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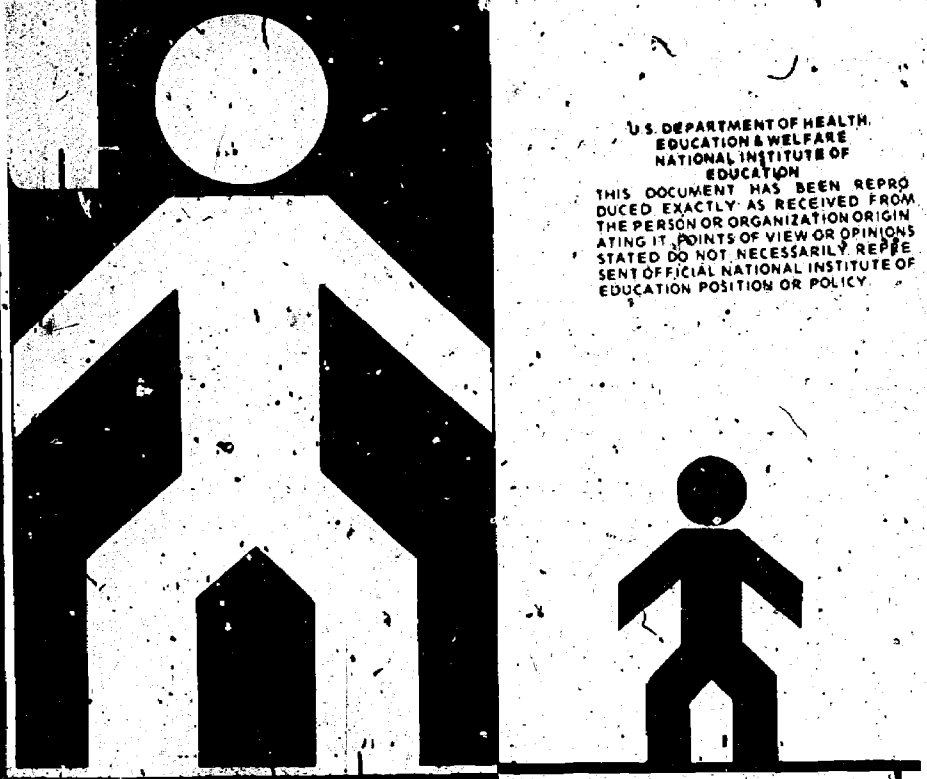
ABSTRACT

More than a decade of affirmative action policy on the part of the federal government has yielded inadequate results. The commonly claimed assumption that blacks are being given unfair and undeserved advantage over whites is examined at length and found unjustified. Bringing together relevant statistics and other data bearing on the effectiveness of equal employment opportunity programs more directly affected by federal laws and regulations, the study concentrates on 3 areas: government employment, federal contractor employment, and employment and admissions in institutions of higher learning. The report demonstrates how dramatic but misleading statistics can be and frequently are cited as indications of how far blacks have advanced in recent years. The report stresses that economic growth has produced a favorable rate of advancement for both minorities and whites, but analysis makes it evident that after a decade of affirmative action policy the increased pace of minority progress is still not fast enough to ensure proportional representation even at the lowest management levels. It is suggested that perhaps disproportionate attention has been focused on the new access blacks have gained to the prestigious white institutions, but the proportion of blacks on campus remains low; they comprised 4.5% and 5.6% of total freshmen enrollment in 1969 and 1970, respectively. (Author/PG)

AFFIRMATIVE ACTION: THE UNREALIZED GOAL



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Affirmative Action: The Unrealized Goal

A Decade of "Equal Employment Opportunity"

The Potomac Institute, Inc.

DECEMBER 1973

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Introduction

AFFIRMATIVE ACTION in employment can be defined as action taken, first, to remedy staffing and recruiting patterns which show flagrant underutilization of minorities and women as a consequence of past discrimination perpetuated in present employment systems, and, secondly, to prevent future employment discrimination which would prolong these patterns further.

It is a widely misunderstood concept frequently stigmatized as involving "reverse discrimination," "preferential treatment," and "quotas." There is widespread currency given to the idea that through affirmative action blacks and other minorities receive unfair and unjustified advantages in the job market. In fact, affirmative action is aimed at eliminating unfair advantage. It entails going beyond the mere prohibition of conscious discrimination, to ensuring that seemingly neutral recruiting, training, hiring, and promotion practices do not operate to the disadvantage of minorities.

Such so-called "systematic discrimination" operates in a number of ways. Common examples include: relying on word-of-mouth contacts for recruiting, where the work force is predominantly white, and minorities, therefore, cannot hear of job opportunities; the deterrent effect of a firm's past history of discrimination in discouraging minorities from applying for jobs; job qualification requirements not relevant to job performance which penalize minority persons suffering from inferior education opportunities; and seniority systems which are based on past

discriminatory job classifications and which operate to block minority advancement.

This report is an attempt to bring together, chiefly from published or publicly-available sources, statistics and other data reflecting on the effectiveness to date of affirmative action in equal employment opportunity. Though it is over a decade since the concept was first officially put into operation, reliable, specifically relevant statistics are only now being collected and it is difficult to know precisely what factors contributed most to perceived improvements in minority hiring and upward mobility. Nevertheless, it is appropriate to introduce some statistics into an area befogged by controversy and confusion to give the dialogue some dimension, as well as to suggest conclusions.

Regrettably, the report includes little about affirmative efforts to recruit and hire women and other minorities, but deals chiefly with blacks. Affirmative action requirements were not extended to women until October 1968, and it is too soon to try to judge their impact. Statistics on blacks alone are more frequently available than those including all minorities, but since blacks make up 90 percent of the minority population, trends among them usually are reflected in other minority communities as well.

There are detailed guides[1] to help employers institute affirmative action programs; that is not the purpose of this survey, nor does it attempt to argue the case for affirmative action. However, basic to the institution of affirmative action is a comprehensive inventory of a firm's employees by grade and classification to find areas of underutilization of minorities, analysis of the reasons for it where it exists, and the adoption of appropriate remedies. To be productive, these programs usually entail the setting of goals and timetables for minority hiring and promotion to give the affirmative action effort a focus, and to measure the effectiveness such a program is having. It is "goals and timetables" in particular which have launched affirmative action into the arena of controversy since they conjure up the unpopular spectre of "quotas." They are not quotas, however, and the differences between goals and quotas are not merely semantic. Quotas are requirements which must be filled and not exceeded; goals are merely targets to be aimed for, and their use has been sanctioned by the courts and the Attorney General.[2] If goals are misused as quotas (and there is no documented evidence to show that this is widespread or common), this is a practice neither required nor condoned by federal regulations.

Other criticisms commonly include the charge that affirmative action, to the detriment of established standards, means preferential treatment for a minority candidate regardless of how qualified he is in relation to his white competitor. Affirmative action demands only that required qualifications are truly relevant to the job to be performed. An employer is not required or expected to dilute his employment standards where they are clearly job-related.

The premise of affirmative action is that white males have the "inside track" to job opportunities and advancement, and special measures are needed to overcome the disadvantages women and minorities suffer as a result. The late President Lyndon B. Johnson, in his last speech on civil rights at the Lyndon Baines Johnson Library in Austin, Texas, on December 12, 1972, dismissed as "the language of evasion" the argument that compensatory programs provide special consideration rather than equal opportunity. As he put it, "To be black in a white society is not to stand on level ground. While the races may stand side by side, whites stand on history's mountain, while blacks stand in history's hollow."[3]

The task of the 'seventies is to even up the ground. Certainly, that task is not made easier by the misconception that affirmative action has given blacks an unfair, undeserved, and illegal advantage over whites.

In the ensuing pages, the report will examine the results of a decade of equal opportunity programs in employment most directly affected by federal law and regulations: government employment, federal contractor employment, and employment and admissions in institutions of higher education.

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2. *Contractors Association* v. *Secretary of Labor*, 311 F. Supp. 1002 (E.D. Pa. 1970); *Higher Education Guidelines Executive Order 11246*. Washington, D.C.: Department of Health, Education, and Welfare, Office for Civil Rights, October 1972, p. 3.
3. *The Washington Post*, Dec. 13, 1972.

I. Affirmative Action: A Brief History

"AFFIRMATIVE ACTION" has its roots in the failure of attempts over three decades to establish equal employment opportunity through the passive prohibition of conscious discrimination.

As far back as the 'thirties, attempts had been made to prohibit such discrimination in the federally-financed training, work relief, and employment programs of the "New Deal." More positive action was elicited from President Roosevelt during World War II when blacks, angry at their exclusion from a job market booming with the growth of defense industries, threatened to embarrass the government internationally by a protest march on Washington.

The Executive Order of June 1941, E.O. 8802, established a Committee on Fair Employment Practices which was to receive and investigate complaints of discrimination in companies holding defense contracts. Executive Order 9346 of May 1943 expanded the program from defense industries to include war industries, and instead of requiring merely "nondiscrimination," expanded the requirement to "nondiscrimination in hire, tenure, terms or conditions of employment, or union membership." The operations of the Committee were hampered by its lack of sanctions and confusion as to what constituted "nondiscrimination," and its demise was effected by determined Congressional opposition which denied it funds. It had achieved little.

President Truman's Executive Order 10308 of December 1951

established a Committee on Government Contract Compliance which was to receive and investigate complaints and supervise the actions of the agencies that were to be responsible for administering the nondiscrimination clause in contracts they signed. This administrative arrangement is the basis of what is in force today. Its virtue was that it avoided difficulties of funding since compliance funds were included with the funding for the agencies as a whole; its disadvantage was that enforcement was entrusted to bureaucracies with priorities other than promoting equal employment opportunity.

President Eisenhower's Executive Orders of August 1953, E.O. 10479, and September 1954, E.O. 10557, expanded the obligations of contractors to include nondiscrimination in "employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay and other forms of compensation and selection for training, including apprenticeship." Contractors were to post notices proclaiming their obligations. Called the President's Committee on Government Contracts, it was given added authority by having the Vice President as chairman, but still had no sanctions to apply in cases of noncompliance, though a system of spot compliance reviews was initiated. The "Nixon Committee," as it became known, was forced to play a chiefly advisory and supervisory role. It recognized in its final report the need for substantial changes if the contract compliance program was to be at all effective.[1]

An Executive Order of January 1955, E.O. 10590, set up the President's Committee on Government Employment Policy which, while chiefly concerned with hiring practices within the government, found itself, as did the Contract Committee, increasingly concerned with problems such as the training and motivation of black workers. Also, its potential effectiveness was drastically restricted by the tiny size of its staff.

By the end of the 'fifties it was becoming apparent that discrimination was more deeply rooted in the social fabric than had first been thought, and it became clearer to both committees that their policies were faced with complex ramifications. Employers were perpetuating discriminatory hiring patterns, often quite unconsciously through, for example, unexamined assumptions as to what jobs were suitable for blacks. Selection and promotion procedures were oriented to those with white backgrounds. The dearth of suitable, qualified black applicants for some jobs was increasingly recognized as reflecting both lack of

adequate training facilities and the self-concept of blacks themselves, long conditioned to accepting discrimination uncomplainingly and to underestimating their own potentialities. At the same time, employers, even those with the best intentions, were not publicizing their openings where blacks and other minorities were likely to hear about them. Thus, by 1960, the view was developing that *passive nondiscrimination was not enough*. Discrimination, it was recognized, could exist and flourish in the simple absence of positive or affirmative action.

Minority unemployment was one part of the picture; there was also the question of occupational status among the employed. In the 1950s, practically half of all the net growth in nonfarm employment among whites occurred in the professional and technical occupations, more than one-fourth occurred in other white-collar jobs, and nearly all the remaining fourth in the skilled categories. Among blacks, however, only two-fifths of the net growth in employment was in the skilled or white-collar occupations, and over one-third was in unskilled labor. With the migrations to the cities from the rural South, many blacks were thus merely exchanging serfdom on the land for serfdom at the factory bench. Earning differentials between blacks and whites reflected the employment differentials.[2] Both pointed to the inadequacy of the mere prohibition of discrimination without enforcement action, and the ineffectiveness of such equal employment policies as had been pursued.

Anti-discrimination efforts modeled on the federal Executive Orders were similarly started at the state and city levels with the establishment of fair employment commissions under state anti-discrimination legislation and city ordinances, reinforced by court decisions. Still, the level of achievement was low.

Political and economic conditions made it imperative by the turn of the decade that action be taken. There was a rising tide of black unemployment, partly due to the growth of automation and the resulting decline in the blue-collar jobs, which were all most blacks could aspire to. At a time when an increased awareness of minority rights and rising expectations were nurturing black militancy on many issues, employment became a vital topic.

President Kennedy came to office with a strong commitment to civil rights. On March 6, 1961, he issued his Executive Order 10925 which established the President's Committee on Equal Employment Opportunity, responsible for eliminating discrimination in employment in the Federal Government, by

government contractors, and the labor unions working on government contracts. Supplemented by E.O. 1114, which extended its authority to employment in federally-assisted construction projects, the Committee had broader enforcement powers, including that of contract debarment for noncompliance, stronger Presidential backing, and a larger budget than any of its predecessors. Moreover, it was charged to see that government contractors "take *affirmative action* to ensure that applicants are employed, and employees are treated during employment, without regard to their race, creed, or national origin." This was the first official requirement that contractors *actively* try to find qualified blacks to fill their vacancies. It asked, in effect, that they concern themselves with the identification, training, and motivation of actual and potential minority employees. Indirectly, it was the first declaration that lack of affirmative action constituted discrimination.

Since then, the concept of affirmative action has been increasingly refined and has grown more sophisticated as the pervasive nature of systematic discrimination has been recognized. As a result, three main fronts have developed to help overcome employment discrimination: first, the Executive, progenitor of the Office of Federal Contract Compliance; second, the Congress, through its Civil Rights Act of 1964 establishing the Equal Employment Opportunity Commission; and, finally, the courts.

The Office of Federal Contract Compliance (OFCC)

President Johnson's Executive Order 11246 of September 1965 remodeled the compliance program. It retained the requirement that government contractors (with contracts over $10,000) take affirmative action, but went further in requiring that such action must be extended to all of a contractor's operations, not merely his government contract. E.O. 11246, amended by E.O. 11375 (October 1967), along with President Nixon's Order 11478 (August 1969), still governs the federal contract compliance program.

E.O. 11246 assigned responsibility for contract compliance to the Secretary of Labor, who established the Office of Federal Contract Compliance in January 1966. OFCC thus became the hub of federal affirmative action efforts under the Executive Order. After various reorganizations, in October 1971 OFCC was absorbed into the Employment Standards Administration of the

Department of Labor, since it was held that OFCC was, after all, administering "employment standards." While OFCC retains overall responsibility for the affirmative action program, industries are assigned for most compliance visits and reviews to 19 major federal agencies on the basis of expertise developed within each agency. Thus, the drug industry is reviewed and visited by the contract compliance division of the Veterans Administration, the food products industry is assigned to the Department of Agriculture, and higher education is the responsibility of the Department of Health, Education, and Welfare, regardless of which agency awarded the contract.

President Johnson's Order stated that affirmative action should "include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship." Affirmative action, as such, was not specifically defined and a definition was a long time in coming, though some agencies did offer suggestions as to what form such action might take and there were a number of unofficial guides to help conscientious employers.[3]

Definitions current in the mid-sixties, such as "anything you have to do to get results," were not helpful to busy personnel managers remote from Washington and unconvinced of the need for change. Such vagueness was probably partly an exercise in political pragmatism, allowing OFCC, in theory, to push harder than Congress—and a skeptical public opinion—might allow if aims were specified. Partly, too, it was held that to define affirmative action exactly would limit it, and "effective affirmative action programs are limited only by the initiative and imagination of the people developing them." Affirmative action was "a plastic concept, that changes as needed, to enable the employment situation of minority groups to be improved."

In 1968, OFCC at last brought out guidelines on affirmative action which required identification and analysis of "problem areas" inherent in minority employment, and prescribed the use of "goals and timetables" to measure how effective the actions taken in problem areas were proving. This definition has been refined, and the current definition and requirements of affirmative action for government contractors, which appeared as Revised Order No. 4 in the Federal Register of December 4, 1971, are as follows:

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort.

An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to increase materially the utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job classification.

(e) Establishment of goals and objectives by organizational units and job classification, including timetables for completion.

(f) Development and execution of action-oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Compliance of personnel policies and practices with the Sex Discrimination Guidelines.

(i) Active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.

(j) Consideration of minorities and women not currently in the work force having requisite skills who can be recruited through affirmative action measures.

The early vagueness as to what affirmative action was and how to achieve it was combined with the government's preference for, and emphasis on, voluntary rather than enforced compliance, and robbed the program of the opportunity to make a substantial and immediate impact. The "Plans for Progress" program, inaugurated under President Kennedy, whereby companies pledged themselves voluntarily to ensure equal employment opportunity, was based on the premise that committed employers would effect equal employment opportunity more quickly and thoroughly than those forced to it by threat of sanctions. It showed, too, the limits of

voluntarism. Too often a company's affirmative action plan amounted only to a letter of pious intent and remained unimplemented. Indeed, at least one "Plans for Progress" company was the subject of a lawsuit against its discriminatory employment practices even as it participated in the plan.[4] The NAACP charged, "It is our experience that major U.S. Government contractors regard the signing of a 'Plan for Progress' as a way of securing immunity from real compliance with the anti-discrimination provision of their government contract . . ."[5]

Despite the pledges, effective enforcement procedures were slow to be developed and used. The guidelines of 1968 detailed the penalties and procedures for noncompliance with the Executive Order, and these were extended in Order No. 4 of 1970 and Revised Order No. 4 of 1971. They provided ample time for a contractor, found in noncompliance, to delay and avoid the ultimate sanction—debarment and a declaration of ineligibility. Enforcement procedures included the possibility of OFCC issuing a "Show Cause" notice in the absence of acceptable affirmative action plans and, thereafter, of issuing a notice of intent to debar within 30 days if the matter had not been resolved through a hearing. "Show Cause" notices have been the principal means employed to urge contractors to compliance. By 1971, only one small contractor had been debarred.

OFCC's low profile in enforcement has been much criticized as undermining the efficacy of the whole affirmative action program. The requirement that contractors make "every good faith effort" to effectuate their affirmative action plans is criticized as so unspecific as to be unenforceable.

Three studies appearing at the end of the 'sixties drew attention to the deficiencies of the federal effort to impose affirmative action. They were Richard P. Nathan's "Jobs and Civil Rights" (1969);[6] "One Year Later" (1969), a joint publication of Urban America and the Urban Coalition;[7] and the U.S. Commission on Civil Rights' publication, "Federal Civil Rights Enforcement Effort" (1970).[8] All criticized the weakness of the enforcement effort, the early lack of clear guidelines to contractors, and the poor coordination among government agencies concerned with enforcement of equal employment opportunity and affirmative action. They questioned whether the federal agencies were sufficiently staffed, funded, or organized for their purposes. The quality and effectiveness of OFCC's role as the chief enforcement agency were further called into question by decisions of the

Departments of Defense and Transportation to award contracts to textile firms guilty of noncompliance, despite recommendations to the contrary by OFCC. Hearings on the matter by the Senate Judiciary Committee on Administrative Practice and Procedings in March 1969 added no luster to the OFCC image.

In the early 'seventies, perhaps partly as a result of these critical reports, a tougher enforcement posture seemed to be in the making. Staff increases, an enlarged budget, the revised guidelines of December 1971, and the improvement of procedures for monitoring enforcement and contractor performance—including data collection and utilization—seemed to suggest that the program was at last getting under way. The debarment of two more contractors, albeit small ones, indicated a more determined federal commitment. Nevertheless, a Civil Rights Commission report of 1973[9] still found procedures to resolve compliance problems inadequate and funding insufficient for the task in hand, with the "good faith" clause a principal factor in the program's weakness.

It is only now, in the early 'seventies, more than ten years after the inception of the program under President Kennedy, that the mechanics of the system are falling into place. The federal commitment, subject as it is to the vagaries of political pressures, tends still to be minimal, however.

The Equal Employment Opportunity Commission (EEOC)

The chief legislative plank for efforts to implement equal employment opportunity is Title VII of the Civil Rights Act of 1964. Title VII requires nondiscrimination in employment among employers, unions, employment services (public and private), and sponsors of apprenticeship or other job training programs. It is the legislative authority for the Equal Employment Opportunity Commission, charged with seeing that Title VII is enforced, and with investigating complaints of discrimination by individuals. Born of compromise, EEOC's role has been limited by its lack of enforcement powers. It has had to rely on "conference, conciliation and persuasion," the willingness of a complainant to take his case to a federal court when conciliation fails, and the readiness of the Justice Department to initiate litigation in cases where it discerned "a pattern or practice" of discrimination. Slow to get into gear, EEOC assumed a complaint-oriented posture in its early years and thus addressed itself primarily to problems of active discrimination.

Nevertheless, EEOC has become increasingly concerned with systematic discrimination and its effects, and thus more involved in promoting affirmative action to counteract it. By 1970, the Commission itself had developed the position that a "violation of Title VII is a violation" of Executive Order 11246 and vice versa."[10]

The Commission's decisions on the merits of charges of discrimination filed under Title VII have increasingly defined discrimination as encompassing all the employment practices at which affirmative action is aimed. Its views have been afforded "great weight" by the courts in discrimination cases, with the result that many Commission decisions on what constitutes discrimination have become established in law. Notably, the Commission has held that statistics showing minorities as absent or underrepresented in certain jobs establish a *prima facie* case of unlawful exclusion. The courts have upheld this view, the Fifth Circuit even going so far as to hold that statistics showing that blacks are only a small fraction of the work force, and are primarily in menial jobs, requires the issue of a preliminary injunction.[11]

The Commission's long-standing concern with pre-employment and pre-promotion testing was vindicated by the Supreme Court's ruling in *Griggs v. Duke Power Co.*,[12] which struck down the requirement that employees have a high school education or pass a standardized intelligence test as a condition of employment, transfer, or promotion. The ruling established the legal necessity for job-related testing procedures, which earlier decisions by the Commission had stressed.

Other courts have validated in law other EEOC decisions as to what constitutes discrimination and needs affirmative action to counteract it. For example, the Commission's finding that word-of-mouth recruitment conducted by a substantially all-white work force, without simultaneous recruitment in the minority community, had discriminatory aspects was upheld by the Eighth Circuit.[13] The Commission's finding that seniority systems, while neutral on their face, frequently perpetuate discriminatory acts and are therefore illegal has been upheld in the courts many times over.[14]

EEOC's own activities in the courts have frequently furthered the adoption of affirmative action programs, both through its role as *amicus curiae* in private actions brought under Title VII and through the Commission's referral of cases to the Justice Department for action.

In private actions under Title VII, the courts are increasingly requiring the parties to negotiate a conciliation agreement under the auspices of EEOC. Such conciliation agreements invariably contain provisions for affirmative means of ending the discrimination, and become the order of the court. In suits initiated by the Justice Department, EEOC is frequently called to provide technical assistance to help the defendant implement the remedial action ordered by the court as well as to conciliate differences.

Conciliation can often forestall court action, since EEOC can move in to conciliate after investigation of a complaint has revealed there is "reasonable cause" to believe discrimination has occurred, and before the complainant or the Justice Department takes the case to court. Such conciliations include affirmative means of overcoming the problem. One of the earliest and most publicized was the agreement with Newport News Shipbuilding and Drydock Company signed in March 1966. It contained provisions for affirmative action to obviate Title VII violations involving hiring, promotions, and the scarcity of blacks in skilled and supervisory job categories.

EEOC's authority under Title VII to furnish to persons protected by this law such technical assistance as they may request involves the Commission directly and continuously in the setting up of affirmative action plans. The objective of technical assistance as the Commission sees it is to bring about "affirmative action to promote equal employment opportunity on the part of employers, labor unions, and community organizations." Not only is technical assistance provided on request, but requests are stimulated by the dissemination of educational materials stressing the need, both moral and—increasingly—legal, to set up such programs.

Such requests have been elicited after EEOC hearings have publicized dubious hiring and employment practices in industries such as textiles, drugs, and the gas and electric utilities. Publicity given to practices revealed as discriminatory alerts employers to the implications of their own employment procedures, and technical assistance is available to help them avoid unconscious discrimination.

Finally, EEOC is empowered under Title VII to "make and keep records relevant to the determinations of whether unlawful employment practices have been or are being committed." Information on the racial makeup of an employer's work force (from so-called EEO-1 reports), of apprenticeship, training pro-

grams (EEO-2 reports), and of labor unions (EEO-3 reports) gained under this authority are invaluable as a means of identifying areas where individual employers and whole industries need to correct deficiencies and are of particular value to contract compliance specialists working to implement the Executive Order.

The Equal Employment Opportunity Act of 1972 (amended Title VII of the Civil Rights Act of 1964, effective March 24, 1972) broadened the coverage of Title VII to include organizations with 15 or more employees, employees of state and municipal governments, and of private and public educational institutions formerly exempted. Since April 1, 1972, EEOC has been empowered to go to court directly when investigation of a charge reveals discrimination and conciliation cannot be reached. Discrimination charges may now be filed by organizations on behalf of aggrieved individuals, as well as by job-seekers themselves. Increasing legal actions under the new Act (140 cases to date), and the record of the courts in requiring affirmative action to remedy discrimination, are a further influence on employers to voluntarily adopt affirmative action plans.

Title VII and the Courts

The judicial interpretation of discrimination under Title VII is now such that affirmative action by all employers, not merely government contractors, is mandatory if they are to be *sure* their employment practices are within the law. The courts have increasingly taken the view that any practice or policy, however inoffensive its appearance or intent, which tends to perpetuate the effect of a prior discriminatory policy is against the law. As Supreme Court Justice Warren Burger expressed it in *Griggs* v. *Duke Power Co.*, "What is required . . . is the removal of artificial, arbitrary and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification."

The case established and confirmed a number of important principles in employment practice, but was specifically about criteria for hiring. The ruling that ostensibly "objective" criteria for hiring, employment, or promotion are discriminatory if they result in a relative disadvantage for minority persons without "compelling business necessity" struck down one of those arbitrary barriers. It requires employers and unions throughout the country to revise their testing procedures if they are to be confident that they are not liable to litigation on this score. Other

court rulings have identified and condemned other barriers in the areas of recruitment policy and practice, placement, testing, systems of transfer, promotion, seniority, lines of progression, and in basic terms and conditions of employment.[15]

Systematic discrimination in employment is by its nature classwide. All Title VII suits are viewed as class actions, whether or not they are specifically designated as such.[16] Where discrimination is found, relief is due the entire "affected class" to which the individual complainant belongs. That relief includes remedies which must open the door to equal employment for all and must "make whole" and "restore the rightful economic status" of the affected class. Thus, court-imposed remedial affirmative action ordered where discrimination is found often includes not only fundamental changes in employment systems, but also the required hiring of a specified number or proportion of qualified minorities or women, and sometimes the payment of substantial amounts of back pay to those affected.

A few examples suffice to show the trend. Black employees of the Lorillard Corporation were awarded $500,000 in back pay when the court found that departmental seniority and limited transfer rights in contracts between the company and its union limited the access of blacks to most jobs. Black employees who had suffered loss of promotions and pay raises were compensated according to what they would have received based on company seniority had the discriminatory practices not existed. Both company and union were ordered to change seniority and assignment systems to assure real equal opportunity in assignments and promotions.

Sardis Luggage Company was ordered to pay $120,000 in back wages to black plaintiffs, plus $25,000 in attorney fees and court costs. It also had to hire black workers in a two-to-one ratio for four years, until the combined production and clerical work force had a ratio of blacks in proportion to the nonwhite work force in the company's labor area.

Virginia Electric and Power Co. was ordered to pay $250,000 to compensate black workers for wages they would have earned if they had not been kept from promotion by a discriminatory system. The company was ordered to eliminate use of high school diplomas and aptitude tests as hiring or promotion criteria for blue-collar jobs since they were not job-related, and to eliminate existing transfer and promotion systems based on job and departmental seniority to allow upward mobility based on total

employment seniority. The company was ordered to hire, subject to availability of qualified blacks, new black employees on a one-for-three basis in the unionized jobs until there were 21.5 percent blacks, and 15 percent blacks for the nonunionized clerical positions.[17]

Although Title VII bars preferential hiring simply to eliminate racial employment imbalances in relation to population ratios,[18] federal courts consistently have found quotas to be a justifiable and necessary remedy as a means of eliminating the present effects of past discriminatory practices.[19] "Race-conscious injuries require race-conscious remedies." Thus, especially in the last two years, there have been increasingly numerous examples of courts ordering preferential hiring of minorities for a limited period to erase the effects of past discrimination.[20]

In an early example of this trend, the Asbestos Workers Union, which had discriminated against minorities, was required not only to admit to membership four minority workers previously the victims of union discrimination, but also, since it was a referral union, to refer blacks and whites on an alternating basis for employment. The Alabama State Police were required to hire police and supporting personnel on a one-to-one basis until blacks were 25 percent of each category. A Mississippi school district was ordered to fill 1970-71 teacher vacancies with blacks until the number of black teachers in 1971 reached the black-white pupil ratio of 1969-70. A trucking firm was ordered to hire blacks on a one-to-one basis with whites until black drivers numbered 20 percent of total drivers. Household Finance Corporation was ordered, subject to the availability of qualified applicants, to hire 20 percent minority workers for clerk-typist, credit interviewer, and branch representative openings until they reached 65 percent of local population parity.[21]

In the important *Carter v. Gallagher* case, the Minneapolis Fire Department was ordered to hire minorities on a one-to-three basis until there were 20 minority firemen. The significant rationale of this order was that ratio hiring would obviate the reluctance minorities felt in applying for such jobs, given the well-known hiring policies which had previously been followed. It would assure the minority community that future hiring would not just be on a token basis.[22]

Courts have ordered minority quotas for training programs as well as for hiring. Goodyear Tire and Rubber Co. was ordered to provide pre-apprentice academic training for 20 blacks per year,

and to admit blacks to apprenticeship programs on a one-to-one basis until the percentage of blacks on craft jobs is at least three-fourths the percentage of blacks in production jobs. Dillon Supply Co., in a consent decree, was ordered to ensure that the next six welder learners, mechanic learners, or machinist learners were black, and thereafter that 60 percent of those hired in these categories were black. Among several cases affecting union practices, the Ironworkers Local 86, in a consent decree, was ordered to have a minority oiler trainee program with a goal of 50 minority participants in each of the first two years, while the Lathers Local 46 was ordered to grant work permits for 100 minority persons, and to issue additional work permits on a one-to-one basis, with a minimum of 250 to be issued each year.[23]

All of these examples of "quotas" and "preferential hiring," be it remembered, are in cases where the courts have found discrimination and recalcitrance in eliminating it. There has, however, been no sanctioning of *indiscriminate preference* for minorities simply because they are minorities. Quotas, as opposed to goals, imposed without a court order as a remedial measure, may well be ruled illegal. In *Griggs* v. *Duke Power Co.*, the Supreme Court noted that the Civil Rights Act "does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group." On this basis, the New York Appellate Court has decided it is illegal for the New York civil service to give across-the-board preference to certain individuals successful in the Professional Careers Program and Test, just *because* they are black or Spanish-speaking.[24] Court decisions on employment practices have been aimed at *discriminatory systems*, rather than at giving or condoning preferential treatment as such.

The emerging judicial interpretation of Title VII may spur employers to institute affirmative action programs for a number of reasons. Herbert Hill has expressed the reasons in this way, "First, the plaintiff can be almost anyone who has any connection with the employment practices of the employers. Second, the range of complaint can be as broad as the employer's total enterprise. Third, the proof may be accomplished on the basis of statistical data. Fourth, the relief given by courts may involve substantial amounts of money and serious alteration of established business practices. It is the growing awareness of this risk which currently gives most promise of a meaningful change in discriminatory employment policies."[25]

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II. Black Income and Employment, 1960-1970: An Overview

AT THE END OF THE decade in which affirmative action was adopted as official policy, the nonwhite minorities still carried an absolute and comparative burden of disadvantage. Handicaps such as inferior schooling, inadequate housing, impoverished family backgrounds, and discrimination in the employment market were reflected in major differences between blacks and whites in statistics on their incomes, employment, and occupational status. Over a third of the nonwhite population, compared to a tenth of the white, were below the officially designated poverty level in 1970, and the black median family income was less than two-thirds that of the white.[1] Nonwhite unemployment rates averaged more than twice those of whites over the decade, and at its end less than one-fifth of whites were in the poorly-paid, unskilled jobs at the lower end of the employment spectrum, but nearly half of the blacks were so employed. Well over half of the employed whites held white-collar jobs compared to under one-twentieth for blacks.

Nevertheless, this gloomy catalogue of disadvantage represents considerable improvement over similar statistics for 1960. By most indicators, blacks were better off at the end of the decade than they had been at the beginning, and the rate at which their conditions were improving consistently outstripped that of the

white majority. This was a decade when economic, political, and social factors had combined to favor minority advancement as never before. Affirmative action was only one of the policies which may have contributed to a faster rate of black improvement.

Despite this much-vaunted progress, however, by the end of the decade the basic pattern of black disadvantage had not been changed. Equality between blacks and whites in an economic sense was still, in the early 'seventies, a remote goal. Certain indicators had been eagerly seized upon as giving hope that a new pattern was emerging, but they proved misleading. Among them were the apparent achievement of black-white income parity in the North and West, and the reduction of the black-white unemployment ratio in a time of rising unemployment, from the traditional approximate two-to-one down to 1.8-to-one. The former proved to be the result of the greater contribution made to family income by black wives who worked more and longer than their white counterparts. The latter was largely the result of the recession striking those industries and those occupations which contained fewest blacks, such as the defense and aerospace industries. By September 1972, the old ratio had reasserted itself.[2]

Dramatic but misleading statistics can be and frequently are cited as indications of how much blacks have advanced in recent years. "The Social and Economic Status of the Black Population of the U.S., 1972" (Table I) shows that the median family income of Negroes and other races increased by 111.7 percent over a 20-year period (1951-71), compared to a 77.4 percent rise for whites. These figures and similar statistics computing percentage increases are deceptive, however. Michael Flax has illustrated most effectively the fallacies inherent in relying only on comparisons of black-white percentage rates as indicators of black advancement.[3] Because black rates of improvement are calculated from such a low numerical base, when presented in percentage terms a small actual improvement emerges as a large percentage. To gain a less misleading picture, one is forced to original figures to look at how much, in percentage terms, the gap between blacks and whites has diminished. A very different impression of black progress then emerges.

Income and Employment

Income figures are an appropriate example. In the light of the dramatic "progress" already cited, it is illuminating to note that

nonwhite families' median income improved from 53 percent of whites' in 1962 to 62 percent in 1972 (Table II), an increase of less than 10 percentage points over ten years. In terms of actual income, after a decade nonwhite families were actually worse off. They had been $3,788 behind whites in 1961, but in 1971 were worse off by $3,958 (Table I). Black families, moreover, contained an average of 4.26 persons compared to the 3.52 in a white family in 1971,[4] and relied heavily on the earnings of black wives. One analysis found that despite the faster rate of income growth among minorities, they will not, at present rates, reach parity with whites before the end of the century.[5] Another commentator, noting that black workers' income gained only four percentage points relative to whites' in the 25 years between 1945 and 1970, calculated that equality will be achieved only after three centuries, in the year 2275, at that rate of progress.[6]

Other statistics on income showing improvement over the decade are similarly misleading. Nonwhite families with incomes under $3,000 decreased from 35 percent to 19 percent between 1961 and 1971, and the proportions with incomes over $10,000 increased from approximately 13 percent to 30 percent (Table I). White families with incomes under $3,000 decreased from 13 percent to seven percent, and those with incomes over $10,000 increased from about 36 percent to over 54 percent. At the higher income level, then, minorities were again at a disadvantage compared to whites. Fewer black families were actually in poverty at the end of the decade, however. The number of nonwhites living below poverty level decreased from over one-half in 1959 to just under one-third in 1972. The comparable decrease for whites was from about one-fifth to less than one-tenth, a greater decline than for blacks (42 percent for whites compared to 23 percent for blacks). But Negroes alone, who made up about 11 percent of the population, represented about 32 percent of those living below the low-income level in 1972;[7] and 40 percent of black children compared to 10 percent of white children are officially classed as "poor."[8]

Much of the improvement in black incomes was due to improvements in employment and occupational status. The unemployment rates declined for both blacks and whites in the 1960s (Table III), with the black-white ratio of unemployment which had averaged 2:1-to-one during the decade declining to 1.8-to-one in 1970 and 1971, but rising again in 1972. The 10 percent black unemployment rate of 1972 was in any case a

nationwide average. The rate among teenagers and in the central cities was much higher. Among black teenagers, the position in 1972 was far worse than it had been in 1960, with the unemployment rates soaring from 24.4 percent in 1960 to 33.5 percent in 1972, more than double that of white teenagers, 14.2 percent (Table IV). In the central cities, by the third quarter of 1971, black unemployment rates had climbed to 14 percent while the white rate had declined to 6.6 percent.[9] As alarming as this picture of inequity is, such official statistics have come under attack in some quarters as being too optimistic since they do not take into account those who have been unemployed for so long that they no longer seek work.[10]

In an independent study which took into account the large numbers of "underemployed" (part-time workers seeking full employment) between August 1970 and March 1971, the Urban League found black unemployment, including underemployment, in urban poverty areas ranging between 23.8 percent and 30 percent.[11] The official unemployment figure for blacks for the period was 11.1 percent. Whatever the exact figures, the pattern remains the same, one of considerable disadvantage for blacks compared to whites in the employment market.

A study by the Bureau of Labor Statistics in 1972 illustrated that disadvantage clearly. Among youths between 16 and 24, it found that while 8.1 percent of white high school graduates and 14.9 percent of whites with eight years' schooling or less were unemployed, the unemployment of black high school graduates was 15.8 percent.[12] The suggested reasons for these differences—discriminatory hiring practices and differences in the quality of schooling—apply equally to employment differences between blacks and whites over the broader spectrum.

Occupational Status

Historically, once employed, blacks have always been over-represented in the lower-paying, less-skilled jobs and under-represented in the better-paying, high-skilled jobs. Despite the achievement of a measure of upward mobility, this was still true after a decade of progress. While the number of workers of "Negro and other races" employed in the better-paying white-collar, craftsmen, and operators occupations increased by 69 percent and the number of whites in these occupations rose only by 23 percent (Table V), such a dramatic increase in fact only brought the proportion of blacks up from six to eight percent of the total.

Table VI, contrasting the occupational distribution of "Negro and other races" in 1960 and 1972, illustrates the degree of upward mobility achieved in a variety of job categories. A general trend upwards is discernible, with the proportions employed in the lowest categories decreasing while those in the top and middle categories increased. By 1972, only 13 percent of "Negro and other races" held professional, technical, and managerial positions, compared to 26 percent of whites (Table VII). At the other end of the scale, twice the proportion of nonwhites, as compared to whites, were employed in service, private household, farm, and laboring jobs (40 percent and 20 percent respectively).

Even within each occupational group, earnings for full-time male workers are substantially and consistently lower for blacks than for whites (Table VIII). Earnings in the professional and craftsmen classes show the greatest differentials: in 1969, $3,500 less for black professionals and $2,200 less for black craftsmen than their white counterparts. Perhaps the most revealing aspect of Table VIII is that it shows the earnings differentials to have been maintained with very little change between 1959 and 1969. Towards the end of the 'sixties, within each job category blacks were earning almost the same amount less than whites as in 1959.

If one assumes that income generally rises with increased education, the earning power of black males still is consistently lower than that of whites even when they are on the same educational level. In 1969, black males 25 to 34 years old with four years of college had median earnings of $2,400 less than their white counterparts. However, black males 35 to 54 years old with four years of college did not fare even that well, their median earnings in 1969 being $5,300 less than for whites. Thus, a pattern of progress for educated young black males is emerging in that increased education beyond high school generally improves the relative earning levels of blacks to whites for younger men. To this potentially hopeful trend among younger men can be added the more encouraging figures for black female workers. At an educational level above high school, the earnings of black and white female workers are about equal regardless of age (Tables IX and X).

Across-the-board statistics sometimes conceal considerable variations in hiring practices and employment patterns in different industries and professions. The nonelectrical machinery and air transportation industries, for instance, hire a much smaller proportion of blacks than the tobacco or personal services

industries. Black professionals, too, are most likely to be in the teaching or auxiliary medical professions, while few are engineers or businessmen.

An overview of black income and employment in the 'sixties, then, shows it to have been a time of uneven black advancement, susceptible to being represented as greater than it was. No revolutionary changes had been achieved, but rather the employment status of blacks was gradually improving, with much ground remaining to be covered. Firm political leadership and popular concern over the depressed status of black Americans, fostered by both black militancy and the civil disorders of the 'sixties, created a climate in which federal civil rights legislation could be passed and federal programs undertaken aimed at ameliorating conditions among the disadvantaged. The affirmative action program was only one of several, and it is difficult to assess precisely its role alone in achieving such improvements as have occurred. The rising educational level of the minorities, the effect of federal and private manpower training programs, anti-poverty campaigns, as well as anti-discrimination measures, whether passive or affirmative, undoubtedly all contributed to the improved situation.

What is clear, however, is that *economic growth* was of major importance in producing the faster rate of progress achieved by blacks in the 1960s. The expansion of the economy after 1961 created a demand for increased manpower which diminished the competitive disadvantage of minorities seeking employment or promotion. Moreover, studies[13] have confirmed that if the nonwhite minorities are to sustain their improved income rates and move increasingly into the middle-income group, the rapid economic growth and low unemployment rates of the mid-'sixties will need to be maintained and continued into the 'seventies. Blacks usually are disproportionately affected by economic setbacks.[14]

The kinds of jobs opening up in the next decade may slow black rates of advancement. It is estimated that the fastest growing employment fields are in the professional and technical areas. These are just those areas where blacks, with their poorer educational opportunities, will be most heavily disadvantaged in competition with whites unless widespread and effective affirmative action can neutralize their disadvantage. At the same time, public and political pressure to improve the lot of the nonwhite minorities has declined and black advancement and the programs

contributing to it have caused some resentment and a backlash in public opinion. Black expectations, however, especially among the young, have risen. Disadvantaged status is no longer a burden to be borne patiently. A major task of the 'seventies, then, is to reconcile legitimate black expectations with white reluctance to forego unfair but traditional advantages in employment.

TABLE I. DISTRIBUTION OF FAMILIES BY INCOME IN 1951, 1961, and 1971

(Adjusted for price changes in 1971 dollars. Families as of following year)

Income	Negro and other races			White		
	1951	1961	1971	1951	1961	1971
Number of families, thousands	(NA)	4,453	5,655	(NA)	41,888	47,641
Percent	100	100	100	100	100	100
Under $3,000	47	35	19	17	13	7
$3,000 to $4,999	27	22	18	20	12	9
$5,000 to $6,999	15	17	15	26	15	11
$7,000 to $9,999	8	1	18	21	25	19
$10,000 to $11,999	2	5	9	7	12	13
$12,000 to $14,999	1	4	9	5	11	15
$15,000 and over	(Z)	4	12	5	13	26
Median income	$3,171	$4,321	$6,714	$6,017	$8,109	$10,672
Net change, 1951-1971:						
Amount	(X)	(X)	$3,543	(X)	(X)	$4,655
Percent	(X)	(X)	111.7	(X)	(X)	77.4

NA Not available.
X Not applicable.
Z Less than 0.5 percent.

Source: U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 46, "The Social and Economic Status of the Black Population in the United States, 1972." Washington, D.C.: U.S. Gov't. Printing Office, July 1973, Table 9, p. 19.

TABLE II. MEDIAN INCOME OF FAMILIES: 1962 to 1972
(In current dollars)

Year	Race of head			Ratio: Negro and other races to white	Ratio: Negro to white
	Negro and other races	Negro	White		
1962	$3,330	(NA)	$6,237	0.53	(NA)
1963	3,465	(NA)	6,548	0.53	(NA)
1964	3,839	$3,724	6,858	0.56	0.54
1965	3,994	3,886	7,251	0.55	0.54
1966	4,674	4,507	7,792	0.60	0.58
1967[1]	5,094	4,875	8,234	0.62	0.59
1968	5,590	5,360	8,937	0.63	0.60
1969	6,191	5,999	9,794	0.63	0.61
1970	6,516	6,279	10,236	0.64	0.61
1971[2]	6,714	6,440	10,672	0.63	0.60
1972[2]	7,106	6,864	11,549	0.62	0.59

Note: Income figures for 1972 from the Current Population Survey conducted in March 1973, which recently became available, have been included in this table. Figures for the remaining years are from Current Population Surveys.

(NA) Not available. The ratio of Negro to white median family income first became available from this survey in 1964.

[1] Revised, based on processing corrections.

[2] Based on 1970 census population controls; therefore, not strictly comparable to data for earlier years.

Source: U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 46, "The Social and Economic Status of the Black Population in the United States, 1972." Washington, D.C.: U.S. Gov't. Printing Office, July 1973, Table 7, p. 17.

TABLE III. UNEMPLOYMENT RATES: 1960 to 1972

(Annual averages)

Years	Negro and other races	White	Ratio: Negro and other races to white
1960	10.2	4.9	2.1
1961	12.4	6.0	2.1
1962	10.9	4.9	2.2
1963	10.8	5.0	2.2
1964	9.6	4.6	2.1
1965	8.1	4.1	2.0
1966	7.3	3.3	2.2
1967	7.4	3.4	2.2
1968	6.7	3.2	2.1
1969	6.4	3.1	2.1
1970	8.2	4.5	1.8
1971	9.9	5.4	1.8
1972	10.0	5.0	2.0

Note: The unemployment rate is the percent of the civilian labor force that is unemployed.

Source: U.S. Department of Labor, Bureau of Labor Statistics. Published in U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 46, "The Social and Economic Status of the Black Population in the United States, 1972." Washington, D.C.: U.S. Gov't. Printing Office, July 1973, Table 26, p. 38.

TABLE IV. UNEMPLOYMENT RATES BY SEX AND AGE: 1960, 1967, and 1970 to 1972
(Annual averages)

Subject	1960	1967	1970	1971	1972
NEGRO AND OTHER RACES					
Total	10.2	7.4	8.2	9.9	10.0
Teenagers	24.4	26.3	29.1	31.7	33.5
Adult women	8.3	7.1	6.9	8.7	8.8
Adult men	9.6	4.3	5.6	7.2	6.8
WHITE					
Total	4.9	3.4	4.5	5.4	5.0
Teenagers	13.4	11.0	13.5	15.1	14.2
Adult women	4.6	3.8	4.4	5.3	4.9
Adult men	4.2	2.1	3.2	4.0	3.6
RATIO: NEGRO AND OTHER RACES TO WHITE					
Total	2.1	2.2	1.8	1.8	2.0
Teenagers	1.8	2.4	2.2	2.1	2.4
Adult women	1.8	1.9	1.6	1.6	1.8
Adult men	2.3	2.0	1.8	1.8	1.9

Source: U.S. Department of Labor, Bureau of Labor Statistics. Published in U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 46, "The Social and Economic Status of the Black Population in the United States, 1972." Washington, D.C.: U.S. Gov't. Printing Office, July 1973, Table 27, p. 39.

TABLE V. EMPLOYMENT BY BROAD OCCUPATIONAL GROUPS: 1960 and 1966 to 1971

(Numbers in millions. Annual averages)

Year	Total		White-collar workers, craftsmen, and operatives		All other workers[1]	
	Negro and other races	White	Negro and other races	White	Negro and other races	White
1960	6.9	58.9	2.9	46.1	4.0	12.8
1966	7.9	65.0	4.0	52.5	3.9	12.6
1967	8.0	66.4	4.3	53.6	3.7	12.7
1968	8.2	67.8	4.6	54.9	3.6	12.8
1969	8.4	69.5	4.9	56.4	3.5	13.1
1970	8.4	70.2	5.1	57.0	3.4	13.2
1971	8.4	70.7	4.9	56.5	3.5	14.2
Percent change:						
1960 to 1971	+22	+20	+69	+23	-13	+11

Note: Comparisons with data prior to January 1971 are affected by the reclassification of census occupations that was introduced in that month. For an explanation of the changes see Bureau of Census Technical Paper No. 26, "1970 Occupation and Industry Classification Systems in Terms of Their 1960 Occupation and Industry Elements."

[1] Includes private household and other service workers, laborers and farm workers. Median usual weekly earnings were about $40 to $120 a week for these workers, compared with $120 to about $200 a week for white-collar workers, craftsmen, and operatives in May 1971.

Source: U.S. Department of Labor, Bureau of Labor Statistics. Published in U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 42, "The Social and Economic Status of the Black Population in the United States, 1971." Washington, D.C.: U.S. Gov't. Printing Office, July 1972, Table 49, p. 65.

TABLE VI. NEGRO AND OTHER RACES AS A PERCENT OF ALL WORKERS IN SELECTED OCCUPATIONS: 1960 and 1972

Occupation	1960	1972
Total, employed	11	11
Professional and technical	4	7
Medical and other health	4	8
Teachers, except college	7	9
Managers, officials, and proprietors	3	4
Clerical	5	9
Sales	2	4
Craftsmen and foremen	6	7
Construction craftsmen	7	9
Machinists, jobsetters, and other metal craftsmen	4	6
Foremen	2	4
Operatives	12	13
Durable goods	10	–
Nondurable goods	9	–
Nonfarm laborers	27	20
Private household workers	50	41
Other service workers	20	18
Protective services	5	10
Waiters, cooks, and bartenders	15	14
Farmers and farm workers	16	9

Source: 1960: U.S. Department of Labor, Bureau of Labor Statistics, BLS Report No. 394, and U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 38, "The Social and Economic Status of Negroes in the United States, 1970." Washington, D.C.: U.S. Gov't. Printing Office, July 1971, from Table 49, p. 61.

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TABLE VII. PERCENTAGE DISTRIBUTION OF EMPLOYED PERSONS BY OCCUPATION: 1972

(Annual averages)

Occupation	Percent distribution	
	Negro and other races	White
Total, employed	100	100
Professional, technical, and kindred workers	9	15
Managers and administrators, except farm	4	11
Sales workers	2	7
Clerical and kindred workers	14	18
Craftsmen and kindred workers	9	14
Operatives, including transport	21	16
Nonfarm laborers	10	5
Farmers and farm workers	3	4
Service workers, except private household	20	10
Private household workers	7	1

Source: U.S. Department of Labor, Bureau of Labor Statistics, Published in U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 46, "The Social and Economic Status of the Black Population in the United States, 1972." Washington, D.C.: U.S. Gov't. Printing Office, July 1973, extrapolated from Table 37, p. 49.

TABLE VIII. MEDIAN EARNINGS IN 1969 AND 1959 BY OCCUPATION GROUP— PERSONS 14 YEARS AND OVER EMPLOYED IN NONAGRICULTURAL OCCUPATIONS BY RACE

(In 1969 dollars)

Nonfarm occupation group	1969	1959
WHITE		
Professional and managerial workers	$10,482	$8,294
Clerical and sales workers	7,425	6,186
Craftsman and foremen	8,362	6,629
Operatives	6,882	5,668
Service workers	4,870	4,574
Nonfarm laborers	4,280	4,188
NEGRO		
Professional and managerial workers	6,957	4,500
Clerical and sales workers	6,018	4,521
Craftsmen and foremen	6,153	3,964
Operatives	5,185	3,683
Service workers	4,156	2,906
Nonfarm laborers	4,197	3,019

Source: U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 37, "Social and Economic Characteristics of the Population in Metropolitan and Nonmetropolitan Areas: 1970 and 1960." Washington, D.C.: U.S. Gov't. Printing Office, June 24, 1971, from Table 17, pp. 66-67.

TABLE IX. MEDIAN EARNINGS IN 1969 AND EDUCATIONAL ATTAINMENT OF PERSONS 25 TO 34 YEARS OLD, WHO WORKED YEAR ROUND IN 1969, BY SEX: 1970

Area and education	Male			Female		
	Negro	White	Ratio: Negro to white	Negro	White	Ratio: Negro to white
UNITED STATES						
Total	$6,346	$8,839	0.72	$4,403	$5,175	0.85
Elementary: 8 years or less	4,743	6,618	0.72	2,935	3,980	0.74
High school: 1 to 3 years	5,749	7,910	0.73	3,671	4,282	0.86
4 years	6,789	8,613	0.79	4,592	5,037	0.91
College: 1 to 3 years	7,699	9,190	0.84	5,544	5,724	0.97
4 years	8,715	11,212	0.78	6,971	7,206	0.97
5 years or more	9,956	11,808	0.84	7,957	8,128	0.98

TABLE X. MEDIAN EARNINGS IN 1969 AND EDUCATIONAL ATTAINMENT OF PERSONS 35 TO 54 YEARS OLD, WHO WORKED YEAR ROUND IN 1969, BY SEX: 1970

Area and education	Male			Female		
	Negro	White	Ratio: Negro to white	Negro	White	Ratio: Negro to white
UNITED STATES						
Total	$6,403	$9,736	0.66	$3,901	$4,956	0.79
Elementary: 8 years or less	5,200	7,422	0.70	2,830	4,038	0.65
High school: 1 to 3 years	6,462	8,775	0.74	3,607	4,471	0.81
4 years	7,400	9,651	0.77	4,583	5,112	0.90
College: 1 to 3 years	8,193	11,500	0.71	5,670	5,776	0.98
4 years	9,327	14,591	0.64	7,293	7,294	1.00
5 years or more	12,277	16,783	0.73	8,105	8,300	0.98

Note: Data are for persons in experienced civilian labor force who worked 50 to 52 weeks in 1969 and had earnings.

Source: U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 46, "The Social and Economic Status of the Black Population in the United States, 1972." Washington, D.C.: U.S. Gov't. Printing Office, July 1973. Table IX from Table 15, p. 25; Table X from Table 16, p. 26.

References

1. *Social and Economic Status of the Black Population in the United States, 1971*, U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 42. Washington, D.C.: U.S. Gov't. Printing Office, 1972.

   (Statistics in these reports do not always apply to blacks separately but sometimes include other minority groups as well. Since blacks account for 90 percent of the nonwhite population, trends among the latter follow those of blacks alone. Thus, in this section, "blacks" is generally used to apply to all nonwhites, except in the tables where specified statistics are quoted with the exact designations used by the Bureau of the Census.)
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11. *The New York Times*, Aug. 2, 1972; *The Washington Post*, Aug. 8, 1972.
12. *The New York Times*, Aug. 13, 1972.

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14. *Op. cit.*, A. H. Pascal, ed. (See articles by M. Koster and P. Welch.)

III. Government Employment

JUSTICE LOUIS D. BRANDEIS expressed the government's special responsibility to implement the equal employment opportunity law in its own personnel systems this way: "Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law breaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy."[1] Samuel Krislov, in "The Negro in Federal Employment," amplified the point: "The public sector is at once the showcase of society, the harbinger of change for the private sector, and a training ground for the introduction of change."[2]

If government is to be *for all* the people, it follows that it must be *by all* the people. Minority exclusion from, or underrepresentation in, government service results in a government less responsive to minority problems. The Kerner Commission has drawn attention to how underrepresentation of minorities in the public service harms the country as a whole by contributing to a feeling of alienation and powerlessness among minorities, harmful to themselves, and likely to damage the Nation as a whole, perhaps in a backlash of violence as in 1968.

More pragmatically, the public sector is an increasingly important source of jobs, especially in the cities. The Federal Government alone is the largest single employer in the Nation, with 2.5 million full-time employees. The 1970 census revealed that no less than one in every seven workers in the United States was employed by federal, state, or municipal government; one out of

every three jobs in the largest urban areas was generated in the public sector between 1962 and 1970. Denying minorities full access to this source of employment can only contribute to increasing their unemployment and poverty, inflating social welfare costs to the Nation and depriving it of needed talents, abilities, and experience.

In fact, federal employment generally parallels the geographic patterns of, and is no better or worse than, private business and industry in the number and quality of jobs afforded minorities.[3] Despite the official commitment of the Federal Government to affirmative action in the last decade, and partly because of the lack of such commitment by state and local governments, minorities are not adequately employed throughout the Nation's bureaucracies, and are not likely to be for a distressing number of years.

The "Merit System"

One reason for the unsatisfactory record of the public sector in equal employment opportunity over the last decade has been the confusion in some circles as to the compatibility of the "merit" requirements of public service with the affirmative action techniques necessary to implement full equal employment opportunity. The alleged incompatibility of the two has been used as a justification for a reluctance to change selection and promotion procedures ostensibly designed to find and further "merit."

But those who argue that these procedures need changing, and point to the often unintentional discriminatory impact of existing government selection and testing systems, have been supported by court decisions. Such discriminatory effects are in fact the very negation of the merit system as it was originally instituted. The merit system (an antidote to the old "spoils" system), as defined by the National Civil Service League, requires an "objective, non-political method of selection and promotion, with provisions of tenure." As Emanuel S. Savas, former first deputy city administrator of New York City, and former chairman of the Mayor's Committee on Civil Service Reform there, put it, "The system was originally designed to promote quality in public service by providing security for the individual employee and freedom from external influences. Unfortunately, this has come to mean freedom to be unresponsive to the changing needs of society."[4] Another commentator made the point more vigorously, "Most of what passes for a merit system today represents administrative

convenience, habit, bias, dubious assumptions and subjective judgments. Much of it is not required by law, but imposed under the discretion of bureaucrats comfortable with the status quo."[5]

Efforts to alter or liberalize existing merit system requirements to make them fairer to minorities tend to be labelled by established groups (such as unions and civil service employees threatened by changes in the system) a violation of merit formulas and even "preferential treatment" or illegal "quota" systems. Such self-protective reactions have been particularly vehement among various policemen's and firemen's unions,[6] and it is not surprising to find a high proportion of the litigation in this area directed at the discriminatory recruiting procedures in police and fire departments. But, as Kranz points out, horror stories of arbitrary selection methods and criteria which illustrate the nonmerit exclusionary practices so often operating today are not confined to any one area of public employment. They are legion. Cited examples include the trained minority counselors barred from appointment in the District of Columbia because they could not pass the irrelevant Federal Service Entrance Examination; Attica prison guards recruited only from all-white rural areas to guard a largely black and urban prison population; Mexican-Americans excluded from jobs as firemen because of height requirements.

The Federal Service Entrance Examination itself was found to discriminate unfairly against blacks in a study by the Urban Institute.[7] Some 8.6 percent of black applicants passed the examination during 1968 and 1969, compared with 42.1 percent of white applicants. In a suit on the subject, however, the courts did not agree with the Institute's conclusion and refused a request to suspend use of the examination. The Civil Service Commission's assertion that the examination is fair and nondiscriminatory and that it is a relatively accurate indicator of how a person will perform on the job was accepted. Civil rights groups and the U.S. Commission on Civil Rights complain, however, that the test does not meet the criteria endorsed by the Department of Justice and the Supreme Court, and required by EEOC and OFCC. They contend that the examination is culturally biased, to the disadvantage of minorities.[8]

Other civil service examinations are even less likely to have been validated for their lack of bias. A confidential report on New York City's civil service is quoted as saying, "We are unable to find a single case where the validity of a New York City civil service examination was scientifically proven in regard to job perform-

ance." The report went on to conclude that the civil service system in operation was an outdated, rigid, largely meritless, and possibly superfluous bureaucracy that "seems to discriminate against the most qualified applicants for public service."[9]

In practice, properly instituted and effective affirmative action programs and merit *are* mutually compatible. No less distinguished a defender of the merit system than Irving Kator, assistant executive director of the U.S. Civil Service Commission, writes, "It is our view that merit systems in their fullest context represent a sound and fair employment approach with broad flexibility for affirmative action to assure relevancy both to effective government and to equal opportunity." He continues, "There must be affirmative action to assure equal opportunity, and strong affirmative action serves to strengthen the merit system itself, by assuring that it is reaching all segments of society."[10]

The records of the federal and local governments can be examined with his assurances in mind.

Federal Government

The series of Executive Orders issued by President Franklin D. Roosevelt and his successors, together with the statutes, judicial decisions, and regulations issued under the Executive Orders, constitute a comprehensive ban on job discrimination in the federal public service. Nevertheless, it has only been in the decade of the 'sixties, with the affirmative action requirements of Presidents Kennedy and Johnson, that there have been the beginnings of a conscious and somewhat effective effort to accord blacks and other minorities their rightful place in government employment.

The Civil Service Commission published its first guidelines for agency plans of action for equal employment opportunity in September 1966. By October 1971, the Commission was reporting to a Senate Subcommittee on Labor[11] that it required each federal agency to have a specific affirmative action program for equal employment opportunity, spelled out in the "action plan" each agency was required to submit to the Commission. "Goals and timetables" were not part of such programs, however, and it was only as late as May 1971 that the Commission suggested for the first time (but did not *require*) that departments and agencies use goals and timetables as "a useful means of encouraging affirmative action on equal employment opportunity." Mindful of the "merit" requirements of the federal service and the need to

avoid charges of "quota" hiring, the memorandum on the subject stressed the limitations of the use of goals and timetables, and the need for flexibility in assessing results.

Other affirmative employment practices had been undertaken, however. There was an ongoing program for conducting evaluations of agency equal employment opportunity programs, with teams visiting individual federal installations to conduct reviews and ensure that progress was being made. An upward mobility program for lower-level employees to help them compete for higher-level jobs was undertaken, and such programs as the Public Service Careers Program were instituted to provide increased job opportunities for minorities at the lower levels and better advancement opportunities for workers at grades GS-2 through GS-5. Counseling and training programs were started for employees at all levels. Supervisors and managers were won over to the virtues of equal employment practices with incentive programs and sensitivity training. Procedures for dealing with complaints of discrimination were improved, and remedies and reproofs for those guilty of discrimination overhauled. Special efforts to recruit and train students in the predominantly minority schools and colleges were started.

"Determined," as he said, "that the executive branch of the Government lead the way as an equal opportunity employer," President Nixon issued Executive Order 11478 on August 8, 1969, which superseded and strengthened previous Executive Orders on nondiscriminatory practices in federal employment. It laid squarely on the Civil Service Commission the duty of "promoting the full realization of equal employment opportunity, through a continuing affirmative program in each department and agency." In November 1970, the President gave added impetus to the federal equal employment opportunity effort when he announced a 16-point program to assist Spanish-surnamed Americans specifically, requiring in detail that the Civil Service Commission employ what are essentially affirmative action techniques to aid them. The Equal Employment Opportunity Act of 1972, and orders under it effective December 1972, further reinforced the Commission's powers and responsibility, and extended employment anti-discrimination requirements to the state and local government levels.

There can be no doubt that the Civil Service Commission's affirmative action and equal employment opportunity programs have achieved improvements, albeit modest ones. The rate of

increase of minority group employment in middle and upper levels in the Federal Government has been greater than that of whites' in recent years, but the degree of success is easily and frequently overstated and the record is marred by poor performance in a variety of areas on the part of many agencies in different regions.

The positive side of the record shows that total black employment in all agencies and under all pay plans was 13 percent in June 1962 and had risen to 15 percent by May 31, 1972, and participation of all minorities in the federal work force was 19.6 percent (Table XI). (Comparative statistics are frequently for blacks only, as detailed data on other minorities were not collected in the early years.) With a black population of 11 percent and a total minority population of 17 percent, this is a commendable showing, though persons with Spanish surnames constitute more than five percent of the population but only three percent of the federal work force. The table below, shows the significant progress made by blacks at every level between June 1962 and May 31, 1972 in the General Schedule and similar salary schedules (i.e., the white-collar jobs):

	Percent Black	
	June 1962	May 31, 1972
Total all pay systems	13.0	15.1
Total General Schedule or similar pay plans	9.1	11.5
GS-1 through GS-4	18.1	21.7
GS-5 through GS-8	7.7	15.8
GS-9 through GS-11	2.6	5.9
GS-12 through GS-13	0.8	3.2
GS-14 through GS-15		2.2
GS-16 through GS-18		2.3

Other pay plans were converted in 1970-71 into new categories under the Coordinated Federal Wage Systems, so that early and recent statistics are not presented in a comparable form. Table XII shows the distribution of minority groups within the various pay categories as of May 31, 1972.

A more critical look at the May 31, 1972 figures gives pause for thought. Minorities are still heavily concentrated at the lowest levels of federal service, in the routine, lower-paid jobs that have traditionally been allotted them. In the General Schedule and similar pay plans, 41.4 percent of the minority work force is at

grades GS-1 through GS-4, while the proportion of white workers at these levels is less than half that percentage (19.6). Minorities cease to be proportionally represented at the GS-7 level, which has been called the "black limit" in federal employment, where they are only 15.4 percent of the work force.

The picture deteriorates the higher one goes in the federal salary scale, so that from GS-16 through GS-18, the supergrade levels, minorities comprise only 3.4 percent of the top managerial jobs. Blacks alone hold 11.3 percent of the GS-7 jobs but only 2.3 percent of the GS-16 through GS-18 positions. While these figures do represent a considerable improvement over the situation in 1962, they scarcely argue for the success of the policy of full participation by blacks and other minorities in the bureaucracy which governs them. A very small proportion of the managers and policy makers in the federal work force, on this showing, are anything other than whites, as has always been the case.

Despite the faster rate of progress enjoyed by minorities as compared to whites, there is in fact a long way to go before minorities can approach parity with white federal employees. The median grade for minority employees on May 31, 1972 under the General Schedule and similar pay plans was 4.5, down from 5 in November 1971, and that for whites remained at 8.8. Within the minority component of the work force, on May 31, 1972, the median grade for American Indians was 4.1, for blacks 4.6, for Spanish-surnamed Americans 5.2, and for Oriental Americans 8.8.

It is easy to present minority progress as greater and more impressive than it really is. Between May 1971 and May 1972, for example, 2,143 minority employees were hired or promoted to grades GS-9 through GS-11, an increase of 7.9 percent, while comparable white figures were 1,319, an increase of 0.5 percent (Tables XIII and XIV). Overall, however, minority representation in grades GS-9 through 11 increased only from 8.6 percent to 9.2 percent, and whites still made up 90.8 percent of these grades in May 1972. At the higher levels the exaggeration of progress is even greater. An addition of 1,184 minority employees at GS-12 through GS-13 can be represented as a 10.6 percent increase, whereas a white increment of 3,440 employees shows only as a 1.6 percent increase.

Such percentages depend on the base numbers from which the increase is computed, and for minorities it is usually extremely low so that a small numerical increase appears large in percentage terms. This trend is even more marked at higher grade levels: a 543

minority increase at GS-14 through 15 represents an 18.6 percent change, as opposed to only a 2.4 percent change for an additional 1,752 whites; at supergrade GS-16 through 18 levels, only 46 additional minority employees constitute a 31.1 percent increase, while a 191 white increment computes only to 3.5 percent. Whites continued to comprise 95 percent or more of the GS-12 through GS-18 employees throughout this period. Thus, while it is quite valid to represent minorities as improving their status at a faster rate than whites in percentage terms, the resulting picture is frequently misleading.

Gloomy projections as to how long it will take minorities to achieve parity in the federal service have been computed by the Civil Rights Commission[12] and by the Public Interest Research Group,[13] both of which have made critical assessments of federal hiring policies. The Civil Rights Commission noted that at the rate established between 1967 and 1970, it would take an additional 35 years for the percentage of black persons in grades GS-12 through GS-18 to equal their proportion of 11 percent of the national population in 1970, and that approximate proportional representation of minorities in high-level management positions "cannot be achieved in the near future."

The Public Interest Research Group estimated that at the rate of increase between November 1967 and November 1970, it would take blacks 17 years at grades GS-9 through 11, 36 years at GS-12 through 13, 39 years at GS-14 through 15, and 71 years at GS-16 through 18, to reach parity with a black population of 11 percent. For Spanish-surnamed Americans the picture was even grimmer: 35 years at GS-9 through 11, 41 years at GS-12 through 13, 129 years at GS-14 through 15, and 141 years at GS-16 through 18, before their numbers would reach parity with a five percent Spanish-surnamed population.

To summarize, while there has been a commendable, but often exaggerated, increase in the proportion of minorities hired and an improvement in their status, progress at the managerial and policy levels is painfully slow. Despite the increased pace of progress for minorities, the rates are still not fast enough to ensure a measure of proportional representation in less than 20 years, even at the lowest management levels.

An analysis of the records of the various agencies[14] on implementing equal employment policies raises questions about the consistency with which such policies are pursued throughout the government. As we have seen, minorities constitute 17 percent

of the population and 19.6 percent of the federal work force. In the Departments of Agriculture and Transportation in November 1972, however, they still constituted less than 10 percent of the work force under all pay systems; in the Office of the Secretary of Defense, 13.4 percent; and in the Selective Service System, Justice Department, Atomic Energy Commission, and the Environmental Protection Agency, less than 15 percent. The National Aeronautics and Space Administration, while arguably a different case because of its requirements for specially trained technicians, could boast only 5.2 percent minority representation in its work force.

Yet at the other end of the scale, EEOC had 63.6 percent minority employees, the Government Printing Office 51.6 percent, and the Office of Economic Opportunity 44.5 percent. The Departments of Labor, Health, Education, and Welfare, and Housing and Urban Development had 31.7 percent, 29.7 percent, and 21.9 percent minority employees, respectively. If some agencies can recruit minorities effectively, it is pertinent to ask why others cannot.

Departments vary enormously, too, in the distribution of their minority work forces. While the Department of Labor has 27.7 percent of its minority work force at grades GS-9 through GS-11, decreasing to 9.2 percent at the supergrades GS-16 through GS-18, the Justice Department has 7.1 percent at grades GS-9 through GS-11, decreasing to 3.8 percent at GS-16 through GS-18; Department of Agriculture 5.9 percent, decreasing to 3.4 percent; NASA 4.4 percent, decreasing to 0.4 percent; Department of Commerce 11.1 percent, decreasing to 1.7 percent; and the Environmental Protection Agency 7.6 percent, decreasing to 0.4 percent at GS-16 through GS-18. Indeed, at most agencies supergrade minority group employees are few and far between.

Regulatory agencies, such as the Federal Communications Commission, Securities and Exchange Commission, Federal Deposit Insurance Corporation, and Federal Home Loan Bank Board, show no minorities among their GS-16 through GS-18 positions. Only 1.1 percent of the 919 such positions in the Department of Defense are held by minorities. The Civil Service Commission itself does not shine by comparison with other departments. It shows a total of 30.1 percent minorities in its work force, but only 10.6 percent minorities at GS-11, decreasing to 0.2 percent at GS-16 through GS-18 levels.

Significant is the picture of minority employment at the Government Printing Office, which has 51.9 percent minorities in

its work force on the General Schedule and similar pay plans, but only 19.4 percent at GS-9 through GS-11, decreasing to 2.7 percent at GS-14 through GS-15, with no minorities at the supergrade levels.

There are considerable variations in the hiring records of the federal civil service regions, and between Standard Metropolitan Statistical Areas too, not all of them related to the proportion of minority population in the region. Indeed, minority employment in federal installations is sometimes significantly less than the minority population of a region. In November 1972, minority hiring percentages varied between the Washington region's 28.6 percent and Boston's five percent, with the Chicago region having 21.3 percent, Dallas 26.2 percent, and Seattle 7.6 percent. The most frequently quoted example, not surprisingly, is that of the Atlanta region, which in November 1972 comprised eight southern states. Only 8.8 percent employed in the General Schedule and similar pay plans were minorities, although they constituted about 25 percent of the population of the region.

At state level within the region, federal installations in Alabama and Mississippi hired 11.4 percent and 11.9 percent minorities respectively in November 1972 in all pay systems, whereas minorities comprise 27 percent of Alabama's population and 37 percent of Mississippi's. In 1965, Alabama hired 10.8 percent blacks in all pay plans, and Mississippi, 9.2 percent.[15] On this basis, federal civil service affirmative action in Alabama and Mississippi would appear to be lagging.

Progress since 1965 in minority hiring also varies enormously between cities in various areas. (Civil Service regions are not comparable between 1965 and 1972 because of changes in the areas they cover.) The Atlanta metropolitan area hired 4.4 percent minorities in the federal GS work force levels in 1965, and had raised that percentage to 12.7 percent by November 1972; Birmingham, Alabama raised its percentage from 8.4 percent to 19.4 percent, Cincinnati from 12.9 percent to 14.5 percent, Boston 3.8 percent to 6.6 percent, Denver 6.2 percent to 12.4 percent, New York City 16 percent to 22.5 percent, and San Francisco 11.8 percent to 27.1 percent.

The wide variations in the results of equal employment policies between regions, cities, and agencies suggest that the Federal Government, and the Civil Service Commission in particular, have not been altogether successful or consistent in rooting out discriminatory patterns. Indeed, some agencies, and not neces-

sarily those with the poorest statistical records on minority hiring and distribution, have been officially *proved* discriminatory in their employment practices.

A federal hearing examiner from EEOC found in October 1971 that the Department of Housing and Urban Development was guilty of racially discriminatory employment practices in general (at least until protests began in October 1970), and ordered the return of pay withheld from 106 employees who had protested such practices.[16] The Equal Opportunity Advisory Committee of the Agency for International Development dissolved itself in May 1972, charging that the Agency failed to hire or adequately promote minorities. In their letter of resignation, 19 of the 22 on the Committee charged, "There seems to be a lack of positive leadership . . . relating to increasing opportunities for minorities. It is also quite clear . . . that . . . the agency is not planning to implement any plan to increase minority representation and/or participation within the several bureaus." It was charged that only 7.1 percent of the Agency's employees were minorities.[17]

More evidence of perpetuated discrimination was that contained in an internal study of the employment policies of the Department of Labor (which claims with some justification to have a hiring record second to none in the Federal Government).[18] The study concluded that the Department of Labor was failing in its mission to be a model employer, and that an analysis of statistics revealed "pervasive and substantial underutilization of minorities and women," especially at the higher grades. The Department's record was worse, the study found, than that of many of the private industries it oversees. Of 50 industries in the Washington metropolitan area, 45 had better 1967 occupation ratios for blacks than the Labor Department's national office did in 1970, and only five were worse. Of 27 industries nationwide with black employment equal to or greater than the national black population percentage of 11, all but six had higher ratios than the Labor Department.

Further, a white male joining the Department would, after five years, be likely to be making almost $4,000 more than a comparable black male. While a white male with long service would tend to be in the higher grades, "length of service is a much less significant indicator of salary for black males than for white males." The study found salary differentials for employees with comparable experience as follows: "white males, $16,217; black males, $12,872; other minority males, $13,843; white females, $14,844; black females, $12,008." As a result of internal audit,

the Department of Labor took effective steps to remedy the deficiencies, instituting a career development program, upgrading and enlarging equal employment opportunity staff, and reorganizing the equal opportunity program.

That such evidence of discriminatory procedures, whether intentional or not, emanates from a department with a "good record" and a responsibility for leadership in the field of equal employment opportunity suggests the limited effectiveness of such programs in other federal departments with poorer records.

Other evidence of the perpetuation of discrimination emerges from the case histories of individuals who have had their claims officially investigated and confirmed. An example cited by the investigator in the Department of Housing and Urban Development study previously referred to was the testimony of a black woman with 28 years service, who reached GS-4 level only after 18 years and GS-5 10 years later.[19] Another example in that Department, a woman with 30 years of service who had trained several whites who later became her supervisors, can be duplicated many times throughout the government. A black Navy Department employee, certified in the Army as able to handle heavy equipment, was employed by the Navy as a driver at wage board Grade 7 and never promoted to Grade 8 despite his training four white men later promoted above him.[20] His complaint of discrimination was upheld, he was awarded back pay, and promoted.

The oft-quoted example of Delegate Walter Fauntroy's father, an employee in the Patent Office, who trained generations of whites later promoted above him, is a part of this pattern.[21] Many allegations of hardship resulting from discrimination were cited in the Congressional hearings held by Del. Fauntroy in September 1972. The increasing militancy among minority employees who feel discriminated against will doubtless give rise to more protests and hearings, such as those that occurred at the Library of Congress, the Department of Health, Education, and Welfare, and the National Institutes of Health.

The Civil Service Commission's procedures for processing complaints of discrimination have been characterized as marked by long delays, timidity, and an unwillingness to step in when an agency is being dilatory. Its remedial actions in cases of proven discrimination are criticized by the U.S. Civil Rights Commission as falling short of what would be expected from a private employer under Title VII and do not, for example, include

retroactive promotions. The guidelines for prompt, fair, and impartial processing of complaints of discrimination and equal employment opportunity counseling have been revised since the Equal Employment Act of 1972, and it remains to be seen how effectively they are put into practice. Minority employees are less likely to wait now, as did a black employee of the General Accounting Office with his Bachelor's and Master's degrees in economics, for 30 years as a GS-3 without promotion before filing a complaint and seeking justice.[22]

This changed climate in federal employment reflects the achievement of an atmosphere in which the justice of claims to equal employment opportunity is now widely recognized. The inconsistencies in the overall picture of performance, however, give substance to the Civil Rights Commission's findings that "the Federal Government's equal opportunity program [and this includes its affirmative action programs] is moving at an uneven and uncoordinated pace."

Several factors emerge as contributing to the unevenness of the record. The Civil Rights Commission points to the lack of a governmentwide plan to achieve equitable minority representation at all wage and grade levels within each department and agency, with a timetable set for the remedying of deficiencies. The refusal of the Civil Service Commission to *insist* on the use of goals and timetables in agency action plans emasculates affirmative action, and lessens the Commission's own chances of assessing the effectiveness of an agency's efforts in practice. By late 1971, goals and timetables were being used in less than half the departments, among them the Department of Defense and its constituent agencies, and the Departments of Agriculture, Commerce, Health, Education, and Welfare, Labor, Transportation, and the General Services Administration. The Commission itself does not utilize these monitoring and measuring tools, and only suggested their use in 1972 with respect to training programs.

The practice of agency self-evaluation and the confidentiality of Civil Service Commission evaluations have been criticized, since they tend to tolerate weak affirmative action practices and shelter agencies from public exposure and censure for poor performance. Independent evaluation of efforts is also suggested by the Civil Rights Commission, citing the Civil Service Commission training programs in particular as needing to be assessed to determine if they are in fact resulting in significant and permanent upward movement by lower grade employees. There is also the fear that

the Presidential Order to reduce the federal work force and lower the median grade levels will reduce affirmative action practices both in recruitment and promotion of minorities.

The consensus is that, though the Civil Service Commission deserves credit for a measure of progress over the last eight years or so, the affirmative action programs in government employment could be greatly strengthened and made more effective if the Commission insisted that all agencies and installations adopt goals and timetables and establish a test validation procedure similar to that used by EEOC and sanctioned by the Supreme Court.[23] Especially since the Equal Employment Opportunity Act of 1972, the Commission possesses the requisite authority to insist on thorough-going attention in the agencies to equal employment objectives and the affirmative methods of achieving them.

State and Local Governments

If the Federal Government's equal employment record can be criticized, that of state and local governments can be much more so. This is all the more serious when local government constitutes the fastest growing area of employment in the country. The number of state and local government employees increased four times as fast as the general population between 1961 and 1971—43 out of every 1,000 people were nonfederal public service employees in 1971. During the same time, and until very recently, federal protection against discrimination in employment by state and local governments could only be elicited by private suits instituted under the "equal protection" and "due process" clauses of the Fourteenth Amendment to the Constitution; in some special cases, also under the loosely-worded nondiscriminatory provisions of the Federal Merit Standards requirements applicable to agencies in receipt of federal funds, or under Title VI of the Civil Rights Act of 1964.

State and local governments have the largest single group of employees for which there is no comprehensive source of information as to racial and ethnic composition. State "fair employment practice" laws have frequently prohibited the collection of such statistics. With no federal spur to urge change, and given the usual institutional inertia, there is little published information on the numbers or distribution of minorities in the public work force to stir the public conscience. The ever-present "merit" requirement of most public personnel systems provides a

plausible shield for the continuation of practices with discriminatory effects.

Evidence is ample that a high proportion of public personnel systems has long perpetuated discriminatory methods of selection and promotion at which affirmative action programs are classically directed, in spite of a lack of up-to-date statistics. Included are such practices as written tests unrelated to job performance; irrelevant requirements as to physical condition, age, sex, or other nonperformance-related qualifications; arbitrarily selected educational or experience requirements; exclusion of persons with arrest or conviction records; oral interviews by unobjective interviewers; limited announcements of job openings and promotional opportunities; and restricting or barring training opportunities for new or "underqualified" employees.[24]

The Civil Rights Commission published a report in 1969 on equal opportunity in state and local governments, "For ALL the people . . . By ALL the people,"[25] which is still the major source of information on the subject. Based on a 1967 survey of seven metropolitan areas—San Francisco, Oakland, Philadelphia, Detroit, Houston, Memphis, and Baton Rouge—it paints a gloomy picture not so much of nonemployment of minorities in terms of numbers but of their underutilization, with the vast majority concentrated in the lowest paying and most menial job categories. The conclusions of the report are worth quoting at length:

> The basic finding of this report is that State and local governments have failed to fulfill their obligation to assure equal job opportunity. In many localities, minority group members are denied equal access to responsible government jobs at the State and local level and often are totally excluded from employment except in the most menial capacities. In many areas of government, minority group members are excluded almost entirely from decisionmaking positions, and, even in those instances where they hold jobs carrying higher status, these jobs tend to involve work only with the problems of minority groups and tend to permit contact largely with other minority group members.
>
> Not only do State and local governments consciously and overtly discriminate in hiring and promoting minority group members, but they do not foster positive programs to deal with discriminatory treatment on the job. Too many public officials feel that their responsibility toward equal employment opportunity is satisfied merely by avoiding specific acts of discrimination in hiring and promotion. Rarely do State and local governments perceive the need for affirmative programs to recruit and upgrade minority group members for jobs.

> Most State and local governments have failed to establish even rudimentary procedures to determine whether minority group members are assured equal employment opportunity. Few governments know with any precision how many minority group members they employ and at what levels; whether minority group members are promoted at the same frequency and on the same basis as other employees; how effective their minority recruitment techniques, if any, have been; and whether their screening devices are in fact a valid indicator of satisfactory job performance.

Tables XV-XVII illustrate not only the sparsity of minority employees at decision-making levels in the various types of local government surveyed, but also their inequitable distribution among departments. Those departments dealing with service functions or primarily with the poor and minority population in a jurisdiction, such as the utilities, welfare, social security and health services, tend to have a higher proportion of minorities than those departments concerned with finance or administration. This pattern reflects the preponderance of minorities employed in the more unpopular, poorly-paid, and insecure jobs such as those concerned with streets, highways, and sewerage, and in the unskilled jobs in hospitals and health facilities.

Police and fire departments are shown to have the poorest records in hiring minorities (Table XVIII). In one central city surveyed (Atlanta), policemen and firemen constituted 24 percent of all city employees in 1972, but blacks were only 4.6 percent of the uniformed force (Table XIX). In the state police forces, black policemen were even fewer and farther between. The Race Relations Information Center, in a separate survey in 1970,[26] found that 98 out of every 100 uniformed state troopers were white. As the Civil Rights Commission makes plain, barriers and obstacles to equal employment opportunity for minority group members are greater among uniformed policemen and firemen than in any other area of state and local government. The jobs pay relatively well, are more secure than most other local government employment, and have often been jealously guarded as a "white preserve." So blatant has been discrimination in selection procedures in these occupations that litigation launched by the NAACP and other civil rights groups has resulted in some seminal court decisions involving court-imposed affirmative action to eradicate discriminatory practices, and remedial preferential hiring to redress their effects.

Perhaps the most notable case was in Alabama,[27] where the federal judge directed the state police to take affirmative action to

remedy the effects of past discrimination, and to hire one black trooper for each white trooper hired until the force became one-fourth black, roughly in proportion to the state's minority population. In Mississippi a federal court enjoined the state to cease discriminatory practices in recruiting its force of highway patrolmen, though it stopped short of ordering preferential hiring. A panel of the Fifth Circuit affirmed the district court order, but a hearing by all the judges (*en banc*) has been granted.[28] In the crucial *Carter* v. *Gallagher* judgment, the federal court required that one qualified minority person be hired for every three vacancies until at least 20 firefighter jobs in Minneapolis were filled by minorities. In Jacksonville, Florida, a federal court approved a plan for the hiring of suitable black candidates for the city's fire department on a 50 percent black-white basis until the black-white ratio in the department equalled the ratio in the city as a whole, and also approved the institution of affirmative action recruiting techniques.[29]

Not only have the fire and police departments been affected, but the courts have also ordered remedial hiring quotas for blacks in Alabama state agencies receiving federal grants.[30]

Such court decisions, and an increasing volume of similar litigation frequently instituted under the "equal protection" clause of the Fourteenth Amendment or under Title VI of the Civil Rights Act of 1964, are giving state and local governments second thoughts about the discriminatory effects of their own procedures. For example, Sacramento, on its own initiative, ordered that affirmative action be undertaken. With a three percent minority representation in its fire department and a 30 percent minority population in the city as a whole, it ordered a system of selective certification of firemen which would lead to the recruitment of seven to 10 minority firemen a year. Even so, it would still take 14 years for minorities to achieve parity. The State of New Jersey and the City of San Diego are among those jurisdictions which have instituted nondiscriminatory performance tests for most jobs at the trade level.

On the whole, little evidence appears that there was any widespread movement to institute affirmative action procedures between the time the Civil Rights Commission collected the data on which its conclusions were based and the changed legal requirements of the early 1970s brought by the Equal Employment Opportunity Act. The National Civil Service League made a survey of public personnel systems in 1970 which confirmed how

little was being done.[31] Few jurisdictions had special programs for recruiting or upgrading minority group employees. Only four out of 10 had special programs to recruit or hire minorities. Only one out of four had special programs to help minority group employees move upwards on a planned, structured basis.

City, state, and county jurisdictions were all more likely to mount special programs for recruiting and hiring than for upgrading minorities; state systems seemed to be more concerned than the others to recruit, hire, and promote; and county jurisdictions lagged significantly behind the cities in all these areas. The survey also found that 85 percent of all jurisdictions claimed to have a merit system (which, properly, requires a nondiscriminatory system of employment based on fitness to perform a job), but that the overwhelming majority was using selection procedures which were increasingly being recognized in and out of the courts as discriminatory and unrelated to fitness to perform a job. Of all jurisdictions surveyed, 94 percent required a high school education for entry-level office workers, and 88 percent gave written tests. At the technical and professional levels, 92 percent of jurisdictions required a college degree, and 65 percent gave written tests. Applicants for unskilled jobs had to have a high school diploma in 22 percent of jurisdictions, a grammar school education in 66 percent, and a written test in 35 percent. Only 54 percent of the jurisdictions had ever validated *any* tests at all to find if they were job-related.[32]

Many local jurisdictions now examining their hiring procedures may find themselves viewing an image similar to that of New York State, reflected in a 1971 annual report from its own Civil Service Commission.[33] Most agencies increased their minority group representation between 1967 and 1971, the Commission said, but black, Puerto Rican, and other minority workers were generally clustered in a few agencies and continued to be so five years later. More than half of the agencies' black and Puerto Rican personnel were service workers—cooks, janitors, hospital aides. Of the 53 agencies covered, two had no minority group employees; some, such as the state police, Housing Finance Agency, and Teachers Retirement System, had relatively few, and four large agencies employed 83 percent of the state's minority group workers even though they account for only 59 percent of total state employment.

The familiar pattern of minority concentration in lower-paying jobs, found in cities such as Philadelphia, Cleveland, and Chicago,

was confirmed in Baltimore by a 1970 survey of the Baltimore Community Relations Commission.[34] There, with the city's population of blacks being 46.4 percent, it found 38.6 percent blacks employed in city jobs outside the department of education: 17.4 percent in managerial positions, 19.5 percent in professional positions, 29.4 percent in technical jobs, and 35.9 percent in clerical jobs. The classified (protected by civil service regulations) labor force was over 55.8 percent black, and unclassified laborers, 80.2 percent black. The police force had 12 percent blacks in uniform; the fire department, 13.4 percent; and the finance department, 18 percent.

Where affirmative action programs have been instituted, their results show what progress can be made, but also the limitations of such progress and, often, of the plans themselves and their enforcement. The City of Atlanta, 51.3 percent black in 1970, undertook an affirmative action program for city hiring beginning in 1970, in a period when the economy was sluggish and the city job turnover at a 10-year low, and increased total minority employment by 19 percent over two years. Numbers of blacks in the higher-paying categories of managers and professionals increased by 70 percent, but that only raised the proportion of black managers from 7.1 percent to 13.5 percent of the total, and black professionals from 15.2 percent to 19.2 percent (Table XIX). The Atlanta Community Relations Commission noted that "the profile of employment remains essentially the same as two years ago, with blacks holding the lower-paying, less prestigious jobs, and whites the higher-paying, more responsible positions." An "abdication of responsibility" was noted in some departments which exhibited a mild response to affirmative action.[35]

Phoenix, Arizona, after an analysis of its employment procedures, put into effect an affirmative action program which achieved a higher percentage of minority employees than in the community at large in all but the two highest EEOC categories, and earned for its performance the comment from an independent evaluator that, "In its efforts and achievements in the hiring and promotion of disadvantaged people, Phoenix is far ahead of many cities." Even so, Phoenix's record in the problem areas of police and fire departments left room for improvement.[36]

Phoenix was assisted in its affirmative activities by a program, undertaken by the National Civil Service League in concert with the Office of Economic Opportunity, called "Pacemaker" (Public Agency Career Employment Maker). It was designed to look at

public employment systems with a view to removing artificial barriers to equal employment. "Pacemaker I," running from March 1970 to March 1971, worked with eight states and 10 cities and counties, and "Pacemaker II," March 1971 to August 1972, brought technical help to put into effect the recommendations of "Pacemaker I." With upwards of 58,000 units of state and local government (excluding school districts) in the United States, this program could only have limited impact, but that it was launched at all is symptomatic of the new and vital interest affirmative action has for public employment systems.

The revised "Model Public Personnel Administration Law" for state and local governments, issued by the National Civil Service League in November 1970, is also said to have lent impetus to a change in civil service and merit systems. In emphasizing the need for job-related, culture-fair, and validated selection procedures, it is reportedly influential in changing selection methods and criteria to make the system more accessible to minorities.[37]

Three major factors contributed to the new climate. In March 1971, with the authority of Congress, the Federal Government issued a new standard of equal employment opportunity as part of an overall revision of existing merit standards. The new standard requires that equal employment opportunity be assured in the state system, that affirmative action be used to achieve it, and that provision be made for appeals to an impartial body. The Civil Service Commission assumed authority for the merit systems standards and, as of July 1, 1972, states were required to submit plans to the Federal Government for affirmative action in equal employment as a condition of the continuation of federal funds to their grant-aided agencies. Since federal grants and aid to state and local governments had increased from about $7 billion in less than 100 grant programs in 1960 to more than $25 billion in over 500 programs in 1970, accounting for 18 percent of all state and local government revenue receipts and stimulating a 62 percent rise in state and local government employment, the impact of the changed requirement could be considerable if adequately enforced.[38]

Figures released by the Civil Service Commission's Office of Merit Standards point to an extremely rosy situation *already* achieved (Table XX). However, these figures refer chiefly to employment in the health, welfare, and social security agencies which have traditionally hired blacks in large numbers in low-paid job categories. No grades are given in the Commission's tables for

employees, and without them the figures can be misleading. While increased recruitment of minorities is important, "upward mobility" is a major current requirement. Future data collection by the Civil Service Commission must recognize the need for analyses of minority distribution within the work force to identify areas of deficiency, without which affirmative action plans are meaningless.

Likely to have a more far-reaching effect in the long run is the judicial decision in *Griggs v. Duke Power Co.* outlawing nonperformance-related job requirements and tests in language which makes it clear that its ruling also covers government selection methods: Taken with other recent court decisions, such as *Carter v. Gallagher*, the effect of the decision is that the states and other local government jurisdictions now *must* take affirmative action to eliminate vestiges of discrimination in all government-supported activities. As employers, government must take affirmative action to eliminate practices and procedures which are inherently discriminatory, and eradicate those which, although neutral on the surface, result in discrimination in operation and effect.

Likely to be more immediately effective is the Equal Employment Opportunity Act of March 1972, which amends Title VII of the Civil Rights Act of 1964 to extend its nondiscrimination provisions to state and local government. The EEOC is authorized thereby to investigate complaints by state and local government employees, and when conciliation fails the Justice Department can bring suit.

In August 1972, the Justice Department brought two suits aimed at the areas of maximum noncompliance throughout state and local governments generally. In Montgomery, Alabama, the Waterworks, Sanitary and Sewer Board and the Montgomery City-County Personnel Board were charged with maintaining a segregated employment structure by assigning whites to higher-paying "classified" positions (e.g., equipment operator) and virtually all blacks to unclassified posts (e.g., laborer), where blacks were paid less for similar work. Blacks, it was charged, had to meet higher employment standards than whites; the city did not inform the black community of job openings and administered qualification tests that discriminated against black jobseekers.

The Los Angeles Fire Department was accused of discriminating against blacks, Mexican-Americans, and Orientals in its recruitment and hiring procedures. The department administrators were charged with using job qualifications and tests biased against

minorities and with refusing to establish valid selection standards that would prevent continuing discrimination.

The selection of these two cities as targets for Justice Department action was probably not so much because their records were worse than those of many others, but because their prominence and the publicity thus generated could help to drive home a lesson to other state and local governments. These, in turn, could make good use of the experience of those jurisdictions which have already made a start in the field. Were similar suits by the Justice Department to be undertaken on a large scale, affirmative action programs and equal employment opportunity for minorities at state and local government levels could well become a reality, the rule instead of the exception, and sooner rather than later.

On a broad scale, it is only now that Congress, the courts, and the federal agencies are pressing the public sector on its obligation to increase representation of minorities. Any valid assessment of affirmative action, then, will have to wait a number of years. A poor performance rating can no longer be excused since local governments have had the experience of others to draw upon for over 10 years, plus the authority of major court decisions, Congress, the federal merit system regulations, and the Model Public Personnel Administration Law to support their efforts. Also, EEOC and the Justice Department will be looking over their shoulders to point up the perils of noncompliance.

TABLE XI. PERCENTAGE DISTRIBUTION OF MINORITY GROUPS WITHIN PAY CATEGORY, AS OF MAY 31, 1972

Pay System	All Employment	Minority Group Status					All Other
		Total Minority	Negro	Spanish Surnamed	American Indian	Oriental	
All Pay Systems	100.0	19.6	15.1	3.0	0.8	0.8	80.4
General Schedule or Similar	100.0	15.5	11.5	2.1	1.0	0.9	84.5
Total Wage Systems	100.0	28.4	20.4	5.9	1.1	1.0	71.6
Regular Nonsupervisory (WG)	100.0	31.0	22.1	6.7	1.2	0.9	69.0
Regular Leader (WL)	100.0	25.6	18.9	4.8	1.2	0.7	74.4
Regular Supervisory (WS)	100.0	17.0	11.5	3.8	0.8	0.9	83.0
Other Wage Systems	100.0	20.6	15.8	2.5	0.7	1.6	79.4
Total Postal Service	100.0	22.0	18.6	2.6	0.2	0.6	78.0
Postal Headquarters Service	100.0	23.9	22.6	0.7	[a]	0.6	76.1
Postal Field Service	100.0	22.0	18.6	2.6	0.2	0.6	78.0
All Other Pay Systems	100.0	9.4	6.8	1.4	0.3	0.9	90.6

[a]Less than 0.05 percent.

Source: *Civil Service News*, U.S. Civil Service Commission, Dec. 18, 1972, Table 12.

TABLE XII. 1972 MINORITY GROUP STUDY, ALL AGENCY SUMMARY
FULL-TIME EMPLOYMENT AS OF MAY 31, 1972

Pay System	Total Full-Time Employees	Negro		Spanish Surnamed		American Indian		Oriental		All Other Employees	
	Number	Number	Pct.	Number	Pct.	Number	Pct.	Number	Pct.	Number	Pct.
Total All Pay Systems ...	2,575,144	387,749	15.1	76,586	3.0	20,053	.8	21,080	.8	2,069,676	80.4
Total General Schedule Or Similar ...	1,330,754	153,447	11.5	28,071	2.1	13,029	1.0	11,589	.9	1,124,618	84.5
GS-1	4,001	1,687	42.2	227	5.7	158	3.9	20	.5	1,909	47.7
GS-2	28,137	7,471	26.6	1,035	3.7	591	2.1	144	.5	18,896	67.2
GS-3	104,183	23,463	22.5	3,716	3.6	2,673	2.6	707	.7	73,624	70.7
GS-4	169,519	33,633	19.8	5,235	3.1	3,428	2.0	1,153	.7	126,070	74.4
GS-5	166,704	29,429	17.7	4,607	2.8	1,888	1.1	1,369	.8	129,411	77.6
GS-6	84,958	13,692	16.1	1,758	2.1	663	.7	636	.7	68,309	80.4
GS-7	112,171	12,650	11.3	2,657	2.4	983	.9	953	.8	94,928	84.6
GS-8	29,933	3,276	10.9	510	1.7	113	.4	318	1.1	25,716	85.9
GS-9	150,760	11,017	7.3	3,189	2.1	1,017	.7	1,704	1.1	133,833	88.8
GS-10	19,397	834	4.3	248	1.3	51	.3	192	1.0	18,072	93.2
GS-11	148,879	6,970	4.7	1,951	1.3	687	.5	1,523	1.0	137,768	92.5
GS-12	129,510	4,439	3.4	1,444	1.1	437	.3	1,268	1.0	121,922	94.1
GS-13	99,753	2,892	2.9	822	.8	240	.2	805	.8	94,994	95.2
GS-14	48,691	1,227	2.5	401	.8	128	.3	503	1.0	46,432	95.4
GS-15	28,375	633	2.2	240	.8	62	.2	275	1.0	27,165	95.7
GS-16	4,076	96	2.4	22	.5	8	.2	16	.4	3,934	96.5
GS-17	1,222	28	2.3	7	.6	1	.1	3	.2	1,183	96.8
GS-18	485	10	2.1	2	.4	1	.2			472	97.3

Source: *Civil Service News*, U.S. Civil Service Commission, Dec. 18, 1972, Table 3.

TABLE XIII. CHANGE FROM MAY 1971 TO MAY 1972 IN MINORITY AND NON-MINORITY EMPLOYMENT BY GENERAL SCHEDULE AND SIMILAR GRADE GROUPING

Grade Grouping	Minority Employment		Non-Minority Employment	
	Change: May 1971–May 1972		Change: May 1971–May 1972	
	Number	Percent Change	Number	Percent Change
Total, General Schedule or Similar	11,598	6.0	14,944	1.3
GS 1 thru 4	2,885	3.5	2,719	1.2
GS 5 thru 8	4,797	6.8	5,523	1.8
GS 9 thru 11	2,143	7.9	1,319	0.5
GS 12 thru 13	1,184	10.6	3,440	1.6
GS 14 thru 15	543	18.6	1,752	2.4
GS 16 thru 18	46	31.1	191	3.5

Source: *Civil Service News*, U.S. Civil Service Commission, Dec. 18, 1972, Table 13.

TABLE XIV: PERCENTAGE DISTRIBUTION OF MINORITY AND NON-MINORITY EMPLOYEES BY GENERAL SCHEDULE AND SIMILAR GRADE GROUPING, AS OF MAY 31, 1971, AND 1972

Grade Grouping	Minority Group Employment										Non-Minority Employment	
	Total Minority		Negro		Spanish Surnamed		American Indian		Oriental			
	May 1971	May 1972	May 1971	May 1972	May 1971	May 1972	May 1971	May 1972	May 1971	May 1972	May 1971	May 1972
Total, General Schedule or Similar	14.9	15.5	11.2	11.5	2.0	2.1	0.9	1.0	0.8	0.9	85.1	84.5
GS- 1 thru 4	27.5	27.9	21.6	21.7	3.1	3.3	2.1	2.2	0.6	0.7	72.5	72.1
GS- 5 thru 8	18.4	19.1	14.4	15.0	2.3	2.4	0.8	0.9	0.8	0.8	81.6	80.9
GS- 9 thru 11	8.6	9.2	5.5	5.9	1.6	1.7	0.5	0.6	1.0	1.1	91.4	90.8
GS-12 thru 13	5.0	5.4	2.9	3.2	0.9	1.0	0.3	0.3	0.9	0.9	95.0	94.6
GS-14 thru 15	3.9	4.5	2.1	2.4	0.7	0.8	0.2	0.2	0.9	1.0	96.1	95.5
GS-16 thru 18	2.7	3.4	1.9	2.3	0.4	0.5	0.1	0.2	0.3	0.3	97.3	96.6

Source: *Civil Service News*, U.S. Civil Service Commission, Dec. 18, 1972, Table 14.

TABLE XV. PERCENT OF NEGROES IN CENTRAL COUNTY EMPLOYMENT BY OCCUPATION AND BY FUNCTION FOR SMSA'S SURVEYED, 1967

	Alameda	Wayne	Shelby	Harris	Fulton
	San Francisco-Oakland	Detroit	Memphis	Houston	Atlanta
OCCUPATIONS					
All occupations	20.2	27.0	26.9	6.6	16.6
Managers and officials	6.8	6.0	1.6	4.5	3.2
Professional and technical	8.6	17.0	14.4	8.7	26.3
Office and clerical	14.9	26.3	7.9	3.4	2.2
Craftsmen and operatives	14.3	7.2	12.4	7.9	4.4
Laborers	16.7	21.9	100.0	9.1	38.5
Uniformed police	8.1	25.2	10.0	2.9	5.3
Uniformed firemen	0	**	**	10.0	**
Custodial	52.4	87.7	7.5	9.1	100.0
Nonuniformed public safety	14.8	46.8	3.3	2.1	4.1
Other service workers	63.4	57.7	88.9	16.9	93.3
FUNCTIONS					
All functions	20.2	27.0	26.9	6.6	16.6
Financial administration and general control	8.9	25.0	20.5	4.4	7.7
Community development	19.1	10.2	5.8	6.6	1.3
Public welfare	13.0	37.6	0	18.1	35.7
Public safety	15.7	41.9	8.9	5.0	5.4
Police	7.7	28.7	8.5	3.1	5.1
Fire	0	**	**	5.9	**
Correction	21.0	77.2	7.7	7.2	5.9
Health	35.0	37.1	48.8	19.7	33.4
Public utilities	**	6.1	0	**	0
Miscellaneous	6.4	12.6	7.7	4.0	58.0

**No function.

Figures are for full-time noneducational employees.

Source: *For ALL the people . . . By ALL the people*, U.S. Commission on Civil Rights, Washington, D.C.: U.S. Gov't. Printing Office, 1969, Table 1-9, p. 20.

TABLE XVI. PERCENT OF NEGROES IN STATE EMPLOYMENT BY OCCUPATION AND BY FUNCTION IN SMSA'S SURVEYED, 1967

	Total all States	San Francisco-Oakland	Philadelphia	Detroit	Atlanta	Houston	Memphis	Baton Rouge
OCCUPATIONS								
All occupations	17.9	9.6	26.3	36.0	5.6	5.6	27.2	3.5
Officials and managers	5.2	2.3	13.8	8.9	3.7	.6	10.6	.3
Professional and technical	10.0	5.4	15.8	21.3	3.9	3.2	13.8	.4
Office and clerical	18.0	12.7	27.7	42.6	3.9	4.9	12.1	.6
Craftsmen and operatives	7.7	4.8	9.3	11.3	9.9	5.1	26.2	6.9
Laborers	21.4	23.3	12.0	66.5	7.9	11.6	20.3	22.4
Other service workers	51.7	56.5	47.9	61.5	50.0	43.1	71.4	30.5
FUNCTIONS								
All functions	17.9	9.6	26.3	36.0	5.6	5.6	27.2	3.5
Financial administration and general control	11.5	17.8	10.3	27.6	4.4	8.4	9.4	1.2
Community development	5.9	8.7	9.4	7.4	2.9	3.4	5.5	.7
Public welfare	80.2	9.6	33.7	40.1	14.7	6.3	22.8	3.0
All public safety	6.0	5.3	16.4	9.8	2.3	3.1	10.2	1.3
Police	2.2	2.5	1.7	.9	2.5	2.1	4.9	1.4
Corrections	12.2	8.2	44.8	23.1	1.4	11.8	35.3	0
Fire protection	0	0	**	**	**	**	**	**
Health, hospitals, and sanatoriums	28.4	11.4	41.1	42.4	6.5	16.3	45.4	2.1
Public utilities	1.1	1.0	6.3	**	**	**	**	1.6
Housing	33.3	**	**	**	**	**	**	33.3
All other	18.0	7.8	21.8	32.4	7.6	2.6	14.6	37.3

**No function.

Note: The city of Baton Rouge and East Baton Rouge Parish though separate geographic entities, also have consolidated governments. In both San Francisco and Philadelphia the city and the county are coterminous and have consolidated governments.

Figures are for full-time nonsubstitutional employees.

Source: *For ALL the people . . . By ALL the people*, U.S. Commission on Civil Rights, Washington, D.C.: U.S. Gov't. Printing Office, 1969, Table 1-8, p. 19.

TABLE XVII. PERCENT OF NEGROES IN SUBURBAN GOVERNMENT EMPLOYMENT BY OCCUPATION IN SMSA'S SURVEYED, 1967[1]

Occupation	SMSA				
	San Francisco-Oakland	Philadelphia	Detroit	Atlanta	Houston
Managers and officials	1.4	5.4	3.3	3.8	2.6
Professional and technical	4.0	8.1	14.7	7.3	4.4
Office and clerical	1.8	5.9	4.7	1.8	1.6
Craftsmen and operatives	5.2	19.3	9.4	22.2	13.1
Laborers	15.9	33.9	4.2	63.4	28.3
General service workers	27.8	31.2	21.3	52.7	71.9
Total[2]	6.3	16.5	8.7	22.0	12.6
Population (1960)	4.8	6.1	3.7	8.5	12.9

[1] Suburban employment in both Baton Rouge and Memphis was less than 100 persons and therefore not included.
[2] Includes public safety occupations.

Note: Figures are for full-time noneducational employees.

Source: *For ALL the people . . . BY ALL the people*, U.S. Commission on Civil Rights. Washington, D.C.: U.S. Gov't. Printing Office, 1969, Table 1-10, p. 21.

TABLE XVIII. PERCENT OF NEGROES IN THE POPULATION AND IN POLICE AND FIRE DEPARTMENTS IN CENTRAL CITIES SURVEYED, 1967

Central city	Population 1965 (est.)	Negroes as a percent of—					
		Police department			Fire department		
		Total	Civilian staff	Uniformed force	Total	Civilian staff	Uniformed force
San Francisco	12.0	4.9	12.7	3.9	0.1	2.2	0.1
Oakland	34.0	5.2	10.7	3.2	4.3	12.0	4.0
Philadelphia	31.0	24.0	63.0	20.4	7.8	25.3	7.3
Detroit	34.0	10.1	42.7	4.6	3.8	35.1	2.1
Atlanta	44.0	10.4	19.7	9.1	12.1	16.7	11.9
Houston	23.0	4.2	6.0	3.5	3.4	2.8	3.5
Memphis	40.0	13.8	29.2	5.5	2.1	25.0	1.3
Baton Rouge	32.0	3.2	0	3.8	2.7	14.3	2.4

Source: *For ALL the people . . . By ALL the people*. U.S. Commission on Civil Rights. Washington, D.C.: U.S. Gov't. Printing Office, 1969. Table 1-7, p. 17.

TABLE XIX. ATLANTA: MINORITY EMPLOYMENT, 1970-1972

Category	Total		Black		White		% Black		% Increase
	1970	1972	1970	1972	1970	1972	1970	1972	
Managers	141	133	10	18	131	115	7.1	13.5	80
Professionals	958	1070	146	205	812	865	15.2	19.2	40
Clerical	921	1055	158	265	763	790	17.2	25.1	68
Operators	1557	1569	363	408	1194	1161	23.3	26.0	12
Laborers	2460	2537	1735	1887	725	650	70.5	74.4	9
Service	619	776	561	691	58	85	90.6	89.0	23
Police	1039	1277	165	248	874	1029	15.9	19.4	50
Firemen	932	992	149	181	783	811	16.0	18.2	21
Total	8627	9409	3287	3903	5340	5506	38.1	41.5	19

Source: "City of Atlanta Minority Hiring and Promotion, Update 1972," Special Report, Atlanta Community Relations Commission.

TABLE XX. COMPARISON OF MINORITY EMPLOYMENT IN STATE AND LOCAL GRANT-AIDED AGENCIES SUBJECT TO THE MERIT SYSTEM STANDARDS WITH OTHER EMPLOYMENT AND NATIONAL POPULATION

	Number of Individuals	% Total Minority Employees[1]			
	Total	Negro[2]	Spanish-Surnamed	Oriental	American Indian
Employment in Grant-Aided Agencies Subject to Standards[3]	458,111	16.4	2.8	0.7	0.4
Federal Government Employment[4]	2,578,124	15.1	2.9	0.8	0.7
Employment in Firms with 100 or more Employees[5]	28,882,600	10.3	3.6	0.6	0.3
National Population[6]	203,212,000	11.1	4.4	1.0	0.4

[1] All figures are percentages of the total number of individuals.

[2] Definitions of minority categories are identical for grant-aided agencies, federal government, and firms, but may vary slightly from those used by the Census Bureau, especially in the Spanish-surnamed category.

[3] From the 1972 consolidated state report, EEO survey of grant-aided state and local agencies (U.S. Civil Service Commission, Bureau of Intergovernmental Personnel Programs). Data as of January 1, 1972.

[4] From *Minority Group Employment in the Federal Government*, USCSC, May 31, 1971, table 1-T. (Minority figures are current as of that date.)

[5] From the 1970 Employer Information Report EEO-1 of the Equal Employment Opportunity Commission as published by the Department of Labor in the *Manpower Report of the President*, March 1972, table G-7.

[6] From the 1970 census: "General Population Characteristics, U.S. Summary," table 48; data on Spanish-language Americans from "Selected Characteristics of Persons and Families of Mexican, Puerto Rican, and other Spanish Origin," March 1971, table 1 (these figures are preliminary).

Source: U.S. Civil Service Commission, Staff Table, Bureau of Intergovernmental Personnel Programs, Office of Merit Systems.

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IV. Federal Contractor Employment: Business and Industry

THE OFFICE OF Federal Contract Compliance (OFCC) was established to root out by affirmative action systematic discrimination in the employment practices of business firms, industrial corporations, financial institutions, and construction companies, which contract with the Federal Government. In 1972, the government had contracts worth $60 billion with some 250,000 firms across the country, and it is OFCC's responsibility to see that federal funds do not go to subsidize discriminatory practices.

The power to withhold or cancel lucrative federal contracts, upon which a firm's profitability may have come to depend, is perhaps the most potent weapon devised to combat discrimination in its subtlest forms. It is, as Herbert Hill has pointed out, far more powerful than the administratively weak state and municipal fair employment practice commissions, and more direct than the expensive, time-consuming procedures established by Title VII of the Civil Rights Act of 1964. Fully effective affirmative action practiced by all government contractors, who employ about a *third* of the Nation's work force, could transform the disadvantaged employment status of minorities and contribute much to the solution of contingent national problems.[1]

A growing body of research suggests that, in fact, government

contractors have tended to be more discriminatory than companies without government contracts. Robert B. McKersie, in an analysis of minority employment patterns in Chicago in 1967, found establishments with government contracts to have a lower proportion of blacks in the work force, especially in clerical jobs, than other establishments.[2]

Jerolyn Lyle's research has shown that the relative occupational standing of blacks in nine industries with a large proportion of government contracts is below average, even after such factors as skill and educational requirements, firm size, unionization, employment growth, and wage levels have been accounted for.[3] The nine industries where she thinks great potential leverage exists for improving black opportunity for occupational parity are: petroleum and natural gas, building construction, other construction, tobacco manufacturers, railroad transport, holding companies, miscellaneous business services, miscellaneous repair services, and private educational services.

In a study with Dr. Bergmann, Dr. Lyle again found that blacks have a lower than average occupational status in industries which are heavily involved in government contracting.[4] The two researchers hypothesize that government contractors, being somewhat insulated from the open marketplace, have less of an incentive to economize on labor costs and therefore greater opportunity to indulge discriminatory propensities. They conclude that enforcement of existing equal employment laws, even in cases where the Federal Government has maximum leverage, "is pathetically lax."

A glance at the 1972 statistics in the nine industries with high average hourly pay rates (Table XXI) shows that most black employees are in the lowest-paid categories, with an average of only two percent in the higher-paid professional and managerial categories and only five percent at the craftsmen level. These statistics scarcely provide support for those who would argue that blacks are receiving preferential treatment through affirmative action.

In the nine industries with the largest proportion of black workers (Tables XXII and XXIII), one might reasonably expect a better record of black employment and upward mobility. In 1972, these nine industries employed an average of 17 percent black workers, but only four percent were in the higher-paid jobs while 12 percent were in the craftsmen jobs and 26 percent held the lowest-paid jobs. The real estate industry was the only one with a

proportion of blacks in higher-paid jobs commensurate with the number of blacks in the population. Medical and other health services had nine percent highly-paid blacks, and the remaining industries had five percent or less. Overall, those blacks in industries traditionally dependent on black labor, such as tobacco and personal services, are more likely than blacks in other industries to be in lower-paid occupations. Since these industries are not usually technically based and do not require the specialized educational qualifications of the aerospace industry, for example, such figures point up the enormity of OFCC's task.

Business and Industry

There exists no accurate and specific measure of the extent to which federally-inspired affirmative action is affecting minority employment patterns among government industrial and business contractors. Certainly it plays some part in the improved hiring rates and limited upward mobility reflected by national statistics. OFCC's data, compiled from the figures in the compliance reports submitted by contractors are, as OFCC is the first to admit, apt to be inconsistent and even unreliable. There is the suspicion that contractors sometimes "doctor" returns in their favor, and compliance officers can do little to call them to account. Inconsistent and overfavorable as they may be, OFCC figures are the chief instrument we have with which to assess contractors' progress in hiring and promoting minorities.

Table XXIV represents the results of an OFCC pilot project to measure black progress in 11 industries with a large number of government contracts, for 1967, 1969, 1970, and 1971. It includes estimates, based on annual rates of progress, as to how long it will take blacks to gain parity of participation and parity of occupation with the average of current total industry utilization in the appropriate labor areas. It is important to note that the projections are not for parity with population, which would probably take even longer for most industries. The occupation ratio, one of the key target selection and evaluation measures used by OFCC, is the ratio of the average black wage to that of all workers, based on occupational distribution.

The table shows improvement in the numbers of blacks hired by the industries between 1967 and 1971, and a slower improvement in their occupational status. It also shows either a slowdown or a lack of improvement between 1970 and 1971, probably due to the

effect of the recession, but possibly also reflecting inconsistencies in the collection of the data.

Industries vary enormously both in the proportion of blacks they employ and in the occupational status they accord them. In 1971, black penetration varied from 20.2 percent of the medical services industry to six percent of the air transportation industry. Only the medical services, food products, and shipbuilding industries employed blacks at a higher rate than their utilization by industry as a whole. Most of the other industries were between three and six percentage points below, so that at the 1971 rate of recruitment only the banking industry could project parity of participation before the end of the 1970s. The occupational status of blacks in the industries varied from the relatively good showing of the banking industry, with an occupation ratio of 0.938, to the chemical industry, with a ratio of 0.842. Those industries with the highest percentages of blacks were not necessarily those with the best affirmative action performance, as the occupation ratios of the medical services and food products industries show.

Rates of improvement also vary. Whereas over the five-year period black participation rose by 4.3 percentage points in the banking industry, and by 3.5 percentage points in the motor freight and medical services industries, the nonelectrical machinery and air transportation industries saw an improvement of only 1.5 percentage points. The air transportation industry showed the greatest improvement in occupational ratio over the period, and nonelectrical machinery by far the worst. It is striking that none of these industries with a high proportion of government contracts, and therefore the potential target of enforcement efforts, increased its black participation rate by even as much as an average of one percentage point a year, or its black occupational ratio by even five percent over the whole period.

The estimated dates for achieving parity of participation and occupation make depressing reading. Participation will not reach parity at 1971 rates of progress until the *next century* in the air transportation, nonelectrical machinery, and chemical industries. Parity of occupation will, according to these estimates, be reached in banking after five years, but in the air transportation, medical services, electrical, gas, sanitary, and food products industries only between 14 and 17 years; and between 23 and 47 years in the shipbuilding, chemical, petroleum refining, and motor freight industries. The nonelectrical machinery industry is not scheduled

to reach occupational parity for 173 years, according to these computations.

Depressing as they are, such predictions are hopeful compared to the independently computed projections of Purcell and Cavanagh in their study of blacks in the electrical industry.[5] They base their projections on the rates of progress in hiring and promotions attained in the electrical industry (which they assert is not racially much different from most others) between 1966 and 1969, when factors such as economic expansion, government and civil rights pressure, as well as affirmative action combined to impel advancement at a faster rate than the 1970-71 period. Nevertheless, they estimate it will take 14 years for blacks to hold 10 percent of craft jobs, nine years to fully integrate clerical positions, and 22 years to integrate technical positions. Sales jobs will not reach the 10 percent mark for 70 years, professional level jobs for 86 years, and managers and officials for 55 years. Factors such as the business cycle, the national economy, black ability to participate fully in apprenticeship and training programs and in vocational schools and business and engineering colleges, and a potential white backlash could all operate to affect these projections.

Banking, as Table XXIV shows, is projected by OFCC to be likely to reach participation parity in 1975 and occupational parity in 1978. According to the director of the equal employment opportunity program at the Department of the Treasury—the compliance agency for the industry—the banking industry led all others in minority hiring. Yet, in a survey of the industry made by the Council on Economic Priorities,[6] which took as a sample minority employment practices in the three largest commercial banks in each of six cities, five of which rank highest in black population in the Nation, they found that in every city except New York minorities were employed at levels below their proportion in the labor force. Differences ranged from 18 percentage points below in Philadelphia to 38 percentage points below in Atlanta. New York banks employed almost five percent more blacks than their proportion in the labor force. Minority group members constituted only 6.7 percent of all employees above office and clerical level; and in Atlanta, only 0.5 percent. Moreover, no immediate improvement was likely. Minority men received less than five percent of promotions to office level in 1970, and the numbers in executive training were few.

The study concluded, "A statistical pattern of employment

discrimination against minorities and women is endemic in commercial banking." This was a telling judgment of the industry supposedly with the best record of affirmative action among government contractors. The findings, however, corroborated those of an EEOC research report of January 1971, which showed enormous variations between banks: five New York banks increased minority participation from 7.7 percent to 19.9 percent between 1966 and 1970, but for five California banks the increase was only from 3.7 percent to 5.9 percent.[7] Overall participation of blacks increased from 4.4 percent in 1966 to 7.5 percent in 1969, but the participation rate was far below the all-industry rate of 9.5 percent. Only two percent of the industry's professional jobs and fewer than one percent of the managerial jobs were held by blacks. The report reached the conclusion that despite government regulation of the banking industry, minorities and women have been seriously underemployed.

All the statistics agree on the lack of minorities in the middle and upper levels of industry and business. An EEOC report based on hearings in New York City on "White Collar Employment in 100 Major New York City Corporations" in 1968 showed how poorly represented minorities were at the management and lower management grades even in companies with comparatively good reputations for minority hiring. The pattern of underutilization of minorities in white-collar jobs is general, as the EEOC publications, "Job Patterns for Minorities and Women in Private Industry" (for 1967 and 1969), confirm. Comparisons of the 1967 and 1969 records in these publications show that progress in upward mobility has been glacial. An OFCC staff table (Table XXV) gives a vivid illustration of how inadequate the participation rate of blacks still is in all but the lowest grades of industry. It shows that at the 1970 rates of hiring the modest goals set for 1980 will probably not be reached in any of 21 manufacturing industries in any job classifications above the level of operatives, since the likelihood of goals being reached decreases the higher the job classification.

While the 'sixties have seen changes in attitude among corporations under federal pressure, and an increasing trickle of blacks entering the management levels of the corporations, statistically the results are not impressive. An indication of how slow progress is comes from a survey, "Women and Minorities in Management and in Personnel Management," produced by the Bureau of National Affairs in December 1971. Most of the 163 companies

surveyed reported they had more women and members of minority groups in management positions than five years before. But two-thirds had no minorities in top management positions; about half had no black or Spanish-speaking Americans as middle managers; half had no first-level supervisors who were black or Spanish-speaking; one-quarter had no black or Chicano professionals. Nonmanufacturing firms had a better record than manufacturing ones, and large firms reported a better showing as well as more plans to improve in the future than small ones.

It is estimated that less than three percent of the line managers and officers in industry are black, and most of these are at the lower levels. Black directors are few, around 70 in mid-1973, with the same distinguished names recurring on several boards.[8] Only a very small number hold vice presidencies, and none of the major national corporations has a black chief executive. Black executives frequently complain that they are assigned to jobs outside the management mainstream, being shunted into positions concerned with urban affairs, community relations, "black markets," or equal employment opportunity. Thus, they miss out on the experience necessary for effective competition with whites for the top jobs. Very few hold jobs in the decision-making, planning, or financial sectors of corporations.

Dean Robert C. Vowels of the Graduate School of Business at Atlanta University is quoted as estimating that by 1985 fewer than four percent of the decision-making positions in corporations will be held by blacks.[9] With only five out of 240 leading business schools having more than 15 blacks in 1969-70, progress by conventional means is likely to be slowly achieved. But holding formal business qualifications does not necessarily lead to integration in the mainstream of business. Out of 37 blacks holding the degree of Master of Business Administration (M.B.A.) from the Consortium for Graduate Business Study, according to Professor Flournoy A. Coles, Jr., only 15 were employed in management positions or jobs likely to lead to management careers.[10]

Preliminary findings by a team of researchers at Harvard Business School led by Stuart A. Taylor also indicate that "members of minority groups in the United States who hold the degree of Master of Business Administration (even from schools of the caliber of Harvard Graduate School of Business Administration) are a lot further away from executive positions in major corporations than white M.B.A.s with comparable backgrounds," for a variety of environmental and attitudinal factors.[11]

The disappointing rates of progress achieved despite the affirmative action program lie at what might be called the policy and operational levels of both industry and government. At the policy level in OFCC, the reorganization which placed it in the Employment Standards Administration of the Department of Labor has been criticized by the U.S. Civil Rights Commission as downgrading and diminishing its effectiveness. Agreeing with this judgment, OFCC director George Holland resigned in June 1972, charging that the resulting compliance activity was "largely cosmetic and illusory."

There has indeed been a reluctance on the part of the federal authorities to make use of the powerful weapon of contract debarment in a way which would quickly bring home the seriousness of the federal commitment to affirmative action. The reason for this may lie in political considerations, and in a continuing conflict between the immediate need for procuring that which the contractor provides and the longer-term necessity of securing equal employment opportunity. The long, drawn-out process of factfinding, negotiation, warnings, and conciliation currently employed before debarment even appears as a possibility gives firms reluctant to change their ways every opportunity for noncompliance and has doubtless contributed to the slow rate of progress registered in the last five years.

Enforcement Innovations

OFCC has, until very recently, seemed reluctant to take a firm stand with major companies and industries. Two recent enforcement efforts, though short of debarment, could prove an effective example to others that noncompliance will not be tolerated, and illustrate for them the far-reaching nature of the affirmative action required. Their success, however, may well owe more to recent relevant court decisions and the fear of litigation than to OFCC toughness.

The first was the OFCC refusal to sanction the General Services Administration's proposed anti-discrimination agreement with American Telephone and Telegraph (AT&T), a contractor with government business amounting to $400 million. Criticisms of the agreement included charges that it failed to provide back pay for those previously discriminated against in hirings and promotions, did not adequately deal with the company's transfer policies which allegedly perpetuated lower pay scales for women and minorities, and failed to provide for hiring qualified women and

minorities in jobs above the lowest levels. The final agreement secured $15 million in back wages to be paid by the firm to those discriminated against in job assignments and promotions, and $23 million in raises to those whom seniority systems had robbed of higher wages. Though there had been other similar settlements of around $1 million ordered previously, the size of this one made it a precedent which may well alarm companies with employment records similar to AT&T's.

The second was the Labor Department's order to Bethlehem Steel to change the transfer and seniority systems perpetuating discrimination at their huge plant at Sparrows Point in Maryland. The order was the culmination of efforts by OFCC since 1968 to rid the plant of discriminatory practices, and it was termed "the most significant enforcement proceeding ever brought under the Executive Order." Even so, OFCC had recommended the cancellation of existing contracts and debarment for Bethlehem until they came into full compliance, but its recommendation was refused by the Secretary of Labor. Some five years after the order, the uphill fight for racial equality at Sparrows Point was still being waged, the seniority system was still at issue, and implementation of the agreement had not yet begun.[12]

The AT&T case is a particularly potent precedent for those federal contractors who think that debarment is not a credible deterrent because the government cannot think of doing without their services. Among such are the gas and electric utilities, where discriminatory employment practices are more prevalent than in most other major businesses. In 1970, for example, blacks were only 6.1 percent of the total work force, 3.7 percent of the white-collar workers, and 0.6 percent of the officials and managers, but 33.2 percent of the service workers.[13] Suggested means of bringing pressure to bear on contractors have included putting payment for services in escrow until compliance is achieved or having the licensing bodies, such as the Federal Power Commission, deny licenses to companies with discriminatory employment systems.

Indeed, harnessing the powers of government regulatory agencies to reinforce OFCC's efforts, even though they have no assigned civil rights responsibilities, is increasingly being advocated. Dr. Armon Alchian, an economist at the University of California at Los Angeles, has documented the fact that federally-regulated industries hire fewer minorities than nonregulated industries and raised the possibility that federal pricing regulations

in particular contribute to discriminatory hiring.[14] This comes about in part, he says, because an industry that can pass its labor costs on to its customers is not truly competitive in the labor market. When an industry is not regulated, a competitive hiring policy becomes a necessity.

The Interstate Commerce Commission could well include an evaluation of the fair employment practices of its regulatees, including their affirmative action plans, as part of its certification process. The powers of the Civil Aeronautics Board could be interpreted to cover employment practices in the air transportation industry. The Federal Communications Commission has already assumed responsibility for prohibiting employment discrimination and encouraging affirmative action among its regulatees, the only regulatory agency which has so far done so.

An example of the help the regulatory boards could contribute is in trucking where the disparate structure of the industry, with many firms too small to be covered by the Executive Order but still contracting with the government, makes it impossible for OFCC to act effectively. Yet the industry is highly discriminatory, with only 7.3 percent blacks overall, 17.3 percent black laborers, and 23.8 percent black service workers. As a growth industry with low job-entry requirements and high wages, it could be an important source of minority employment.[15]

The Federal Power Commission which, according to a report of the Civil Rights Oversight Subcommittee of the House Committee on the Judiciary, September 1972, "has failed to fulfill the constitutional and statutory responsibilities with respect to ensuring equal employment opportunities in companies which it regulates," has been deemed by the Justice Department to have clear authority to bar employment discrimination among its regulatees. Since the gas and electric utilities are among the more discriminatory industries,[16] and are also among the contractors for whom debarment hardly seems feasible, OFCC's efforts could be greatly helped by backing from the Commission.

At the operational level, the federal performance has been much criticized.[17] Funding, and therefore staffing, is described as inadequate. In mid-1972, there were approximately 1,000 compliance officers in the agencies and about 900 at the Department of Labor in the Employment Standards Administration, with some 250,000 contractors to monitor. OFCC estimates an adequate review takes about one week. The adequacy of compliance reviews depends heavily on the degree of commitment in the agency

regional offices, generally remote from Washington and concerned with other aspects of contractor compliance besides equal employment opportunity. The on-the-job training of compliance officers is described as inadequate, so that their performance is often wanting. Inconsistently collected data which are not broken down into job categories may hold up effective review and compliance efforts, especially when they have reached the critical stages where litigation or recommendation to debar are contemplated. The impossibility of adequate monitoring of "good faith" efforts required of contractors remains a major difficulty.

Some of the shortcomings in federal procedures are illustrated by the account of Treasury's compliance efforts in the report of the Council on Economic Priorities, "Shortchanged."[18] The report found "extensive, obvious bias," but Treasury reported itself confident that "there are not that many" banks not in compliance. Asked how Treasury judged whether a bank is in compliance, officials replied, "We generally take the bank at its word." Asked how he checked that inequities were being corrected, an official responded, "They tell me they are doing X, Y and Z. How do I know they are telling the truth?"

This pattern of reliance on the contractor's self-analysis, through lack of authority and manpower to undertake searching reviews and follow-up examinations, is a critical weakness and undermines the effectiveness of the federal effort. Moreover, the fact that the information in individual reviews is secret and the affirmative action plans of companies are not a matter of public record prevents interested groups from reinforcing the federal effort and "riding herd." A women's group leader is quoted as protesting, "To deny disclosure of the [affirmative action] plans is to destroy what appears to be the only method by which the Executive Order can be enforced. The compliance agencies lack the resources to do adequate reviews and investigations of their own!"[19]

Reviews and sanctions are one part of the federal effort, the "stick." The "carrot" approach, where the favorable minority-hiring record of a firm in competition for a contract is seriously taken into account, is just being developed. Publicity was given to the role that affirmative minority-hiring at North American Rockwell had played in gaining it the $5 billion space shuttle contract. The company's affirmative action plan was instituted after protests in 1970 by the Black Workers' Association were backed by OFCC and by the time of the contract award in

mid-1972 almost 12 percent of professional people, eight percent of lower management, and almost seven percent of top management of North American's Space Division were minorities. Comment by a NASA organization management official on the award included, "The fact that North American moved forward on this front [the equal employment] tells us something about how the company is thinking ahead, about how it is going to get along in its labor relations over the next ten years."[20] The "positive sanction" or "carrot" approach is one which could be developed further: contractors with especially good records being given some form of bidding or contract preference.

To date, many in industry have not taken it seriously. Former Labor Secretary Hodgson reported a businessman irritated by federal minority-hiring requirements demanding of him, "How many three-legged Patagonians do you want us to hire this week?" And this illustrates the attitude of many in industry to the federal regulations on affirmative action. Executives frequently have regarded the federal requirements as so much "mickey mouse," an irritating and irrelevant window dressing performance which needs to look good for compliance reviews and for public relations purposes, but which need not have too much substance. Only now is a general realization beginning to dawn in industry of the breadth of existing procedures which have to be implemented to ensure compliance with federal regulations. Appointing an executive with the title of equal employment officer (often with only minimal duties in that direction) or drawing up impressive-looking plans and making portentous announcements of dedication to equality can be token gestures disguising an unwillingness to make the thorough-going reform in recruiting, hiring, and promotion methods necessary to achieve real equality of opportunity.

A classic illustration of a general pattern is provided by the aptly-named report, "Promise vs. Performance," a study of equal employment opportunity in the Nation's electric and gas utilities based on EEOC hearings held in November 1971.[21] While witnesses emphasized their companies' commitments to equal opportunity, the hearings revealed example after example of procedures and assumptions which, while not explicitly discriminatory, were so in practice. They included recruitment based on invalid and culturally-biased testing, prejudiced assumptions operating in the job assignments of minorities once recruited, rigid and inflexible seniority, promotion and transfer systems which limited the opportunity for minorities to advance, and a lack of training

programs to give those in jobs and departments not normally leading to higher level or supervisory posts the chance for promotion. Even fringe benefits such as the awarding of scholarships to employees' children were shown to suffer from discriminatory practices.

At the policy level, the overwhelming concern naturally has been with profits and profitability, with the social implications of company policies and procedures usually taking a secondary position. Such attitudes filtering down to middle-management levels often resulted in mere gestures and tokenism in the equal employment effort. Recent judicial decisions may change the emphasis at top management levels, since courts have ruled that companies are liable to compensate workers who have suffered discrimination. Large payments have been made, as by AT&T. In other cases, firms have found the courts awarding substantial costs, if not back payments, in discrimination cases brought by employees. When lack of affirmative action begins to harm a company where it hurts, in the profit margin, or reflects bad publicity through court actions, the issue becomes one of importance to top management.

Corporate Social Responsibility

Too, the concept of "corporate social responsibility" is said to be gaining ground, tied as it frequently is to corporate self-interest. Henry Ford expressed the essential rationale for this when he remarked, "Whatever seriously threatens the progress of the country and its cities also threatens the growth of the economy and your company."

Once the highest levels of industry are committed to affirmative action, be it for federal contracts, increased efficiency, fear of court-ordered compensation payments, adverse publicity, or through a sense of social responsibility, the problem of translating that commitment into effective action remains. Quantified goals for minority hiring and promotion are an indispensable tool for measuring progress and could appropriately be used as a measure of middle management's efforts. Purcell and Cavanagh suggest that if a manager's performance in this area were included in his own general appraisal and considered crucial to his own promotion and advancement, minority hiring and upward mobility would be taken more seriously as a traditional business objective.

Large companies such as International Business Machines,

Minnesota Mining and Manufacturing, and Xerox have already introduced the practice. The Xerox chairman is quoted thus: "I am not satisfied with our progress in the placement of minorities and women in upper level and managerial positions. . . . Achieving these objectives is as important as meeting any other traditional business responsibility. It follows, of course, that a key element in each manager's overall performance appraisal will be his progress in this important area. No manager should expect a satisfactory appraisal if he meets other objectives but fails here."[22] That the best of publicized intentions go awry was revealed when EEOC announced it had filed suit against the Xerox Corporation alleging unlawful discrimination against minorities, specifically that Xerox excludes Spanish-surnamed persons from employment in California.[23]

Purcell and Cavanagh's research has pinpointed the key role of the foreman in making integration on the shop floor successful. As with middle management, the system could use rewards and sanctions for success in dealing with minorities among lower-level management as well.

To the perennial cry that there are not enough "qualified" blacks at the middle-management level to hire or promote, the late executive director of the National Urban League, Whitney Young, answered, "Businesses that cry about the lack of trained Negroes for supervisory jobs probably haven't looked at the talent on their own work force." The revelation in "Promises vs. Performance" that one company still had, in 1972, at least eight black janitors with college degrees bears him out. Carefully designed training programs and promotion procedures are clearly of major importance in achieving successful integration and minority upward mobility patterns within a company. Management has, however, sometimes rationalized a lack of affirmative training and recruitment programs at any but the lowest level as likely to cause resentments leading to a "white backlash." Training programs and affirmative recruitment efforts could benefit whites and others as well as blacks—the elderly, the young, the female, and the disadvantaged are white as well as black, brown, and yellow.

In particular, Purcell and Cavanagh's survey of four electrical plants, in different areas of the country where the black work force had grown substantially and blacks had been moving into supervisory, technical, and craft positions as a result of affirmative action, found "only a small proportion of white workers complaining about or even perceiving preferential hiring and promo-

tion for their black fellow-workers. The large-scale white backlash feared by some was significantly absent."

The authors also found evidence to refute management canards about blacks' job performance. They found that in the opinion of the foremen in the plants surveyed about the quantity and quality of work produced (and foremen were in the best position to know), blacks did at least as good a job as the average white worker, in spite of the fact that the blacks were generally younger and with less industrial experience.

The vital role of training programs in successful affirmative action is clear, when so many minority workers have been ill-prepared for the world of work by their schools and disadvantaged backgrounds. In a striking analogy, Purcell and Cavanagh point out that coming into the industrial world from the ghetto is a transition as difficult as that of the average white man trying to fit into a group of black men on a street corner in Harlem.

Amidst the plethora of federal training programs, those most closely associated with affirmative-type action have been the Manpower Development Training Act's "On-the-Job Training" program, under which employers can be reimbursed for training costs; and particularly the "Job Opportunities in the Business Sector" (JOBS) program, which in effect subsidizes the hiring of disadvantaged workers by private employers in the hope of promoting affirmative action-type hiring and training. The heart of this program is the voluntary participation of the private sector, and indeed a reported 65 to 75 percent of participants have hired and trained disadvantaged minorities without the subsidy. The program is presided over by the National Alliance of Businessmen and has achieved some widely publicized success. NAB estimates that over four years, more than one million disadvantaged persons have been helped with training and/or jobs under the arrangement.[24]

An evaluation of the program by the General Accounting Office, however, revealed some of its drawbacks.[25] The subsidies were apparently more successful in making jobs than initiating training. Moreover, many of the jobs provided were low-skilled and vulnerable to technological change. The hiring figures are generously reported, but many hired could have secured the jobs without the program. A formal link between a validated JOBS program and the federal affirmative action program could be helpful to contractors looking for minority workers to meet their goals and strengthen their own affirmative action programs,

though the government would have to develop means to ensure that its subsidies were used effectively to train as well as hire those who would not otherwise have gotten jobs.

Completely voluntary, well-publicized training programs for the disadvantaged have been undertaken by some large corporations.[26] They range from simply allowing the use of their machinery and staff for training purposes to arranging cooperative "sandwich-type" programs in which a student divides his time between work and school. In Chicago, General Electric set up a school for the disadvantaged and equipped and staffed it; and in Detroit, Chrysler and Michigan Bell "adopted" several inner-city schools and furnished a whole range of assistance to them, including equipment and vocational teachers, as well as setting up cooperative programs.

Such activities have been described as likely to dry up when their publicity value to a company wanes and business conditions dictate a tightening of the corporate budget. Nevertheless, such activities do constitute affirmative action when they increase the number of minority workers hired, and could well be adopted by large contractors on a more general scale. Increased contacts between business and schools and, especially, cooperative education where a student learns precisely those skills which the company needs can benefit both the business world and the minority community. The examples set by the larger corporations could motivate smaller firms as the idea of "corporate social responsibility" gains added currency.

TABLE XXI. NEGRO PERSONS EMPLOYED IN INDUSTRIES WITH HIGH AVERAGE HOURLY EARNINGS, BY OCCUPATIONAL PAY LEVEL: 1972

Industry	All Occupations	Higher Paid[1]	Middle Pay Level[2]			Lower Paid[3]
			Total	Craftsmen	Other	
NEGROES EMPLOYED						
All Industries (thousands)	3,242	294	2,360	251	2,109	587
Total: 9 Industries[4] (thousands)	776	28	710	85	625	38
PERCENT NEGRO OF TOTAL EMPLOYED						
All Industries	10%	3%	11%	6%	13%	27%
Total: 9 Industries[4]	9	2	11	5	12	20
Printing and Publishing	6	2	7	3	10	30
Chemicals	9	2	11	6	10	24
Primary Metal	13	2	14	7	17	19
Fabricated Metal	10	2	11	6	13	19
Nonelectrical Machinery	6	2	7	4	8	14
Electrical Machinery	8	1	9	4	8	19
Transportation Equipment	12	2	14	7	17	24
Air Transportation	6	3	7	3	10	10
Instruments	7	2	8	4	9	23

Notes: Data are based upon EEO-1 reports filed with the U.S. Equal Employment Opportunity Commission by companies with 100 or more employees.

[1] Professional, managerial, and sales workers.
[2] Technical, clerical, craftsmen, operatives, and labor workers.
[3] Service workers.
[4] Nine high earnings industries.

Source: Compiled from data supplied by the U.S. Equal Employment Opportunity Commission and the Department of Labor, Bureau of Labor Statistics.

TABLE XXII. NEGRO PERSONS EMPLOYED IN INDUSTRIES WITH A LARGE PROPORTION OF NEGROES, BY OCCUPATIONAL PAY LEVEL: 1972

Industry	All Occupations	Higher Paid[1]	Middle Pay Level[2]			Lower Paid[3]
			Total	Crafts-men	Other	
NEGROES EMPLOYED						
All Industries (thousands)	3,242	294	2,360	251	2,109	587
Total: 9 Industries[4] (thousands)	502	35	196	15	180	271
PERCENT NEGRO OF TOTAL EMPLOYED						
All Industries	10%	3%	11%	6%	13%	27%
Total: 9 Industries[4]	17	4	17	12	16	26
Tobacco	25	4	28	10	31	57
Medical & Other Health Services	16	5	14	11	15	28
Local Passenger Transit	21	7	23	11	25	27
Water Transportation	18	3	20	12	26	20
Eating & Drinking Places	16	6	17	19	16	17
Real Estate	12	5	12	9	14	26
Hotel & Other Lodgings	21	7	16	13	16	26
Personal Services	29	7	34	25	35	37
Misc. Repair Services	10	3	12	10	22	33

Notes: Data are based upon EEO-1 reports filed with the U.S. Equal Employment Opportunity Commission by companies with 100 or more employees.

[1] Professional, managerial, and sales workers.
[2] Technical, craftsmen and foremen, operatives, and labor workers.
[3] Service workers.
[4] Nine industries with a large proportion of Negroes.

Source: Compiled from data supplied by the U.S. Equal Employment Opportunity Commission.

TABLE XXIII. DISTRIBUTION OF TOTAL AND NEGRO PERSONS EMPLOYED BY OCCUPATIONAL PAY LEVEL IN INDUSTRIES WITH A LARGE PROPORTION OF NEGRO EMPLOYMENT: 1972

Industry	Total Employed (thousands)	Percent of Total Employed					
		Total	Higher Paid[1]	Middle Pay Level[2]			Lower Paid[3]
				Total	Craftsmen	Other	
All Industries:							
Total	32,885	100	28	65	13	52	7
Negro	3,242	100	9	73	8	65	18
9 Industries:[4]							
Total	2,922	100	25	40	3	37	35
Negro	502	100	7	39	3	36	54
Tobacco:							
Total	68	100	14	83	11	72	3
Negro	17	100	2	90	4	86	8
Medical & Other Health Services:							
Total	1,905	100	29	36	2	34	35
Negro	304	100	9	32	1	31	59
Local Passenger Transit:							
Total	116	100	9	83	18	65	8
Negro	25	100	3	87	9	78	10
Water Transportation:							
Total	72	100	15	82	17	65	3
Negro	13	100	2	93	10	83	5
Eating & Drinking Places:							
Total	333	100	13	15	2	13	72
Negro	53	100	5	18	3	13	77
Real Estate:							
Total	76	100	34	46	7	39	20
Negro	9	100	12	45	1	44	43
Hotel & Other Lodgings:							
Total	239	100	10	28	5	23	62
Negro	51	100	4	21	3	18	75
Personal Services:							
Total	94	100	20	70	4	66	10
Negro	27	100	5	83	3	80	12
Misc. Repair Services:							
Total	20	100	18	81	35	46	1
Negro	2	100	5	90	3	87	5

Notes: Data are based upon EEO-3 reports filed with the U.S. Equal Employment Opportunity Commission by companies with 100 or more employees.

[1] Professional, managerial, and sales workers
[2] Technical, clerical, craftsman, operatives, and labor workers.
[3] Service workers.
[4] Nine industries with a large proportion of Negroes.

Source: Compiled from data supplied by the U.S. Equal Employment Opportunity Commission.

TABLE XXIV. NEGRO EMPLOYMENT PROFILE FOR SELECTED LABOR AREAS: 1971, 1970, 1969, 1967

Industry	Compliance Agency	Penetration Year	Penetration Rate	Penetration Ratio	Occupation Ratio	Projected Years of Parity: Penetration	Projected Years of Parity: Occupation
Food Products	USDA	1971	15.1%	1.180	.894	–	1990
		1970	15.8	1.200	.884	–	1989
		1969	14.3	1.188	.882	–	1991
		1967	12.8	1.255	.871	–	–
Chemicals	AEC	1971	9.3	.694	.842	2009	2002
		1970	9.2	.719	.834	1978	2003
		1969	8.4	.675	.829	2016	2007
		1967	7.2	.661	.829	–	–
Shipbuilding	Commerce	1971	18.8	1.126	.903	–	2010
		1970	18.4	1.179	.901	–	1987
		1969	18.0	1.186	.895	–	2074
	DOT	1967	15.8	1.068	.893	–	–
Nonelec. Mach.	DOD	1971	7.4	.655	.870	2005	2146
		1970	8.2	.695	.869	1975	2101
		1969	6.9	.628	.868	2023	2022
		1967	5.9	.614	.863	–	–
Elec., Gas & Sanitary Svcs.	GSA	1971	8.2	.636	.862	1981	1989
		1970	8.1	.614	.854	1976	1981
		1969	6.9	.553	.841	1983	1998
		1967	5.2	.486	.830	–	–
Medical Services	HEW	1971	20.2	1.656	.859	–	1988
		1970	20.4	1.659	.847	–	2123
		1969	20.4	1.770	.846	–	1984
		1967	16.7	2.184	.825	–	–
Petrol. Refining	Interior	1971	8.2	.550	.847	1994	2001
		1970	7.4	.529	.844	1988	1984
		1969	6.7	.403	.833	1999	2017
		1967	5.3	.469	.826	–	–
Motor Freight	Post Office	1971	10.1	.754	.919	1976	1996
		1970	9.4	.696	.914	1977	1991
		1969	8.2	.651	.910	1982	2014
		1967	6.6	.595	.906	–	–
Air Transp.	DOT	1971	6.0	.484	.846	2012	1987
		1970	5.7	.452	.847	Never	1977
		1969	5.6	.479	.825	1992	1987
		1967	4.5	.433	.805	–	–
Banking	Treasury	1971	10.1	.789	.938	1975	1978
		1970	10.1	.796	.935	1973	1976
		1969	8.6	.726	.924	1973	1976
		1967	5.8	.563	.900	–	–
Drugs	VA	1971	8.7	.644	.877	2002	1994
		1970	8.0	.664	.869	1990	2101
		1969	8.2	.647	.858	1984	1986
		1967	6.7	.598	.852	–	–

Source: OFCC data compiled from Table 1, OFCC Memorandum 3400-5, and from "An Analysis of Negro Occupation Position," by George F. Travers and Robert B. McKersie.

TABLE XXV. INDEX OF DIFFICULTY BY INDUSTRY AND OCCUPATION FOR BLACKS, 21 MANUFACTURING INDUSTRIES, 1970-1980

	Offls & Mgrs	Profl & Tech	Sales Workers	Clerical Workers	Crafts-men	Opera-tives	Labor-ers	Service Workers
Ordnance and Accessories	3	3	3	3	3	0	0	0
Food & Kindred Products	3	2	3	3	1	0	0	0
Tobacco Manufactures	3	0	2	2	3	0	0	0
Textile Mill Products	3	3	3	3	3	1	0	0
Apparel & Other Tex Prod	3	3	3	3	1	2	1	0
Lumber & Wood Products	3	2	3	2	2	1	0	0
Furniture & Fixtures	3	3	3	3	2	1	0	0
Paper & Allied Products	3	3	3	3	3	1	1	0
Printing & Publishing	3	3	3	1	3	1	0	0
Chemicals & Allied Prod	3	2	3	1	3	1	0	0
Petroleum & Coal Prod	3	3	3	1	3	1	0	0
Rubber & Plastics Prod	3	3	3	3	3	1	1	0
Leather & Leather Prod	3	3	3	3	3	3	3	1
Stone Clay & Glass Prod	3	3	3	3	3	1	1	0
Primary Metal Industries	3	3	3	3	2	0	0	0
Fabricated Metal Prod	3	3	3	3	3	1	1	0
Machinery Exc Electrical	3	3	3	3	3	1	1	1
Electrical Equip & Supp	3	3	3	2	3	1	1	0
Transportation Equipment	3	3	3	3	2	0	0	0
Instruments & Rel Prod	3	2	3	2	3	1	1	0
Miscellaneous Mfg.	3	3	3	3	2	1	1	0

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1—Hiring Rate Slightly Below Rate Needed To Meet 1980 Goal
2—Hiring Rate Moderately Below Rate Needed To Meet 1980 Goal
3—Hiring Rate Greatly Below Rate Needed To Meet 1980 Goal

Source: OFCC staff table.

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V. Federal Contractor Employment: Construction

MINORITY EMPLOYMENT in the construction industry has long been an area of special difficulty and concern. The $127 billion-a-year building and construction industry pays the highest blue-collar wages, accounts for over 11 percent of the Gross National Product, and has a vast growth potential.[1] Yet, especially at the higher-paid and skilled levels, it is primarily a "white" industry. It presents a clear-cut example of the familiar inverse relationship between skill level and minority participation, the result of decades of outright discrimination practiced by employers and the unions who control employment through hiring halls. Attempts to improve minority participation have met strong resistance, so that the number of minority workers entering skilled trades in the construction industry remains extremely low.[2]

The construction industry and its employment policies are of special concern to minorities for a number of reasons. Building skills do not generally require the academic education denied to many blacks in ghetto schools, and if there were no discrimination construction jobs would be the natural recourse for many. Also, blue-collar jobs in the industry are the route to many higher-paid, supervisory jobs. Wages for the craft occupations in the unionized trades (where blacks are most sparsely represented) average about three times the general industrial rate. While few blacks have access to the higher-paid unionized craft jobs, many are skilled and experienced in the same crafts but are forced to work on

nonunion jobs, often on residential building projects where wage rates are much lower.

Moreover, jobs in the industry are highly visible, and much new construction—highways, "model city" projects, public housing, and urban renewal construction—has been taking place in the inner city and low-income areas where black communities are located. The paucity of blacks on site, and the kinds of jobs they do, are only too obvious to that community, and could again lead to angry demonstrations by frustrated black workers of the kind witnessed in 1963-65.[3] Much of such construction is financed by federal money and the industry as a whole is highly dependent on public funds. New federal construction projects, for example, include the planned office and records center in Hempstead, New York, at an estimated cost of $7.4 million; a $64.4 million courthouse and federal office building in New York City; a $57.5 million federal office building in Detroit; a $45 million courthouse and office complex in San Diego, and another costing $21.3 million in Lincoln, Nebraska.[4] Exclusion or token representation of black workers on such federally-financed projects amount to government subsidy of discrimination.

Employment in the construction industry is frequently dependent upon membership in a building union, since these unions, especially the craft unions, are chiefly "referral unions" operating hiring halls to place their members in jobs. Minority membership in unions therefore is crucial to their employment on union jobs, which pay the highest rates. In 1970, EEOC figures showed that minorities were 15.1 percent of the membership of building trades unions with hiring halls, compared to an all-industry proportion of 20.1 percent for referral unions generally. In the construction unions in 1969, blacks alone comprised 6.8 percent of the membership, compared to an average of 9.2 percent in all referral unions.[5] By 1971, black membership in the construction unions had increased to 8.2 percent, but was still lower than their employment level in all industry.[6]

Because of regional differences in minority labor force, unionization, length of seasonal occupations, distribution of government contracts, etc., national industrywide statistics tend to obscure regional variations among the building trades. In 1971, blacks had a high membership rate in the poorly-paid "mud and trowel" trades, and extremely low rates in the better-paid "mechanical" trades. The trowel trades had a combined black membership of 25.4 percent, but the skilled trades only 5.4 percent. The

mechanical trades had only 1.7 percent black membership in 1971, and in those occupations lumped together as "miscellaneous," which include such trades as asbestos workers, lathers, painters, and operating engineers, 3.6 percent. The so-called "critical" craft unions, such as the plumbers and pipefitters, sheet metal workers, iron workers, elevator constructors, and electrical workers, had black memberships of 1.2 percent, 1.0 percent, 2.0 percent, 1.0 percent, and 1.8 percent, respectively. By contrast, two-thirds of all blacks in the building trades were in the laborers union, with a black membership of 28.5 percent; the plasterers and cement masons, 18.3 percent; and the roofers, 16.8 percent (Table XXVI).

Civil rights spokesmen and black community leaders contend that such figures are clearly indicative of continuing racial discrimination on the part of unions and employers, maintained more subtly and less openly than before, but with the same effect. Union leaders generally acknowledge that there has been discrimination in the past, but claim that economic factors and skill requirements for union membership combine to produce such a record today. They contend that the availability of jobs for minorities depends on turnover and the expansion of the labor market, and that qualified minorities simply are not available.

The union definition of what constitutes "qualification," however, is apt to be unreliable, as the courts have ruled in a number of cases. They have viewed exclusive reliance on union-dominated qualifications and seemingly "neutral" union rules on referral systems discriminatory where they result in a low statistical minority representation. An illustrative case is that brought by EEOC against Plumbers Local 189 and Mechanical Contractors' Association of Central Ohio.[7] Blacks in Columbus who had been licensed by the city were refused journeyman status in the union and access to union jobs. The union had, however, admitted in the past that the city licensing requirements were as demanding as their own, and the federal court ordered city-licensed blacks admitted to the union as journeymen and put on a priority list for job assignment. Access to such priority lists was normally accorded to those who had considerable experience on union jobs which blacks, given the historical pattern of exclusion, could not aspire to under normal circumstances. The union experience rule was held discriminatory and the court took appropriate action.[8]

The federal response to the situation has been threefold. First,

suits have been brought against discriminating locals by the Justice Department; and EEOC has acted as *amicus curiae* in private suits with the objective of getting court-ordered affirmative action. The Justice Department, for example, moved early in 1972 against two New York construction unions and 10 employer groups, charging that Locals 14 and 15 of the Operating Engineers in New York City discriminated by refusing to admit blacks on the same basis as whites, and by using job referral standards which ensure priority to the union members, mostly white. Local 14 had "few" blacks, and Local 15 had 768 blacks out of 5,650 members. An injunction was sought against the discrimination, and an order requested that the unions carry out job training programs for minorities and inform them of new opportunities.[9]

Secondly, OFCC pressure has been brought to bear on unions through the contractors' needs to comply with the affirmative action requirements of the Executive Order, since continuing federal contracts are as necessary to the unions as to the contractors. Thirdly, efforts have been made to increase the supply of union-qualified minorities through expanded minority participation in apprenticeship programs.

In the beginning, the affirmative action requirements for building contractors under the Executive Order were not standardized, and each federal agency arranged its own contract compliance procedures. These sometimes included pre-award conferences and the requirement that manning tables, showing by craft the number of workers and minorities to be hired, be presented before a contract was approved. All too often, general affirmative action plans were presented but then were largely ignored in practice.

"Philadelphia Plan"

With the "Philadelphia Plan" (plus the experience in St. Louis and Cleveland), a new and potentially effective approach developed out of the manning table requirement.[10] First put into effect in November 1967, contractors on federally-financed projects were required to submit tables of how many minority workers were to be hired in six trades and how long they were to be on the job. Contracts had to be approved by OFCC. Contractors and unions protested, contracts were held up, and the Comptroller General objected that the plan violated contract bidding procedures, only to be overruled by the Attorney General in 1968.

A tighter plan was spelled out by the Department of Labor in orders in June and September 1969. Applying to all federally-assisted construction projects of $500,000 or more in metropolitan Philadelphia, the plan set certain prescribed goals for the employment of minority workers in the six "critical" crafts whose unions showed fewest minority members. The goals were set after hearings had shown that minorities made up only one percent of the iron workers, steamfitters, sheet metal workers, electricians, elevator construction workers, and plumbers and pipefitters unions in a city more than one-third black. All federal agencies were to include the same range of goals, which increased each year over a period of five years, in all bid specifications. The goals were resisted at first and labelled "illegal quotas," but they eventually received the specific blessing of the courts as a "valid executive action."[11]

The plan was criticized on several counts at the outset. It made no provision for training enough minority workers to meet the goals; the requirement that the contractors make "good faith" efforts to meet the goals was seen as a potential escape clause, and the limitation of the plan to projects of $500,000 upwards was faulted.[12]

The effectiveness of the plan is open to question. In 1971 and 1972 (Table XXVII), minority man-hour goals were not only met in most crafts, but exceeded by several. In the first half of 1972, minority workers put in 15.9 percent of man-hours worked on 145 projects, surpassing the average percentage goal of 14.8 percent, although the steamfitters and sheet metal workers union fell short of their goals.[13] A major criticism of the plan was that goals were set too low, and the exceeding of them would seem to support this. "Minority man-hours worked" was a criterion capable of manipulation, too, and there were widespread allegations of "tokenism" as employed minority craftsmen were moved from one site to another for compliance review purposes. As to the number of minorities actually recruited, the last official total given out in 1971 was 97, and in 1972 the number was unofficially reported as around 200, compared to an early Labor Department prediction of 3,400 by that year.[14]

Other criticisms center on enforcement. Three small contractors had been barred from bidding on federal contracts for noncompliance, which is remarkable considering the general reluctance of government to use the sanctions at its disposal. Given the smallness of the contractors debarred, and the fact that action

against no less than 150 contractors had been recommended, it was still a feeble gesture. The local Philadelphia OFCC enforcement staff is small and has substantial nonenforcement duties which reduce the capacity to monitor compliance.[15]

Though the plan deals with progress in millimeters rather than meters, it has been important as a precedent-setting example of the usefulness of government-inspired goals and timetables. Government-imposed plans have, however, largely given way to voluntary "hometown" plans, despite a promise by the Secretary of Labor that "Philadelphia-type" plans would be extended to other cities. St. Louis, Atlanta, Washington, and San Francisco had such plans imposed before the emphasis shifted to voluntarism, and Seattle had a court-imposed plan. Achievements varied. To take Washington as an example, at the end of the 1970-71 year almost half the Washington area contractors were said by OFCC officials to be failing to meet first-year standards.[16] In the fall of 1973, the Washington Plan was the focus of further criticism. The head of the city's Office of Human Rights was quoted as saying that some unions were slipping backwards, and that despite advances the plan was failing according to its own measurements for success. Management and union leaders insisted that the goals set by the plan were unrealistically high and impossible to meet.[17]

The reported findings of a study of the Washington Plan by Richard L. Rowan and Lester Rubin of the Wharton School at the University of Pennsylvania for the U.S. Manpower Administration reflect the weaknesses inherent in all the-imposed plans. They found that while the plan had created a demand for minority workers, the potential minority work force essentially remained untapped by federal contractors. The contractors asked the unions for their minority workers, and when few were forthcoming, most relied on proving "good faith" effort to avoid debarment. Few advertised for nonunion labor, fearing slowdowns and a future of noncooperation from unions, despite OFCC's promise to prosecute vigorously any union taking such action.

The researchers found that contractors often shifted the same minority workers from site to site to comply, while unions issued short-term work permits to minority workers to avoid admitting them to membership. This practice made skilled and able minority craftsmen unwilling to leave current jobs, however low-paying, for the prospect of a permit to work in trainee status or in an apprenticeship which offered no guarantee against being unemployed a few weeks later. As a result, the study found, the men

who applied for the new job openings were "predominantly undereducated, undertrained, unemployed, and lacking in continued work experience."[18]

Voluntary "Hometown" Plans

The essence of the "hometown" plans was that unions, contractors, and the minority community negotiate voluntary plans to increase minority participation. The Chicago and Pittsburgh plans, formulated after confrontations between members of the black communities and construction workers, are generally considered prototypes; 91 cities across the country were designated for hometown plans, with the Department of Labor promising to fund the training programs which were to be an integral part of acceptable plans, and threatening imposed plans if acceptable plans were not evolved.

The hometown plans have been so unsuccessful as to be labelled a fraud by some. In the moderated language of bureaucracy, even the Department of Labor admits that, "Up to now the hometown solutions program has not moved as rapidly as we would have liked. It is clear that much remains to be done."[19] How much of an understatement this is can be gleaned from a survey of the record.

First, to the prototypes. In Chicago, for the second time in three years, a voluntary plan between construction companies and building trades unions, with a goal of training 9,800 minorities for union membership over four years, collapsed because of poor performance.[20] Given the fate of the first plan, which collapsed amidst a financial scandal after $750,000 had been spent to train fewer than 100 blacks out of a projected 4,000, the signs are not encouraging. The Pittsburgh Plan, which set out to get 1,250 minority journeymen hired in union jobs over four years, was diluted to become an agreement for the training of blacks, with no assurance of union membership. Over $470,000 had been spent at the time of the plan's collapse in 1971. With 157 blacks trained, this worked out to $30,000 per placement.

The Department of Labor cites the Boston and Denver plans as the "most successful,"[21] in an area of dubious success. After 18 months, the Denver Plan saw only 135 trainees out of a projected goal of 300, and an expenditure of $336,642. The first Boston Plan was so unspecific as to be condemned by the local black community and designated "woefully inadequate" by the Massachusetts Advisory Committee of the U.S. Commission on Civil

Rights. After 10 months and the expenditure of nearly $600,000, only 70 trainees had been chosen out of a first-year target of 500. Half the 70 were already skilled workers who had been denied union permits, and only 30 had never had any previous experience in the industry. Under the threat of federally-imposed goals and timetables, a new plan was devised by the government and the unions, without the minority community's participation. It envisaged the acceptance of 351 trainees into 18 unions, with one-third of them going into the relatively lower-paid carpenters' union. Condemned by most informed observers outside the unions, the plan became the subject of a suit by the NAACP.

The pattern of failure is repeated in hometown plans almost without exception. By 1972, New Orleans had recruited 39 trainees out of a projected 200 at a cost of $193,454; in January 1972, Indianapolis had 117 trainees out of a projected 518, with $462,732 spent, and a survey showed 15 out of 17 signatories to the agreement in noncompliance.[22] In January 1973, New York City withdrew from the New York Plan, with 537 out of 800 minority workers trained and a charge by the U.S. Commission on Civil Rights that only 34 men actually had achieved union status.[23]

This dismal record may be partly the result of local union reluctance to cooperate, even to the extent of accepting their own trainees as equal union members, and partly the result of inadequate plans and ineffective supervision and enforcement by federal authorities. Though the hometown plans do not include federal sanctions for noncompliance, the federal performance was criticized.

The findings of the New York Advisory Committee to the U.S. Commission on Civil Rights, for example, in "Hometown Plans for the Construction Industry in New York State," October 1972, contain much that is applicable to typical hometown plans elsewhere.[24] The Committee called hometown plans "an abrogation of federal responsibility" since standards for compliance were based on negotiations between "such unequal partners" as unions, contractors, and the minority community, and usually resulted in weak plans. These should not be accepted by compliance agencies, it said, "as a substitute for their responsibility to enforce applicable nondiscrimination laws and policies." It criticized the lack of assistance given by OFCC to minority communities in developing such plans, and the subsequent failure to monitor them once established. It continued, "The fact that its New York office

was without staff from February 1970 to April 1971 is evidence that OFCC has failed to play a meaningful role in monitoring hometown plans in New York State."

The report stressed two factors as vital to improvement in publicly-assisted contracts: specific adequate numerical goals by craft, contained in the bid specifications for the contracts; and the existence of a local "Outreach" program and machinery for on-the-job training. More generally, the report publicized the lack of local government attempts to develop affirmative action policies, or machinery to ensure minority participation in locally-assisted construction. The Committee called for a single, consistent statewide plan applicable to all construction in the state without the necessity for negotiations between the industry and the minority community.

In short, the hometown plans have been widely criticized for having small minority enrollments, for lacking enforcement machinery, and for being dominated by the union and management components of their administrative committees, to the disadvantage of participating representatives of the minority communities.

The major innovation in the hometown plans, however, was the attempt to get agreement to train minorities for the skilled construction crafts, a particularly important aspect of affirmative action when the unions so often plead a lack of "qualifiable" applicants. The plans themselves have shown that there are many experienced and competent black craftsmen for whom the chief barrier to equal employment is the lack of a union card. The hurdles to be surmounted in getting a union card include, as the courts have recognized, unfair entrance requirements and tests which, it is alleged, are designed to exclude blacks.

A classic example of a widespread experience is provided by the case of *Dobbins v. Local 212, International Brotherhood of Electrical Workers, AFL-CIO*. Dobbins, a fully-experienced and certified black journeyman electrician with a Bachelor of Science degree, had been denied membership in Local 212 since 1949 and thus was not able to work on the local private and public construction projects for which the union maintained an exclusive hiring hall. The federal court in a landmark ruling ordered that Dobbins be admitted to union membership immediately and placed on referral lists with seniority dating to his last application for membership.[25]

Apprenticeship Programs

In an effort to step up the supply of union-recognized "qualified" applicants for union membership, the government has been turning its attention to increasing minority participation in apprenticeship programs. Affirmative action has a special role here since minority youths—without a tradition of participation, well aware of the discriminatory attitudes in the unions, and rarely being counseled at school to try apprenticeship courses—have tended not to apply for them. Not only were they skeptical of their chances of being accepted in such courses, but they found the usual lack of information as to where, when, and how long such training takes, and how to apply for it.

The Labor Department has set up Apprenticeship Information Centers to open channels of communication to the minority communities on the subject, and special attempts have been made to encourage recruitment. Growing out of a seminal suit involving the Sheet Metal Workers Local 28 (which had never, in 76 years, had a black as an apprentice or journeyman) and the Workers Defense League, the "Labor Education Advancement Program" and the apprenticeship "Outreach" program were born. Operated in a number of cities by such bodies as the Workers Defense League or the Urban League, with the blessing of the unions, "Outreach" is largely financed by the Department of Labor.[26]

Much publicity is given to the programs and their achievement, and taken at face value they show a record of success. In 1960, minorities were 2.5 percent of registered apprentices; by 1969, 8.6 percent; and by 1972, 15.1 percent. A glance at the trade breakdown of apprentices by construction-related trade for 1970 (Table XXVIII), however, confirms that apprenticeship programs are contributing to a continuance of the old patterns in the construction industry. Little new ground is being broken. A disproportionately high percentage of minorities are apprenticed to the traditionally "black trades" such as cement masons (39.4 percent), roofers (36.4 percent), plasterers (29.2 percent), painters (24 percent), lathers (18.3 percent), and bricklayers (16.4 percent). The skilled crafts show their traditional paucity of minorities, with asbestos workers having only three percent minority apprentices, plumbers and pipefitters 7.1 percent, and electrical workers also 7.1 percent. Indeed, it has been estimated that even if some of the "critical" craft unions started to accept minority apprentices in proportion to their population ratios,

parity with whites would not be achieved before the middle of the next century.

The apprenticeship programs are, in any case, largely irrelevant to the main point, minority participation in the craft unions. There is a high dropout rate among apprentices, at least 30 percent, though the Workers Defense League claims a lower rate of 19 percent for its programs. But completing an apprenticeship is no guarantee that a minority worker will gain union status. Moreover, it is estimated that at least three-fourths of the white journeymen in craft unions do not go through apprenticeship training. A system of nepotism frequently operates to recruit whites, who are generally trained on the job by friends or relatives at wages far above apprenticeship rates.

The case of *Vogler* v. *Asbestos Workers Union Local 53* in New Orleans provides an interesting example of how apprenticeship programs can be designed as vehicles of discrimination. The federal court ruled that the local was discriminatory and ordered that minorities be recruited. The union, in response, planned to establish an apprenticeship training program and an "Outreach" program. The NAACP objected in court, since the union local had never needed an apprenticeship program before, and its all-white members were trained on the job in a matter of days. To subject black recruits to a four-year apprenticeship was gross discrimination. The judge agreed, suspending the local's constitution and membership standards so that blacks might be admitted immediately.[27]

Affirmative action in the construction industry, applied through the Philadelphia and hometown plans and through federally-funded training and apprenticeship programs, is progressing at a leisurely rate. Blame has been put on union locals, operating in an overtly or covertly discriminatory ways on inadequate federal enforcement efforts stemming from insufficient staffing and funding (which has its roots in lack of commitment at the political level); and also on the black community for failing to recruit qualified workers vigorously or to press minority rights tenaciously enough.

Suggestions for action have ranged from the obvious to the radical.[28] To suggest the maintenance of full employment is to labor the obvious. Stringent, consistent enforcement of Order 4 would clearly do much to stimulate change in the industry. There is a need, as the New York Advisory Committee saw, for areawide

plans at state and city levels to be coordinated and for local government in particular to institute affirmative action procedures on its construction projects. Critics of existing procedures advocate strict enforcement of the principle that contractors must show they have an integrated work force before they are considered eligible to bid for government contracts. The resulting dearth of eligible bidders in an area, it is claimed, would be a powerful spur to both union and contractor compliance.

Other radical measures suggested include bypassing the hiring hall arrangements altogether and relying on public or private agencies, general recruiting methods or, where possible, on all-minority hiring halls. The assumption so widespread among unions that their members must all be employed before any new workers, especially minority workers, can be admitted to membership is an unjustified and discriminatory assumption of privilege. Special consideration might also be given to minority construction firms where they exist.

A return to government-imposed goals and timetables for minority hiring, as in the Philadelphia Plan, is widely recognized as essential, with goals set realistically high rather than low. "Voluntary" plans and goals clearly have not worked, as Mayor Lindsay recognized with his plea for strict federally-imposed manning tables after the collapse of the New York Plan.

A more efficient formula for computing goals could be designed from EEOC reports which analyze the labor supply in an area according to job category, thus avoiding the necessity for time-consuming local hearings. Where, because of discriminatory qualification requirements, unions cannot supply minority labor in sufficient numbers to meet goals, unions could be bypassed and nonunion minority persons with certificates from city agencies or the armed forces used. Where an employer can attest that a minority employee does work of journeyman quality, that attestation should become an official qualification entitling a worker to employment opportunities under the federal program.

Constant on-site reviews, with monthly reports by contractors on the racial makeup of their crews by project and by craft and wage scales, are advocated to prevent tokenism. Such compliance reports could well be required to be submitted as evidence of "good faith" by contractors when bidding for further federal contracts, their records to be taken into account when contracts are awarded. Certainly the suggestion that the annual reports required by EEOC on the racial makeup of firms with 100 or more

employees, or 50 employees in firms holding government contracts of $50,000 and over, be taken into account when contracts are awarded would be practicable, and contractors might also be persuaded to keep an "affirmative action" file of eligible minority workers to call upon when they had need of them.

There is an urgent need for a change in attitude of many unions. Skilled and experienced minorities need to be admitted immediately as union journeymen. Given the recalcitrance of many locals in continuing discriminatory procedures, it is hoped that the international unions, committed as they are to affirmative action, will bring increased pressure to bear. In extreme cases, trusteeship powers could be invoked, or direct control of discriminatory hiring halls assumed.

If locals do not cease discrimination voluntarily, they may find themselves, as many already have, subject to court orders. In August 1972, it was announced that two electrical workers union locals in New Jersey, charged with discriminatory hiring practices, had signed pledges to take affirmative action to admit specified numbers of minorities as union members, the first time a minority hiring agreement had been signed for an area rather than for a project.[29] As the message of judicial opinion and court-ordered remedial action is increasingly understood, more action of this kind may result.

Procedures for admission as apprentices or journeymen need to be reviewed and if the international unions do not act, the courts might well continue to do so. Union noncooperation over recruiting minority apprentices has led to suggestions that apprenticeship programs be taken out of private union control and vested in the government. Abolition of the present apprenticeship system as obsolete and irrelevant also has been proposed, with new training procedures substituted to benefit both minorities and whites. Such traditional restrictive practices as low journeymen-apprenticeship ratios, designed to keep the number of skilled craftsmen small and wages high, need to be looked into since they indirectly contribute to the low rate of minority participation. At the same time, minorities need to be apprised of new opportunities gradually opening for them in the construction crafts, and to be convinced of the good faith of unions and employers.

Affirmative action in industry, undertaken under the aegis of the Executive Order, has clearly played a part in getting more minorities hired and promoted, but its results to date have been minimal. Employers have not been vigorous in eliminating

discriminatory systems, partly because until the 'seventies they had not been convinced of the need to do so. OFCC has been reluctant to force the issue through the use of contract debarment. While the need to comply with federal regulations has exerted some pressure on the industry and the unions, OFCC's efforts appear to be more a marginal invitation than a thoroughgoing force for change. In fact, it seems now that the slower and more cumbersome means of attacking systematic discrimination through the courts under Title VII are in the end proving more effective. The example of precedent-making judgments from the bench, ordering far-reaching remedial measures and large compensatory sums to the victims of discrimination, may achieve more in eliminating such discrimination among employers and unions than action under the Executive Order.

TABLE XXVI. MINORITIES AS PERCENT OF TOTAL REFERRAL MEMBERSHIP IN BUILDING TRADES UNIONS

1971

International union	All minorities	Blacks	Spanish Americans	Orientals	American Indians
Mechanical trades	5.7	1.7	3.0	0.2	0.8
Boilermakers	10.0	4.3	4.2	.4	1.1
Electrical Workers (IBEW)	5.6	1.8	3.0	.3	.5
Elevator Constructors	2.0	1.0	.7	[1]	.3
Iron Workers	8.3	2.0	3.6	.4	2.2
Plumbers and Pipefitters	3.8	1.2	2.0	.1	.6
Sheet Metal Workers	6.7	1.0	5.1	.2	.4
Laborers, roofers, and allied trades	38.6	25.4	12.1	.2	.9
Bricklayers	10.5	7.4	2.7	[1]	.4
Laborers	42.9	28.5	13.3	.2	.9
Plasterers and Cement Masons	33.5	18.3	14.1	.2	.9
Roofers	25.0	16.8	6.2	.1	1.9
Miscellaneous construction trades	8.9	3.6	4.2	.4	.7
Asbestos Workers	3.6	1.4	1.6	[1]	.6
Carpenters	9.4	3.6	5.0	.2	.5
Lathers	9.7	3.7	5.4	[1]	.5
Marble Polishers	13.8	3.6	9.7	[1]	.5
Operating Engineers	7.3	3.7	1.7	.9	1.1
Painters and Decorators	12.6	3.7	8.0	.3	.7

[1] Less than 0.5 percent.

Note: Data are preliminary. For comparable data for 1969, see *Monthly Labor Review*, May 1972, p. 21, table 5. However, since 1969 and 1971 data are drawn from slightly different universes of union locals, a change from year-to-year may reflect changes in locals reporting, rather than an absolute change in minority membership.

Source: U.S. Equal Employment Opportunity Commission, Local Union Report EEO-3, 1971. Published in Herbert Hammerman, "Minorities in Construction Referral Unions—Revisited," *Monthly Labor Review*, May 1973, Table 2, p. 44.

TABLE XXVII. PHILADELPHIA PLAN: GOALS AND TIMETABLES FOR UTILIZATION OF MINORITIES IN CONSTRUCTION WORK, 1970-1973

	Goals and Timetables				Actual Goals Achieved	
	1970	1971	1972	1973	Dec. 31, 1971	July 31, 1972
Ironworkers	5-9%	11-15	16-20	22-26	19.8%	19.0%
Plumbers & Pipefitters	5-8	10-14	15-19	20-24	14.3	15.3
Steamfitters	5-8	11-15	15-19	20-24	14.2	15.0
Sheet metal	4-8	9-13	14-18	19-23	10.4	13.5
Electrical	4-8	9-15	14-18	19-25	9.2	18.2
Elevator Constructors	4-8	9-13	14-18	19-23	9.8	15.0

Source: *News*, U.S. Department of Labor, Office of Information, Mar. 31, 1972 (USDL 72-202) and Sept. 21, 1972 (USDL 72-642).

TABLE XXVIII. TOTAL AND MINORITY GROUP APPRENTICES IN THE UNITED STATES, BY CONSTRUCTION-RELATED TRADE OR CRAFT, 1970

Trade or Craft*	No. of Programs	Total Apprentices	Negro	Spanish-Surnamed	Oriental	American-Indian	% Minority
Asbestos Worker	17	563	12	4	1	0	3.0
Boilermaker	51	1,294	49	45	3	10	8.3
Bricklayer	145	3,259	411	112	3	10	16.4
Carpenter	323	17,698	1,197	807	14	257	12.9
Cement Mason	55	1,138	319	102	19	8	39.4
Electrical Worker	639	27,456	1,048	632	72	191	7.1
Iron Worker	143	6,759	349	242	10	126	10.8
Lather	16	436	54	26	0	0	18.3
Operating Engineer	53	4,006	296	119	8	51	11.8
Painter	90	2,697	349	264	7	27	24.0
Plasterer	25	219	48	10	2	4	29.2
Plumber-Pipefitter	536	19,630	810	455	33	95	7.1
Roofer	28	1,118	320	53	0	34	36.4
Sheet-Metal Worker	213	7,533	374	275	11	113	10.3
Miscellaneous	67	1,109	34	38	3	4	7.6

*Separate statistics are shown for each trade or craft for which at least three programs were reported.

Source: Apprenticeship Information Report EEO-2, 1970, U.S. Equal Employment Opportunity Commission.

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    See also Alfred W. Blumrosen, "Removing Roadblocks to Minority Hiring," *Monthly Labor Review*, April 1972. Washington, D.C.: U.S. Department of Labor, Bureau of Labor Statistics.
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VI. Higher Education: Employment and Admissions

SINCE THE CONNECTION between employment and level of education is a close one, better and more education is a powerful potential for cutting black disadvantage. Here, however, we are primarily concerned with higher education, the master key to upward mobility. Despite indications that conditions may be changing (partly the result of *Griggs* v. *Duke Power Co.*, which underscored the need for *job-related* qualifications), certification is still basic to advancement. A college diploma has become a virtual union card for entry into middle- and upper-level positions in the occupational hierarchy. A college graduate can expect to earn nearly $200,000 more in his lifetime than a high school graduate, and research has shown that even when adjustments have been made for ability differences, the fact of higher education alone explains three-fourths of the differences in earnings.[1]

At the same time, the latest Census Bureau figures indicate that families with incomes of over $15,000 are four times as likely to send children to college as families with incomes of under $3,000. But in 1971, only about 12 percent of black families earned more than $15,000, compared to 26 percent of white families.[2] As Jerome Karabel put it, "higher education is inextricably linked to the transmission of inequality from generation to generation. Wealthy students are more likely to attend college than are equally able students from low-income background, and a college degree in turn confers economic benefits which extend above and beyond

measured ability differences. The entire process helps ensure that the already affluent receive an education which enables them to retain their privilege and position."[3] Blacks and other minorities, disproportionately numbered among the poor and disadvantaged, are handicapped in the race for certification and the prospect of good jobs.

Academic Employment

Affirmative action programs in the employment field are designed to combat systematic discrimination of the sort that seems to be built into higher education as well. Such programs applied to institutions of higher education are a potential means of breaking the vicious circle. A government committed to ensuring that it does not subsidize discrimination among its contractors cannot rightfully exempt contractors simply because their business happens to be education.

The role of the Department of Health, Education, and Welfare (HEW) as the enforcer of the Executive Order in the education world is currently aimed at faculty and nonfaculty employment in the universities which are government contractors; that is, approximately 2,500 out of some 3,000 institutions of higher education which received nearly $1.5 billion in government contract money, mainly for research. Vigorous enforcement of the affirmative action requirements among university contractors would have a substantial effect in combating institutional racism and discrimination throughout the whole system of higher education, and not only at faculty level.

It can be argued that admission to undergraduate and graduate programs is analogous to admission to the apprenticeship programs of industry, and that by limiting access to them universities and colleges control the number of women and minorities in their labor force. Universities thus can be said to have an obligation to take affirmative action to ensure that their potential "labor pool" includes sufficient numbers of women and minorities. Pressed on this issue by the women's groups who have been active in campaigning for justice in higher education, HEW has indicated that it may take action under the Executive Order to assert jurisdiction where a relationship can be demonstrated between admission to graduate school and employment in institutions of higher education in a teaching or research capacity.[4] If it does so, the potential changes could be enormous.

HEW came late to the realization of its obligations under the

Executive Order. Its consciousness was raised largely by the women's groups which stimulated more than 400 individual and class complaints on race and sex discrimination in higher education institutions across the country. With the start of active enforcement and compliance reviews, such as that at the City University of New York beginning in January 1969, HEW raised a storm of controversy in academic circles and encountered considerable resistance from university administrations.

Universities' doubts about affirmative action requirements as applied to their own hiring procedures centered on a number of issues. John H. Bunzel, president of California State University at San Jose and a prominent spokesman for those who argue the dangers of affirmative action in higher education, pleaded that universities are a special case, different from other contractors and deserving of special treatment. "Each institution in a pluralistic society has its special characteristics and those of a university should be recognized and defended by the government. A university is not an industrial plant. It is neither better nor worse, but it is different."[5]

Goals and timetables of affirmative action programs were widely labelled as "quotas" or, when the difference was acknowledged, further stigmatized as likely to lead to quotas in practice. With them, it was argued, would come the threat of reverse bias, the undermining of standards of academic excellence, and the destruction of the universities themselves. President Bunzel expressed the fears in some academic circles thus, "We must not compromise the right of the university to make its own academic decisions regarding hiring, rank, tenure and promotion, based on professional judgments about the intellectual capacity, scholarship and teaching ability." Federal involvement in a university's hiring procedures was seen as a possible threat to academic freedom, and the need of race and sex identification for analysis of hiring patterns raised strong objections, especially among Jewish groups who had good reason to be suspicious.

While J. Stanley Pottinger, then director of the Office for Civil Rights at HEW, has said, "These issues are serious ones and the concerns expressed by responsible members of the academic community cannot be dismissed out of hand," many of the arguments advanced by the academic community against affirmative action were felt to be rationalizations of a deep-seated reluctance to change. But Pottinger has also pointed out, "The spectre of lost autonomy and diminished quality among faculties

is one which obscures the real objective of the law against discrimination—that is, to ensure equal opportunity to all persons regardless of their race, sex, religion, color or national origin."[6]

Pottinger defined goals as "projected levels of achievement resulting from an analysis by the contractor of his deficiencies and what can reasonably be done to remedy them, given the availability of qualified minorities and women and the expected turnover in his work force. When used correctly, goals are an indicator of probable compliance and achievement, not a rigid or exclusive measure of performance as would be the case if quotas were required."[7] "Quotas," he further stated, "imply a numerical level of employment that must be met. If quotas were required, they would be rigid requirements, and their effect would be to compel employment decisions to fulfill them, regardless of the compromising effect fulfillment might have on legitimate qualifications and standards, regardless of the good faith effort made to fulfill them, and regardless of the fact that quotas might be set by arbitrary standards unrelated to the availability of capable applicants, and the potential of the contractor to recruit them."[8]

The continued cry of "quotas," despite repeated rehearsals of the real and substantial differences between quotas and goals and timetables, suggests a certain disingenuousness on the part of some academics and administrators. "Indeed . . . a cynical observer might be inclined to conclude that at least some of the academic community, priding itself as it does on careful research and intellectual ability to comprehend important distinctions . . . simply doesn't want to understand."[9]

To the idea that goals would become quotas in practice, Pottinger retorted, "To make the point that goals cannot operate in the real world without becoming quotas, critics must characterize university officials generally as ignorant, as spiteful, as unconcerned about merit, or as weaklings ready to collapse in the face of supposed whispered directions 'from upstairs' to hire unqualified women and minorities because that is the easiest way to ensure a flow of Federal dollars. It is an unconscionable argument and an unfair condemnation of the academics' intelligence and integrity."[10]

Repeatedly, HEW spokemen have said that "reverse discrimination" with consequent lowering of university faculty standards was in no way required by affirmative action plans and was, in fact, illegal. At the same time, however, it was held that some college administrators were using the federal regulations as an

excuse when turning down applicants for jobs, claiming that federally-required "quotas" were to blame rather than saying simply that the candidate had been rejected.[11]

The quota debate apart, the reluctance of universities to analyze and adjust salaries (sometimes severely discriminatory to women and minorities) or to attend to such issues as grievance procedures, anti-nepotism regulations, training for nonfaculty personnel, safeguards against clustering or segregation of minorities, or discriminatory leave policies, raised doubts as to their publicly-avowed commitment to affirmative action when it was required of themselves rather than of others.[12] The universities' claim to special status, characterized as "the underlying image of the academic institution as an ivory tower consecrated to intellectual excellence and suddenly defiled by... crude political demands,"[13] was vigorously refuted by some commentators. They called the claim, since liberal academics had supported affirmative action as applied to business and industry, "an egregious example of 'limousine liberalism'."[14] HEW met the claim with a flat statement that it was a simple matter of law that all institutions which benefit from tax-financed contracts had to make efforts to ensure equal opportunity.

On the question of race identification, it was pointed out that the alleged "color-blind" attitudes of college administrators and department chairmen ignored the fact that such recruiting methods could act as a screen inhibiting the growth of culturally-inclusive faculties. Both race and sex identification was insisted upon as basic to affirmative action programs, just as were goals and timetables for hiring as measurements of compliance, since "the road to exclusive white male faculties is paved with good intentions." The argument that a change in hiring methods might undermine standards of excellence was met with examples of the fallibility of the old methods and the effect of the "buddy system" which had produced what was virtually a "white male quota system." Critics charged that President Bunzel's asserted right to make hiring decisions based on judgments about intellectual capacity, scholarship, and teaching capacity had in fact been compromised by discriminatory practices existing for over 200 years.[15]

Pointing out that federal requirements affecting universities with contracts were not new—they have long imposed intricate procedural and auditing requirements affecting university administration—HEW argued that the best way to keep the federal

presence to a minimum was to make all possible positive efforts for compliance. Pottinger reassured the nervous that nothing in affirmative action impinged on the university's right to academic freedom, its right to "teach, research or publish whatever it wishes in whatever form it desires—whether in the classroom, the laboratory, the campus, the press or elsewhere."

While fighting a war of words with the academic community, HEW was also taking practical steps toward enforcement. Guidelines were prepared for use in institutions of higher education to explain and ensure compliance with the Executive Order. Issued in final form in October 1972, they stated bluntly, "We expect that all the affected colleges and universities will henceforth be in compliance with the Order." They apply to all private and public institutions of higher education with 50 or more employees, and contracts of more than $50,000. They require the colleges to examine all employment policies to ensure that they hide no discriminatory practices, and to maintain written affirmative action plans. The guidelines carefully define goals and timetables and make it clear that quotas for women and minorities are "not received or permitted," and that dilution of standards of excellence is not contemplated. Particular attention is paid to recruiting methods seen as crucial to the success of affirmative action.

Meanwhile, in the face of university reluctance to cooperate in enforcement of the Executive Order, HEW deferred or postponed $23 million in federal funds over two years, pending compliance. It penalized temporarily 14 universities which were slow to comply, including Cornell, Harvard, Duke, Vanderbilt, and Columbia universities, together with the University of Michigan and the City University of New York.[16]

The cases of Columbia University and the City University of New York, which were reluctant to furnish names, sex, position, salary, promotion history of each of the universities' employees, faculty and nonfaculty, or to set satisfactory goals and timetables for the hiring of minorities and women, received considerable publicity and, especially in the case of Columbia, took considerable time to settle. The universities, faced with the suspension of federal funds, expressed dismay at the amount of detailed analyses required by the government and at the immense burden of clerical work. Reassurance had to be given to university officials that the confidentiality of personnel files would be scrupulously respected.

The analyses, when undertaken, illuminated dramatically the point of government requirements. The targets finally agreed upon

suggest the degree of discrimination previously existing. The affirmative action plan at Columbia set the goal of adding 900 women and minority group members to its academic and nonacademic staffs by 1977. The university would try to recruit at least 333 blacks, 139 Spanish-surnamed persons, 21 Orientals, and 325 women for nonacademic posts. The Schools of Architecture, Law, Business, and Social Work would try to hire or promote 11 members of minority groups, and hire overall 81 to 101 additional women faculty, of whom 11 to 14 would be given tenure.[17]

Brown University, which narrowly avoided penalization for noncompliance, eventually came up with an analysis which admitted, "The University does not on balance appear to utilize minorities in proportion to their availability." It set up a three-year schedule of hiring as a remedy. Among nonfaculty workers, for example, it set targets of five new minority officials or managers, 14 new professionals, and eight new technical workers.[18] A study by independent consultants at the University of Michigan showed that minorities were clustered in the lower-level jobs: 20 percent of the people in the lowest salary level were minority group members, and 11 percent of those in minority groups were below the minimum salary grades at the university.[19]

This pattern is a general one across the country among faculty as well as nonfaculty staffs. An American Council on Education study based on a random sampling of 303 institutions, including 57 junior colleges, 168 four-year colleges, and 78 universities, found that blacks totaled only 2.2 percent of faculty in all institutions of higher education.[20] Minorities as a whole made up 2.4 percent of faculty in universities, 3.6 percent in four-year colleges, and 1.5 percent in two-year colleges (Table XXIX). Minority women were better represented on campus staffs than minority men. A study of 699 matched black and white faculty by David M. Rafky found 28 percent of black faculty holding ranks lower than assistant professor compared to eight percent of white faculty (who were, however, more likely than the blacks to hold a doctorate).[21]

These studies do not indicate how this situation is being affected by affirmative action plans, since most of them involve three- or five-year deadlines and none has fallen due. Potential black and female academics are in demand, and blacks especially can command good starting salaries, though these have been overstated. However, David Rafky's study suggests interesting but

unconfirmed trends emerging in the hiring of black faculty. While in the academic year 1968-69, blacks already in the academic profession were being keenly sought out, with 3.1 job offers to their white counterparts' 1.5, only six percent of young blacks seeking to enter the profession were *invited* to accept their current position, compared to 41 percent of comparable whites. These statistics may have changed in succeeding years, but they probably reflect what Rafky calls the irrationality within the academic marketplace; namely, blacks' limited access to information and the inadequate "feeder" process whereby professors and department heads recommend graduate students to schools with faculty vacancies. This is precisely the kind of situation which affirmative action programs work to change.

Graduate Admissions

Universities seeking to hire black faculty to meet their affirmative action plans complain of the lack of qualified candidates, that is, those with a doctorate. Their complaint has substance, though difficulties can be exaggerated. The Ford Foundation pointed out that while "exact numbers are difficult to obtain, recent surveys indicate that American graduate and professional school enrollments include about four percent blacks, one percent Mexican-Americans and Puerto Ricans, and 0.6 percent American Indians. Yet these three groups together comprise more than 15 percent of the total U.S. population."[22]

HEW found in 1970 that only 4.1 percent of all graduate and professional school students were black.[23] The Department's latest data indicate that there was one white graduate student for every nine white undergraduate students, but only one minority graduate student for every 13 minority undergraduates and one black graduate student for every 16 black undergraduates.[24] Preston Valien, then acting associate commissioner in the U.S. Office of Education, described the situation as "a national scandal and tragedy."[25] Even so, the figures represent recent improvements.

In the 1940s, Herbert Aptheker points out, it was still possible for a book to be published with the title, "Negro Holders of the Ph.D.," which lists all such together with biographical sketches and a brief description of their dissertations.[26] Between 1964 and 1968, according to a survey by James W. Bryant, only 0.8 percent of all doctorates were awarded to blacks. While the survey projects a 20 percent rise over this number of Ph.D.s awarded to blacks by

1973, that will still mean that blacks constitute less than two percent of all American Ph.D.s.[27]

Moreover, black professional and post-baccalaureate students tend to be concentrated in certain fields and in certain schools. For example, over half the doctorates (54.9 percent) received by blacks are in education and social sciences.[28] Blacks are notably underrepresented in mathematics and subjects dependent on them. HEW's latest data show that in 1970 blacks were only 4.2 percent of all medical students, 3.6 percent of all dental students, and 3.9 percent of all law students (Table XXX). A Carnegie Commission study and research by E. P. Caruthers both confirm that until recently over 90 percent of black physicians received their training from Howard or Meharry Medical Colleges. Even today, these schools, representing only two percent of the Nation's medical schools, still enroll one-fourth of all black medical students.[29] Not only is there a need for greater numbers of minorities to enroll in graduate and professional schools, but there is a need for them to be recruited by a greater variety of schools and disciplines.

Given this state of affairs, the salvation of universities subject to federal requirements would seem to be to look to *qualifiable* students, and by affirmative action to take more steps to help them get qualified.* Several studies indicate that there would be no lack of response to affirmative recruitment from black students, who tend to have higher aspirations than their white counterparts for graduate and professional study. Alan E. Bayer found that in 1971 half (49 percent) of blacks but only one-third (33 percent) of whites planned to work for a Master's or Doctor's degree.[30] Such aspirations among blacks are usually frustrated, mostly by financial problems which probably are the greatest factor working to keep blacks out of graduate school. Blacks are less likely to be able to finance their own way through graduate

*The final disposition of *DeFunis* v. *Odegaard* (___ Wn. 2d ___, ___ P. 2d ___ (No. 42198)) will have an important bearing on future minority student recruiting and admissions policies. On March 8, 1973, the Supreme Court of the State of Washington, in reversing a lower court ruling, permitted the University of Washington School of Law to utilize a plan to bring about a reasonable representation of minority group students. The Washington Supreme Court found, specifically, that there was no constitutional bar *per se* under the Fourteenth Amendment in giving preference to minority students. The court pointed out that all that was barred by the Fourteenth Amendment was the use of race for the purpose of making an invidious distinction. This decision is now under appeal to the U.S. Supreme Court.

school and loans are more difficult for them to secure. Also, blacks tend to come from a background distrustful of lenders and may already be heavily in debt for their undergraduate education.

The poor undergraduate education which is the lot of many blacks is another handicap. A third of black students go to traditional Negro colleges where they are likely to receive little preparation for graduate school. David Riesman and Christopher Jencks judge, for example, that only five black colleges are comparable in quality to the better white schools.[31] Black colleges, poor and often dealing with impoverished, rural students ill-prepared for undergraduate studies, are themselves frequently locked in a cycle of disadvantage.

Moreover, qualifications for graduate school, such as graduate record exams, are likely to be white-oriented. They have been shown to be most inaccurate in predicting the future success of black students in graduate school, but have had an effect in screening out potential black graduate students. Once in school, minority graduate students often feel the burden of a double responsibility, that of performing adequately in the primarily white academic arena while still relating to their own community.

Attempts are being made to meet some of these problems. Special summer college programs, important since they do not impose an extra year of post-baccalaureate remedial study preparatory to doctoral studies, and post-graduate remedial work are being arranged to orient black students to graduate school, to develop their confidence in their ability to handle their studies, and to prepare them to compete equally for scholarships. Counselors, often black faculty, are appointed to deal with personal and academic difficulties and to direct students to sources of financial aid where possible.

However, the suspicion lingers that there is more talk than action about minority graduate recruitment and remedial programs. An Educational Testing Service survey revealed that of 254 graduate schools answering a questionnaire, only 89 answered that they had some *definable* procedures for recruiting minority students; even some of these answered with reservations, while most of the rest had arrangements which differed very little from the usual conventional recruiting methods.[32]

Another ETS survey, though it outlines an impressive array of special programs, on analysis only shows how far most graduate programs still have to go to ensure reasonable representation of minorities. Law schools had the best record with the percentage of

black enrollment ranging from two percent to 16 percent, and most averaging between six percent and 10 percent. Most medical and graduate schools of arts and sciences indicated enrollment of under five percent, with a number unable to compute any percentage at all.[33] On the financial front more help is plainly needed, since it seems that many of the national programs aimed at minority group students are aiding, in practice, those who would qualify for institutional fellowships anyway. Those most in need are still slipping through the net.

Undergraduate Enrollment

If there is more talk than action to aid minorities at graduate school level, how much more pervasive is rhetoric at the undergraduate level. Here affirmative action in the guise of open admissions and its accompanying programs has led to a popular assumption that "a massive wave of black students is having a malevolent and destructive effect on higher education." This assumption is not justified; as John Egerton concludes, "The wave is more like a ripple, more salutory than sinister."[34]

Statistics on increasing minority enrollment at undergraduate levels vary enormously, depending on whether they include part-time and working students, and the method of collection. HEW's Office of Civil Rights produced figures for the fall of 1970 which showed that black students remained substantially underrepresented at undergraduate levels despite increasing enrollments (Table XXXI). HEW found 8.3 percent black representation among first-year students, 6.8 percent in the second year, 5.4 percent in the third, and 5.2 percent in the fourth. Blacks made up 6.6 percent of all full-time enrollments. However, a Census Bureau report showed blacks comprised 13 percent of the college-age population.[35] The HEW survey showed that 44 percent of all full-time black undergraduates were enrolled in "predominantly minority institutions." Black representation on the campuses of the major "integrated" schools is clearly still minimal.

Fred E. Crossland calculated that minority underrepresentation in American higher education could perhaps be eliminated in four or five years if the number of 1970 black freshmen were increased by 89 percent, the number of Puerto Ricans by 88 percent, and the number of American Indians by 350 percent. In addition, to maintain parity minority enrollment would have to constitute 15 percent of the total for a period of years, the academic attrition rate would have to be no higher than for other students, and

minorities would have to constitute 15 percent of the total enrollment in graduate and professional schools.[36] Such are the sobering projections as opposed to the popular impression of a "black tide" sweeping the universities.

An analysis of the distribution of minority students among various kinds of institutions of higher education is revealing. Roughly one-third of black students in 1970 were enrolled in black four-year colleges (as compared to one-half in 1964), one-third were in two-year public colleges, and one-third in predominantly white four-year colleges. Fred Crossland points out that urban community colleges attracted one-half of all new black freshmen in 1970, and judges that this probably was the most important reason for the increase in minority enrollment in the 1960s. Whatever the advantages of two-year community colleges, and they are many, they do not provide full higher education and their enrollment figures for blacks serve to put an unduly favorable gloss on the picture of black participation in higher education generally.

An American Council on Education survey pinpointed the proportion of blacks enrolled in the various kinds of institutions, as follows: public institutions enrolled a higher percentage of black freshmen than did private institutions; blacks constituted a higher percentage of the enrollment of public two-year colleges (8.6 percent) than of public four-year colleges (6.8 percent), and 5.2 percent of the enrollment of public universities. Private two-year and four-year colleges included 3.6 percent and 4.4 percent blacks, respectively.[37]

Such a distribution pattern is capable of various interpretations. It does suggest some of the factors influencing aspiring minority freshmen enroute to higher education: the barriers posed by the selectivity and high cost of private institutions; the easier geographic accessibility of the two-year colleges, which ask a less daunting financial commitment and have less stringent qualifications for admission; and the attraction of the more familiar cultural environment of the black colleges. Such factors emphasize the disadvantaged status of so many black students compared to their white counterparts.

Barriers to aspiring black undergraduate students are extensive. Conventional tests of academic ability show minority students as scoring badly and in practice present a formidable barrier to their college entrance, even though mitigating factors can be cited such as poor preparation in high school and cultural bias in test

material.[38] Black students are more likely to have been directed into nonacademic vocational and technical courses in the first place. Those from disadvantaged backgrounds have psychological and environmental barriers to overcome when college is considered. They tend to live in areas where the quality of schools and conventional cultural resources are below the national average, and are usually effectively segregated in their schools from the majority students with whom they later compete for college entrance.

Perhaps the greatest barrier is financial, especially as college costs continue to rise. Warren W. Willingham reported from his survey of 129 public and private senior colleges in the Midwest that 13 percent of all freshmen require financial support, but the figure for minority students is 41 percent. He found that 14 percent of all freshman aid went to the 4.5 percent of the students who are members of some minority group.[39] Fred Crossland corroborates, saying that eight or 10 percent, with a high proportion of minorities among them, of an entry class at a private institution might be receiving 35 to 50 percent of freshman financial aid.

Once in college, minority students are less likely to complete the course than whites. The Census Bureau reported that in the age group 25-29, 10 percent of blacks and other minorities completed college compared to 17.3 percent of whites.[40] Again, finance is a major consideration in failure to complete school—the minority student cannot borrow easily because of parents' low income, has to work long hours for menial wages to finance himself, and thus increases his chances of low grades and dropping out.

These, then, are some of the problems colleges and universities face in taking affirmative action to recruit minority students. The two main areas of concern have been, first, to get the students into a college and, once there, to try to reduce the influences at work which might cause them to drop out. In practice this means changing recruiting and admission methods and offering remedial courses and scholarships.

Efforts have been made to reach out into the black communities and high schools to try to recruit qualifiable and qualified blacks. The "Ivy League" and "Seven Sisters" schools have made well-publicized efforts to attract minority students, with some success (Table XXXII). Most, and perhaps disproportionate, attention has been focused on the new access blacks have gained to

the prestigious institutions which have both the funds and the confidence to take "high-risk" students, but other colleges have not been entirely idle. Warren W. Willingham's midwestern college survey, for example, revealed an increase in minority freshmen enrollment of 25 percent in 1969 over 1968, and another 30 percent in 1970 over 1969. Yet the proportion of blacks on campus remained low; they comprised 4.5 percent and 5.6 percent of total freshmen enrollment in 1969 and 1970, respectively.

According to Fred Crossland, there are some three or four dozen public and private institutions in positions of leadership, such as the "Ivy League" and "Seven Sisters" schools, which have committed themselves to substantial increases in minority enrollment, up to 10 percent or more of the freshman class. But most institutions simply have no long-term policy on minority enrollment, despite lip service to the idea and considerable publicity. Moreover, it is difficult to assess how effective recruiting programs have been overall. The likelihood is that they have reshuffled rather than increased total minority enrollment, with black students who would otherwise have gone elsewhere recruited by the prestigious white institutions.

Publicity and widespread controversy have attended attempts to restructure test barriers for admission of qualifiable minority students. Recruiting programs demonstrated the need to reach not just the qualified students but the qualifiable as well if real progress was to ensue. Though the college dropout rate for blacks is higher than that for whites nationally, and information about the "high risk" students is difficult to come by, it seems their attrition rate generally is lower than their academic credentials and entrance test scores might have predicted. Alexander Astin's study for the American Council on Education indicates that black persistence rates in college are at least as high as, and probably higher than, persistence rates for whites of comparable ability.[41]

Preliminary evaluation of some specific open admissions programs shows substantial numbers of "high risk" students, manifestly insufficiently prepared for college but with high motivation, have succeeded with adequate remedial help despite the odds against them. At the City University of New York, the open admissions program started in the fall of 1970 and offered some form of admission to any New York City high school graduate regardless of poor academic record, test scores, or type of high school program completed. In 1962, only two percent of City University freshmen were black or Puerto Rican; in 1970, the

figure was 33 percent.[42] In 1971, two out of three freshmen were white, 20.3 percent were black, and 8.8 percent Puerto Rican. The dropout rate was found to be slightly higher than before, but still below national averages. However, it appears that it was the children of white, blue-collar workers who were benefiting most from the program.[43] The trend toward increasing white, lower middle-class enrollment is a national one, and an interesting reflection of the pervasive benefits of less rigid admission standards.

Once in college, less help is offered to disadvantaged minorities than is generally recognized. Robert Staples points out, "With no provision for counseling or tutoring, these [black disadvantaged] students are thrust into an environment for which they are not academically and psychologically prepared. Much of this is due to earlier educational experiences and failures. Remedial courses, if needed, should be provided by the university."[44] According to Peter A. Janssen, up to now blacks have been dropped on the campus with little guidance or encouragement, and administrators are only now beginning to realize the amount of help—financial, academic, and social—which is needed.[45] A survey by August Eberle of the Department of Higher Education at Indiana University, cited in the Janssen article, concluded, "Much is being said about helping blacks, little is being done." Only one-fourth of the institutions surveyed, for example, said they had special financial aid for black students. Only half offered academic help.

The trend is general. The need is likely to accelerate because of soaring costs. The added expense of minority recruitment programs, the cost of special personal and academic counseling, remedial programs, and the heavy demand for financial aid are more than some colleges can sustain. Fred Crossland concludes, "Minority programs at some of the leading colleges and universities are in jeopardy, and recent growth in minority enrollment at private institutions may ease off." The cutback in federal educational opportunity grants to colleges for needy students (less than 35 percent of the sum requested by the Office of Education was appropriated in 1972) tends to accelerate such a trend.

It is ironic that the academic community, which has for so long been the champion of liberal causes and the advocate of such civil rights as equal employment opportunity, should be so slow to root out its own discriminatory employment and admissions practices. Institutions of higher education have been pressured by affirmative action programs into an era of change and self-examination

from two directions, by HEW's firm posture in enforcing the Executive Order on government contractors, and by minority pressures at the undergraduate level.

From the data available at this stage, it is difficult to draw definite conclusions about the effectiveness of affirmative action programs and the degree of change they are stimulating, but certain general observations can be made. First, the publicity attending efforts to increase minority enrollment at undergraduate and graduate levels has left the impression that the thrust is greater than it is. There has indeed been a demonstrable improvement in minority undergraduate enrollment, and to a lesser extent graduate enrollment, over the last decade and especially in the last four years. Still, minority enrollment figures are low and far from proportionate to the total minority population. Open admissions policies and remedial, academic, and financial aid for disadvantaged students have been publicized so vigorously that a popular impression has been created of hosts of inadequately-prepared minority students breaching established standards. In fact, relatively little help is being given to these students, whose needs are enormous. Forgotten is the fact that the group currently benefiting most from open admissions seems to be the white, lower middle-class children of blue-collar workers.

At the faculty level, a recent study by the American Council on Education of 42,000 teaching faculty members showed that American colleges and universities have only a slightly higher percentage of women and blacks on their faculties now than they did four years ago. Despite the pressure of federal affirmative action regulations, the study indicates that the percentage of black faculty members has increased from 2.2 in 1968-69 to 2.9 in 1972-73. Women faculty members increased from 19.1 to 20.0 percent over the same period.[46]

Such data give evidence of inherent if unconscious discriminatory hiring and training practices. Future trends depend on the government's enforcement stance. There is a strong case for HEW taking the view that it has a responsibility to insist on affirmative action as a condition of contract compliance. Sustained pressure and frequent reviews by competent compliance officials are needed to counteract institutional lethargy and conservatism. In fiscal year 1972, only 99 field investigations were conducted, mostly of institutions located in states having sparse minority populations—much too small a proportion of the more than 2,600 institutions receiving federal assistance.[47]

To make affirmative action plans viable at the faculty level, added financial resources need to be devoted to aiding minority students in graduate and undergraduate schools. State and private funds enlisted in this cause, plus a major change in federal funding policies for higher education, could provide resources of sufficient magnitude to produce notable progress. But this, in the end, is a political decision. Vitally important is the publicizing of the true facts of minority participation in higher education at all levels, not just sporadic and sparse attempts at affirmative action. This would help to ameliorate the impression in the public mind that much (too much) is being done preferentially to help minorities in higher education.

TABLE XXIX. PERCENTAGE DISTRIBUTION OF COLLEGE AND UNIVERSITY FACULTY BY RACE AND SEX, 1969

Race	All Institutions			Two-Year Colleges			Four-Year Colleges			Universities		
	Men	Women	Total	Men	Women	Total	Men	Women	Total	Men	Women	Total
White	96.6	94.7	96.3	99.1	96.7	98.4	94.2	91.3	93.5	97.7	97.7	97.7
Black	1.8	3.9	2.2	0.5	1.4	0.7	4.2	7.4	5.0	0.4	1.0	0.5
Oriental	1.3	1.1	1.3	0.2	1.4	0.5	1.2	0.9	1.2	1.6	1.0	1.6
Other	0.3	0.3	0.3	0.2	0.5	0.3	0.4	0.3	0.4	0.3	0.2	0.3

Notes: From a sampling of 303 institutions, including 57 junior colleges, 168 four-year colleges, and 78 universities; a total of 60,028 faculty respondents. (Percentages do not add up to 100 because of "rounding.")

Source: Alan E. Bayer, *College and University Faculty: A Statistical Description*. Washington, D.C.: American Council on Education, 1970, from Table 2, p. 12.

TABLE XXX. MINORITIES IN POST-BACCALAUREATE TRAINING, 1970

	Total		Total White		Total Minority		Black		Spanish Surname		Oriental		American Indian	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total: Graduate and Professional Students ...	543,150	100	503,281	92.7	39,869	7.3	22,302	4.1	6,297	1.1	9,662	1.8	1,608	0.3
Medical Students ...	43,958	100	40,914	93.1	3,044	6.9	1,845	4.2	363	0.8	789	1.8	47	0.1
Dental Students ...	16,737	100	15,696	93.8	1,041	6.2	597	3.6	127	0.7	296	1.8	21	0.1
Law Students ...	64,871	100	61,107	94.2	3,764	5.8	2,552	3.9	702	1.1	317	0.5	193	0.3

Source: "Higher Education Data," U.S. Department of Health, Education, and Welfare, Office of Education, October 1971. Published in *Research Currents*, American Association for Higher Education, June 1, 1972, p. 2.

TABLE XXXI. MINORITY GROUP ENROLLMENTS, FALL 1970

	Total Number of Students	Negro	Spanish Surname	Oriental	American Indian
UNDERGRADUATE					
First Year	2,078,376	171,969	53,714	21,022	12,519
Second Year	1,354,751	91,837	27,846	14,687	6,803
Third Year	896,565	48,493	12,928	10,046	4,161
Fourth Year	857,715	44,537	10,382	8,808	4,178
Totals	5,187,407	356,836	104,870	54,563	27,661
GRADUATE & PROFESSIONAL					
Totals	543,150	22,302	6,297	9,662	1,608
COMBINED ENROLLMENTS					
Fall 1970	5,730,557	379,138	111,167	64,225	29,269
(Pct.)	(100.0%)	(6.6%)	(1.9%)	(1.1%)	(0.5%)
Fall 1968	5,354,653	303,397	95,200	55,025	31,458
(Pct.)	(100.0%)	(5.7%)	(1.8%)	(1.0%)	(0.6%)

Source: *The Chronicle of Higher Education*, Vol. VI, No. 2, Oct. 4, 1971, p. 1.

TABLE XXXII. BLACK FRESHMEN ACCEPTED AND ENROLLED

	1968-1969		1969-1970	
	Accepted	Enrolled	Accepted	Enrolled
Brown	56	22	165	76
Columbia	58	29	115	51
Cornell	115	60	157	67
Dartmouth	58	28	130	90
Harvard	55	51	109	95
Univ. of Pennsylvania	125	62	251	150
Princeton	76	44	126	68
Yale	70	45	150	100
Barnard	33	20	81	40
Bryn Mawr	22	10	31	15
Mount Holyoke	46	18	61	31
Radcliffe	17	14	51	37
Smith	34	19	86	46
Vassar	24	24	43	22
Wellesley	19	9	104	57

Source: James Cass, "Can the University Survive the Black Challenge?" *Saturday Review of Literature*, June 21, 1969.

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Conclusion

SINCE IT WAS FIRST officially introduced in 1961, affirmative action in employment has become an accepted *principle* of national public policy. In *practice*, however, it is assailed by criticism from two quite divergent points of view. One holds that affirmative action has been perverted into a system of discrimination-in-reverse that jeopardizes the rights of the majority. The other holds that affirmative action programs have been pursued so halfheartedly and ineffectively that they have only scratched the surface of inequality in federal and federally-regulated employment.

The foregoing analysis makes it disquietingly clear that more than a decade of affirmative action policy has yielded woefully inadequate results. Blacks and other minorities are still drastically underemployed in every category except the most poorly-paid and undesirable jobs, and at the highest-paid and most prestigious levels they are rare indeed. It follows from this that, if equity is ever to be achieved, affirmative action efforts must be pursued with greatly increased vigor, commitment, and competence. It also follows that the fears of a widespread system of quotas favoring minorities are either wholly unjustified or extremely premature.

Yet the underlying issue should be faced: Given the need to undo the results of past discrimination, how far are we justified in departing from traditional standards of recruitment, hiring, and promotion? Are we ethically bound to follow "color-blind" procedures, or is a *color-conscious* approach practically and morally justifiable?

The case of the latter-day advocates of color-blindness is

essentially a meritocratic one: Solely individual ability and achievement, they argue, not group identity, must determine who receives what rewards in the society. They decry discrimination on grounds of race, creed, class, sex, religion, or ethnic origin. They recognize that past discriminations have resulted in existing inequities and imbalances that should be rectified. They maintain, however, that past injustices must not be remedied at the expense of individuals who happen to belong to favored (or less unfavored) groups. Hence it is acceptable, even obligatory, to provide extra education and training for one who has been denied such opportunities in the past because of group identity. But it is improper and unjust to give preference at the point of selection to such an individual over a better qualified person from a more advantaged background.

One's view of this argument depends heavily on what one takes to be the proper definition of "affirmative action." The Labor Department's Revised Order No. 4 directs, "An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. . . . Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate." In terms of recruitment, this means that an employer must actively and systematically seek to attract minority group applicants. Such an effort is essential, not in order to favor one group over others, but in order to change a long-established pattern of discrimination to an equalitarian one. This pattern of discrimination can be changed only by a conscious effort to reverse the methods and their inequitable results until such time as the historical imbalance is redressed.

Seeking applicants is one thing; choosing among them is quite another. To select a nonwhite applicant over a better qualified white, it is argued, is as odious a form of discrimination as the reverse. But an insistence on an inflexible meritocracy overlooks some important realities. For one thing, it assumes that there are precise methods of measuring and comparing the qualifications of applicants. As every experienced employer or admissions officer knows, this is not the case. In practice, the employer who is free to do so takes into account not only "objective" test results, but many intangible factors as well—his perception of the applicant's character, personality, motivation, family circumstances, ability to work harmoniously with others, and so on. In general, these factors have worked to the disadvantage of nonwhites, since the

white selectors have tended to prefer the applicants who most resembled themselves in appearance, dress, speech, family, and community background. We have also come to realize that employment tests are not the impartial instruments they once were thought to be. Most of them still put an unwarranted emphasis on verbal facility at the expense of other aptitudes and skills that undereducated nonwhites are more likely to have.

Under these circumstances, it is simplistic to argue that the applicants can be put into some indisputable rank order of qualification. In most cases, there is room for much legitimate flexibility of judgment in choosing among a group of applicants, all of whom may justifiably be regarded as "qualified." If an employer or admissions officer uses that flexibility to help remedy racial imbalance resulting from past exclusion, he is not necessarily guilty of discrimination-in-reverse. On the contrary, it can be strongly argued that he is fulfilling an ethical obligation to reexamine and modify selection criteria that are racist in effect, if not in intent.

Many persons who will go along with informal departures from standard selection criteria balk at the setting of numerical goals, which they regard as nothing more or less than quotas. Can one in fact distinguish between a goal to be striven for and a quota that is an absolute requirement? The Federal Government, which requires "goals and timetables" in several of its equal opportunity programs, insists that there is such a distinction and that it must be observed. The guidelines of the Office of Federal Contract Compliance declare that goals "may not be rigid and inflexible quotas that must be met." The line is a fine one and, in more than one instance, has been overstepped. Yet the fact that a policy is sometimes abused does not discredit the policy itself.

The central question is not whether the goal-setting requirement is sometimes misapplied, but whether the requirement itself is necessary and defensible. Even this cursory review of the history of equal opportunity programs demonstrates that it is. Experience with nondiscrimination laws, state and federal, has invariably shown that little or nothing happens so long as the employer or institution is not held accountable for measurable results. The federal contract compliance program, for example, yielded more protestations of good faith than black employees until goals and timetables were introduced. Similarly, school desegregation in the South was mainly an exercise in tokenism until target figures were established for black pupils and faculty members. The old plaint,

"We've tried but we just can't find any who are qualified," tends to prevail unless some specific standard of achievement is applied.

It follows from this that an effective equal opportunity program must include some method of measuring results. If the object is to achieve greater utilization of minority manpower and talent, how is progress to be judged without feedback on the effects of the effort? It is this logic that has led the Federal Government (and in a few cases state and local governments) to require racial censuses of public employees, of college faculty and administrative personnel, and of employees of government contractors.

The collection of racial and ethnic data rankles administrators and defenders of the meritocratic viewpoint. Many university officials and teachers see it as an intrusion on sacrosanct processes of professional selection and advancement, as well as on personnel records that are regarded as inviolate in academe. Many employers see it as a burdensome (and often embarrassing) imposition on management. Government officials themselves tend to be reluctant to the point of recalcitrance about inflicting the chore of data-gathering on their subordinates, grantees, and contractors.

The reasons for these negative attitudes toward data collection are several. One is the conviction that such censuses are inextricably related to the violation of merit standards and the imposition of quotas, overt or covert. Another is understandable resentment of time-consuming red tape that diverts energy and attention from the primary mission of the enterprise. Yet another is the surviving fear of civil rights adherents, white and black, that racial data will, in the end, inevitably be used to perpetuate rather than end discrimination.

Each of these objections is justified to some degree. Yet, when the alternative consequences are considered, it is difficult to sustain the argument against the collection and analysis of racial data, at least at this stage of history. No business can be run successfully without the self-evaluation made possible by the balance sheet; no university can examine its educative processes if it has no idea what becomes of its graduates. By the same token, if we are serious about finding and using the methods that will create equality in practice, we must have the data collection means to measure the relative effectiveness or ineffectiveness of our efforts.

The debate over color-blindness versus color-consciousness is not new. It was heard in the United States Supreme Court nearly eighty years ago when the issue was the right of a color-conscious majority to segregate black citizens. The Court upheld segregation.

But Justice John Marshall Harlan, in his famous dissenting opinion in *Plessy* v. *Ferguson*, wrote: "In the view of the Constitution, in the eye of the law, there is in this country no superior, dominant ruling class of citizens. There is no caste system here. Our Constitution is color-blind, and neither knows nor tolerates classes among its citizens."

Given the facts of the current situation, as reviewed in the preceding pages, one can only guess at what Justice Harlan would say today. But there is at least a possibility that it would be something like this: "Our Constitution is color-blind But until our society translates that ideal into everyday practice, the decision-maker who is color-blind is blind to injustice."