

4. THE JUSTIFICATIONS FOR AFFIRMATIVE ACTION:

THE CONTINUING NEED TO COMBAT DISCRIMINATION AND PROMOTE INCLUSION

Affirmative action was established as part of society's efforts to address continuing problems of discrimination; the empirical evidence presented in the preceding chapter indicates that it has had some positive impact on remedying the effects of discrimination. Whether such discrimination lingers today is a central element of an analysis of affirmative action. The conclusion is clear: discrimination and exclusion remain all too common.

4.1. Evidence of Continuing Discrimination

There has been undeniable progress in many areas. Nevertheless, the evidence is overwhelming that the problems affirmative action seeks to address -- widespread discrimination and exclusion and their ripple effects -- continue to exist.

- Minorities and women remain economically disadvantaged: the black unemployment rate remains over twice the white unemployment rate; 97 percent of senior managers in Fortune 1000 corporations are white males; (28) in 1992, 33.3 percent of blacks and 29.3 percent of Hispanics lived in poverty, compared to 11.6 percent of whites. (29) In 1993, Hispanic men were half as likely as white men to be managers or professionals; (30) only 0.4 percent of senior management positions in Fortune 1000 industrial and Fortune 500 service industries are Hispanic. (31)
- Blatant discrimination is a continuing problem in the labor market. Perhaps the most convincing evidence comes from "audit" studies, in which white and minority (or male and female) job seekers are given similar resumes and sent to the same set of firms to apply for a job. These studies often find that employers are less likely to interview or offer a job to minority applicants and to female applicants. (32)
- Less direct evidence on discrimination comes from comparisons of earnings of blacks and whites, or males and females. (33) Even after adjusting for characteristics that affect earnings (such as years of education and work experience), these studies typically find that blacks and women are paid less than their white male counterparts. The average income for Hispanic women with college degrees is less than the average for white men with high school degrees. (34)
- Last year alone, the Federal government received over 90,000 complaints of employment discrimination. Moreover 64,423 complaints were filed with state and local Fair Employment Practices Commissions, bringing the total last year to over 154,000. Thousands of other individuals filed complaints alleging racially motivated violence and discrimination in housing, voting, and public accommodations, to name just a few.

4.2 Results from Random Testing

The marked differences in economic status between blacks and whites, and between men and women, clearly have social and economic causes in addition to discrimination. One respected method to isolate the prevalence of discrimination is to use random testing, in which individuals compete for the same job, apartment, or other goal. For example, the Fair Employment Council of Greater Washington, Inc., conducted a series of tests between 1990 and 1992. The tests revealed that blacks were treated significantly worse than equally qualified whites 24 percent of the time and Latinos were treated worse than whites 22 percent of the time. Some examples document the disparities:

- Two pairs of male testers visited the offices of a nationally-franchised employment agency on two different days. The black tester in each pair received no job referrals. In contrast, the white testers who appeared minutes later were interviewed by the agency, coached on interviewing techniques, and referred to and offered jobs as switchboard operators.
- A black female tester applied for employment at a major hotel chain in Virginia where she was told that she would be called if they wished to pursue her application. Although she never received a call, her equally qualified white counterpart appeared a few minutes later, was told about a vacancy for a front desk clerk, later interviewed, and offered the job.
- A black male tester asked about an ad for a sales position at a Maryland car dealership. He was told that the way to enter the business would be to start by washing cars. However, his white counterpart, with identical credentials, was immediately interviewed for the sales job.
- A suburban Maryland company advertised for a typist/receptionist. When a black tester applied for the position, she was interviewed but heard nothing further. When an identically qualified white tester was interviewed, the employer offered her a better position that paid more than the receptionist job and that provided tuition assistance. Follow up calls by the black tester elicited no response even though the white tester refused the offer.
- A GAO audit study uncovered significant discrimination against Hispanic testers. Hispanic testers received 25 percent fewer job interviews, and 34 percent fewer job offers than other testers. In one glaring example of discrimination, a Hispanic tester was told that a "counter help" job at a lunch service company had been filled. Two hours later, an Anglo tester was offered the job. (35)

The Urban Institute's Employment and Housing Discrimination Studies (1991) matched *equally qualified* white and black testers who applied for the same jobs or visited the same real estate agents. Twenty percent of the time, white applicants advanced further in the hiring process than equally qualified blacks. In one in eight tests, the white received a job offer when the black did not. *In housing, both black and Hispanic testers faced discrimination in about half their dealings with rental agents.*

Similarly, researchers with the National Bureau of Economic Research sent comparably matched resumes of men and women to restaurants in Philadelphia. In high priced eateries, men were more than twice as likely to receive an interview and five times as likely to receive a job offer than the women testers. (36)

The Justice Department has conducted similar testing to uncover housing discrimination. Those tests

also have revealed that whites are more likely than blacks to be shown apartment units, while blacks with equal credentials are told nothing is available. Since the testing began, the Justice Department has brought over 20 federal suits resulting in settlements totaling more than \$1.5 million. A particularly graphic case of discrimination occurred during a fair housing test performed by the Civil Rights Division in Wisconsin, which sought to establish whether discrimination existed against the relatively large East-Asian population there. When the Asian tester approached the apartment building, the rental agent stood between the tester and the door to the rental office and refused to allow the tester to enter the building. The tester was told that there were no apartments available and there would not be any available for two months. When the white tester approached two hours later, the individual was immediately shown an apartment and was told he could move in that same day.

4.3 Exclusion from Mainstream Opportunities: Continuing Disparities in Economic Status

Apart from the remediation of and bullwark against discrimination, a second justification offered for continuing affirmative action in education, employment and contracting is the need to repair the mechanisms for including all Americans in the economic mainstream. There is ample evidence to conclude that the problems to which affirmative action was initially addressed remain serious, both for members of disadvantaged groups and for America as a whole.

- A recent study by the Glass Ceiling Commission, a body established under President Bush and legislatively sponsored by Senator Dole, [\(37\)](#) recently reported that:
 - White males continue to hold 97 percent of senior management positions in Fortune 1000 industrial and Fortune 500 service industries. Only 0.6 percent of senior management are African American, 0.3 percent are Asian and 0.4 percent are Hispanic.
 - African Americans hold only 2.5 percent of top jobs in the private sector and African American men with professional degrees earn only 79 percent of the amount earned by their white counterparts. Comparably situated African American women earn only 60 percent of the amount earned by white males.
 - Women hold 3 to 5 percent of senior level management positions -- there are only two women CEOs in Fortune 1000 companies.
 - The fears and prejudices of lower-rung white male executives were listed as a principal barrier to the advancement of women and minorities. The report also found that, across the board, men advance more rapidly than women.
- The unemployment rate for African Americans was more than twice that of whites in 1994. The median income for black males working full-time, full year in 1992 was 30 percent less than white males. Hispanics fared only modestly better in each category. In 1993, black and Hispanic men were half as likely as white men to be managers or professionals. [\(38\)](#)
- In 1992, over 50 percent of African American children under 6 and 44 percent of Hispanic children lived under the poverty level, while only 14.4 percent of white children did so. The overall poverty rates were 33.3 percent for African Americans, 29.3 percent for Hispanics and 11.6 percent for whites.

- Black employment remains fragile -- in an economic downturn, black unemployment leads the downward spiral. For example, in the 1981-82 recession, black employment dropped by 9.1 percent while white employment fell by 1.6 percent. Hispanic unemployment is also much more cyclical than unemployment for white Americans. (39) Hispanic family income remains much lower, and increases at a slower rate, than white family income. (40)
- Unequal access to education plays an important role in creating and perpetuating economic disparities. In 1993, less than 3 percent of college graduates were unemployed; but whereas 22.6 percent of whites had college degrees, only 12.2 percent of African Americans and 9.0 percent of Hispanics did.
- The 1990 census reflected that 2.4 percent of the nation's businesses are owned by blacks. Almost 85 percent of those black owned businesses have no employees. (41)
- Even within educational categories, the economic status of minorities and women fall short. The average woman with a masters degree earns the same amount as the average man with an associate degree. (42) While college educated black women have reached earnings parity with college educated white women, college educated black men earn 76 percent of the earnings of their white male counterparts. (43) Hispanic women earn less than 65 percent of the income earned by white men with the same educational level. Hispanic men earn 81 percent of the wages earned by white men at the same educational level. The average income for Hispanic women with college degrees is less than the average for white men with high school degrees. (44)

A study of the graduating classes of the University of Michigan Law School from 1972-1975 revealed significant wage differentials between men and women lawyers after 15 years of practice. While women earned 93.5 percent of male salaries during the first year after school, that number dropped to 61 percent after 15 years of practice. *Controlling for grades, hours of work, family responsibilities, labor market experience, and choice of careers (large firms versus small firms, academia, public interest, etc.), men are left with an unexplained 13 percent earnings advantage over women.* (45)