called for a discussion and review of affirmative action in his book, *Civil Rights: Rhetoric or Reality?* We are at least 10 years behind in finding the most effective remedy to ensure equal opportunity. Today, I argue that we cannot afford another decade of missed opportunity as well as personal responsibility. We live in a dramatically different political, social, and economic world in the 1990s. The face of discrimination has also changed. In the 1960s, we confronted clear-cut acts of blatant discrimination and today we are confronting less obvious, but no less pervasive forms of discrimination.

We are going through a transformation of the economy and work force, not only domestically, but internationally. We are seeing fundamental, structural changes being replaced by new technology. We need to harness the intellectual energy within our community along with our emotional intelligence, and reevaluate in light of these new changes in the marketplace. The challenge is here and the decision we make, right or wrong, will be with us for the first decade of the 21st century, which is just a few years away.

There is also a deep philosophical tension concerning the best way to approach our emerging economic, educational, political and social challenges. Some might call it a revival of the Dubois and Booker T. Washington vision. A fundamental belief in limited government interference with basic individual rights; but an equally strong belief in government intervention to protect these very same basic rights. This tension has led to considerable disagreements.

We have seen conflicting reports, but we cannot ignore the fact that too many black men who were supposed to be helped by affirmative action are still dropping out of the labor market. Sociologist William Wilson at the University of Chicago describes many of the young males as the "truly disadvantaged." We simply cannot allow this to continue.

In light of real world facts of life, there should be no reasoned disagreement over the underlying promise of affirmative action. That is, that we simply must do more than just saying "stop discriminating," if we are ever going to stop the effects of a history of discrimination. Furthermore, we must have the courage to recognize that there is room to question the effectiveness and legality of certain affirmative action programs and policies. It is irresponsible of us simply to turn our backs on this reality and assume we have developed a social and legal panacea as many are arguing today. Too many blacks believe incorrectly, that they can succeed only with the help of affirmative action or some special program. I argue that such an attitude is an insult to all of the John Johnsons who succeeded against great odds long before affirmative action. There are other side effects not usually mentioned in the present affirmative action debate, which Justice Clarence Thomas highlighted in the *Adarand Constructors v. Pena* case. "Government cannot make us equal; it can only recognize, respect and protect us equally before the law and these programs stamp minorities with a badge of inferiority and may cause them to develop dependence or to adopt an attitude that they are entitled to preferences."

We fought too long and too hard to make people stop saying all blacks look alike—but I say it is a

far greater evil that many say blacks all think alike. It is a far greater evil that we tend to exact rhetoric over facts and critical analysis. To change our thinking is not easy, especially when the changes are perceived and publicized as setbacks to present hard earned civil rights gains. But we cannot clutch symbols when reality demands change. We cannot instinctively dismiss new concepts, new ideas, and new leaders. Do not permit those who thrive on sensationalism to sway you. Be persuaded by the same study and research as you would be persuaded by in your professional endeavors.

In closing, with respect to racial discrimination, we have moved from the original concept of equal individual opportunity to the concept seeking equal group results. The Civil Rights Act of 1964 required that individuals be judged on their qualifications as individuals, without regard to race, sex, age, or ethnic origin. Our future as we speak, depends on our skills, our courage to act in a positive way, and drop our buckets where we are and make this a better world.

IV. Community Organization Positions on Affirmative Action

Affirmative Action in Hiring and Contracting: An Effective Public Policy

By James W. Compton and James H. Lewis

Affirmative action is a broad term used to describe strategies implemented to assure the absence of discrimination in areas such as hiring, contracting, and university admissions. Initially, as in President John Kennedy's Executive Order 10925, the term pertained to an obligation of firms doing business with the Federal Government to "take affirmative action to ensure that applicants are employed, and employees are treated during their employment, without regard to their race, creed, color, or national origin."

The definition of affirmative action took on its present form during the Johnson administration. Under Executive Order 11246 in 1965, Federal contractors with 50 or more employees and $50,000 in government business were required to have affirmative action plans expected to result in sufficient minority employment with the firm to evidence nondiscrimination. Since then, both public and private sector employers and contractors have implemented a variety of different "affirmative action" strategies designed to eliminate discrimination in hiring and contracting, and to enhance racial diversity among their employees and vendors.

The universe of affirmative action includes a number of different approaches to fighting discrimination. These include set-asides in contracting, programs that promote minority hiring or contracting by undertaking extensive searches for minority applicants or vendors, providing special assistance to minority vendors in order for them to bid and operate competitively, utilization of numerical goals for contracting or hiring, and negotiation of minority hiring goals due to U.S. EEOC monitoring.

Affirmative action in hiring and contracting is an important tool for two reasons:

First, use of affirmative action is essential to prevent discrimination and to redress historical discrimination;

Second, we have an interest as members of a local community and as a nation in creating racial diversity in the workplace and marketplace, and in eliminating economic disparity between racial groups in our society.

The following chapter explains why affirmative action programs are needed and provides indications of their effectiveness in the areas of hiring and contracting, particularly with respect to combating discrimination against racial minorities.

I. Hiring

Affirmative action strategies in hiring have taken three basic forms:

1. Affirmative action hiring policies by governments.
2. Voluntary private sector hiring goals.
3. Affirmative action hiring targets negotiated with the office of Equal Employment Opportunity or by court order.

Considerable evidence points to the need to continue affirmative action programs. Chicago, like many other large American cities, is troubled by the persistence of a numerically large underclass that includes substantial numbers of African Americans. This group of persons tends to be racially segregated, has low levels of educational achievement, and is characterized by persistent unemployment and underemployment. Perhaps the chief defining characteristic of this group is its poverty level. Analysis of the 1990 census data by the Chicago Urban League revealed a pattern of low income and high unemployment for Chicago's

African Americans, a problem that persisted through the 1980s.[1] In Chicago in 1990,

- White median family income was $40,874 compared to $22,456 for African American families.
- Nine percent of white persons had incomes below the poverty line compared to 33 percent of African Americans.
- Over 47 percent of African American children lived in poverty compared to only 11.9 percent of white children.
- Almost 20 percent of African American persons were unemployed compared to 5.4 percent of whites.

A 1988 report by the Chicago Urban League presents the substantial racial disparity in representation of persons in occupations in firms in the Chicago area.[2] Within Chicago,

- executive, professional, sales, technical, craftsmen, and machine operator occupations all have significant African American underrepresentation. African American men were 25 to 40 percent less likely to be those jobs than in the labor market overall.
- transportation and administrative occupations have significant black male overrepresentation. Black men are 100 to 150 percent more likely to be in these jobs than in the labor market overall.
- service and laborer occupations have moderate African American male overrepresentation. African American men are about 20 percent more likely to be in these jobs than in the labor market overall.

While these disparities are not of themselves proof of discrimination in hiring, they are what our labor market would look like if discrimination were occurring or the vestiges of recent discrimination were to remain. It is essential for the health, if not the future survival, of our society to eliminate these imbalances which have resulted from a past of discrimination in employment and education and to assure that discrimination does not occur in the future. The high correlation of poverty with race reinforces negative racial attitudes in society in general.

Part of the reason for these disparities in employment is that overt discrimination in the hiring process continues to exist. Employment testers from the Legal Assistance Foundation conducting a study of prevalence of discrimination in hiring in the Chicago area in the early 1990s found that discrimination took place both in how interviews with applicants of different races were handled, and in how resumes and applications were handled. A 1991 study by the Urban Institute utilizing 476 hiring audits in Washington, D.C., and Chicago also revealed hiring discrimination. Twenty percent of white testers were able to advance farther in the hiring process than could the African American tester, and in 15 percent of cases, the white was offered a job and an equally qualified African American was not.[3]

Research studies controlling for educational levels, age, work experience and race find that race continues to be the single greatest factor accounting for variations in employment levels. Stratton found that only 20 percent to 40 percent of variation in unemployment can be attributed to factors other than race.[4] Among persons with the least education or experience, race has the greatest differential impact. Aboud and Killingsworth, in a similar analysis, found that only 30 percent

1 Chicago Urban League, Latino Institute and Northern Illinois University, *The Changing Economic Standing of Minorities and Women in the Chicago Metropolitan Area, 1970–1990.* (DeKalb: Northern Illinois University, 1994).

2 Nikolas C. Theodore and D. Garth Taylor, *The Geography of Opportunity: The Status of African Americans in the Chicago Area Economy* (Chicago: Chicago Urban League, 1991).

3 Margery Austin Turner, Michael Fix, and Raymond J. Struyk, *Opportunities Denied, Opportunities Diminished: Racial Discrimination in Hiring* (Washington, D.C.: Urban Institute, 1991).

4 Leslie S. Stratton, "Racial Differences in Men's Unemployment," *Industrial and Labor Relations Review*, 46 (1993): 451–463.

of variation in employment was attributable to factors other than race.[5]

Studies show that firms continue to hire members of their own race with majority-owned businesses hiring disproportionately few minority workers. Majority-owned businesses tend to fall into one of two categories: either they have no minority employees or they have almost entirely minority employees. Bates found that in urban areas in 1982, 93 percent of African American businesses filled over 50 percent of their openings with African Americans but 58 percent of nonminority employers had no minority employees.[6] Nationally, among businesses owned by white males in the nine major industrial sectors, the average percentage of businesses having no minority employees ranged from 45 percent in wholesale trade to 58 percent in selected services.[7] Conversely, 26 percent of retail trade firms and 35 percent of transportation and public utility firms had from 75 percent to 100 percent minority employees. These firms were primarily located in minority communities.

Affirmative action has proven to be an effective strategy for eliminating discrimination and reducing racial disparity in hiring. There have been substantial increases in numbers of minority persons hired since the mid-1960s when these programs were put in place. The influx of minority workers into American firms since the 1960s has clearly had no negative impact on productivity. Leonard found that productivity of minority and female workers in manufacturing did not decline at the margin with increased hiring, indicating that reverse discrimination has not taken place as affirmative action has been implemented. In other words, new minority workers hired through affirmative action have been qualified for their jobs. Leonard concludes that "job redistribution has not entailed large efficiency cost and that government policy has made progress in fighting discrimination." Although title VII enforcement appears to have fallen on relatively few firms, from 1966 to 1978 there was a substantial increase in the proportion of the work force that is African American.[8]

A recent study of performance of Chicago area firms and affirmative action demonstrated no adverse impact on firms by increasing minority hires. Coleman found that minority workers were no more likely to be retained in slack times for firms than were white workers. Thus in times of industry layoffs, affirmative action did not cost white workers jobs. Coleman also failed to find any relationship between hiring of minority workers and loss of productivity as measured by profitability, industry position, or efficiency.[9]

Due in part to the Federal commitment to affirmative action dating to the mid-1960s, affirmative action programs have been applied most strongly in government and it is there that we find the greatest representation of minority persons at all occupational levels. In the Chicago area, African American males and females are substantially overrepresented in proportion to whites in employment in state, local, and Federal governments.[10]

It also appears that EEO settlements and monitoring have had an effect on hiring practices of subject firms with respect to race of new employees. Leonard found that between 1974 and 1980 the share of black male and female, and white

5 John Aboud and Mark Killingsworth, "Do Minority/White Unemployment Differences Really Exist?" *Journal of Business and Economic Statistics* 2 (1984): 164–172.

6 Timothy Bates, "Utilization of Minority Employees in Small Business: A Comparison of Nonminority and Black-Owned Urban Enterprises," *The Review of Black Political Economy*, 23 (1994): 118.

7 United States Department of Commerce, *Characteristics of Business Owners*.

8 Jonathan Leonard, "Anti-discrimination or Reverse Discrimination: The Impact of Changing Demographics, Title VII, and Affirmative Action on Productivity," *Journal of Human Resources*, 19 (1984): 145–174.

9 Major G. Coleman, "The Affirmative Dilemma: The Politics and Reality of Individualistic Remedies for Collective Discrimination: Affirmative Action and the Chicago Labor Market 1960 to 1990," Unpublished Paper, Chicago, Illinois, 1993, p. 20.

10 Taylor and Theodore, *Geography of Opportunity*, pp. 32, 35.

female employees increased significantly faster in firms subject to Federal contractor regulations than in firms that were not. The fastest growth rates appeared in non-clerical, white collar and unionized positions. In Federal contractors, black male employment grew 3.8 percent faster, black female 12.3 percent faster, and other minority male employment 7.9 percent faster than whites. Differentials in earnings between whites and blacks also narrowed, particularly in white collar and skilled craft positions.[11]

Hyclak, Taylor, and Stewart found that affirmative action requirements associated with being a government contractor had positive effects on minority hiring. Firms subject to affirmative action requirements were more likely to hire black males for managerial jobs. The process of implementing affirmative action programs within a firm also had a cumulative effect; firms that already had large numbers of women and African American men tended to attract higher numbers of African American male and women's employment applicants.[12]

One of the persistent criticisms of affirmative action programs in hiring is that their existence tends to stigmatize members of minority groups, resulting in assumptions that minority persons did not earn their employment and that they will feel worse about themselves. There is no evidence that affirmative action programs have any effect on esteem of persons who may have been hired because of them. Taylor found that African Americans and women show no difference in job satisfaction or self-concept at firms that have implemented affirmative action programs. In fact, African Americans in firms with affirmative action programs showed greater levels of occupational ambition. In general, African Americans consider stigma less of a problem than lack of economic opportunity.[13]

II. Contracting

Affirmative action is essential in the area of contracting in order to eliminate discrimination that persists in the purchasing processes in the public and private sectors. A bi-product of this process is increasing and expanding minority businesses that provide economic stability for minority neighborhoods, and that hire large numbers of minority workers.

A. African American Businesses Have Not Penetrated White Markets

The separation of races in Chicago that has been so well documented in terms of residential segregation is every bit as pervasive in the economic realm. In part, economic segregation stems from residential segregation, but it also has a life unto itself stemming from a number of factors. These include the persistence of "old boy" networks that pervade many economic transactional networks that were built upon relationships begun when virtually all manufacturing and wholesaling was owned by whites. The persistence of these networks has made it difficult for minority vendors to break into markets both in the private and public sectors.

Over half of all product sales in the United States are from one business to another. Minority firms tend to be overly dependent upon government for sales. Lack of access to these markets is little understood, but is highly damaging to the ability of minority firms to go and create jobs that tend to go to minority workers.

Both because of set-asides and the prevalence of greater numbers of minority persons in leadership positions in government as opposed to the private sector, minority firms rely more upon government for purchases than do majority firms. From 8 percent to 10 percent of sales by minority vendors in the 9 industrial categories were to local, State, or Federal Government against only 3 percent to 5 percent of sales by majority firms.

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11 Jonathan Leonard, "What Was Affirmative Action?" *American Economic Review*, 76 (1986): 359–363.

12 Thomas Hyclak, Larry W. Taylor and James B. Steward, "Some New Historical Evidence on the Impact of Affirmative Action: Detroit 1972," *Review of Black Political Economy*, 21 (1992): 81–98.

13 Marylee C. Taylor, "Impact of Affirmative Action on Beneficiary Groups: Evidence From the 1990 General Social Survey," *Basic and Applied Social Psychology*, 15 (1994): 143–178.

Developing private sector markets for minority vendors is much more difficult than in the public sector. With the exception of Equal Employment Opportunity requirements, which govern only discrimination in personnel and are not a public record, and Federal monitoring of companies with Federal contracts, there is little monitoring of private sector vending transactions. Statistics document clearly the difficulty minority vendors of almost all types have had penetrating private markets in the United States. Nationally, between half and two-thirds of black-owned firms in the nine industrial categories currently rely on minority customers for from 75 percent to 100 percent of their sales. An additional 10 percent of firms rely on minority customers for from 50 percent to 75 percent of sales. This suggests that in large measure, commerce in America remains highly segmented between majority and minority communities.

The need to combat our history of economic discrimination is illustrated by the underrepresentation of black businesses in virtually every industrial sub-sector of agriculture, mining, construction, manufacturing, wholesale trade, and several of the selected services. Although African Americans constitute more than 10 percent of all Americans, only approximately 2 percent of firms are owned by blacks. In many areas, the percentage of black ownership is even lower. In virtually every industrial category, the market share of black businesses is also disproportionately small. Sales by black-owned firms represented less than 1 percent of total sales in the selected industrial categories

The lack of markets to which minority businesses have access is underscored by the mixed picture of national minority business growth during the 1980s. From 1982 to 1987, there was substantial growth in the number of black-owned businesses across most industrial divisions and subcategories. Many industrial divisions such as furniture and fixtures, printing and publishing, chemicals, rubber, and primary metals, gained in numbers of firms but suffered decreased sales. In many areas, an increasing number of black entrepreneurs were expanding into relatively limited markets. Black communities have excess productive capacity and need assistance in locating new markets for sales.

Development and expansion of minority-owned enterprises is essential because minority workers depend upon minority-owned businesses for employment. Minority owned firms in the nine major industrial sectors averaged from a low of 63 percent of finance, insurance, and real estate businesses to 90 percent of agricultural services having work forces ranging from 75 percent to 100 percent minority employees. Conversely, very few black-owned businesses had few or no minority employees. Clearly, minority businesses afford an important avenue for economic growth in minority communities. A 1994 survey by the Chicago Urban League found that more than half of minority-owned construction firms employed work forces that were at least three-quarters minority and another 25 percent employed work forces that were at least half minority.[14]

B. Barriers to Market Entry

The majority of what we know about why minority firms have such a difficult time penetrating markets controlled by whites comes from reports of their experiences trying to obtain government contracts. Surveys conducted by the Chicago Urban League of minority contractors who sought business with the Cook County Board and State of Illinois in the late 1980s and early 1990s provide detailed examples of problems securing contracts with governments due to overt discrimination and structural barriers that result in disparate impact on minority contractors. These problems have also consistently been noted in surveys of contractors conducted by the Metropolitan Water Reclamation District and Chicago Park District.

1. Uneven bid notification

Minority firms consistently report that they are not made aware of notifications to bid, or bid notification comes too late for them to respond

14 Joseph S. Moag and Nikolas C. Theodore, *The Employment Capacity of Small Construction Contractors* (Chicago: Chicago Urban League, 1994).

competitively. Favored firms may receive "unofficial" notice of upcoming contracts and sometimes even their specifications so that when a general bid notice is circulated, they are prepared to respond quickly. Selective bid notification can be a way of discriminating against minority firms.

2. Problems securing bonding and financing

Because minority firms tend to be less well capitalized on average than majority firms and because they can be subject to discrimination in financial markets, narrow rules by contractors regarding bonding and financial structure can have a discriminatory effect on the ability of minority firms to secure contracts. This is particularly true in the case of large contracts where the contractor may require that the firm winning the bid demonstrate ability to provide up-front financing to support initial work on a project.

3. Slow payments for work

Payment schedules for work generally require considerable up-front investment by a firm to execute a contract prior to receipt of the first payment. Government is also notoriously slow in making payments to contractors. Lags in payment are particularly onerous for small firms and firms that have difficulty securing financing for cash flow, a characteristic of many minority businesses.

4. Bid shopping of subcontractors

Bid shopping occurs when a bid amount is communicated to other potential contractors and favored suppliers are then given an opportunity to undercut the previous low bid. This is particularly prevalent in development of subcontractors. Suppliers later submit invoices for overages, arguing that they had legitimately underestimated the cost of completing the job. In this way, contractors can ensure that favored subcontractors receive their business.

5. Contract size, especially for prime contractors

One of the biggest impediments to minority contractors securing work, particularly as prime contractors, can be contracts that are too large for them to perform. Bundling of a variety of tasks or commodities into a single contract has a discriminatory effect in that it essentially precludes competition from smaller minority vendors.

6. Old boy network

The "old boy network" is a euphemism for the continuing practice of purchasing agents finding ways to let contracts to persons with whom they have had long-standing relationships. For the most part, this has meant networks of white buyers and contractors controlling the bidding, contracting, and subcontracting processes.

7. Restrictive bid specifications

Purchasing can be unfairly controlled by setting specifications for the commodity or service such that a limited number of suppliers, or even only a single supplier, is able to provide it. In that way, the purchasing agent can assure that contracts will be secured by preselected individuals and that others will be excluded, even though the contract is openly, and presumably competitively, bid.

C. Other Contracting Issues

Often the barriers to business development lie in vestiges of historical discrimination. Studies of capitalization of new firms consistently show that minority firms have less access to investment of debt capital than do white-owned firms, particularly at the point of startup. Minority-owned firms are more likely to rely upon personal savings to start their business, despite those savings on average being far less than those available to whites. A study of financing of Chicago area businesses showed that from 1976 through 1982, whites were able to obtain 64 percent of a larger amount of startup capital from banks against African Americans obtaining only 48 percent of a smaller base from banks. Whites averaged almost twice as much startup capital for businesses than did African Americans.[15]

To some extent, these disparities are likely the product of discrimination that continues to take place in financial markets. Banks may be unwilling to make loans to minority recipients located in

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15 Susan Getzendanner, Ruben Castillo and Milton Davis, *Report of the Blue Ribbon Panel to the Honorable Richard M. Daley, Mayor of Chicago*, Chicago, Illinois, 1990, pp. 62, 63.

minority neighborhoods. In other cases loan officers may simply have less confidence in the ability of minority entrepreneurs. The dearth of personal resources is a product of the long climb that has been necessary to lift minority workers into jobs where they and their families can make sufficient money to accumulate personal savings with which to start businesses.

Much of the focus of affirmative action in contracting has focused on government and the construction industry. Government has been most accessible to influence because of the sensitivity of elected officials to the political process. The largest expenditures by governments fall in the area of construction contracting. Concerted efforts to increase minority representation in the construction trades date to the mid-1960s. Until affirmative action was made nonvoluntary, these efforts largely failed. In 1966 a voluntary program of recruitment of minority journeymen resulted in the addition of only 430 workers to a Chicago-area construction work force numbering over 100,000. Following direct confrontations on job sites, a second voluntary program called the "Chicago Plan" was initiated in 1970. Over the 16 month period in which the "Chicago Plan" operated, the U.S. Department of Labor's audit verified less than 100 new minority construction workers.[16] A "New Chicago Plan" enacted in 1972 resulted in hiring of only 266 minority construction workers. *The Chicago Reporter* observed that between 1972 and 1974, 96 percent Cook County plumbing contracts went to three nonminority contractors, and that no minority contractors received awards for road work or construction subcontracts.[17]

For the public sector, one of the methods utilized to demonstrate need for affirmative action programs is documentation of disparity between the proportion of minority firms operating in a market providing a particular service or commodity, and the proportion of minority firms receiving contracts from a unit of government. This "disparity study" is part of the larger predicate study now required by the U.S. Supreme Court in order to document that sufficient discrimination has occurred within a governmental jurisdiction to warrant operation of a narrowly tailored affirmative action set-aside program. Predicate studies regularly find that minority firms are underrepresented among the contractors of a unit of government when compared to their overall availability in the local marketplace.

The 1993 predicate study for Cook County stated concisely the need for mandatory affirmative action programs:[18]

> . . . M/WBEs continue to be at a competitive disadvantage in seeking County contracts and subcontracts because of the continuing effects of historical discrimination and M/WBE participation, especially in the award of prime contracts, [which] continues to fall short of their availability to perform County work. Moreover, so long as the County's efforts are limited to persuasion and monitoring, no amount of good intentions can ensure sustained results. Indeed, the experience of other local governments demonstrates that voluntary programs and other race and gender neutral measures, without more, are not sufficient.

As with hiring, substantial evidence demonstrates that affirmative action programs have operated effectively and the potential for set-asides to have impact on the economic development of minority communities is substantial. The major challenge for the minority business community has been to move beyond small retailing operations that essentially recycle spending within the community in which a minority-owned firm is owned and operated. The largest number of minority owned firms are small restaurants, retailers, and service companies that primarily serve a local clientele and bring little outside revenue into the community.

To attain economic growth and stability, minority-owned firms that can make sales to indi-

16 Getzendanner et al, *Blue Ribbon Panel*, pp. 45, 46.

17 Thomas G. Abram and James J. Zuehl, *Predicate Study for the Cook County Minority- and Women-Owned Business Enterprise Program*, Chicago, Illinois, 1993, p. 31.

18 Abram and Zuehl, *Predicate Study*, p. 4.

viduals outside the community, and equally importantly to other businesses and institutions must thrive. Professional services and construction are two important business sectors procured by governments that provide for a high level of economic export for workers living in minority communities. An econometric analysis by the Chicago Urban League demonstrated that full implementation of the city's ordinance would result in creation of over 1,700 private sector jobs for minorities and about $58 million in direct and an additional $112 million in additional economic activity.[19]

One of the most important characteristics of government set-aside programs is that they are mandatory rather than voluntary. Mandatory programs are essential to overcome the kinds of deep-rooted obstacles to full minority economic participation enumerated above. The implementation of set-aside programs by local governments has clearly led to increased utilization by local governments of minority contractors. In 1984, the year prior to implementation of the City of Chicago's set-aside program, city contracting with racial minority vendors and subcontractors totaled only $51 million. In the 3 years following implementation of the program, minority contracting increased to $132 million in 1986 and $160 million in 1989. Spending with women-owned businesses increased from $12 million to $39 million over the same period.

From 1979 to 1989, the city reported that contracting with minority prime contractors increased substantially. In 1979, less than 1 percent of all city payouts went to minority firms. By 1989, minority firms constituted 12.8 percent of total payouts to vendors of services, 10.5 percent of payouts to construction services, and 14.7 percent of payouts for product purchases.[20]

In 1988, the Cook County Board enacted its set-aside ordinance. From its implementation in 1988 through 1991, the County increased from $3.3 million to $9.3 million prime contract awards to minority vendors. Awards to women-owned businesses increased from less than $1 million to over $11 million in the 4 year period.[21]

The importance of strong affirmative action goals is also demonstrated in the experience of the Metropolitan Water Reclamation District (MWRD). When in response to the Supreme Court's ruling in *Croson* the MWRD shifted to voluntary compliance with affirmative action, minority business participation dropped from 23.6 percent in the first half of 1989 to 11.4 percent in the second half of the year. Women's business participation also dropped, from 16.2 percent with numerical goals to 7.4 percent without them. Upon restoration of goals in 1990, minority business participation climbed back to 16.8 percent.[22]

Large companies operating in the Chicago area credit their affirmative action, or "supplier diversity" programs, with leading to increased utilization of minority businesses. Research for a forthcoming study by the Chicago Urban League found that one major Chicago-area corporation reported increases in total purchases from women-owned and minority firms from $53.9 million in 1990 to over $68.9 million in 1993. Another major corporation reports increases in minority purchases from 1968, when there were virtually none, to 1993 when minority and women's business enterprise actual payments approached $800 million to almost 3,500 vendors.

African American Firms are Disproportionately Small and are Located in African American Neighborhoods

Effective affirmative action programs lead to stronger minority economic communities. Because minority businesses hire minority workers at greater rates than nonminority firms, a key way to develop minority communities economi-

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19 Nikolas C. Theodore, *The Role of Set-Asides in Minority Business Development: An Econometric Analysis* (Chicago, Illinois: Chicago Urban League, 1992).

20 Getzendanner et al, *Blue Ribbon Panel*, pp. 54, 55.

21 Abram and Zuehl, *Predicate Study*, p. 3A.

22 Ibid., p. 61.

cally is through growing minority businesses.[23] However, compared to majority-owned firms, Illinois' minority-owned firms are small, accounting for approximately one-half of 1 percent of all State employment. Minority-owned firms with paid employees are, on average, smaller than white-owned businesses with employees. National figures show that 20 percent of nonminority firms have 10 or more employees and 2 percent have more than 100 employees. Figures for minority-owned firms, on the other hand, are substantially lower. Less than 10 percent of all minority-owned firms employ more than 10 workers and only two-tenths of 1 percent have more than 100 workers.[24]

A major reason for the high rates of unemployment in central cities has been the flight of businesses from central city neighborhoods and a corresponding lack of businesses owned and managed by minorities. William Julius Wilson's analysis of the rise of concentrated minority, inner-city poverty focuses on the loss of manufacturing jobs from locations either within or proximate to minority neighborhoods. Middle-aged men living in low-income African American neighborhoods have experienced a drop of almost 67 percent in manufacturing employment, while only half as many young workers are now employed in manufacturing as they were 15 years ago.

Minority-owned firms tend to be located in minority neighborhoods. A 1994 Chicago Urban League survey of minority construction firms found heavy concentrations of these firms in Chicago's African American communities. Of over 700 firms surveyed, 359 were concentrated within just 17 zip codes located on the west and south sides of Chicago, and in predominantly African American suburbs located immediately south of the city. Most of the additional minority construction firms were located in adjacent zip codes. Growth of these firms, therefore, strengthens communities that have suffered from a variety of discriminatory practices historically.

III. Conclusion

Affirmative action programs will continue to be an important tool for eliminating discrimination against racial minorities in hiring and contracting into the foreseeable future. As the evidence above attests, need for affirmative action both to combat discrimination and reduce disparity continues to exist. Affirmative action programs have, for the most part, helped in addressing these problems. Since the U.S. Supreme Court's decision in *Croson* in 1989, affirmative action programs have become more narrowly tailored and more directly responsive to the discriminatory patterns that may be manifest in particular communities. Programs have become increasingly sensitive to the needs of members of all racial groups. Through the availability of waivers, programs provide the requisite flexibility. Units of government and private sector firms must continue operating the most effective affirmative action programs possible.

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23 Gregory Patterson, "A Delicate Balance," *Wall Street Journal*, Apr. 3, 1992, and Timothy Bates, "Do Black-Owned Businesses Employ Minority Workers? New Evidence," *The Review of Black Political Economy*, 17 (1988).

24 U.S. Dept. of Commerce, Bureau of the Census, *1987 Economic Census, Characteristics of Business Owners*.

Affirmative Action: A Latino Perspective

Latino Institute

What is Affirmative Action?

Deep damage has been done to American society and culture by racism and sexism over the course of American history. In order to undo the damage and thereby expand social justice, affirmative action was created and implemented to bring qualified people of color into jobs and educational institutions from which they had traditionally been excluded. **By providing such access, affirmative action policy is the cornerstone of equal opportunity for Latinos, other minorities and women.** It is a tool that ensures nondiscrimination and, therefore, a necessary element of this nation's policy of equal employment, educational, and economic opportunity.

Affirmative action is a public policy that seeks to remedy the inequalities that exist along racial, ethnic, and gender lines and to reduce the disparities and gaps experienced by minorities and women. The continued existence of affirmative action policies throughout the Nation and in Illinois is necessary in a society where minorities and women continue to be disadvantaged due to the inequalities and discrimination that continue to plague society.

What Affirmative Action Is Not

Affirmative action was never intended to supersede merit selection. Nor is it intended to cause the hiring or admitting of people solely and exclusively on the basis of their color or sex, with no concern for qualifications or any other factors. These are both mistaken notions of affirmative action. Under affirmative action policies, employers are urged to make a real effort to find qualified people who have historically experienced exclusion from many occupations and professions. Similarly, universities are urged to enhance their recruitment methods in order to find qualified Latino, African American, Native American and Asian students who have generally had much less access to higher education than white students.

Affirmative action is not about quotas. In cases where extreme discrimination is found to exist, the only reasonable way of remedying the discrimination is to set numerical goals that can be met within a certain amount of time. The set goals are the standard by which to determine whether an inequity continues to exist. Such goals are flexible, temporary, and are meant to be inclusive. Quotas, on the other hand, are fixed, intended to be permanent, emphasize numbers not qualifications, and intended to exclude others from jobs and education.

Affirmative action policy means that qualified minorities and women may be given additional consideration when jobs become available or when applying to universities and colleges. It is fair to take race, ethnicity, and gender into consideration for remedial purposes to achieve an equitable society especially since these groups have not had access to other forms of preferential treatment such as children of alumni, children of donors, athletes, and the "old boy" network. Preferential treatment is nothing new in America. However, affirmative action is less a policy of preferential treatment and more a policy that provides an opportunity for minorities and women to compete and excel on the basis of their qualifications, not gender, race, or ethnicity.

Affirmative Action Is Successful

Affirmative action policies have led to expanded opportunities for minorities and women resulting in increased access to employment across a spectrum of occupations, higher education and housing. Thanks to affirmative action policies, many individuals who otherwise would not have had the chance or opportunity to acquire new skills and lead productive lives, have been able to do so.

Affirmative action policies of colleges and universities and the creation of minority scholarship opportunities and programs providing greater access for low-income students to colleges through student loans and grants have played a large role in the major increases in minority college enrollment. In the Chicago metro area, the percentage

of African Americans having completed college increased from 4.3 percent in 1970 to 11.8 percent in 1990 and the Latino college completion rate increased from 4.4 percent in 1970 to 7.7 percent in 1990.[1] Many businesses and other sectors have also succeeded in diversifying their organizations and providing opportunities for those who have been traditionally excluded. For example, between 1984 and 1990, Latino employment in upperlevel Federal jobs jumped more than 45 percent.

This illustrates the effectiveness of affirmative action policies in providing additional opportunities. However, given the inequities that continue to plague our society, affirmative action policies continue to be as critical today as in the past.

Affirmative Action Continues to be Necessary Due to Existing Discrimination and Inequities

While affirmative action has contributed to lessening the gap attributable to discrimination, minorities and women still face barriers in seeking jobs, education, and housing. There is much evidence, including studies that summarize the overall prevalence of discrimination encountered by minority job seekers, as well as minorities seeking housing and home loans, that illustrate the continuing legacy of discrimination against minority groups. Some examples include the Glass Ceiling Commission's report revealing less than 1 percent of senior corporate management positions are held by Latinos or African Americans and a report by the Federal General Accounting Office which states that many Latino and Asian workers face bias because they look or sound "foreign." Although the participation of minorities and women has increased in the employment and educational arena, there is no question that stark inequalities between whites and minorities continue to exist in our society.

The persistent and increasing gaps in socioeconomic status between whites and minorities is a great threat to the improvement of race relations and our growth as a society. In the last two decades, inequalities in economic attainment between whites and minorities in the Chicago metropolitan area have increased, not lessened. For example, African American families only had incomes half (52.7 percent) of white family incomes in 1990 and Latino family income dropped from 68.5 percent of white family income in 1970 to 58.7 percent in 1990.[2]

Similar inequalities continue to exist in the area of employment, a key factor leading to economic attainment. For instance, Latinos and African Americans experienced significantly higher unemployment rates than whites in 1970, 1980, and 1990, with the gap actually widening during the last decades in the Chicago metro area. In the Chicago metro area, the large poverty gap between whites and Latinos, African Americans and Asians widened between 1970 - 1990 while the poverty rate among whites decreased over the past two decades.[3] In 1990, almost 20 percent of Latinos and 30 percent of African Americans were living in poverty. African Americans were six times, and Latinos were four times, more likely to be in poverty than whites.

Affirmative action was implemented to promote equity and level the playing field in an attempt to overcome past effects of discrimination and exclusion. Affirmative action at its most basic level means that you cast a wider net to ensure that the employment force is representative of the population at large. However, this proportionate representation has yet to become a reality in many areas. In the State of Illinois in 1990, Latinos accounted for only 2.9 percent and African Americans for 8.3 percent of persons in the managerial and professional specialty occupations, compared to whites at 85.2 percent.[4]

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1 *See* Chicago Urban League, Latino Institute, and Northern Illinois University study, *The Changing Economic Standing of Minorities and Women in the Chicago Metropolitan Area* (hereinafter referred to as *Changing Economic Standing*).

2 Ibid.

3 Ibid.

4 Latino Institute.

It is clear that Latinos are not receiving their fair share of jobs in the State of Illinois. No where is this more evident than when examining Illinois State government hiring. In 1990, 7.3 percent of the total Illinois labor force was Latino. However, data indicates that only 2.5 percent of the Illinois State government work force is Latino. Nongovernmental employers are three times more likely than State government to hire Latinos. If the Illinois State government did as good a job of hiring Latinos as nongovernmental employers in Illinois, 4,609 Latinos would work in Illinois government—3,043, more than the 1,566 employed in 1992.[5]

Educational institutions, the cornerstone of our promise of equal opportunity in the future should reflect the image of a fair multiracial society. In the Chicago metro area however, four times as many whites (28.5 percent) complete college than Latinos at 7.7 percent and about two and a half more times (11.8 percent) than African Americans.[6] This level of parity should be reflected in student enrollment, as well as in the pool of educators and administrators. Trends in the public schools often mirror developments in social and race relations. Public education institutions have the opportunity to provide a significant number of professional opportunities to people of color. As such, minority educators can serve a critical role as key role models for both minority and white students. Yet, with a student population of approximately 30 percent, only 8 percent or 1,880 Chicago Public School teachers were Latinos in October 1993.[7] Furthermore, Latinos accounted for only 11.1 percent of Chicago Public School Administrators.[8]

In addition, suburban counties show a pattern of severe underrepresentation of African American, Latino and Asian teachers and administrators. In 1990, out of 298 suburban school districts in the Chicago metro area, 131 employed no minority teachers at all.[9] If the distribution of minority teachers reflected that of all teaching positions, roughly 9,600 minority educators would be employed in Chicago's suburbs—a number four times greater than the 2,300 minority teachers currently employed there.[10]

Although we aspire to become a color blind society where in the words of Martin Luther King, judgments are made on the contents of one's character rather than on the color of one's skin, the truth is that we have not yet reached that point. Unfortunately, the inequities illustrated above indicate that all is not well in Illinois. We are far from living in a society where the majority of those residing in the United States are colorblind, where race and gender are irrelevant, or where people do not suffer disadvantage because of their race or national origin.

Affirmative Action—Who Benefits? Who Should Benefit?

Affirmative action not only promotes equity but also celebrates multiculturalism, diversity of cultures and pluralism. As the world's most ethnically and racially diverse nation, our society has the ability to tap into our pluralistic and multitalented population to diversify business, government, private and educational institutions, as well as widen the pool of qualified candidates for all levels of employment. Ethnic diversity can only strengthen our society. For example, organizations with a good track record of producing nonwhite managers and managing people from different backgrounds will enjoy a growing advantage in recruiting and motivating workers.

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5 Ibid.

6 *Changing Economic Standing*.

7 Latino Institute, *CPS Staffing Update*.

8 Ibid.

9 Chicago Urban League and Latino Institute study, *What Affirmative Action? Where Are the Minority Educators in the Metropolitan Chicago Schools?*.

10 Ibid.

Economically, such organizations or businesses may also be more attuned to an increasingly diverse population of customers and consumers in both domestic and international markets, especially in relation to global alliances.

Affirmative action impacts upon each segment of our multiracial/multicultural society and serves to reduce the disparities and gaps experienced by minorities and women. From the perspective of the Latino Institute, affirmative action benefits:

1) individuals,
2) the disadvantaged group, and
3) larger society.

However, the most direct beneficiary of affirmative action policies is the individual. The individual is critical in closing the documented gaps and inequities that exist in the three areas of education, employment, and contracts. Closing the gaps can only be accomplished one person at a time. However, through this process there are also benefits to disadvantaged groups and larger society.

Consider each individual a particle of sand. Affirmative action policies exist to eventually fill a hole with these particles of sand so that our society becomes one of proportionate representation. While individuals are closing this gap, disadvantaged groups as a whole also benefit. However, with the growing numbers of individuals from disadvantaged groups being "lifted up" the disadvantaged group in turn is also "lifted up" in that these **individuals** have contributed to closing the societal inequalities or gaps which exist. By contributing to the closing of these gaps, we are a little closer to achieving proportionate representation. Therefore, the status of the entire **"disadvantaged group"** is improved, as is **larger society**, which benefits from a more diverse society which is representative of all populations and groups in the United States.

For example, in the area of education, affirmative action often assists in providing an individual with the opportunity to receive an education. An African American or Latina may gain entry into a prestigious university and receive scholarships to help with tuition. Given this scenario, it is clear that affirmative action benefits that specific individual. However, it is also clear that individual will contribute to society by virtue of contributing to a more educated segment of the population, thereby closing the gap that continues to exist in education between minorities and whites. In the area of employment an individual is benefited by wages, status, and position, however their position contributes to raising the economic status of the community to which they belong. Similarly, in the area of contracts, while there are clear benefits to the individual business person, the existence of minority firms also contributes to closing the gap of inequality that exists between the "disadvantaged group" to which this individual belongs and larger society. These benefits are derived even if the business person is no longer economically disadvantaged.

Within this affirmative action debate, specifically in the arena of education, there is a question as to the equity of treating a Latino doctor's son who has attended an elite prep school in the same way that one would treat a poor Latino boy living in a barrio and attending a substandard high school. In this kind of a situation it is important to realize that while both young men may reap individual benefits from affirmative action policies, their achievement is also a substantial gain for his or her community. It is through these gains, that disadvantaged groups and larger society reap the benefits of affirmative action policies.

Traditionally, affirmative action policies have treated both of these young men in the same way. However, at this juncture in the affirmative action debate, the Latino Institute would like to suggest that the economic status of the individual must be considered. Therefore, we suggest that a two-pronged test be used: 1) race/ethnicity, and 2) economic disadvantage. In order to ensure sound implementation of affirmative action and to ensure that **economically disadvantaged individuals** benefit, both prongs must be examined together.

In the area of employment, we continue to support the notion that it is fair to ensure that **qualified** minorities and women be given additional consideration when jobs become available. It is fair to take race, ethnicity, and gender into consideration for remedial purposes to achieve an

equitable society especially since these groups have not had access to other forms of preferential treatment such as children of alumni, children of donors, athletes, and the "old boy" network.

In the area of contracts, checks and balances must be applied throughout the implementation of affirmative action. One such form of "checks and balances" would be to develop and/or implement criteria or compliance standards. Examples of such criteria for making awards to contractors might include: a businesses' track record and commitment in hiring minorities from the community to providing community support. Ideally all businesses, minority and nonminority alike, would comply with these compliance standards. However, many minority businesses are already predisposed to this type of activity given their existing networks and work within the community.

Societal Costs Resulting from the Dismantling of Affirmative Action

There is no doubt that abandoning affirmative action will damage the economic and educational gains made by minorities and women thus far. Eliminating affirmative action policies will in all likelihood further divide our nation into a society of haves and have-nots, with the overwhelming majority of have-nots comprised of minorities and women.

If social justice and diversity are characteristics truly valued and celebrated in our society, then affirmative action should be lauded as a policy that works, is fair, and achieves diversity. The consequence of eliminating affirmative action is that society will continue to receive the wrong message about the nature of our increasingly pluralistic society and the racial and ethnic diversity of various regions throughout this country. Affirmative action provides opportunities and special consideration for **qualified** minorities. History has taught us that such opportunities do not happen without systemic, sustained intervention and public policies such as affirmative action. Abolishing affirmative action would be like throwing away a major cure for a disease while allowing the disease to continue rampant and uncured.

Conclusion

Although affirmative action directly benefits the individual, the end result of such a policy inevitably benefits the collective from which the individual stems. When a Latina graduates from Stanford University, she has not only contributed to her personal educational goals but also to the educational gains and educational status of all Latinos—as well as the educational status of all Americans. This in turn allows our country to compete in the ever widening global economy. There is no reason for the talents of our diverse society to go untapped. The societal and economic benefits of affirmative action are legion. The bottom line for affirmative action policies is that the benefit to the one contributes to the benefit of the many. Only by improving the life of individuals, can society at large be improved.

Before the existence of affirmative action, minority groups were virtually invisible in many employment sectors and educational institutions. With the advent of affirmative action policy, gains have been made and minorities and women have become more visible in all facets of our society. However, these gains have not been sufficient. Inequalities and discrimination continue to exist. As long as these inequities continue to exist, affirmative action will continue to be a necessary policy to achieve that for which we aspire: a truly egalitarian society.

Recommendations

The Latino Institute offers the following recommendations to consider in developing and amending affirmative action policies:

(1) In the area of education, we support the utilization of a two-pronged test in student admission to educational institutions by race/ethnicity and economic disadvantage.
(2) In the area of employment, we continue to support the notion that it is fair to ensure that qualified minorities and women be given additional consideration when jobs become available.
(3) In the area of contracts, we support criteria which consider a businesses' track record and commitment to hiring minorities from the community and to providing community support.

Note: The Latino Institute located in Chicago, Illinois, is a 22-year-old nonprofit organization dedicated to empowering Latinos through leadership, training, pub-

lic policy analysis, research, and advocacy. Patricia Berrera, senior advocate for the Latino Institute, provided much of the research for this paper. Sylvia Puente, director of public policy at the Latino Institute, presented the paper to the Advisory Committee at the consultation.

Affirmative Action: A Critically Important Policy

By Nancy Kreiter

Introduction

Our affiliate, Women Employed, is a 22 year-old membership organization of working women at all employment levels, in a wide variety of industries and occupations. The Coalition for Equal Opportunity is a broad-based group of 58 women's, civil rights, labor, religious, and business organizations throughout Illinois dedicated to protecting the workplace, business, and educational gains that women and minorities have achieved over the past 30 years. We believe that affirmative action policies and programs remain critically important to combat persistent discrimination, promote diversity, and create a level playing field for those who would otherwise not have an equal opportunity to go to college, get a job or win a contract.

Although women and minorities in Illinois have made progress under affirmative action, serious discrimination persists today. We have documented that in employment, education, and business, minorities and women do not have equal opportunity.

- In Illinois, Hispanics make up 7.9 percent of the population, but hold only 2.6 percent of the State government jobs.
- White men hold most of the upper-level jobs in Illinois government. Eighty-seven percent of the State employees who earned more than $50,000 annually are white; 86 percent of the State employees who earned more than $40,000 annually are white, and 80 percent of the State employees who earned more than $30,000 annually are white. In contrast, 63 percent of black employees, 53 percent of Latino employees, and 63 percent of women workers earned less than $30,000 annually.
- During 1993, 73 percent of the faculty at public universities in Illinois were male, 27 percent female. Of tenured full professors, 85 percent were men, 15 percent were women. The only position where women outnumbered men was instructor, an untenured position that is the lowest rung on the faculty ladder; 68 percent of the instructors were women, and 32 percent were men.
- In 1993 at public universities in Illinois, the average salary for a male faculty member was $49,000, compared to $38,600 for a female faculty member. Men, on average, earned more than women for every faculty position—professor, associate professor, assistant professor, and instructor.
- Fifty-three percent of the people in Illinois are women; 43 percent of the undergraduate students enrolled at the University of Illinois are women. In contrast, men constitute 47 percent of the populace, but account for 57 percent of the undergraduate enrollment at the University of Illinois. While 14.8 percent of the people in Illinois are African American, only 7 percent of the undergraduates enrolled at the University of Illinois are African American. Latinos account for 7.4 percent of the population of Illinois; 5.4 percent of the undergraduates enrolled at the University of Illinois are Latino.
- In 1994, $1.3 billion in Illinois State contracts went to businesses owned by white men. Only $140 million in contracts went to businesses owned by women, and only $47 million in contracts went to businesses owned by African American men.

Both Women Employed and the Coalition for Equal Opportunity unequivocally support affirmative action programs which have allowed working women and minorities the opportunities to compete and excel on the basis of merit, not gender or race. Affirmative action is fair, it is necessary and it works.

The Impact of Affirmative Action on Women's Employment Patterns

This paper focuses primarily on the impact of affirmative action on women's employment patterns. Our perspective is based on our direct experience with working women that began in 1973, approximately the same time that demands were escalating for establishing mechanisms to combat sex discrimination in the workplace and for enforcing affirmative action requirements. Since

that time, because of vigorous advocacy by women's organizations like Women Employed, periods of strengthened enforcement by government, and affirmative action undertaken by employers, women have made dramatic gains in entering occupations previously closed to them.

Over the past 22 years, our organization has developed a unique and thorough understanding of affirmative action. Women Employed's Job Problems Counseling Service has provided information and advice to tens of thousands of women experiencing discrimination and unfair treatment at work. In addition, through our career development and job hunting assistance programs, we have extensive experience with the barriers women continue to face in advancing in the work force. We also closely monitor the performance of Federal, State, and local equal employment opportunity enforcement agencies. This work includes extensive statistical monitoring of discrimination case handling, policy analysis, and development of detailed proposals for improving enforcement efforts. Over the years, we have been party to numerous discrimination suits in various industries. We have also worked in cooperation with major corporations, educational institutions, and government agencies on voluntarily developing affirmative action programs.

Affirmative action requirements and programs have been an essential component of women's progress in employment. The concept of affirmative action—the development of specific plans and performance measures to increase the representation of women and minorities in job categories in which they are underrepresented—was adopted only after it became clear that government policies of "passive nondiscrimination" were not sufficient to provide equal opportunity. Affirmative action has evolved into a fair and equitable policy widely applied to public and private employment, with bipartisan political support, affirmed in principle and practice by the Supreme Court. On the Federal level, affirmative action was established by Executive Order 11246, issued by President Johnson and retained by Presidents Nixon, Ford, Carter, Reagan, Bush, and Clinton. On July 19, 1995, President Clinton reaffirmed his unequivocal support for affirmative action programs after conducting an exhaustive review which concluded that such programs remain necessary, are flexible, are fair, and work to ensure equal opportunity for all qualified individuals.

However, the current debate on affirmative action has been a distorted one which has created confusion about what affirmative action is and is not. Affirmative action does *not* mean preferential treatment, quotas, or the hiring of unqualified people—in fact, these activities are specifically *prohibited* under Federal regulations. Affirmative action is a tool that affords qualified individuals a fair and equal opportunity to compete for employment on the basis of their merit, not their gender or race. Outreach, recruitment, and training are examples of affirmative action practices implemented to ensure that all applicants and employees compete on an equal footing. Affirmative action thus opens doors to qualified individuals who might otherwise be excluded because of prejudice; once people get the opportunity, they must prove their own merit for jobs and promotions.

Opponents of affirmative action have attacked the concept of numerical goals, saying that they force employers to hire less qualified applicants. In fact, affirmative action programs do not force employers to hire, promote, or train *unqualified* workers in order to meet rigid hiring quotas. Affirmative action goals do not reserve a specific number of positions for any particular group. A goal is an estimate of the number of qualified persons who are available and could be reasonably expected to be employed absent discrimination. The estimate is made by the employer and its test is that it be reasonable, attainable and nondiscriminatory. Progress toward the goal is a measure of the employer's success in eliminating the discriminatory exclusion of minorities and women. As in any other business function, be it profits, productivity, or return on capital, goals and timetables are necessary to measure progress and success in hiring a diverse, qualified work force. Further, compliance with affirmative action requirements is not determined on the basis of goal achievement. The test is whether or not a good faith effort has been demonstrated. Abuses of affirmative action principles must not be allowed; neither do they constitute a sufficient excuse to abolish affirmative action programs altogether.

The myth of widespread reverse discrimination is not grounded in reality. According to a recent

U.S. Department of Labor study, "affirmative action has caused very few claims of reverse discrimination by white people." In fact, of only 100 reverse discrimination cases filed in Federal court between 1990 and 1994, just six cases were found to have merit.

There is ample documentation that affirmative action programs have been responsible for significantly increasing the employment opportunities of women in jobs from which they have been excluded historically. Since 1970, the percentage of officials and managers who are female has risen from 16 percent to over 40 percent; the percentage of women in graduate business schools has risen from 4 percent to 34 percent; and women in law schools have increased from 13 percent to 43 percent. Furthermore, the number of women-owned businesses has increased by 43 percent in just the past four years. These businesses employ 15.5 million persons in the U.S.—35 percent more people than the Fortune 500 companies employ world-wide.

Some of the most impressive increases in women's participation were achieved in specific industries and occupations which were targeted by organizations and the Office of Federal Contract Compliance Programs (OFCCP) early on. For example, a suit filed by the Women's Equity Action League in 1974 forced the OFCCP to focus on higher education institutions. In 1970, 28 percent of all university and college teachers were women; today women's participation has reached 42.5 percent. The entire banking industry was targeted for enforcement actions by the OFCCP during the Carter administration. Women's representation as bank officers and managers increased from 17.6 percent in 1970 to 49 percent currently. One of the most dramatic improvements took place in the field of sales after the OFCCP targeted the insurance industry. The percentage of female sales agents increased from 7 percent in 1970 to 35 percent in 1994.

Women Employed's members are the individuals behind those statistics. Twenty years ago, our members in the banking industry who held college degrees were employed in jobs with strictly clerical career paths; today they are vice presidents, investment managers, trust and banking officers. Our members in the insurance industry who were stuck in dead end jobs as raters, customer service representatives, claims adjusters, and secretaries today hold positions as senior underwriters, claims managers and actuaries.

Enforcement efforts by the OFCCP were successful because the numerical goals and timetables included in affirmative action plans made it possible for the agency to statistically measure a contractor's good faith efforts to correct underutilization of women and minorities in its work force. The ability to quantitatively measure the success or failure of a contractor's efforts and require corrective measures is essential if the contract compliance program is to function as an effective weapon against job discrimination.

And let us not forget the facts behind the critical 1987 Supreme Court decision upholding the use of affirmative action goals—*Johnson vs. Transportation Agency of Santa Clara County*.[1] There were *no* women in the agency's 238 "skilled craft worker" positions, which included road dispatchers. Under its affirmative action plan, the agency set a goal for increased employment of women in this category; in its effort to meet the goal it took gender into account in deciding to promote a woman to road dispatcher, rather than a man with substantially equal qualifications. Gender was only one factor among many considered, and the woman who received the promotion was fully qualified for the job. Without affirmative action, Diane Joyce, who became her agency's first woman road dispatcher, would have been passed over by men who didn't think a woman could do the job. In fact, three male supervisors (one of whom had previously derided Ms. Joyce as a "skirt-wearing person") interviewed the candidates and recommended a man for the position. Had it not been for the agency's affirmative action plan, Diane Joyce—who is still today successfully performing her duties as road dispatcher—would in all likelihood have been denied the chance she clearly deserved.

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1 480 U.S. 616 (1987).

The progress has been significant, but much remains to be done. Many occupations remain segregated by sex, with women vastly underrepresented in many higher-paying fields. For instance, women comprise only 8 percent of police officers, 8 percent of engineers, and 16 percent of architects. Women remain concentrated largely at the lower levels of employment; while women make up 46 percent of the work force, they represent only 5 percent of top management at Fortune 2000 industrial and service firms. White men, on the other hand comprise 43 percent of the work force, but hold 95 percent of senior management positions. The gender gap in earnings persists, and it is worse in the Chicago area than in the nation as a whole. Full-time working women earn less than 72 percent of men's earnings nationally, but in Chicago, women earn less than 66 percent of the earnings of their male counterparts; African American women earn only 57 cents for every dollar earned by white men; for Hispanic women, the wage gap widened over the last decade, falling to less than 43 cents for every dollar earned by white males.

Affirmative action has clearly not completed its task. Discrimination, occupational segregation, and the wage gap persist. If we are truly committed to ensuring equal opportunity for all individuals to compete and excel in today's workplace, it is critical to preserve affirmative action. The United States Supreme Court, in a recent decision involving affirmative action, *Adarand v. Pena*,[2] recognized that discrimination remains a fact of life and emphasized that governments may use affirmative action measures to eliminate the effects of discrimination. Justice O'Connor, writing for a majority of the Court, stated, "The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it." In the same case, Justice Ginsberg noted that numerous studies have documented that the effects of discrimination are evident in our workplaces, markets, and neighborhoods. For example, job applicants with identical resumes, qualifications, and interview styles still experience different receptions, depending on their race. Minority entrepreneurs sometimes fail to gain contracts though they are the low bidders, and they are sometimes refused work even after winning contracts.

Using affirmative action as a scapegoat for economic anxiety is counterproductive as well as irresponsible. Let me quote a strong proponent of affirmative action, Governor William Weld of Massachusetts, in suggesting a far more productive role for our policymakers. "Appeal to the same sense of community that Americans have always shown when their interest as a nation is at stake. Increasing the size of America's economic pie—which can be achieved only if everybody has a seat at the table—is the most important challenge facing our country today."

Conclusion

Affirmative action has been effective in helping women and minorities enter occupations that were once closed to them and move up the ladder in various occupations. It has proved to be a useful, remarkably successful tool to open the doors of opportunity for those who have been excluded. It has not caused rampant reverse discrimination and it does not require quotas. When implemented carefully and correctly, affirmative action is fair and it works. Just 2 months ago, the Federal Glass Ceiling Commission issued unanimous and bipartisan recommendations calling for the use of affirmative action as a vital tool for ensuring that all qualified individuals have equal access and opportunity to compete based on ability and merit, as well as increased resources to support strengthened enforcement efforts.

We urge the Illinois Advisory Committee to the U.S. Civil Rights Commission to take a lead role in putting an end to one of the most divisive political debates this nation has experienced. Let us shift the focus to constructive initiatives to narrow a persistently unfair wage gap, to shatter unacceptably low glass ceilings, and to chip away at the all too apparent brick walls that shut out women and minorities from higher paying jobs.

2 115 S.Ct. 2097 (1995).

An Economic View of Affirmative Action

By Hedy M. Ratner

The Women's Business Development Center was enormously pleased with the depth of President Clinton's support for equal opportunity and against discrimination, and support for affirmative action. Now it is our turn to act to protect our gains and our opportunities.

We believe that affirmative action policies and programs remain critically important to combat persistent discrimination, promote diversity, and create a level playing field for those who would otherwise not have an equal opportunity to go to college, get a job, or win a contract.

AFFIRMATIVE ACTION IS FAIR, IT IS NECESSARY, AND IT WORKS. Affirmative action is an essential element of this nation's policy of equal employment, education, and economic opportunity.

The Coalition for Equal Opportunity is illustrative of affirmative action Chicago style . . . bold, gutsy, decisive, substantial, and committed—unlike other major cities and States who have, or are attempting to, dismantle their affirmative action programs. We believe it is crucial to coalesce for the common goal of strengthening and supporting affirmative action at all levels in the public and private sector.

As an ardent and vociferous advocate of both affirmative action and President Clinton's impassioned support of it, I should like to add a dimension to the content of the dialogue on this issue. We have all heard the classical arguments in support of affirmative action . . .

We need a level playing field

We need to redress for past and present discriminatory neglect and abuse

These are, of course, truisms, but I want to offer another perspective for the body politic. The drama is not in the numbers or in the law but in the logic. Here then are four such points.

1. Small Business Ownership by Women

One, in great part owing to affirmative action, 50 percent of small businesses in the United States are now owned by women and minorities. No one will doubt that this is an important, literally an essential segment of our economy.

Does it not make sense that in contracts awarded there should be MORE pieces of the pie to MORE people, rather than larger pieces for a few?

That is especially healthy for our economy. It means more wages and taxes paid by more people, more employment, more money in circulation, more purchasing power by more people.

2. Business Practices of Women Entrepreneurs

Two, women entrepreneurs do business differently.

Because of who we are and how tough it was for us to get where we are, women employers show greater humanity and greater flexibility in the workplace. That manifests itself in policies such as flex-time, family and medical leave, policies that consider the importance of child care, care for aging parents, and other sensitive occurrences that most company policies do not embrace or ignore altogether.

One may argue that this contributes nothing to the bottom line. To that I would argue the opposite! An organization's most productive asset is its people.

Employees who are shown loyalty, compassion and fairness, and policies that reflect those verities, are far more productive than their counterparts in companies that operate strictly by the traditional book.

3. Women and Minorities Hire More Women and Minorities.

One of the most significant problems with discrimination is the lack of economic access. Women and minorities have traditionally been denied that access. But access is provided by women and minority employers.

4. "Qualified" Workers

The Random House Dictionary of the English Language defines the word qualified: "Having the qualities, accomplishments, etc. which fit one for some function or office. . . ."

People who oppose affirmative action cite that unqualified people are getting the jobs, promotions, and contracts. We who support affirmative action are also opposed to awarding jobs, promotions and contracts to unqualified persons.

What has been totally overlooked or forgotten in the entire panoply of arguments for and against is the fact that the beneficiaries of affirmative action MUST be qualified—not sneaked in to accommodate a lower standard. But qualified!

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In Chicago, unlike most other cities, there is a commitment to affirmative action policies, a direct result of Mayor Daley's support and aggressive leadership.That has led the way to increased—but far from sufficient—public and private sector support for policies that are equitable and fair for qualified individuals and businesses. In other words . . . affirmative action!

Opponents say affirmative action is not necessary; others say we already have it, citing the great numbers of women and minority business owners. What they fail to point out is that despite the increasing number of small businesses owned by minorities and women, the aggregate of assets and sales of those companies are outrageously lower than those owned by white males.

These companies and their minority and women owners need encouragement, strengthening, and support by word and by deed. By doing this, we will add to the economy, create more jobs, increase employment, and develop new and diverse leadership.

For the above reasons and for all the economic and sociological reasons that great nations should recognize, affirmative action programs and policies should be continued and supported.

A Statement on Affirmative Action from the Mexican American Legal Defense and Educational Fund (MALDEF)

Introduction

The Illinois Advisory Committee to the U.S. Commission on Civil Rights has requested that MALDEF submit a position paper regarding affirmative action.[1] MALDEF welcomes the opportunity to offer a Latino perspective on this issue. All too often Latinos are overlooked as the debate over affirmative action focuses on African Americans and women. But, as a review of history demonstrates, affirmative action is as much a Latino issue as it is an African American or a women's issue. How the debate over affirmative action will be resolved will have profound implications for Latinos who are the fastest growing minority and an economically vital portion of the U.S. population.

Historical Context

Calculated and legally sanctioned racial discrimination throughout U.S. history excluded Latinos, as well as other minorities and women from educational opportunities, business ownership, and higher income occupations. Attitudes regarding what opportunities should be made available to Latinos and minorities were tainted by racial prejudice. As one farmer stated in the 1930s about Mexican farmworkers, "[t]he illiterate makes the best farmworkers.[2]

Mexicans were the first group of Latinos to arrive in the Midwest during World War I,[3] lured by the prospect of employment with the railroads and other nonagricultural jobs which paid higher wages than the agricultural work in the Southwest.[4] From the outset Mexican newcomers faced racial discrimination.

In Chicago, Mexicans received the lowest wages of all ethnic groups,[5] and were excluded from most labor unions due to their ethnicity.[6] In the 1920s Mexicans comprised 40 percent of the total railroad maintenance crews of Chicago.[7] Nevertheless, unions such as the Brotherhood of Railroad and Maintenance Workers discriminated against them.[8]

Socially, as well, Mexicans experienced discrimination. In East Chicago, Indiana, in the 1920s, two theater owners limited Mexicans to the black section of the theater and in Gary, Indiana, a section of the municipal cemetery was reserved for Mexicans, excluding them from the rest of the cemetery.[9] Moreover, in Chicago,

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1 Because this paper has been requested by the Illinois Advisory Committee to the U.S. Commission on Civil Rights and it is being prepared by MALDEF's Chicago office, this paper will present a Midwest perspective on the issue of affirmative action.

2 L. Grebler et al., *The Mexican American People*, Macmillan Publishing (1970) at 15.

3 Felix M. Padilla, *Latino Ethnic Consciousness, The Case of Mexican Americans and Puerto Ricans in Chicago*, University of Notre Dame Press (1985) at 23.

4 Rodolfo Acuña, *Occupied America: A History of Chicanos*, Harper Collins Publications (1988) at 176.

5 The average annual income for steadily employed unskilled and semi-skilled workers of all ethnic groups in Chicago in the mid-1920s ranged from $800 to $2,400, with $100 a month regarded as the "poverty line." Two-thirds of the Mexican households earned less than this $100 a month subsistence income, as compared with half of black families and one-fifth of white families. This was despite the fact that a rather high proportion (47 percent) of Mexican women worked to supplement family income. Padilla at 25.

6 Acuña at 91–92.

7 Ibid. at 175.

8 Ibid. at 228.

9 Ibid. at 176.

Mexicans paid 25 percent more for housing with the same conveniences, than an Irish family[11] and were more likely to be unfairly arrested for disorderly conduct or vagrancy than other immigrants.[12]

The depression only intensified assaults on Mexicans. During the 1930s, it is reported that between 500,000 to 600,000 Mexican workers and their families (many of whom were U.S. born) were forcibly returned to Mexico because they were accused of taking jobs away from native born Americans. This included up to one-third of Chicago's Mexican population.[13]

Although Latinos endured widespread hostility and prejudice, they made significant contributions to the U.S. when this country called upon them to protect our democratic ideals. For example, Latino World War II veterans received more Congressional medals of honor than any other racial or ethnic group.[14] Yet, despite their service to their country, Latino veterans and war heroes were excluded from job and educational opportunities when they returned home. For example, Latino World War II veterans returned home from the war to the legally enforced segregation of the Southwest where signs stating "no Mexicans allowed" were prominently displayed at public facilities. Furthermore, Latinos continued to be underrepresented in higher paying jobs and thus denied entry to the middle class. In Chicago, Mexican Americans received lower wages than either the foreign-born or second generation Italians and Poles, despite the fact that they had more schooling than immigrants and almost as much as other native-born ethnics.[15] A 1953 *Chicago Sun-Times* story reported that in all of Chicago there were seven Mexican nurses, five teachers, one lawyer, one dentist, and one policeman.[16]

In the late 1940s a second group of Latinos, Puerto Ricans, began to arrive in Chicago. Their numbers increased substantially during the 1950s, and reached their highest level in the 1960s.[17] Like the Mexicans who arrived before them, they experienced discrimination in employment,[18] and housing,[19] and were victims of police brutality.[20]

In the 1950's, the McCarthy era also encouraged the repression of Latino activists such as Ramon Refugio Martinez, a meat packing worker who was accused of being a subversive and was consequently deported under the McCarran Walter Act. Similarly, the INS conducted Operation Wetback, a massive roundup of illegal, Mexican aliens directed by retired generals from the armed forces, who treated Mexicans like war criminals.[21] Thus, after World War II Latinos continued to be excluded from public facilities, schools, trade unions, and the political process. In

11 Ibid. at 180.

12 Ibid. at 176.

13 Ibid. at 243.

14 Ibid. at 228.

15 Padilla at 33.

16 Ibid. at 33.

17 Ibid. at 38.

18 According to one of the reports of the U.S. Immigration and Naturalization Service, in 1960 the majority of Puerto Rican workers were employed in three leading unskilled categories—"operatives and kindred" (45.7%), "laborers" (13.7%), and "service workers" (11.7%). On the other hand, only 1.6% of all Puerto Rican workers were part of the professional, white-collar occupations. (*Ibid.* at 45).

19 The unwillingness of whites to tolerate Puerto Ricans as neighbors limited Puerto Ricans' choice of housing, forcing them to pay higher rents in those buildings open to them. (*Ibid.* at 45.)

20 *Chicago Daily News*, "Cops Brutal in Arrest: Latin Group," Aug. 2, 1965.

21 Acuña at 298.

1946, two Federal court cases, one in California and the other in Texas, outlawed de jure segregation against Latinos in schools laying the foundation for the historic *Brown v. Board of Education* case in 1954.[22]

The Birth of the Civil Rights Movement

Out of the struggles for equal opportunity and social justice came significant gains such as the adoption of the Civil Rights Act of 1964, the recognition of the rights of language minority students in the U.S. Supreme Court's *Lau's v. Nichols* decision[23], and the birth of civil rights organizations, such as MALDEF in 1968. These struggles and victories also lead to the realization that while overt discrimination was no longer legally sanctioned, race-based and national origin discrimination were alive and well in the practices of employers and educational institutions.

The Civil Rights Act of 1964 protected the rights of workers by making it illegal for public and private sector employers to discriminate against workers based on race, color, religion, sex or national origin. However this protection was not enough as Presidents Kennedy,[24] Johnson,[25] and Nixon[26] found it necessary for the government to take "affirmative" steps to ensure fairness in public and private policies and to redress a past history of discrimination. And all subsequent presidents, Republicans and Democrats alike, have supported affirmative action.

Also, to avoid costly litigation and in response to civil rights struggles, employers, governmental entities and universities began the long and arduous process of voluntarily opening their doors to previously excluded groups. The voluntary steps taken by these institutions became known as affirmative action.

Purpose of Affirmative Action

Affirmative action is designed to provide a measure of equal opportunity by eliminating discriminatory barriers and opening doors to qualified minorities and women in areas where they have historically been excluded and are therefore underrepresented. The purpose of affirmative action is to create an environment where equality, opportunity, and merit can prevail and each person can contribute his or her full potential. These voluntary efforts are also designed to ensure that the government itself does not discriminate, and to avoid the costly and cumbersome lawsuits, court orders and penalties for discrimination. MALDEF believes that affirmative action policies, while generally conservative, play a critical role in increasing equal educational, business and employment opportunities for the Latino community. Even more importantly, affirmative action policies, by making equal opportunity more of a reality, strengthen this country.

Affirmative Action Benefits Society

Affirmative action policies and programs were not intended to be the ultimate solution for our societal problems. In fact, given this country's history of discrimination and the persistence of discrimination, affirmative action programs serve only as a modest remedy. However, steps taken to increase educational, economic and business opportunities for all people in society, no matter how modest, have far reaching implications.

In 1990, Latinos constituted 9 percent of the general U.S. population. By the year 2020, Latinos are projected to grow to 20 percent of the U.S.

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22 Mendez v. Westminster Sch. Dist. 161 F.2d 774 (9th Cir. 1947); Delgado v. Bastrop Indep. Sch. Dist., No. 388 (W.D. June 15, 1948); *Brown v. Board of Education,* 345 U.S. 972 (1953) (order assigning the case for argument).

23 *Lau v. Nichols*, 414 U.S. 563 (1974).

24 President Kennedy creates the President's Committee on Equal Employment Opportunity. Federal agencies are told to integrate their workers.

25 President Johnson issues an executive order requiring federal contracts to "take affirmative action" to ensure they do not discriminate against workers.

26 President Nixon signs Executive Order 11246, originally signed by President Johnson in 1965, which sets goals for hiring minority contractors. Later his administration presses colleges to set goals for increasing their number of students and faculty.

population.[27] Moreover, the Latino population is more youthful on average than the general U.S. population with 40 percent of Latinos below the age of 19.[28] Given these facts, it is inevitable that Latinos will play a role in shaping American society well into the 21st century. However, what kind of role, and its relative importance, depends on the educational, employment, and economic policies implemented today.

Education plays a crucial role in individual success and in creating productive members of the labor force. In turn, having a strong labor force is critical towards fostering a strong economy. A strong labor force and economy is vital in ensuring that we, as a society, are prepared for the ever expanding global market. Given the increasing size of the Latino population and the relative youth of the Latino population in the U.S., educational access is vital to the Latino community and our society. Overcoming the barriers to equal education, employment and business access is key to helping Latinos fulfill their potential and to ensuring their effective participation in the economy.

Affirmative action programs have been significant tools for employers, educational institutions and government entities in attempting to address institutional discrimination against Latinos, other minorities and women. For example, in 1977 only 2 percent of the bachelor's degrees conferred by colleges and universities, were received by Latinos. By 1993, this percentage had increased to 3.9 percent.[29] Moreover, prior to the implementation of affirmative action programs in law schools, women made up only 5 percent of the nation's lawyers. That number has now grown to 20 percent. Similarly, affirmative action programs have helped minority-owned firms procure Federal contracts. In 1976, less than 1 percent of Federal procurement was conducted with minority business enterprises. Between 1982 and 1992 the volume of Federal contracts increased by approximately 24 percent, while the number of contracts awarded to minority-owned firms increased by more than 125 percent.[30]

Not only have affirmative action programs created economic opportunities for people that were once excluded, but businesses have benefited from the diversity of their work force. Studies have shown that companies with the best equal opportunity and affirmative action records have the highest profit margins.[31] Increasing the numbers of Latinos with college degrees, results in larger numbers of Latinos with higher earnings. These increased earnings translate in turn to greater consumer spending, contributing to the vitality of our economy and to increased tax revenues. For example, if high school completion rates and college participation rates for the current generation of Latinos were equal to the rate for whites, the increase in Federal tax revenues would be in the order of $13 billion per year.[32]

The Continued Need for Affirmative Action

Despite the gains made by the Latino community towards civil rights and the benefits of affirmative action, the United States has fallen far short of achieving the goal of true equal opportunity for all. Proposals to eliminate affirmative action fail to acknowledge the institutional and racially discriminatory barriers that exist in today's society for Latinos, other minorities, and women. Critics of affirmative action argue that

27 Issue Paper, *Increasing Hispanic Participation in Higher Education: A Desirable Public Investment* (Rand Institute on Education and Training, September 1995).

28 Ibid.

29 U.S. Department of Education's National Center for Education Statistics, *Digest of Education Statistics*.

30 White House Affirmative Action Review: Report to the President, at 60, 71 (July 19, 1995).

31 T. Cox and C. Smolinski, *Managing Diversity and Glass Ceiling Initiatives as National Economic Imperatives*, U.S. Dept. of Labor (1994).

32 Ibid.

affirmative action results in greater job insecurity for whites and the overrepresentation of minorities in educational institutions, businesses, and the work force. However, the evidence suggests the opposite to be true.

1. Education

Over 40 years after *Brown v. Board of Education*, Latino students continue to study in classrooms that are significantly segregated. Nearly three-quarters of all Latino students attend schools that are predominantly minority.[33] Indeed, Latinos are far overrepresented in our nation's extremely segregated underfunded noncollege preparatory urban school districts.[34] It is no surprise to find that Latinos are more likely to drop out of school than whites. In 1993, the Latino dropout rate was 27.5 percent, while for whites it was only 11 percent.[35] Moreover, although the percentage of Latino high school graduates going to college has increased over the last two decades, Latinos continue to lag behind the college participation rates of whites, and the gap is widening. While half of all Latino students graduate from high school, only about 9 percent of Latinos who enter college, graduate from college. In Illinois, only about 8 percent of Latinos receive college degrees.[36] In fact, according to the Changing Economic Standing of Minorities and Women in the Chicago Metropolitan Area study (1970–1990), Latinos have only made marginal gains in college completion over the past two decades—3.6 percent in Chicago and 1.3 percent in the suburbs.

It is not that Latino youth are less capable but the reality is that there is a disparity between the educational experience of Latinos and other poor minorities and that of nonminorities. This disparity begins with the educational system's unequal distribution of resources, a process that all too often shortchanges those who attend schools in poorer districts. The system continues to affect the learning potential of Latino children through its ineffective response to the needs of limited English proficient (LEP) children. When students' language difficulties are not met with a program that facilitates the transition from monolingualism or limited-English proficiency to bilingualism while simultaneously ensuring that participants do not fall behind academically, those students, regardless of intelligence, are likely to perform poorly. Poor performance then leads to students being "tracked" into low ability groups in the primary grades and remedial programs in the secondary grades. Once these students are labeled as low achievers, their self-esteem is in serious jeopardy and the expectations placed on them—by teachers, by parents, and by the students themselves—are limited.

This position is further exacerbated by the content of remedial programs, which fail to teach the type of higher-order learning skills that normally prepare students to perform adequately on standardized tests. Continued "tracking" leads to fewer math and science courses, exclusion from gifted programs, and being disproportionately subjected to suspensions and discipline.

Many opponents of affirmative action favor improving conditions in the schools that minority children attend, instead of relying on affirmative action to get into college. This is a position that no one can disagree with. However, this is not what is in fact happening. Quite the contrary, head start programs, State pre-K programs, bilingual education programs, and funding for schools are all being threatened due to limited financial resources. Moreover, until a more equitable method of funding schools is created, poorer school districts will continue to have lesser resources.

Thus, given the many barriers that Latinos and other minorities continue to face in obtaining an education, the need for universities to

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33 Galster, George, "Minority Poverty: The Place-Race Nexus and the Clinton Administration's Civil Rights Policy," Citizens' Commission on Civil Rights, *New Challenges, The Civil Rights Record of the Clinton Administration Mid-Term*, 1995, p. 33.

34 Ibid. at 39.

35 Office of Minorities in Higher Education, American Council on Education, *Thirteenth Annual Status Report on Minorities in Higher Education* (March 1995).

36 U.S. Census Bureau, *Hispanic Americans Today* (1993).

strengthen and expand affirmative action programs to assist students in overcoming many of the existing barriers to educational success, cannot be sufficiently underscored.

2. Employment

Despite having the highest labor force participation rate of any group, the Latino unemployment rate is twice as high as it is for whites and the trend is worsening.[37] Latinos also face a disproportionate concentration in low-paying and economically declining industries, income discrepancies,[38] more layoffs, and lower rates of business ownership.[39] This disproportionate impact can not be accounted for by differences in age, education, gender, industry, or occupation.[40] While all workers earn more if they stay in school, the return on educational investment is substantially less for Latinos and other minorities. For every dollar earned by whites, Latinos make just 59 cents. This pay gap persists even when age, education and language skills are taken into account. In fact, instead of diminishing, wage discrimination grows at each level of education. Among high school dropouts, Latinos get 63 cents for every dollar whites receive. For Latino professionals, the disparity increases to 53 cents per dollar.[41]

Widespread evidence suggests that these disparities adversely affecting the Latino community are predominantly due to the persistence of racial, ethnic, and national origin discrimination in this country.[42] The Glass Ceiling Commission report found that "serious barriers to advancement remain" for minorities and women in American corporations, including "persistent stereotyping, erroneous beliefs that no qualified women or minorities are out there, and plain old fear of change."[43] The Commission reported that of senior managers at the Fortune 500 biggest firms, 97 percent are white and 95 percent male, and that Latinos are "relatively invisible in corporate decision-making positions."[44]

Labor market studies show that a significant factor in the earnings differential between Latinos and whites is attributable to employment discrimination.[45] In a controlled experiment regarding job discrimination, a study found that equally qualified Latino applicants were turned down in favor of their white counterparts for more than one job out of every five and in every type of job. Similar studies have documented even higher discrimination rates in Chicago (33 percent).[46]

Discrimination remains rampant in every sector of our society. Racial discrimination is not

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37 E. McKay, ed., *State of Hispanic America*, 1991, National Council of La Raza (1992) at 4-5; "Bias Hits Hispanic Workers," *New York Times* (Apr. 27, 1995).

38 Over one quarter (27 percent) of all Latino families live below the poverty level, compared to about 10 percent for non-Latinos. U.S. Census Bureau, *Hispanic Americans Today* (1993). On average, Latino families earn less than 60 percent of the incomes of white families and between 1983 and 1993, Latino income levels stagnated, while non-Latino incomes increased 8 percent. U.S. Census Bureau, *The Hispanic Population in the United States* (March 1993).

39 E. McKay, ed., *State of Hispanic America* 1991, National Council of La Raza (1992) at 4-5; C Gonzales, *The Empty Promise: The EEOC and Hispanics*, National Council of La Raza (1993) at 3-5; U.S. General Accounting Office, *Displacement Rates, Unemployment Spells and Reemployment Wages by Race* (September 1994); United States Census Bureau, *Hispanic America Today* (1993).

40 U.S. General Accounting Office, *Displacement Rates, Unemployment Spells and Reemployment Wages by Race* (9/94).

41 Los Angeles Times (1/10/93).

42 C. Gonzales, National Council of La Raza, *The Empty Promise: The EEOC and Hispanics*, at 3–5 (1993).

43 Federal Glass Ceiling Commission, *Good For Business: Making Full Use of The Nation's Human Capital* (March 1995).

44 Ibid.

45 C. Gonzalez, *The Empty Promise: The EEOC and Hispanics*, National Council of La Raza (1993) at 3-5.

46 Marc Bendic, Jr., et al., *Discrimination Against Latino Job Applicants: A Controlled Experiment*, Human Resource Management (1992).

merely a vestige of the past, but has reconfigured itself into a pattern of second generation discrimination.[47]

The Preferential Treatment Myth

Regrettably, however, much of the public discourse on the issue of affirmative action recently has been fueled by myth and misconception. One of the most virulent myths about affirmative action is that it involves preferential treatment, set-asides, and quotas for unqualified minorities and women.[48] It is a myth that is particularly offensive to Latinos who have long disdained special treatment and have achieved their successes only by virtue of their own hard work. Indeed, quotas and preferences have been specifically found to be unconstitutional.[49] Instead, what the government is recommending are goals and timetables, not quotas. Goals and timetables are flexible objectives and must be reasonable, attainable, and nondiscriminatory. They are targets and timeframes set to reach equal opportunity. The practice of setting goals and timetables comes from business management principles showing that the best way to achieve results is to establish clear objectives and measure performance along the way. For affirmative action programs, the goal is equal opportunity for all.

The Reverse Discrimination Myth

The preferential treatment myth is related to another popular and pernicious misconception: that we have somehow lost our way on civil rights, that affirmative action is out of control, causing reverse discrimination against whites in general and men in particular, and that we need to return to some earlier period when we adhered to the original intent of a color-blind system of laws. Nothing could be further from the truth. Because MALDEF is a legal organization, we look at the evidence. If reverse discrimination is so rampant, why is the unemployment rate for white males so much lower than it is for minorities and women? Why do white men enroll and graduate from college at rates that eclipse those of other groups? Why do nearly 94 percent of all Federal procurement dollars go to nonminority owned businesses, a figure greater even than the high percentage of businesses owned by nonminorities (91 percent)? Why has every attempt to document discrimination against whites and men shown that such claims are extraordinarily rare, and that a high proportion are thrown out of court because they are brought simply by frustrated job applicants who are less qualified than the chosen woman or minority candidate.[50]

Further evidence that affirmative action has not adversely impacted whites is found in Illinois State employment. For example, whites hold 9 out of 10 jobs in two of the biggest agencies, transportation and conservation. Whites hold at least 85 percent of the jobs in two thirds of State agencies that disclosed the breakdown of their work forces. While Latinos make up 7.9 percent of the population, they hold only 2.54 percent of the State jobs[51] and comprise only 2.1 percent of all promotions State government between 1976 and 1990, compared to 70.2 percent for whites and 25.5 percent for African Americans.[52] Moreover, white men continue to benefit from a disproportionate gap in State employment earnings. A full 87 percent of the 4,597 employees who earned

47 Ibid.

48 The truth is that most affirmative action programs involve only outreach efforts to expand the pool of qualified applicants taking race or national origin into account as one of many race-neutral factors.

49 *Regents of University of California v. Bakke*, 438 U.S. 265 (1978).

50 Urban Institute (1992): *See also* A. Blumrosen, U.S. Dept of Labor study, NA Daily Labor Report (3/23/95). (Review of employment discrimination cases show only 0.2 percent are found to be valid claims of reverse discrimination).

51 Tim Novak, "Minority Hiring Lags in Illinois: Jobs at State Agencies Don't Reflect 1980 Law," *St. Louis Post Dispatch*, Apr. 19, 1993. Analysis of Agency Workforce reports filed with the Illinois Human Rights Department.

52 Anthony A. Sisneros, "Illinois Public Service: Problems and Perspectives," data gathered from the Central Management Services Statewide Summary of New Hires, Promotions and Transfers, Report No. 910144 Oct. 16, 1990.

more than $50,000 annually were white. Meanwhile, of the few Latinos employed by the State, 57 percent earned less than $30,000 annually.[53]

Constitutional Standards for Affirmative Action

This absence of evidence for reverse discrimination is consistent with the law. Not only has affirmative action not expanded since its inception, it has been continually and consistency narrowed from the outset, and State and local affirmative action programs have for some years been subject to the strictest scrutiny and the most rigorous standards under the law since the 1989 Supreme Court decision in *City of Richmond v. J.A. Croson Co.*[54] Recently, the United States Supreme Court held in *Adarand Constructors, Inc. v. Pena,*[55] that a Federal minority business contracting program is likewise subject to strict judicial scrutiny, leading many of the same commentators who allege that affirmative action is out of control to contend paradoxically that affirmative action is dead because it is unconstitutional. Neither contention is correct. What the Court said is that affirmative action programs are proper if they are done right. Indeed it should be noted that the Court's decision did not invalidate the program being challenged. Under the 14th amendment's equal protection clause, strict scrutiny requires that race-based legislative classifications be narrowly tailored to achieve a compelling governmental purpose. Numerous State and local minority business contracting programs have been reviewed under this legal standard and found to be constitutional. Generally, a compelling purpose is found where the program is predicated on a sound legislative determination to remedy past discrimination. Many Federal affirmative action programs, such as the diversity obligations of large Federal contractors under Executive Order 11246 administered by the Office of Federal Contract Compliance Programs, do not rely on race-based classifications and therefore should not be governed by the requirements of the strict scrutiny test.[56]

Thus, affirmative action policies should continue to be pursued after *Adarand.* Not only are such efforts essential to the economic development of an increasingly important segment of the country, they are constitutionally proper. Many current programs are not subject to the demands of strict scrutiny, and for those that are there is ample legislative basis for supporting a finding that these programs are warranted as a remedy for past and continuing discrimination or otherwise justified and consistent with congressional power.

The Need for Unity

For Latinos, this is a volatile climate in which to attack affirmative action. The public atmosphere in the wake of last year's Proposition 187 ballot initiative in California and other anti-immigrant proposals is increasingly polarized, racially charged and fearful. We have witnessed widespread and increasing mistreatment of Latinos and other ethnic minorities—both immigrant and citizens—running the gamut from denial of jobs and housing to exclusion from restaurants, banks, and other commercial and public services, to violent hate crimes. Many in the Latino community will tell you they believe it is open season for discrimination against people who look or sound "foreign." This should not be surprising. Proposition 187 and other antiimmigrant proposals have unleased forceful and dangerous passions that are not easily controlled. Moreover, discrimination against people who appear foreign to some observers is a familiar and well-documented phenomenon when government policy re-

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53 Tim Novak, *Few Minorities Get Piece of State Jobs Pie in Illinois*, St. Louis Post Dispatch, Apr. 5, 1994. Analysis of Agency Workforce reports filled with the Illinois Human Rights Department.

54 488 U.S. 469 (1989).

55 115 S.Ct. 2097 (1995).

56 *See, e.g., Associated Pennsylvania Constructors v. Jannetta,* 738 F. Supp. 891 (M.D. Pa 1990) (applying less demanding "rational basis" test to minority business contracting program requiring only good faith efforts).

quires or encourages private persons to engage in home-made immigration decisions, as we have seen since the passage of the employer sanctions provisions of the 1986 immigration act.[57]

However, like it or not, there is no "us" and "them." We are in this diverse and remarkable society together, and we will not prosper as a nation without the contributed talent of everyone.

Understanding and promoting the crucial role that diversity plays in our socioeconomic future is pivotal to our continued success in the growing global economy. How we as a nation react to differences among people—whether we choose to harness the full strength of diversity or allow it to polarize us—indicates a great deal about what kind of society we are and wish to be. The socioeconomic health of this nation depends on providing education, and job and business opportunities for women and minorities who already make up 50 percent of the labor market and will represent an increasingly larger share of job seekers as we enter the 21st century.

The democratic principles of equal opportunity for all, not the vestiges of racism, must define our legacy and true potential as Americans. By moving beyond the rhetoric and misinformation surrounding affirmative action, we can and will posit solutions that transcend simplistic and reactionary antiaffirmative action measures.

We are good, diverse, and decent people—our history as Americans must reflect these basic qualities. Let us head the call of Abraham Lincoln to follow "the better angels of our nature."

Note: The Mexican American Legal Defense and Educational Fund (MALDEF) is a 28 year-old national, nonprofit, civil rights organization organized to protect and advance, through education, advocacy, and legal action, the civil rights of Latinos. Patricia Mendoza, regional counsel to the Chicago regional MALDEF office, presented this paper at the consultation.

57 *See e.g.*, General Accounting Office, *Immigration Reform: Employer Sanctions and the Question of Discrimination*. (1990).

V. Position Statements on Affirmative Action from National Organizations

A Statement on Equal Opportunity and Affirmative Action
The United States Catholic Conference

Department of Social Development and World Peace
3211 4th Street, N.E.
Washington, DC 20017-1194

May 21, 1996

The Honorable Henry Hyde, Chairman
Judiciary Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the United States Catholic Conference, the public policy agency of the nation's Catholic bishops, I write in opposition to HR 2128—the "Equal Opportunity Act of 1995." The Catholic bishops conference believes that passage of this bill would set back the nation's attempts to address the vestiges of racism and sexism and the resulting discrimination which have scarred our people, our communities, our government, and our society.

Our nation needs a renewed debate over how best to overcome the lasting consequences and current impact of racism and unjust discrimination in all of its forms. We need to examine which remedies are working well, which are in need of strengthening or reform, and which should be abandoned. Sadly, the often partisan debate and the sweeping nature of this legislation generate more heat than light, more political struggle than public dialogue.

When he came to our nation last fall John Paul II declared: "The basic question before a democratic society is how ought we to live together?" This question is at the heart of this discussion. Are we to see ourselves as isolated individuals competing for limited opportunities? Are we to divide ourselves into competing groups clawing for advantage?

In our 1979 pastoral letter on racism, ***Brothers and Sisters to Us***, the U.S. Bishops strongly state: "Racism is a sin; a sin that divides the human family, blots out the image of God among specific members of that family, and violates the fundamental dignity of those called to be children of the same Father . . . Racism is sometimes apparent in the growing sentiment that too much is being given to racial minorities by way of affirmative action programs of allocations to redress long-standing imbalances in minority representation and government funded programs for the disadvantaged. At times, protestations claiming that all persons should be treated equally reflect the desire to maintain a *status quo* that favors one race and social group at the expense of the poor and nonwhite."

"Racism obscures the evils of the past and denies the burdens that history has placed upon the shoulders of our Black, Hispanic, Native American, and Asian brothers and sisters. An honest look at the past makes plain the need for restitution where ever possible—makes evident the justice of restoration and redistribution.

We believe that the moral task before our leaders is to search for the common good in this divisive debate, to renew our nation by seeking opportunities for all Americans, acknowledging that this requires appropriate and judicious affirmative action to remedy discrimination and to offer opportunity for all, including those on the margins of our society.

As we said in our pastoral letter, ***Economic Justice for All***, "Discrimination in job opportunities or income levels on the basis of race, sex, or other arbitrary standards can never be justified. It is a scandal that such discrimination continues in the United States today. Where the effects of past discrimination persist, society has the obligation to take positive steps to overcome the legacy of injustice. Judiciously administered affirmative action programs in education and employment can be important expressions of the drive for solidarity and participation that is at the heart of true justice. Social harm calls for social relief."

Affirmative action—clear in purpose and careful in application—remains a necessary tool for reaching equal opportunity. To abandon this tool now would be to retreat in our struggle for justice and limit our hope for an inclusive society that harnesses the talents and energy of all our people.

Sincerely

William S. Skylstad
Bishop of Spokane
Chairman, Domestic Policy Committee

Note: In response to an invitation from the Advisory Committee, the United States Catholic Conference submitted the above letter from William S. Skylstad, Bishop of Spokane and chairman of the domestic policy committee, to the U.S. House of Representatives Judiciary Committee as its position statement on affirmative action. The signed letter is on file with the Midwestern Regional Office of the U.S. Commission on Civil Rights, Chicago, Illinois.

The Episcopal Church and Affirmative Action

Introduction

The support of affirmative action by the Episcopal Church is based primarily upon the Church's understanding of justice, and upon the identification of racism as a sin. In the 1985 Blue Book Report to the General Convention, the Standing Commission on Human Affairs and Health address institutional racism in these words:

The new Testament makes clear that "In Christ there is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female: for all one in Christ Jesus" (Galatians 3:28). Our distinctive natures are maintained whole while our unity is secured "in Christ." We are defined as one, as whole, as unified by our relationship to Jesus Christ. Christians share with people of good will a deep concern and respect for the dignity of human beings everywhere.

The National Council of Churches defines racism as the intentional or unintentional use of power to isolate, separate, and exploit others. This use of power is based on a belief in superior racial origin, identity, or supposed racial characteristics. Racism confers certain privileges on and defends the dominant group which, in turn, sustains and perpetuates racism. Both consciously and unconsciously, racism is enforced and maintained by the legal, cultural, religious, educational, economic, political, and military institutions of societies.

Racism is more than just a personal attitude; it is the institutionalized form of that attitude.

Institutional racism is one of the ways organizations and structures serve to preserve injustice. Intended or not, the mechanisms and function of these entities create a pattern of racial injustice....

Historically, people of European ancestry have controlled the overwhelming majority of the financial resources, institutions, and levers of power. Racism in the United States can, therefore, be defined as white racism: racism as promulgated and sustained by the white majority.

As Christians, we must recognize racism as a sin against God. We make this statement by the National Council of Churches our own and we go on to observe that racism knows no boundaries and penetrates religious and secular communities throughout the worship.

Several General Conventions have passed resolutions opposing racial discrimination within both Church and society. We are pleased to note the creation by the Executive Council of the national Coalition for Human Needs and of the staffing of several "ethnic desks" to address the problem programmatically. We are pleased to note, the

National Conference on Racism, sponsored by the Coalition in February of 1982, which brought together 229 persons from 57 dioceses to raise the consciousness of dioceses and Church persons about racism, to confront the effects of racism, to share strategies for combating racism, and to enable dioceses and congregations to enact programs to combat racism.

As of 1984, fourteen dioceses and regional groups have reported substantial steps to enact plans to combat racism. These steps include local conferences, the establishment of diocesan commissions on racism, affirmative action policies, racial audits, and a survey of affirmative action practices by Episcopal seminaries. The 66th General Convention meeting in 1979 at Denver called on the Executive Council to design and implement an affirmative action plan for nondiscriminatory employment within the Episcopal Church Center affecting both clerical and lay persons. Such as Equal Employment Policy and Affirmative Action Program was drafted and adopted by the Council in February of 1982. The following September, the 67th General Convention adopted this affirmative action plan to cover the employees, committees, commissions, boards, and agencies of the General Convention, together with the firms from which Convention purchases goods and services. Programs of education and public witness on affirmative action were also mandated.

The Standing Commission on Human Affairs and Health rejoices in these developments. We observe, however, that the program, as adopted, calls for monitoring; yet it is not evident to us that this is being done. What is needed now is a compelling reaffirmation of that policy and a wholehearted commitment to the implementation of the letter and the spirit of that policy. An increase in the number of persons and fami-

lies living in or near poverty, a disquieting increase in the number of incidents which appear to be caused by racial polarization, and the evident erosion in the quality and moral fabric of life are but a few of the indicators which make the need for this commitment to action by the whole Church imperative.[1]

Reference in the report to the 1979 General Convention was to action taken to call for affirmative action for the following reasons:

1. According to the Bureau of Labor Statistics, minorities are more than twice as likely to be in lower paid service industries as the white majority; five times as likely to be private household workers; twice as likely to be farm laborers; while whites are twice as likely to be higher paid skilled craft workers and three and a half times more likely to be managers and administrators.

2. According to the United States Commerce Department, black family median income is 57 percent of white family income, and white high school dropouts have a 22.3 percent unemployment rate as against a 27.2 percent unemployment rate for black youth with a college education.

3. According to Statistical Abstracts of the United States, blacks are underrepresented in the less hazardous and are overrepresented in the more hazardous occupations —e.g., in the steel industry, of those working at the coke ovens, where lung and respiratory cancers are the highest, 90 percent are black.

4. According to the United States Commission on Civil Rights, " . . . overt racism and institutional subordination provide definite benefits to a significant number of whites . . . "—e.g., "exploitation of members of the subordinated groups through lower wages, higher prices, higher rents, less desirable credit terms, or poorer working or living conditions than those received by whites . . . "

5. According to the United States Commission on Civil Rights, many Federal agencies have ignored or subverted affirmative action requirement, thereby impeding minorities from moving into higher paid professional, managerial, and skilled trade jobs.[2] In September of 1992, the following paper was presented to the House of Bishops meeting in Baltimore, to examine the theology of justice and opposition to racism.

Following up on that action, the 1979 General Convention adopted a resolution supporting the principle of affirmative action, and called for programs of education on affirmative action:

RESOLVED, the House of Bishops concurring, That the 66th General Convention supports the principle of affirmative action - especially, special admissions programs for minorities in universities and professional schools and programs to upgrade unskilled workers to the skilled level; and be it further

RESOLVED, the House of Bishops concurring, That this 66th General Convention instruct the Executive Council, within the 1980–82 triennium, to initiate programs of public education on affirmative action at all levels of the Church; and be it further

RESOLVED, the House of Bishops concurring, That this 66th General Convention instruct the Executive Council to communicate our support of affirmative action to the major religious bodies of the United States and urge them to endorse, support and implement affirmative action.[3]

At the 1982 General Convention, the Episcopal Church committed itself to support of affirmative action programs implemented by the Federal and State governments, aimed for voluntary implementation of affirmative action to place minor-

1 Blue Book Reports, 1985, pp. 123 and 124.

2 *1979 Journal of General Convention*, p. C-133.

3 *1979 Journal of General Convention*, p. C-134.

ities, women, and other underprivileged persons in offices, committees, and commissions of the Episcopal Church, and called upon individual dioceses and congregations to do likewise:

RESOLVED, the House of Deputies concurring, That this 67th General Convention of the Episcopal Church:

> **1. Commits this Church, in the implementation of its program for 1982-85 to support, through prayer, education, and courageous public witness, the strengthening and advancing of Affirmative Action programs heretofore implemented by the Federal government and the States;**
>
> **2. Commends the Presiding Bishop and the President of the House of Deputies for their efforts to make appointments to offices, committees, and commissions within this Church in such manner that minorities, women, and underprivileged persons of all kinds may be fairly and affirmatively represented at all levels of service and responsibility in this Church; and**
>
> **3. Encourages individual Dioceses and congregations to examine the compositions of bodies providing leadership within their respective jurisdictions, with an eye that the membership of such bodies may be more truly representative of our brothers and sisters who came from minority or underprivileged backgrounds.[4]**

In the next General Convention in 1985, the Episcopal Church called for the establishment of affirmative action programs at all levels within the Church, and specifically addressed the continuing concern over racism:

RESOLVED, the House of Bishops concurring, That the 68th General Convention calls on all dioceses and related institutions and agencies of the Episcopal Church to establish and publicize an Equal Employment and Affirmative Action Policy and to provide a means for effective monitoring of the same; and be it further

RESOLVED, That the Board for Theological Education is directed to develop, in consultation with the Council of Seminary Deans, an instrument and process to make an audit of racial inclusiveness to be found in the respective student bodies, faculty and trustees as well as in their curricula and field work; and be it further

RESOLVED, That the Executive Council use its existing program agencies and staff to ascertain what specific steps the dioceses and local congregations, the seminaries, and other agencies of the Church have taken to implement the 67th General Convention Resolution on racism which called for implementation of Affirmative Action programs, and report the findings to the Church at large by 1988.[5]

Having taken that general step, the Convention also specifically requested dioceses to not only establish such affirmative action programs, but provided for annual reporting, as well:

RESOLVED, the House of Bishops concurring, That the several Dioceses of the Church be requested to establish Affirmative Action procedures, using as a basis those procedures adopted by the 67th General Convention for the Executive Council, the General Convention, and the interim bodies of the General Convention; and be it further

RESOLVED, That the several Dioceses be requested to report annually their participation in such procedures to the Executive for Administration and to the Committee on the State of the Church, using a form prepared by the Personnel Committee/Department of the Executive Council.[6]

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4 *1982 Journal of General Convention*, p. C-145.

5 *1985 Journal of General Convention*, p. 161.

6 Ibid., p. 162.

In 1988, the standing commission on the Church in metropolitan areas, in its report to the General Convention, again expressed its concern for the sin of racism, and urged a resolution supporting affirmative action, but coupled with a direct addressing of the matter or institutional racism in all areas of life, not just in the religious arena:

Our religious tradition teaches us that all people are created in the image of God and posses an inherent dignity and worth regardless of race or class. Despite this tradition, racism is still deeply ingrained throughout all the institutions in our society, including the Church. Its manifestations are often subtle and devastating. Historically, affirmative action has been seen as one effective remedy to offset past racial injustices. The view has been under hostile attack over the past decade and it needs to be reaffirmed at this stage in our history.[7]

In response to the Commission report, General Convention of 1988 adopted the following resolution:

RESOLVED, the House of Bishops concurring, That this Convention reaffirm its commitment to a vigorous affirmative action program in all institutions in society as a remedy to historical, racial and sexual injustices. Such a program, already instituted at the national Church level, should serve as a model to include an open and vigorous search to fill positions with women and minorities. This should include set targets and an extensive evaluation of performance; and be it further RESOLVED, That this Convention urge all of its dioceses and congregations to address the issue of institutional racism in the political and economic arenas, and also in religious institutions; and be it further
RESOLVED, That congregations help their members to address patterns of racism in the settings where they work in educational and other community institutions, and in housing practices.[8]

In 1991 the Executive Council Commission on Racism reported that it was mandated:

(1) to offer and provide assistance to dioceses, congregations and agencies of the Episcopal Church in developing programs to combat racism;
(2) to offer and provide assistance in the development of affirmative action programs and monitoring implementation of the same;
(3) to offer and provide assistance in the evaluation of such programs;
(4) to report to the executive council annually and to report to the General Convention in 1991 and thereafter.[9]

Goals and Objectives for the Next Triennium

Among the goals and objectives for the next triennium are the following:

(1) Equip church members to understand institutional racism and develop plans and programs to combat racism using data resulting from the institutional racism audit.
(2) Influence and monitor the racial and ethnic composition of interim bodies, commissions, committees and networks of the Episcopal Church.
(3) Provide antiracism training for the executive council.
(4) Monitor implementation of affirmative action program, equal employment policy and purchasing practices at the Episcopal Church Center, which must be a model for the whole Church.
(5) Follow up on recommendations from meetings with Episcopal Church Center units/divisions.
(6) Continue the development of networks of trainers in provinces.
(7) Work with a minimum of 11 dioceses in developing programs to combat racism.

7 Blue Book Reports, 1988, p. 210.

8 *1988 Journal of General Convention*, pp. 189–90.

9 *Blue Book Reports*, 1991, p. 145.

(8) Request a pastoral letter on the sin of racism from the House of Bishops.[10]

In response to the report, both the House of Deputies and House of Bishops of the 1991 General Convention conducted racism self-audits.[11] In addition, a resolution of specific actions was adopted:

RESOLVED, the House of Bishops concurring, That the 70th General Convention urge each Dioceses to implement and go strengthen initiatives with all congregations in the Diocese toward becoming a Church of all for all races and a Church without racism committed to end racism in the world; and that these initiatives include but not to be limited to:

Prayer and Worship—encourage the establishment of prayer groups and support groups around the theme of combating racism.

Planning and Funding—ensure that funding and planning structures affirm racial equity in appointments to and funding of all diocesan staffs, committees and commissions.

Deployment—support and actively work to assure that parishes who have never considered minority clergy for vacancies do so.

Recruitment—actively recruit and support minority candidates in their progress from postulancy to ordination.

Education—prepare educational material to provide parishes with an educational series on the nature of racism that will acknowledge racism as a sin and will work toward eliminating its existence in the Church.

Racial Survey—conduct a racial survey to determine where minority persons are in the Diocesan structures and parishes to determine if they are present on all Diocesan committees and vestries in proportion to their presence in the Church.[12]

Note: This position statement on affirmative action was received from the Rt. Rev. William Wantland, Bishop of the Eau Claire (Wisconsin) diocese.

10 Ibid., p. 146.

11 *1991 Journal of General Convention*, pp. 90 and 540.

12 Ibid., p. 382.

National Association of Manufacturers Position Statement on Affirmative Action

Subject: Affirmative Action

The National Association of Manufacturers (NAM) supports affirmative action as an effective method of achieving civil rights progress. Industry realizes that it is good business policy to encourage and promote programs that enhance minority and female participation at all levels within the workplace.

Affirmative action programs have strengthened the fabric of society and created an environment of cooperation and understanding among people of diverse backgrounds. In endorsing affirmative action, it should be made clear that goals, not quotas, are the standard to be followed in the implementation of such programs.

Note: This position statement was solicited by the Advisory Committee through the Midwestern Regional Office of the U.S. Commission on Civil Rights. The position statement correspondence is on file with the Midwestern Regional Office, Chicago, Illinois. The date of the statement is May 24, 1985.

A Human Relations Perspective on Affirmative Action

From The National Conference

As a national leader in intergroup relations, beholden to no one group and concerned about all, The National Conference works to advance the goals of equality and justice for all races, religions, ethnicities, and cultures.

The National Conference, founded as The National Conference of Christians and Jews, has worked since 1927 to remedy the harmful effects of racial, ethnic, gender, and religious discrimination. Our efforts stem from the belief that our Nation is only strengthened by expanding the protection of equality to those Americans who have traditionally been denied the basic privileges and opportunities of citizenship. The National Conference has taken up the challenge to promote efforts to incorporate women and people of color into areas from which they have too long been excluded. Only by embracing our diversity and recognizing that we must strive to achieve racial and gender parity, can we truly lead the world on issues of social justice. As a human relations organization, The National Conference is concerned with any governmental action that would undermine our mission to "fight bias, bigotry, and racism" and our efforts "to promote understanding and respect for all."

The National Conference is concerned about the recent calls to end affirmative action initiatives. At a time when relations between America's ethnic, racial, and religious groups are often frayed and sometimes violent, efforts to promote diversity and equality are necessities, not merely civic ideals. A key component to the actual achievement of these goals has been and remains the use of affirmative action.

Until a more effective tool to fight bias, bigotry, and racism is developed, we stand firmly behind the continued use of affirmative action initiatives and remain dedicated to the expansion of opportunities and access for all races, religions, and cultures. In fact, affirmative action is arguably the most powerful instrument in the fight against gender and racial bias. In the last 30 years, largely because of affirmative action programs, our nation has made significant strides in providing access and opportunity for women and people of color. Yet, it is much too soon to declare victory over racial and gender bias.

Affirmative action should be viewed as one of the most productive routes for the emergence of people of color and women into the mainstream. It is a tool used to ensure equal opportunity in employment, business contracts, education, and housing.

Affirmative action is a summary of those measures by which Federal, State, and local governments as well as academic institutions and corporations not only remedy past and present discrimination, but also prevent future discrimination. This is a worthy effort which is conceptually accepted by most Americans in order to attain an inclusive society. Affirmative action permits the use of racial- and gender-conscious measures to bring about equality of opportunity. As Justice Blackmun so eloquently stated, "In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently. We cannot—we dare not—let the Equal Protection Clause perpetuate racial supremacy."

As to the claims that we, as a nation, no longer need affirmative action, there is absolutely no empirical data to support claims that we have leveled the playing field or reached a "color blind society." To the contrary, studies ranging from the Federal Glass Ceiling Commission Report to The National Conference's report on intergroup relations, *Taking America's Pulse*, continue to document the underrepresentation of women and people of color in all aspects of American life, and the continued misunderstandings and distrust between and among racial and ethnic minorities.

It is essential, therefore, for leaders in government, business, and the independent sector to continue their efforts to find avenues of access and opportunity for women and people of color with the objective that, one day, we can live in a world where color and gender are not taken into account. We will advocate the end of affirmative action when racial and gender discrimination have been ended.

This paper presents our philosophic and programmatic support for affirmative action initiatives by briefly examining the historical context of affirmative action, the potential miscommunication and misperceptions caused by such initiatives, and, lastly, suggests a new dialogue needed to bridge the gaps of communications that surround affirmative action.

Affirmative Action: A Historical Context

Affirmative action represents a proven means of empowering women and people of color to have more of a stake in society. For too long, we have allowed racial and ethnic conflict to divide our nation. The reason for this division is our failure to resolve our racial and ethnic conflicts in a meaningful and lasting manner. The effects of centuries of pervasive discrimination still linger. Racism still obscures our history and has blocked the full integration of those Americans who are not of European descent. The race issue pervades this nation's history, and its residue still finds its way into virtually every aspect of American society.

There are calls to rescind affirmative action, which stands at the center of the necessary racial pact that we negotiated just a generation ago. Recently, the leadership of both parties have called for a reexamination of Federal affirmative action programs. On the State level, California Governor Pete Wilson brought the issue to the forefront of political discussion, by calling for a state ballot initiative which would effectively end affirmative action in the Golden State.

Abandoning affirmative action principles would jeopardize progress made to date and restrict future gains by women and people of color. This would hamper the Constitution's promise of equal opportunity for all. Outlawing affirmative action would therefore result in the loss of a necessary remedy in the ongoing struggle to end discrimination and to achieve equal opportunity in the workplace and in higher education.

Intergroup Relations in the Current Affirmative Action Debate

In the context of human relations, affirmative action is one of today's most debated and divisive issues. Simply mentioning the phrase creates tension and taps into the emotions of many. Supporters and opponents alike agree on one thing—after 30 years, this controversial policy has acquired misunderstandings, misinterpretations, and mistakes of intent and execution over time.

It is indeed unfortunate that we have opted to undertake a national debate on affirmative action within this framework of miscommunication and misunderstanding. In order to forego having this debate become overly divisive, The National Conference strongly advocates dialogue, research, and communication on the issue. Our continuing work to find common ground on potentially divisive issues, including affirmative action, has taught us that the search for good human relations most frequently occurs only in the wake of racial and ethnic disruptions.

The current dialogue has become unnecessarily hostile and misinformed on the benefits of affirmative action. The National Conference is working to bring civility to the intense level of discord surrounding this issue. It is our goal to guide this discourse away from the extreme rhetoric of polarization to a place where we can work together in a manner which benefits society as a whole and strengthens and unites our communities.

Tensions between our racial, ethnic, and religious communities bring forth discussions about how our nation, comprised of diverse ethnic, religious, and racial groups, can truly improve understanding and respect for each other. The Rodney King riots in Los Angeles, the Crown Heights murders in New York City, and the recent beating of illegal immigrants in California are a few examples of intergroup conflicts that have given rise to dialogue on methods of improving our interaction with each other.

We hope that the often ill-informed rhetoric, from all parties involved, will be lessened so that we can begin to actually listen to each other and, ultimately, move the debate to a point where we are able to calmly discuss methods to improve and enhance the effectiveness of affirmative action's ultimate goals.

Potential Perils of Affirmative Action in a Human Relations Context

For some, the basic question presented by affirmative action is whether government should consider factors of race and gender in its employment and contracting decisions. Our long history of using race and gender classifications to hold back

entire groups and generations of American citizens creates a tension with governmental policies that use skin color and gender as criteria for opportunities and access.

A. Divisions Exacerbated by Affirmative Action

Currently, the affirmative action public policy could be interpreted as detrimental to race relations. Women and people of color compete with white males for benefits and opportunities based on group status rather than individual merit. Intended beneficiaries and innocent victims of redistributive affirmative action plans, concurrently seeking benefits and opportunities in employment and education, succumb to the "You're in, I'm out" conflict. The result of these group-based affirmative action or diversity policies is intergroup resentment and discord.

Moreover, a basic tenet of human rights is that the dignity of an individual should never be sacrificed to any interest, including the national interest. Under this line of thought, affirmative action plans that look to "collective" retribution are regarded as an affront to the concept of individual merit.

We acknowledge that there may be imperfections in affirmative action programs as they are presently administered. We support efforts to review such policies for the purposes of enhancing their effectiveness. Until there is a viable policy alternative in place that can act as a broad based strategy to combat the efforts of past and present discrimination, we will continue to vigorously support the core principles of affirmative action.

B. Misperceptions Surrounding Affirmative Action

By providing accurate information, creating an atmosphere for civic and civil discussion, and facilitating a process for common action by people in need on all sides of this issue, The National Conference hopes to foster a thoughtful societal conversation on affirmative action.

A clear example of the misdirected tenor surrounding affirmative action involves the use of quotas. Quotas have been outlawed by Federal and State statutes and regulations. Only in rare instances of court-ordered, short-term time spans have numerical targets been allowed to remedy egregious discrimination by a specific employer.

Another related misperception concerning affirmative action involves the use of goals and timetables approved by courts and government agencies. In no uncertain terms, goals are not tantamount to quotas. Goals represent useful benchmarks for measuring progress. They allow the achievement of nondiscrimination by schools and employers in their selection and assessment procedures to be measured and analyzed.

A far more serious misperception is that affirmative action gives preferences to unqualified women and people of color. The statistical evidence simply does not support this broad assertion. Neither laws nor proponents of affirmative action support placing unqualified people in jobs. The United States may well be at a point in its human relations evolution that highly specific goals and targets are no longer required, but it is folly to assume that the objectives of affirmative action have been achieved to the point of full and fair inclusion of women and minorities.

Affirmative Action as a Unifying Tool

Affirmative action, as implemented by courts, businesses, educational institutions, the Federal executive branch, and most states is not what is dividing America today. Rather, it is the persistence of the same social ills this public policy was designed to help remedy. Affirmative action is the easier target for those in our society who will not admit to or confront the larger, more challenging problems of intergroup prejudice and discrimination.

Affirmative action directly addresses our current state of race relations by offering an equitable redress to centuries of racial and gender discrimination. In the end, affirmative action is a flexible concept which includes various actions to overcome those barriers not based upon merit and qualifications. As long as such barriers exist, many women and people of color will be deprived of opportunities and access. For example, where an employer formerly may have only used word-of-mouth announcements for new job openings, thus perpetuating an all white-male work force, the employer's affirmative action plan may include job posting and announcements in media targeted to reach women and people of color. An educational institution may use scholarships which are designed to attract students who belong to groups that were historically denied admission, or, realizing the inferiority of instruction and teaching in certain urban public schools, might

use tests which would try to reveal the real intelligence and intellect of students who have come from disadvantaged educational environments. Other programs may include training and apprenticeship efforts. Affirmative action also has been a significant and needed tool for effective enforcement of antidiscrimination laws. Not only is affirmative action used as a remedy in cases of proven racial or gender discrimination, it has also been voluntarily adopted to prevent and avoid future racial or gender discrimination.

Conclusion

Affirmative action benefits all Americans, not just its immediate beneficiaries. The fact that women and people of color have made significant gains over the past 30 years is due largely to effective affirmative action programs in both the private and public sectors. Affirmative action acts as a measured, effective response to discrimination designed to achieve real, not illusory, equality for women and people of color. Just as the Equal Protection Clause and the civil rights laws have had to become part of the fabric of American life, affirmative action contributes to achieving a nation that is free of bias, bigotry, and racism.

We are all bound together in a vast network of affirmative action, of mutual support systems, which we take for granted. The National Conference's Survey, *Taking America's Pulse* documented that when Americans were asked "Do you favor full racial integration, integration in some areas of life, or separation of races," 68 percent of Americans favor "full integration" with another 17 percent favoring "integration in some areas." Only 7 percent nationwide would rather see "separation of the races." These statistics provide hard evidence that Americans are not simply giving lip service to the concept of integration and diversity but expressing positive support for programs that promote racial parity. This is seen by the overwhelming 87 percent majority of Americans who agreed that "If America wants to be competitive in the world, it is in our self-interest to educate and give job-training to racial minorities." Culturally, our report showed most Americans ready to embrace the notion of equality of access and opportunity.

In the private sector, many business leaders have dedicated themselves to managing diversity by doing everything possible to advance the careers of women and minorities. Their commitment is rooted in doing what is right for business and doing what is right in order to give every individual an opportunity to develop to their full potential. This kind of commitment is exactly the spirit that brought forth voluntary affirmative action initiatives and it is precisely the kind of commitment that will sustain affirmative action in the future.

This dedication must be expanded in the private sector and preserved in the public sector. We are dangerously close to repeating history by turning back the clock on State and Federal affirmative action initiatives. We urge individuals and all leaders to maintain their support for the core principles of affirmative action in order to advance opportunity and access for all Americans.

Note: This position statement on affirmative action was solicited by the Advisory Committee through the Midwestern Regional Office of the U.S. Commission on Civil Rights. This article was researched and edited by Juan F. Otero, public policy fellow of the Washington National Office of The National Conference, and Brian E. Foss, vice president of The National Conference. The viewpoints expressed herein are a summary of the historical actions and philosophy of The National Conference, but do not represent specific policy statements of the National Office of The National Conference.

Position Statement on Affirmative Action to the United States Commission on Civil Rights

From the Anti-Defamation League

The Anti-Defamation League welcomes the opportunity to submit this statement to the United States Commission on Civil Rights. We believe this is a subject which warrants public attention and debate, and the League commends the Midwestern Regional Office of the U.S. Commission on Civil Rights for sponsoring this forum.

In the course of the last three decades, this country has made meaningful progress in redressing an historical legacy of segregation and discrimination and in ensuring and promoting minority participation in the full spectrum of American life. For many, this progress reflects the success of the civil rights movement in America, in which the Anti-Defamation League (ADL) has played an integral role. ADL has, in the past, filed *amicus* briefs in the United States Supreme Court urging the unconstitutionality of, or illegality of, racially discriminatory laws or practices in such cases as *Shelley v. Kraemer, Sweatt v. Painter, Brown v. Board of Education, De Funis v. Odegaard, Fullilove v. Klutznick,* and *Memphis Fire Department v. Stotts.* In all of these cases, the League has advocated the position that each person has a constitutional right to be judged on his or her individual merits. ADL clearly and unequivocally adheres to the notion that racial diversity in academic and employment settings is in the interest of this nation. However, the League rejects the concept that allowing special consideration of immutable characteristics is the only means to achieve the goal of full participation by all segments of society.

ADL has long adhered to the position that a primary goal of our society should be the elimination of all forms of discrimination and the establishment of equality of opportunity for all Americans. ADL was one of the first organizations to advocate and support legislative and administrative actions by government to prohibit discrimination in employment, education, housing, and other areas of American life. ADL played a significant role in securing the adoption of such laws and regulations, including the Civil Rights Act of 1964. Recognizing that antidiscrimination laws by themselves would not succeed in leveling the playing field because prior victims of discrimination frequently lacked the education and training necessary to compete in a merit-based process on an equal basis, ADL has supported a variety of traditional affirmative action measures in an effort to foster meaningful equality of opportunity. ADL continues to support affirmative action as it was originally conceived, as an effort to assist prior victims of discrimination.

A just society has an affirmative obligation to help undo the evils flowing from past discrimination by affording its victims every opportunity to hasten their productive participation in the society at their optimum level of capacity. Consequently, ADL advocates and supports provision for special compensatory education, training, retraining, apprenticeship, job counseling, and placement, welfare assistance and other forms of help to the deprived and disenfranchised, to enable them as speedily as possible to realize their potential capabilities for participation in the american economic and social mainstream.

While supportive of special efforts to recruit minorities and other elements of affirmative action as originally conceived, ADL has consistently opposed quotas, racial preferences, proportional representation, and the use of race as an absolute qualification for any post. Unfortunately, governmentally required numerical goals and timetables have frequently operated as the functional equivalent of quotas. Favoritism based on immutable characteristics such as race and ethnicity do not advance equality. The evolution away from a system of decisionmaking focused on individual merit and toward a system of group preferences has had a demonstrably negative impact on race relations in this country. Resentment has been aroused even among minority communities because the practice unfairly stigmatizes minorities in the eyes of fellow citizens.

The League believes that race-based preferences and quotas cannot be justified on the theory that the 14th amendment protects only racial minorities. Such a concept is wholly contrary to

the basic constitutional principles that all persons are entitled to be free from discrimination on grounds of race, religion, creed, sex, or national origin. The equal protection clause protects all individuals, regardless of race, from State-sponsored discrimination. The rights conferred by the amendment are personal and cannot be waived. Even in cases where there is a history of past discrimination, it is generally inappropriate, ADL believes, to use race or ethnicity as a remedial tool. However, under narrow circumstances the League believes that race and ethnicity can be used remedially if a court makes a finding that there is a history of systemic and egregious discrimination, all other remedies have been ineffective, and the remedy is limited in duration. Similarly, the League does not deem it a racial preference if an employer, in response to current egregious and systemic discrimination, considers race and ethnicity in its hiring and promotion practices. Both of these exceptions, while perhaps narrower than the standard set forth by the United States Supreme Court in *Adarand V. Pena*, recognize that there are limited situations in which race must be considered to confront manifest and persistent discrimination.

There is no doubt that the playing field in this country is far from level, and our society has substantial headway to make in eradicating discrimination. To this extent, it is vital that we undertake a renewed commitment to fighting discrimination and promoting opportunity for all sectors of the American human landscape. Tougher and more aggressive enforcement of the civil rights laws is a substantial first step. Rather than cutting funding for enforcement of this country's civil rights laws, funding must be increased. The unprecedented case backlog at the Equal Employment Opportunity Commission is just one of many symptoms that should alert lawmakers that laws are hollow if they are not accompanied by the necessary enforcement resources.

The 1991 amendments to the civil rights act provide for a broader range of damages for successful claimants. Except for the substantial minority of litigants who can afford counsel in discrimination cases, few lawyers take discrimination cases on a contingency fee basis. Therefore, the futility of the damages provisions are obvious if injured parties have *no* day in court. The enormous discrimination lawsuits against Fortune 500 companies like Denny's or Wal-Mart, while appealing news stories, do not represent the bulk of discrimination complaints.

Most forms of discrimination are either too subtle to be actionable or too institutionalized to be penetrable. Therefore, enforcement of anti-discrimination laws is, in and of itself, insufficient. Although most observers candidly admit that discrimination continues in this country, they do not share the same unanimity when confronted with the "solution" question. In part, quotas and other forms of mandated preferences grew out of the recognition that "good citizenship" and "justice" were inadequate catalysts for the elimination of discrimination. It ism, however, possible to provide incentives without resorting to race-based preferences.

In some cities, for example, coalitions have formed between local industry, school representatives, government officials, and other community representatives to begin to grapple with the challenge of promoting diversity and equal opportunity. At the core of these initiatives is the conviction that outreach and education will go a long way in facilitating equal opportunity. The League has long believed that there is a positive correlation between ignorance and discrimination and a negative correlation between education and discrimination. For that reason, ADL has developed training and educational programs.

ADL's A WORLD OF DIFFERENCE Institute has documented success in training businesses, local government, and academic institutions in the value of diversity. By breaking down common myths and building an appreciation for diversity, the eradication of discrimination in employment and admissions can be accomplished. Federal and State government should take the lead and mandate compulsory diversity education for all employers that receive Federal or State funds.

Universities and industry, through governmentally created incentives, should be encouraged to develop programs for the recruitment, training, hiring, and promotion of individuals who have a personal history of disadvantage. Economic rather than racial, criteria provide for an equitable basis upon which to develop special hiring and admissions programs. In valuing individual ability to triumph over hardship and adversity, we, as a society, acknowledge grit, determination, and perseverance "qualification criteria."

Proactive measures must be taken to pull the outsiders into the economic mainstream, and economic factors furnish the most egalitarian means to accomplish this imperative objective.

ADL welcomes recent legal initiatives intended to restore merit-based decisionmaking and to prohibit any form of discrimination in employment, education, housing, and other areas of American life. Coupled with a commitment to expand the pool of qualities and characteristics which constitute the concept of "merit," there is room to be optimistic that race and ethnicity will not form the basis for privilege or discrimination.

Clearly, there is much room for improvement in this country's crusade against discrimination and bigotry. The Federal Government has the opportunity to take the lead, at least by example, in this most important obligation. The League, therefore, applauds the Commission's initiative in confronting this difficult problem and we thank you for the opportunity to participate.

Note: This position paper was solicited through the Detroit regional office of the Anti-Defamation League. Harlan A. Loeb, assistant director, legal affairs, national office of the ADL, provided the statement. His signed correspondence is on file with the Midwestern Regional Office of the U.S. Commission on Civil Rights, Chicago, Illinois.

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Appendix

Affirmative Action Papers in the Five Volume Series by State Advisory Committees in the Midwestern Region of the United States Commission on Civil Rights.

The State Advisory Committees participating in this series of consultations on affirmative action are: Illinois, Indiana, Michigan, Ohio, and Wisconsin. The State Advisory Committee report in which the paper appears is listed in parenthesis.

Papers

"A Human Relations Perspective on Affirmative Action," The National Conference (Illinois, Indiana, Michigan, Ohio, Wisconsin).

"Achieving Participation Goals for Women in the Construction Workforce," by Nancy Hoffmann (Wisconsin)

"Affirmative Action: A Critically Important Policy," by Nancy Kreiter (Illinois).

"Affirmative Action: A Latino Perspective" (Illinois)

"Affirmative Action: A Proactive Approach to Equality and Equity in Employment," by Thelma T. Crigler (Illinois).

"Affirmative Action—A Sensible Tool," by Sam H. Jones (Indiana)

"Affirmative Action: An American Tradition," by Donna R. Milhouse (Michigan).

"Affirmative Action: An Employer's Perspective," by Timothy G. Costello and Shelly A. Ranus (Wisconsin)

"Affirmative Action and the Asian Pacific American Community," by Ann E.Y. Malayang (Michigan).

"Affirmative Action as Legal Remedy and Compensatory Opportunity," by Howard L. Simon (Michigan).

"Affirmative Action at the University of Michigan," by James J. Duderstadt (Michigan).

"Affirmative Action: What Is It? A Layperson's Perspective," by Patricia L. Bell and John T. Blackwell (Michigan).

"Affirmative Action and Asian Americans: Lessons from Higher Education," by Yvonne M. Lau (Illinois)

"Affirmative Action and Government Spending: Cutting the Real Waste," by Ronald E. Griffin (Michigan).

"Affirmative Action and Misconceptions in the National Debate," by Marvin A. McMickle (Ohio)

"Affirmative Action and the Conflict of Opposing Conceptions of America's Future," by Charlie Jones (Ohio)

"Affirmative Action and the Practical Realities Confronting Employers," by J. Stuart Garbutt (Illinois)

"Affirmative Action and the Rule of Law," by Robert L. Willis, Jr. (Michigan)

"Affirmative Action as Affirmative Government Purchasing," by Ronald E. Hall (Michigan).

"Affirmative Action as an Antidote to the Socioeconomic Bimodalization of America," by Lynn R. Youngblood (Indiana)

"Affirmative Action as Discrimination: An Historian's View," by Thomas C. Reeves (Wisconsin)

"Affirmative Action as Good Business," by Roland C. Baker (Illinois).

"Affirmative Action at a Small, Private, Liberal Arts College," by Michele A. Wittler (Wisconsin).

"Affirmative Action at Ameritech," by Douglas L. Whitley (Illinois).

"Affirmative Action at Procter & Gamble," by John E. Pepper (Ohio).

"Affirmative Action at Work: Battleground of Competing Values," by Bron Taylor (Wisconsin).

"Affirmative Action Controversy," by Jacqueline H. LaGrone (Indiana).

"Affirmative Action: Equality of Opportunity and the Politics of Change," by Robert T. Starks (Illinois).

"Affirmative Action: Equity and Efficiency," by Dereka Rushbrook (Wisconsin).

"Affirmative Action Hiring in the Milwaukee Police Department," by Joan Dimow and Kenneth Munson (Wisconsin).

"Affirmative Action: Implications for Indiana," by Joanne M. Sanders (Indiana).

"Affirmative Action in Employment: A Commentary on OFCCP Enforcement and Executive Order 11246," by Ann Barry (Wisconsin).

"Affirmative Action in Hiring and Contracting: An Effective Public Policy," by James W. Compton and James H. Lewis (Illinois).

"Affirmative Action in Multiracial America," by Jeryl Levin (Illinois).

"Affirmative Action in the Federal Government—A United States Air Force Perspective," by Michael B. O'Hara (Ohio).

"Affirmative Action in the Twenty First Century," by Ellen Frankel Paul (Ohio).

"Affirmative Action in Wisconsin State Government," by Gregory C. Jones (Wisconsin).

"Affirmative Action into the Twenty First Century: Revision and Survival," by Dulce Maria Scott and Marvin B. Scott (Indiana).

"Affirmative Action: Mend It—But Don't End It," by Sam Thomas, III (Ohio).

"Affirmative Action Plans or Government Investigations: Which Serves Us Best?," by Michael Vlantis (Indiana).

"Affirmative Action Programs in Not-For-Profit Human Service Organizations," by Karen Johnston (Illinois).

"Affirmative Action: Pushing Equal Opportunity," by Maureen Manion (Wisconsin).

"Affirmative Action Recruitment, Hiring, and Employment of People With Disabilities," by Nancy Griffin (Indiana).

"Affirmative Action Set Asides: Bad Programs," by Larry Robinson (Ohio).

"Affirmative Action—Should It Be Continued, Modified, or Concluded," by Charmaine Clowney (Wisconsin).

"Affirmative Action: Still Needed After All These Years," by Samuel Rosenberg (Illinois).

"Affirmative Action: Time To Rethink Anti-Discrimination Strategy," by Lee H. Walker (Illinois).

"Affirmative Action: What is Our Future? What Is Best For America? A Case for Affirmative Action," by Samuel Gresham, Jr. (Ohio).

"Affirmative Action Versus Markets as a Remedy for Discrimination," by John Lunn (Michigan).

"(The) Ambivalent Future of Affirmative Action," by Jonathan L. Entin (Ohio).

"(The) Americans With Disabilities Act and Affirmative Action," by Kent Hull (Indiana).

"The Episcopal Church and Affirmative Action," The Episcopal Church General Convention (Illinois, Indiana, Michigan, Ohio, and Wisconsin).

"An Economic View of Affirmative Action," by Hedy M. Ratner (Illinois).

"An Ethic of Care and Affirmative Action: A Critical Analysis of Supreme Court Jurisprudence," by Francis Carleton (Wisconsin).

"(The) Assault on Affirmative Action and Reality," by Ellen Bravo (Wisconsin).

"Beyond Black and White: Asian Americans and Affirmative Action," by Gail M. Nomura (Michigan).

"Breaking Through Multiple Barriers: Minority Workers in Highway Construction," by Janice A. Schopf (Wisconsin).

"(The) Case For Maintaining and Enhancing the Use of Voluntary Affirmative Action in Private Sector Employment," by Barbara J. Fick (Indiana).

"City of Columbus Predicate Study Summary," by Gwendolyn Rogers and Melinda Carter (Ohio).

"Civil Rights Issues Facing American Muslims in Illinois and the Lack of Affirmative Action Inclusion," by Moin "Moon" Khan (Illinois).

"Affirmative Action—A Success Story for One Minority-Owned Business," by Vijay Mahida (Michigan).

"Detroit Branch NAACP Statement on Affirmative Action," by Joann Nichols Watson (Michigan).

"Disassembling Myths and Reassembling Affirmative Action," by Phoebe Weaver Williams (Wisconsin).

"Effectiveness of Goals in Affirmative Action Programs," by Theodore R. Hood (Indiana).

"(The) Folklore of Preferential Treatment," by Kenneth W. Smallwood (Michigan).

"General Motors Corporation Position on Affirmative Action," by William C. Brooks (Michigan).
"(The) Impact of Affirmative Action on Opportunities in Illinois: Beliefs Versus Realities," by Cedric Herring (Illinois).
"Impact of Affirmative Action on the Hispanic/Latino Community," by Joseph L. Mas (Ohio).
"Mending, Not Ending, Affirmative Action: The Approach of Bloomington, Indiana," by Barbara E. McKinney and Colleen Foley (Indiana).
"Michigan Department of Civil Rights Review of State Affirmative Action Programs," by Winifred K. Avery and Charles Rouls (Michigan).
"Myth Versus Reality: A Call for Integrity in the Debate of Affirmative Action," by Cathy J. Cox (Indiana).
"National Association of Manufacturers Position on Affirmative Action," the National Association of Manufacturers (Illinois, Indiana, Michigan, Ohio, Wisconsin).
"Ohioans Oppose Preferential Programs Based on Race or Gender," the *Ohio Poll*.
"(The) Origins of Affirmative Action in Employment," by Ken Masugi (Ohio).
"Plurality and Affirmative Action: The Social Requirement of Diversity," by H. Paul LeBlanc, III (Illinois).
"Position Statement from the Anti-Defamation League on Affirmative Action to the United States Commission on Civil Rights," The Anti-Defamation League (Illinois, Indiana, Michigan, Ohio, Wisconsin).
"(The) Practice of Affirmative Action by the Wayne County Commission," by Victor L. Marsh (Michigan).
"Practice Versus Politics, A Focus on Affirmative Action," by Alvin L. Pierce (Indiana).
"Proactive Affirmative Action: A Position Paper," by Dennis Gabor (Wisconsin).
"Racial Disparity and Employment Discrimination Law: An Economic Perspective," by James J. Heckman and J. Hoult Verkerke (Illinois).
"Reconsidering Strict Scrutiny of Affirmative Action," by Brent T. Simmons (Michigan).
"Reflections on the Indianapolis Experience in the 1980s with Affirmative Action and Equal Opportunity," by William H. Hudnut (Indiana).
"Reforming Affirmative Action in Ohio," by Governor George V. Voinovich (Ohio).
"Reinventing Affirmative Action," by Boniface Hardin (Indiana).
"(The) Relevancy of Affirmative Action for a Recent Immigrant Among the Minority Population," by Sebastian Ssempijja (Wisconsin).
"(The) Role of Affirmative Action in Promoting Intergroup Relations," by Horacio Vargas (Michigan).
"Southern Illinois: A Case for Affirmative Action," by Don E. Patton (Illinois).
"Statement on Equal Opportunity and Affirmative Action," by The United States Catholic Conference (Illinois, Indiana, Michigan, Ohio, Wisconsin).
"Statement on Affirmative Action from the Mexican American Legal Defense and Educational Fund" (Illinois).
"Strong Affirmative Action Monitoring Guarantees Impartial Employment Opportunities for Women and Minorities Currently Not Welcome in Wisconsin's Construction Industry," by Karen Meyer (Wisconsin).
"(The) Theology of Racism and Affirmative Action," by Rt. Rev. William C. Wantland (Wisconsin).
"Thirty Year Retrospective: Women and Affirmative Action 1965-1995," by Eileen D. Mershart (Wisconsin).
"Time To Dismantle Affirmative Action," by Rebecca A. Thacker (Ohio).
"What Affirmative Action Requires," by Emily Hoffman (Michigan).
"(The) World Your Children Will Inherit," by Jeannie Jackson (Michigan).

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Avery, Winifred K. and Charles Rhouls, "Michigan Department of Civil Rights Review of State Affirmative Action Programs" (Michigan).

Baker, Roland C., "Affirmative Action as Good Business" (Illinois).

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Bell, Patricia L. and John T. Blackwell, "Affirmative Action: What Is It? A Layperson's Perspective" (Michigan).

Berrera, Patricia, *see* "Affirmative Action: A Latino Perspective" (Illinois).

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Brooks, William C., "General Motors Corporation Position on Affirmative Action" (Michigan).

Carleton, Francis, "An Ethic of Care and Affirmative Action: A Critical Analysis of Supreme Court Jurisprudence" (Wisconsin).

Carter, Melinda and Gwendolyn Rogers, "City of Columbus Predicate Study Summary" (Ohio).

Clowney, Charmaine, "Affirmative Action Should It Be Continued, Modified, or Concluded" (Wisconsin).

Compton, James W. and James H. Lewis, "Affirmative Action in Hiring and Contracting: An Effective Public Policy" (Illinois).

Costello, Timothy G. and Shelly A. Ranus, "Affirmative Action: An Employer's Perspective" (Wisconsin).

Cox, Cathy J., "Myth Versus Reality: A Call for Integrity in the Debate of Affirmative Action" (Indiana).

Crigler, Thelma T., "Affirmative Action: A Proactive Approach to Equality and Equity in Employment" (Illinois).

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Duderstadt, James J., "Affirmative Action at the University of Michigan" (Michigan).

Entin, Jonathan L., "The Ambivalent Future of Affirmative Action" (Ohio).

Fick, Barbara J., "The Case For Maintaining and Enhancing the Use of Voluntary Affirmative Action in Private Sector Employment" (Indiana).

Foley, Colleen and Barbara E. McKinney, Barbara E., "Mending, Not Ending, Affirmative Action: The Approach of Bloomington, Indiana" (Indiana).

Gabor, Dennis, "Proactive Affirmative Action: A Position Paper" (Wisconsin).

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Gresham, Jr., Samuel, "Affirmative Action: What is Our Future? What Is Best For America? A Case for Affirmative Action" (Ohio).

Griffin, Nancy E., "Affirmative Action Recruitment, Hiring, and Employment of People With Disabilities" (Indiana).

Griffin, Ronald E., "Affirmative Action and Government Spending: Cutting the Real Waste" (Michigan).

Hall, Ronald E., "Affirmative Action as Affirmative Government Purchasing" (Michigan).

Hardin, Rev. Boniface, "Reinventing Affirmative Action" (Indiana).

Harrod, Robert C., *see* The National Conference, "A Human Relations Perspective on Affirmative Action" (Ohio).

Heckman, James J. and J. Hoult Verkerke, "Racial Disparity and Employment Discrimination Law: An Economic Perspective" (Illinois).

Herring, Cedric, "The Impact of Affirmative Action on Opportunities in Illinois: Beliefs Versus Realities" (Illinois).

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