

# **A National Report Card on Discrimination in America: The Role of Testing**

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## Chapter 3

# Adding Testing to the Nation's Portfolio of Information on Employment Discrimination

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### Introduction

Beneath the surface of many current controversies about employment discrimination and its remedies lurk differences of perceptions about empirical reality: Do racial and ethnic minorities today enjoy the same job opportunities as nonminorities? How many employers deliberately treat women differently from men? Is discrimination litigation typically frivolous or well-founded?

The United States generates its answers to such questions from a portfolio of information sources. Personal experience, anecdotes, and journalism exemplify intuitive components of this portfolio; opinion polls, laboratory experiments, and statistical studies represent approaches based on more formal research. Drawing from these sources, the nation enjoys information that is reasonably accurate on some aspects of employment discrimination but seriously inaccurate on others.

Employment testing is a new source of information developed within the past decade and implemented to date only on a modest scale. This chapter

argues that testing uniquely bridges the intuitive and research components of the information portfolio. *In a world in which stories are more powerful than studies, testing generates studies that are also stories.* That characteristic gives testing unique potential to increase the effective information on which the nation bases its employment discrimination policies. Testing should be far more widely used to measure and monitor the nation's progress on this important issue.

The chapter develops this conclusion as follows. The first section summarizes the state of employment discrimination in the United States today, as portrayed by research. The next section then describes the major audiences for such information and the accuracy of their perceptions. The third section describes employment testing and its potential to close information gaps identified in the previous section. In the fourth through seventh sections, a four-part program to fulfill this potential is outlined. The final section concludes with a proposal for an annual national "report card" combining testing and non-testing data.

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## What Research Reveals about Employment Discrimination<sup>1</sup>

### Patterns of Unequal Employment Outcomes

One of the most well-established characteristics of the American labor market is that employment outcomes are far from equally distributed on demographic dimensions such as race, gender, age, and disability status. To illustrate this point, table 1 presents 10 indicators of labor market outcomes, ranging from unemployment rates to measures of earnings and job quality. For each indicator, the table provides, in bold type, the ratio between the indicator's value for white males and five other race/ethnicity and gender categories.

If employment outcomes in the United States were not related to workers' race/ethnicity and gender, then the bold figures would be approximately 1.0 throughout table 1. However, that is clearly not the case. For example, the unemployment rate for black males is 2.22 times that for white males; median annual earnings for Hispanic females are 56 percent of those of white males; and white females with only a high school diploma are 2.32 times as likely as corresponding white males to be employed in a service occupation.

Such differences are so well documented that their existence is not controversial. However, controversies abound concerning the explanation of these differences. Roughly, the differing positions in this debate can be divided into *employer-focused* explanations and *worker-focused* explanations.

In employer-focused explanations, the predominant cause of group differences such as those in table 1 is discrimination, conscious or unconscious, by the individuals and institutions that are the gatekeepers of employment opportunities. These gatekeepers include employers, as well as educational and training institutions, unions, job placement systems, employees' coworkers, and even the news and entertainment media that shape attitudes and perceptions. This interpretation emphasizes instances of *disparate treatment*, in which employment decisionmakers perceive, welcome, or reward persons of equal



**Table 1** *Selected Employment Outcomes by Race/Ethnicity and Gender, U.S. Civilian Labor Force, 1994*

Employment Outcome	White Males	White Females	Black Males	Black Females	Hispanic Males	Hispanic Females
Labor Force Participation %	75.9 <b>1.00*</b>	58.9 <b>.78</b>	69.1 <b>.91</b>	58.7 <b>.77</b>	79.2 <b>1.04</b>	52.9 <b>.70</b>
Unemployment Rate %	5.4 <b>1.00</b>	5.2 <b>.96</b>	12.0 <b>2.22</b>	11.0 <b>2.04</b>	9.4 <b>1.74</b>	10.7 <b>1.98</b>
% College Grads in Professional or Managerial Occupations	66.6 <b>1.00</b>	70.5 <b>1.06</b>	56.4 <b>.85</b>	68.3 <b>1.03</b>	— <sup>b</sup> —	— —
% with Only High School Diploma in a Service Occupation	8.3 <b>1.00</b>	19.2 <b>2.32</b>	19.1 <b>2.30</b>	32.9 <b>3.96</b>	— —	— —
% Represented by a Union	17.2 <b>1.00</b>	12.1 <b>.70</b>	23.3 <b>1.35</b>	18.1 <b>1.05</b>	15.5 <b>.90</b>	12.1 <b>.70</b>
% Using a Computer on the Job <sup>c</sup>	48.7 <b>1.00</b>	— —	36.2 <b>.75</b>	— —	29.3 <b>.60</b>	— —
% Allowed Flexibility in Work Schedule <sup>c</sup>	15.5 <b>1.00</b>	— —	12.1 <b>.78</b>	— —	10.6 <b>.68</b>	— —
% Covered by a Pension Plan	41.8 <b>1.00</b>	37.5 <b>.90</b>	35.6 <b>.85</b>	37.5 <b>.90</b>	24.4 <b>.58</b>	25.4 <b>.61</b>
% of Hourly Paid at or below Federal Minimum Wage <sup>c</sup>	6.1 <b>1.00</b>	— —	6.5 <b>1.07</b>	— —	8.6 <b>1.41</b>	— —
Median Annual Earnings	\$28,444 <b>1.00</b>	\$21,216 <b>.75</b>	\$20,800 <b>.73</b>	\$17,992 <b>.63</b>	\$17,836 <b>.63</b>	\$15,860 <b>.56</b>

\*Figures in bold are the ratio of the reported figure to the corresponding figure for white males.

<sup>b</sup>Dashes indicate data not available.

<sup>c</sup>Data not available by gender.

qualifications but different backgrounds differently. It also encompasses instances of *disparate impact*, in which systems and procedures that treat persons from different groups equally nevertheless result in consistently more favorable outcomes for some groups than others. To the extent that the requirement or process generating these differences is not justified by business necessity, then American law categorizes these outcomes as discriminatory as well.

The alternative worker-focused explanation typically acknowledges that instances of discrimination do occur. However, this interpretation describes such occurrences as rare and finds the principal cause of group differences in employment outcomes in the behavior of workers themselves.

In particular, this explanation focuses on differences among demographic groups in *employment qualifications*. For instance, to explain the differences in average earnings reported in the final row of table 1, this interpretation focuses on differences in educational achievement. In terms of formal educational credentials, for example, the proportion of black males who are high school graduates is only 87 percent of the corresponding proportion for white males, and the proportion who are college graduates is only 49 percent that for white males. This line of reasoning is often extended to less formally documented



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aspects of employment readiness as well. For example, recent research emphasizes that, in evaluating applicants for entry-level employment, employers particularly value such "soft skills" as dependability, honesty, the ability to communicate orally and in writing, and the ability to relate to coworkers and supervisors (Holzer 1996; Murnane and Levy 1996; SCANS 1992). Proponents of worker-focused explanations often attribute the poor employment prospects of such groups as minority inner-city youth to lack of work-readiness on these dimensions.

Worker-focused explanations also emphasize differences among groups in *occupational interests*. When workers voluntarily select jobs and careers to match personal preferences, then group differences in occupational distributions might arise without employers' discriminatory behavior. For example, according to the 1990 Census, women constitute 94.3 percent of registered nurses, but only 20.7 percent of physicians. This pattern might reflect discrimination against women by medical schools, employers, and health care consumers. But proponents of worker-focused explanations typically argue that it reflects women's preferences as well. Specifically, they posit that women on average have a greater desire than men for jobs requiring less educational investment and imposing less work pressure, so that they can more easily pursue child-rearing (Becker 1965; Schultz and Peterson 1992; Jacobsen 1994).

### **Six Research-Based Generalizations**

Obviously, employer-focused and worker-focused explanations both raise important points, and researchers continue to disagree concerning the quantitative balance between the two. Nevertheless, substantial consensus has been achieved among researchers on six important generalizations.

The first generalization concerns the *prevalence of discrimination* in the contemporary American labor market. In numerous studies covering a variety of racial/ethnic, gender, age, and other demographic groups, when differences in qualifications and interests are accounted for, differences in employment outcomes reduce substantially. However, in virtually no cases do they fall to zero, and in most cases not close to zero. Thus, for example, when salaries of women are statistically compared with those of men with similar education and work experience, men's earnings typically average approximately 10 percent more than those of equally qualified women (Egan and Bendick 1994). After differences in education and experience are accounted for, racial/ethnic minorities remain underrepresented in higher-level occupations (Gill 1989). And when employees acquire additional experience, wages for younger workers increase but wages for older workers decline (Wanner and McDonald 1983). These persistent patterns make clear that, in the 1990s, discrimination continues to operate in the American labor market to a very important extent.

A second generalization concerns the *form of this continuing discrimination*. Before major federal antidiscrimination laws were enacted starting in the 1960s, it was not uncommon to encounter state and local "Jim Crow" statutes explicitly precluding racial and ethnic minorities from certain types of employment, newspaper classified advertising that divided "Help Wanted—Male" from "Help Wanted—Female," mandatory retirement that separated older



workers from jobs they wished to retain, and workplaces in which many positions were held exclusively by members of a single race or gender group.

Despite the combined pressure of antidiscrimination laws and changing societal norms, such occurrences have by no means disappeared.<sup>2</sup> However, their prevalence has been dramatically reduced. Although it remains common to see men and women performing different jobs and receiving different pay, it is much less likely today to observe them receiving different pay for performing the same job. While it remains common to observe occupations that include women or minorities in very small numbers ("tokens"), it is much less likely today to see women and minorities entirely absent (the "inexorable zero"). And while it remains common for white males to be more likely than women or minorities to receive a job offer after being interviewed, it is much less likely for women or minorities to be refused the opportunity to be interviewed.

Reductions in blatant discrimination leave less harsh and dramatic forms of discrimination to predominate in the labor market today. These forms frequently feature, for example, multiple differences in treatment, each one of which is not crucial but whose cumulative effect places individuals on substantially different career paths (Word, Zanna, and Cooper 1974). They often derive from social relationships that limit access to information about job opportunities and applicants (Granovetter 1974; Bendick 1989b). They may reflect issues of "social comfort" and personal style that affect whose comments get listened to, who is perceived as competent, and who gets credit for accomplishments (Tannen 1994). And, as discussed below, they are inevitably rooted in assumptions about individuals based on stereotypes about that person's demographic group. Such mechanisms may be less obvious than physically aggressive sexual harassment, racial name-calling, or posters announcing, "No Irish need apply." However, that softer guise does not diminish their seriousness. These arrangements can powerfully distort who gets hired; what they are paid; who gets preferred assignments, training, and promotions; and who gets disciplined or dismissed (Braddock and McPartland 1987; Zwerling and Silver 1992).

The third generalization concerns the role of *stereotypes* in discriminatory behavior. Research in cognitive social psychology documents three patterns of human thought relevant to interpersonal behavior in the workplace: First, persons' prior assumptions about group characteristics strongly influence how they perceive and judge individuals they encounter. Second, persons whose perceptions and judgments are influenced by such assumptions are often unaware of that influence and perceive themselves as unbiased. Third, the stereotypes widely held in American society are highly unfavorable toward groups traditionally discriminated against. For example, images of African Americans and Hispanics commonly held both by the general public and by employers portray them, relative to nonminorities, as less intelligent, honest, energetic, stable, and articulate and more prone to violence (Smith 1990; Neckerman and Kirschenman 1991; Culp and Dunson 1986).

The fourth generalization concerns the *information content* of employment qualifications. As noted earlier in this paper, demographic groups often differ in their possession of formal qualifications. This pattern is evident, for example, in educational attainment (years of education completed, fields of study selected,



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grades awarded); work experience (length of work experience, extent of opportunities for on-the-job learning); and formal credentials (completion of organized apprenticeships, acquisition of certifications such as C.P.A.). It also often typically arises in terms of scores on paper-and-pencil tests and ratings on job interviews (Hartigan and Wigdor 1989).

But what precisely do such qualifications signify? In many cases, the relationship to employees' on-the-job performance is marginal at best. Specifically,

- Qualifications required or preferred by employers may be only weakly justified in terms of business necessity. For example, many insurance companies prefer that trainees for insurance sales have college degrees. However, they typically do not specify what enhancement in an employee's ability to sell insurance that degree is supposed to convey and have not analyzed whether persons with degrees are more successful in the sales role.
- The distinction between persons rated qualified and those not qualified may be marginal. For example, in the warehouse of a manufacturing plant in Mississippi, the company promoted workers to forklift driver from among warehouse laborers who were "qualified," meaning that they had forklift experience. Although many warehouse laborers were African Americans, the "qualified" group was all white. But that qualification could be acquired with only a single day's experience, usually gained at the company itself by being assigned to fill in for an absent regular driver.
- Research in industrial psychology concludes that most screening and rating processes routinely applied in hiring and promotional decisions have limited power to identify more promising employees. For example, personal interviews of job candidates are part of virtually every job selection process, but performance on interviews predicts only about 10 percent of the difference among hirees in subsequent job performance (Reilly and Chao 1982).

In such circumstances, differences in measured qualifications often represent less than they appear to represent.

The fifth generalization raises similar questions about *occupational interests*. As with qualifications, career aspirations often differ substantially among demographic groups. For example, a higher proportion of African Americans seek employment in the public sector than would be expected based on their representation in the overall labor force, and in opinion polls, more women than men state that they place priority on finding employment compatible with family responsibilities (Albelda 1986; Reskin 1984).

However, research indicates that such patterns of aspirations are heavily influenced by what workers perceive as realistic and often change with outreach and experience. In other words, workers' reluctance to aspire to certain occupations may not reflect strongly held personal preferences but rather the absence of demographically similar role models in that occupation, lack of exposure to the field, or reluctance by employers to make even minor, low-cost adaptations of jobs to accommodate persons with different personal preferences (Hagniere and Steinberg 1989).

The sixth and final generalization concerns the role of *well-designed personnel practices* in reducing the prevalence of discrimination. In general, discrimination is more likely in workplaces where human resource management



decisions are made informally, subjectively, "behind closed doors," and without documentation, explicit and validated criteria, advertising of opportunities, or training for supervisors and other decisionmakers. Of course, formal rules and procedures—for example, periodic performance reviews, public postings of job vacancies, and written job descriptions—cannot by themselves guarantee the absence of bias. However, they tend to constrain extreme cases of irrationality, promote transparency of understanding between employers and employees, broaden the pool of candidates considered when opportunities arise, and help employment decisionmakers to be consistent (Cascio 1998).

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## Do Perceptions Match Research Findings?

With regard to employment discrimination and its remedies, important decisions are made in four principal venues. The venue of *public opinion* affects the behavior of individuals in daily interactions in the workplace, as well as their behavior as voters. The venue of *public policy* controls employment discrimination laws, the allocation of resources for their enforcement, and the range of legally permissible or legally mandated antidiscrimination initiatives. The venue of *personnel management* governs employers' policies and decisions concerning workers' recruitment, hiring, compensation, training, promotion, discipline, and dismissal. Finally, the venue of *litigation* adjudicates employment disputes, with rulings sometimes affecting only the parties in a specific case and sometimes affecting society more broadly.

In each of these venues, perceptions of empirical reality influence the decisions reached. These perceptions, in turn, are based on research only to the extent that research findings are effectively disseminated to the relevant audiences and that those audiences find the information credible and worthy of attention.

How effectively does empirical information concerning employment discrimination, such as was summarized in the first section, reach and influence decisionmakers in the four venues? The answer is mixed, with reasonably accurate information prevailing on some topics and misleading beliefs prevailing on others.

On three important subjects, general consensus has been achieved in American society that is consistent with the findings of research. These subjects are the extent of *past discrimination* in the American workplace, the provisions of *civil rights laws* regarding blatantly discriminatory behavior, and the incompatibility of blatantly discriminatory behavior with *current societal norms*.

This consensus is revealed in public opinion polls, which report that the majority of the American public agrees with the concept of equal opportunity in the workplace (Louis Harris 1989; Kluegel and Smith 1986). It is further demonstrated by the reluctance of either political party to question seriously the basic equal opportunity provisions of federal, state, and local antidiscrimination laws. The majority of individuals in the American workplace behave as if they understand the risks of social, managerial, or legal sanctions now associated with blatantly discriminatory behavior. Although these common understandings have not led to universal abolition of discriminatory acts, they tend to limit



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them to isolated circumstances and impose self-conscious furtiveness on persons engaging in them.

Supporting this consensus, empirical information on these three points has been communicated repeatedly, extensively, and in multiple ways over several decades. With respect to race, for example, communication began in the 1960s with media coverage of dramatic incidents in the civil rights struggle, and it continues to be reinforced through symbols such as the Martin Luther King holiday and Black History Month. With respect to other groups, public service announcements urge us to hire the handicapped, workplace training warns us not to engage in sexual harassment, and equal opportunity posters are as familiar on lunchroom bulletin boards as their counterparts promoting workplace safety.

Perhaps the clearest demonstration of the consensus is provided when these norms are visibly violated. Over the past several years, employment discrimination has made front page news on several occasions. Denny's restaurants were caught engaging in discriminatory treatment of African-American customers. Physical and verbal sexual harassment surfaced at a Mitsubishi auto assembly plant. Senior executives of Texaco were tape-recorded uttering racial epithets. All these cases triggered widespread adverse publicity, threats of consumer boycotts, multimillion-dollar legal settlements, and statements of outrage from public officials. An information-based consensus had ruled these acts outside the acceptable mainstream.

No similar consensus has been achieved on three other aspects of employment discrimination.

The first is the *current prevalence* of discrimination. Public opinion polls report that, among persons who are not members of groups traditionally facing discrimination, the predominant opinion is that discrimination in employment, as in other aspects of American life, is largely a problem of the past. For example, in one nationwide sample, only 37 percent of whites thought that an African-American applicant who is as qualified as a white would be less likely to win a job that both want, and only 41 percent felt that the chances of an African American to win a supervisory or managerial position were more limited than those of counterpart whites (Louis Harris 1989). This perception contrasts sharply with the research summarized in the first section.<sup>3</sup>

The second topic on which American society has not achieved an accurate, information-based consensus is the significance of *less blatant forms of discrimination*. This topic is related to the first, for when survey respondents characterize discrimination as a problem of the past, many appear to be referring to blatant, conscious discriminatory behavior. Research, particularly that summarized under the second and third generalizations in the first section, makes clear that discriminatory acts need not be direct, dramatic, or deliberate to create major differences in employment opportunities. This insight has not been effectively communicated to many of America's voters, workers, elected officials, employers, or judges and jurors.

The final topic on which an information-based consensus is lacking concerns the role of antidiscrimination initiatives, such as affirmative action, that extend beyond ensuring equal treatment of equally qualified individuals. The research summarized in generalizations four through six in the first section



implies that employment outcomes can often be altered substantially by reexamining the qualifications required to perform jobs, exposing workers to career opportunities they might not have otherwise considered, and redesigning employment procedures and practices to make them more consistent and rational. America's voters, workers, elected officials, employers, and judges and jurors have not been made adequately aware of the role of such actions in promoting equal opportunity in the workplace. Nor have they effectively been informed that such approaches are typically the central direction of affirmative action. Instead, they have been left with misperceptions that equate affirmative action with quotas, reverse discrimination, and promotion of the unqualified (Thernstrom and Thernstrom 1997).

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## Testing: A New Information Source

### Testing for Research Purposes

Given these information gaps, it is not surprising that public and private antidiscrimination activities have periodically come under intense attack. In particular, starting with the presidency of Ronald Reagan, public policy was marked by sharp cutbacks in the funding of antidiscrimination agencies, governmental advocacy of positions hostile to previously supported initiatives, conservative appointments to the federal bench, and Supreme Court decisions (notably, *Croson* and *Atonio*) raising the standards of proof required to support discrimination charges (Clark 1989).

Observers sympathetic to antidiscrimination and affirmative action initiatives often argued that these developments reflected a false premise that discrimination was no longer a problem in American society (Bergmann 1996). Development of employment testing is directly traceable to one observer who had the vision to see testing as a fresh response to this premise. This astute observer was James Gibson, then a senior official of The Rockefeller Foundation, who initiated an exploratory grant to the Urban Institute in 1987.

That grant underwrote development of a prototype approach to employment testing (Bendick 1989a) that drew heavily on the experience of housing testing that was then becoming well-established.<sup>4</sup> This prototype was variously adapted and implemented in a series of research projects over the subsequent decade. The first studies were fielded by the Urban Institute, examining the employment experiences of Hispanics (Cross et al. 1990; Kenney and Wissoker 1994) and African Americans (Turner, Fix, and Struyk 1991). The Fair Employment Council of Greater Washington followed with studies of Hispanics (Bendick et al. 1991), African Americans (Bendick, Jackson, and Reinoso 1994), and older workers (Bendick, Jackson, and Romero 1996; Bendick, Brown, and Wall 1997). Two additional studies have been completed by researchers not involved in the initial design. Selected characteristics of these nine efforts are summarized in table 2.<sup>5</sup>

Table 2 also reports the key findings of these investigations. In nearly all cases,<sup>6</sup> the studies document substantial discrimination in hiring in the contemporary American labor market, thereby confirming patterns described in the



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Table 2 Characteristics of Nine Testing Studies of Employment Discrimination in Hiring, 1989-96

Characteristic	(a) African-American/White		(b)		(c)	(d)		(e) Anglo/Hispanic		(f)	(g) Older/Younger		(h)	(i) Male/Female	
	FEC*	UI*	UI*	UC*	UC*	FEC	UI	UC	FEC	UC	FEC	FEC	FEC	Neumark	
Number of Tests	149	300		145		498	300	140	79	102	65				
Labor Market(s)	Washington	Chicago, Washington	Chicago, Washington	Denver	Washington	Washington	Chicago, San Diego	Denver	nationwide	Washington	Philadelphia				
Source of Job Sample	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	newspaper lists, walk-ins	
Method of Application	in-person	in-person	in-person	in-person	in-person	in-person	phone, mail	in-person	mail	in-person	in-person	in-person	in-person	in-person	
% Resumes	0	0	0	0	0	50	0	0	67	100	0				
College Graduates	22%	23%	37%	37%	37%	34%	16%	37%	10%	26%	0%				
Industry	5	21	20	20	20	46	10	17	34	21	0				
Retail	63	37	32	32	32	4	56	35	8	46	100				
Office	10	19	11	11	11	16	18	11	48	7	0				
Service	24%	13% <sup>b</sup>	2%	2%	2%	22%	20%	~10% <sup>c</sup>	26% <sup>b</sup>	41%	40%				
Other															
Net Rate of Discrimination															

\*FEC=Fair Employment Council of Greater Washington, Inc.; UI= The Urban Institute; UC= University of Colorado-Denver

<sup>a</sup>Includes only some modes of discrimination.

<sup>b</sup>Protected group was treated more favorably than the non-protected group; see note 6.

first section. The final row of the table reports that, when matched pairs of job seekers with equal qualifications applied for the same job vacancy, African-American, Hispanic, older, or female applicants were treated less favorably than their white, non-Hispanic, younger, or male counterparts by a substantial proportion of employers. In the case of African-American and Hispanic job seekers, that proportion is about 25 percent. In the case of older and female job seekers, it is about 40 percent.

As these studies were completed, their findings were documented in scholarly books and journals. Some have also been presented in public policy forums. In particular, one Urban Institute effort (Cross et al. 1990) was sponsored by the U.S. General Accounting Office and was reported as part of that agency's congressionally mandated evaluation of the impact of the federal Immigration Reform and Control Act (IRCA). More recently, syntheses of the studies have been presented in congressional testimony, in debates surrounding California's anti-affirmative-action Proposition 209, and in the deliberations of President Clinton's Initiative on Race (e.g., Bendick 1995).

Similar syntheses have been presented on a limited number of occasions to the employer community (e.g., Bendick 1994). Some of the studies—notably those conducted by the Fair Employment Council of Greater Washington—have been formally released to the news media, which typically gave them limited coverage. The only extensive attention has arisen from testing conducted by the news media themselves, sometimes with technical assistance from organizations such as the Fair Employment Council of Greater Washington. In 1997, for example, the television news magazine *Frontline* broadcast dramatic “hidden camera” footage contrasting the experiences of a job applicant in a wheelchair with that of a nondisabled testing partner.

### Testing for Litigation

Concurrently with providing support for testing-based research, The Rockefeller Foundation provided seed money to the Fair Employment Council of Greater Washington and the Washington Lawyers Committee for Civil Rights and Urban Affairs to develop testing for antidiscrimination litigation. In the early 1990s, these organizations adapted the prototype testing methodology to this purpose, conducted a series of litigation-oriented tests, and brought two suits (Boggs, Sellers, and Bendick 1993). One of these suits, filed in federal court, alleged racial discrimination in job placement by the Washington, D.C., affiliate of a nationwide employment agency, Snelling and Snelling. The other suit, filed in District of Columbia superior court, alleged sexual harassment by the proprietor of a small job placement firm. Both cases were settled with significant damages awarded to the plaintiffs, including the Fair Employment Council of Greater Washington and its testers.

Since that time, a handful of additional testing-based suits have been filed and settled by other organizations, including the Chicago Legal Assistance Foundation and the Massachusetts Commission Against Discrimination. In 1992, the federal Equal Employment Opportunity Commission (EEOC) adopted a policy of accepting discrimination charges based on tester evidence. And in 1997, both the EEOC and the other principal federal employment discrimina-



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tion enforcement agency, the Office of Federal Contract Compliance Programs (OFCCP), initiated pilot projects using testing in their investigative activities. In virtually all these developments, the Fair Employment Council of Greater Washington played a role as an advocate, advisor, trainer, or contractor.

### **Testing's Underdeveloped Potential**

Perhaps the most basic finding from a decade of employment testing is that the technique has tremendous potential to address the information gaps identified in the second section of this chapter. It can generate findings that are controlled and objective yet possess vivid persuasive power. It can document forms of discrimination that other empirical techniques cannot. It can provide unique insights into psychological and social processes and thereby lead to improved antidiscrimination practices.

Given this potential, the limited scale of testing's current use is frustrating. Throughout a decade in which issues of race and gender have been hotly contested in newspaper headlines, the voting booth, legislative bodies, the nation's highest courts, and even bloody riots, employment testing has never moved beyond an ad hoc, sporadic, hand-to-mouth scale. Only a modest body of testing-based research has been completed, and few dramatic advances in testing techniques have occurred. There has been no concerted dissemination to make testing-based insights common knowledge among the general public, public policymakers, or employers. Although some important legal precedents have been set, there has been no large volume of testing-based litigation. The conference at which this analysis was first presented itself symbolized the failure to establish a broad constituency of producers and consumers for the technique; attendance was dominated by the same small group of researchers, lawyers, and advocates who have been involved in the activity from its inception.

The moment has arrived—indeed, it is long overdue—to boost employment testing to a qualitatively different level of activity and influence. The next sections of this chapter outline four principal directions for this development.

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## **Testing to Communicate the Current Extent of Discrimination**

The first direction that should be pursued involves making public opinion and public policy more accurately informed about the *extent to which employment discrimination currently operates in the American labor market*. This understanding can support sustained or expanded antidiscrimination laws and resources for their enforcement. It can also enhance the general population's personal understanding and improve their individual behavior in the workplace.

The nine studies in table 2 provide a solid starting point for these efforts. However, the range of employment activities they encompass is far too limited. About 50 percent of the tests documented in the table were conducted in a single labor market, the Washington, D.C., metropolitan area, which cannot be assumed typical of labor markets nationwide. The range of demographic groups



whose experiences have been studied is similarly narrow. Only one study in table 2 examines gender discrimination, and that effort is limited to a single occupation, restaurant servers. No random-sample studies have been conducted on discrimination against persons with disabilities, discrimination favoring one minority group over another, or discrimination against persons from multiple protected groups (for example, women of color). In these circumstances, the research community needs to conduct additional testing studies on random samples of employers, systematically mapping local labor markets, industries, occupations, and demographic groups that have not yet been explored.

Such a series of studies would offer an opportunity to involve additional social science researchers in employment testing, thereby bringing fresh ideas to the subject as well as enhancing its visibility and credibility. Research funders might support doctoral students who wish to apply testing in their dissertations, or seek out scholars with established reputations in discrimination research but no previous experience with testing.

As additional testing studies are completed, their results need to be disseminated to the general public and public policymakers. Unlike more esoteric forms of research, testing lends itself to dramatic, visually striking, intuitively appealing presentations that can win media exposure and public attention. But to do so requires effort and public relations expertise. To maintain the credibility of testing, individual studies must be conducted in a scientifically rigorous, objective manner and published in respected scholarly outlets. However, an overall program of research and dissemination should be conceptualized as a *social marketing* initiative designed to inform public attitudes (Kotler and Roberto 1989). Research findings should find their outlet not only in scholarly journals but also in prominent news stories, visually striking television public service announcements, and congressional testimony featuring testers relating their individual experiences.

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## Testing to Reveal the Subtleties of Contemporary Discrimination

A second direction for testing should be to provide more accurate information to the general public and public policymakers concerning the *prevalence and significance of less blatant forms of discrimination*. As was discussed in the first section, although such discrimination often operates indirectly and without intent, it is powerfully discriminatory nonetheless.

Not only information on the prevalence of discrimination but also improved understanding of discrimination's subtler forms can improve the interpersonal behavior of individuals in the workplace. At a public policy level, it is also likely to sustain antidiscrimination laws and promote resources for their enforcement. In particular, for reasons discussed in the second section, it is likely to enhance public understanding of, and support for, actions that go beyond equal opportunity, such as affirmative action.

Testing can be particularly useful in examining subtle and complex forms of discrimination because of the unique detail it provides on psychological



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processes and interpersonal interactions in the workplace. However, the field methods and analytical procedures implemented in testing studies to date have been too primitive to exploit this potential fully. Advanced methods for recording data, including hidden tape recorders and cameras, have been shown to be feasible but have not been systematically applied. More sophisticated procedures for analyzing testing experiences could be drawn from state-of-the-art concepts in linguistics and cognitive social psychology, but these have been attempted only on a preliminary level (Bendick 1996). An agenda for employment testing must include upgrading testing methodology to take advantage of these underutilized opportunities.

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## Testing to Improve Employers' Personnel Management Practices

A third direction in development involves *repackaging testing findings to enhance their use by employers*. Employers directly control much of what occurs in the workplace through their human resource management policies and through selection and training of the managers who implement these policies. Litigation represents one strategy for focusing employer attention on employment discrimination. Providing employers with information on problems in their workforce and opportunities to improve efficiency and profitability represents an important alternative approach. Testing has substantial underutilized potential to support the latter strategy.

In the 1990s, antidiscrimination efforts in the workplace voluntarily initiated by employers are often labeled *managing diversity*. With their goal of enhancing the productivity of employers' increasingly diverse workforces, these activities are often largely separate from traditional equal employment opportunity (EEO) and affirmative action programs designed to comply with government requirements (Thomas 1991; Jackson et al. 1992; Bendick, Egan, and Lofhjelm 1998). In initiatives to manage diversity, information such as that which can be generated through testing can play both a *motivating* role and a *facilitating* one. In the former role, information that makes higher-level executives aware of problems of discrimination and its adverse effects on employees can increase the likelihood that firms will invest in such activities; in the latter role, information supplied to diversity management trainers, organizational development consultants, and other staff implementing these initiatives can increase the effectiveness of their efforts.

To some extent, employers would absorb testing-based information from dissemination efforts targeting the general public such as were discussed in the fourth and fifth sections. However, the importance of this audience justifies more targeted outreach, including the following three initiatives.

First, testing results need to be distributed through information channels to which employers pay particular attention. Many employers' most important information source is the trade press covering their own industry. Many executives follow *Progressive Grocer* or *Iron Age* with greater intensity than they devote to general news media or even the generic business press such as the



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*Wall Street Journal*. Although extra effort is required to write articles or make conference presentations for a series of narrow audiences rather than one broad audience, such efforts may be necessary to communicate in ways that are relevant to the target audience. Furthermore, to prepare for such eventual dissemination, testing studies might target specific industries, such as banks, employment agencies, or construction firms.

Second, the findings of testing research need to be translated into formats—such as training handouts, videotape presentations, and learning exercises—for daily use by diversity trainers and organization development consultants. To develop such products, testing researchers need to team with specialists in the development of such materials. This audience seldom reads materials published by the Urban Institute Press, however worthy, but they routinely purchase training materials from the American Management Association or the Society for Human Resource Management.

Third, testing practitioners might assist employers to implement testing within their own organizations. Many employers, especially large ones, routinely conduct in-house surveys or focus groups to measure employee satisfaction and identify workplace problems. These firms also often use testing-like approaches, such as “secret shoppers,” to monitor customer service. With technical assistance from researchers familiar with testing methodology, some imaginative employers might add testing to their sources of information about their own workplaces.

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## Testing to Strengthen Antidiscrimination Litigation

The fourth and final direction for development of testing's potential involves *testing to support employment discrimination litigation*. Although such tests must be conducted with the same objectivity and care as testing for research, it is often appropriate to adapt their design to the requirements of the legal process. For example, rather than being applied to a random sample of employers, litigation-oriented tests may target firms suspected of discrimination, and one firm may be tested repeatedly to document its behavior thoroughly (Boggs, Sellers, and Bendick 1993).

Testing is generally not feasible for *posthiring* forms of discrimination, such as those involving employee assignments, compensation, promotions, or terminations; these aspects of employment involve decisions about persons already known to employers. However, testing is well suited to examining employers' *hiring* practices. This match is fortunate because hiring discrimination is often difficult to document without testing. A job applicant who is told that a vacancy has already been filled or has been filled by someone more qualified seldom has adequate information to challenge these statements. Currently, claims of hiring discrimination constitute only about 6 percent of complaints lodged annually with the EEOC (Bendick, Jackson, and Reinoso 1994). Testing can provide more thorough monitoring of this important aspect of employment.

To implement litigation-oriented hiring testing on a wide scale will require development of employment testing capabilities in multiple local antidiscrimination organizations.<sup>7</sup> In particular, nonprofit fair housing councils operate in



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many locales, and many have experience testing for housing discrimination. A campaign to expand their agendas to employment discrimination could be pursued, offering these organizations training, technical assistance, and perhaps modest startup resources. Such efforts have been pursued by the Fair Employment Council of Greater Washington to a modest degree, such as organizing one nationwide training conference (Fair Employment Council 1993). However, only a far more sustained and deliberate effort is likely to achieve substantial results.

Public antidiscrimination employment agencies—notably the EEOC, OFCCP, and their state and local counterparts—can also implement testing as part of their investigative processes. As was discussed in the third section, one state agency, the Massachusetts Commission Against Discrimination, has done so on several occasions, and the EEOC and OFCCP are currently conducting pilot projects. These steps move in the right direction, but painfully slowly.

As part of their routine activities, public antidiscrimination agencies such as the EEOC have access to important data on the employment practices of individual employers. The agencies receive worker complaints alleging discriminatory behavior. They also receive periodic reports (such as the well-known EEO-1 forms) on which firms report the representation of different demographic groups among their employees. These agencies commonly use such data internally, with varying degrees of sophistication in their analyses, to identify potential targets for investigation. Following this same approach, investigations involving testing by these agencies can be targeted the same way. That procedure would raise the probability that testing will be efficiently targeted on discriminatory firms. In addition, it would prepare for litigation in which testing evidence and nontesting evidence are both presented.

Public agencies could substantially enhance private testing-based enforcement efforts if they were to make public some of the same information currently used internally. For example, OFCCP could publish data on the demographic characteristics of the workforce at individual firms that are government contractors. Or the EEOC could provide tabulations of the number of discrimination complaints lodged against individual firms. Strategically minded private enforcement agencies could use such information to target their testing efforts for maximum effect.

Combining testing and nontesting information represents one way to incorporate testing into a broader *strategy for EEO enforcement*. It is not the only way, however. In employment discrimination litigation, as in litigation in general, one necessary ingredient is a plaintiff who has suffered injury and has standing to sue. Employment discrimination enforcement is often hamstrung by mismatches between the availability of plaintiffs and the seriousness of employers' discriminatory behavior. Public agencies, such as the EEOC, labor under backlogs of tens of thousands of cases, that, although meritorious, affect only one or a few individuals. Concurrently, these agencies, nonprofit antidiscrimination organizations, or private attorneys may be aware of egregious cases of *systemic* discrimination affecting hundred or thousands of workers but cannot pursue these cases for lack of appropriate plaintiffs. In testing, the testing organization and testers who experienced discrimination during their tests can fill the role of plaintiffs. In that circumstance, testing permits public and



private enforcement resources to be targeted toward cases where discrimination problems are the most serious rather than those where plaintiffs are the most vocal.

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## Conclusion: Testing as the Core of an Annual National Report Card

Although the four approaches described in the previous sections would attack employment discrimination in important ways, even the four together may fail to gain for the issue the high visibility and sustained attention it requires and deserves. A fifth, capstone initiative is needed to ensure a prominent place on the national agenda. For this role, I propose an annual "national report card." By this phrase, I mean a research report to be released at the same time every year with extensive press coverage,<sup>8</sup> setting forth quantitative indicators of the current state of employment discrimination in the nation.

Some of the indicators in the report card should be generated through testing—in particular, the proportion of tests conducted that year on a random sample of employers nationwide<sup>9</sup> in which employers were observed behaving in a discriminatory manner. Examples of these indicators are presented in the final row of table 2.

However, because testing can usually be applied only to hiring, and even then most easily only to entry-level jobs, this technique can provide only part of the data that should be reported. The report card should also incorporate information from at least five nontesting sources, as illustrated in table 1.

- *Earnings* of workers with different demographic backgrounds (for example, comparisons between the median annual earnings of white males and those of other gender and racial/ethnic groups). These figures are already generated and published annually by the U.S. Bureau of Labor Statistics from its monthly Current Population Survey.
- *Unemployment rates* for different demographic groups (as well as related measures of labor force participation, such as employment-to-population ratios). As with earnings, these data are already available from the U.S. Bureau of Labor Statistics.
- *Employment representation*, such as the proportion of women and racial/ethnic minorities employed in different occupations. These figures can be computed from data collected annually by the EEOC from all large employers and government contractors (e.g., U.S. EEOC 1997).
- *Acquisition of employment credentials* (for example, the numbers of women and minorities receiving degrees in fields in which they have been traditionally underrepresented and the proportion of women and minorities among persons acquiring work-related credentials such as C.P.A. or journeyman status in the construction crafts). Suitable data could be acquired from federal agencies (such as the U.S. Department of Education), state licensing boards, or trade and professional associations.



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- *Discrimination disputes*, such as the number of complaints filed annually with the federal EEOC and its state and local counterpart agencies (already tabulated by the EEOC); or the number of discrimination lawsuits filed in federal courts (already tabulated by the Administrative Office of the Federal Courts).

The impact of this annual study would be greatest if the report card had three characteristics. First, each indicator should be comparable from year to year, so that progress over time (or lack of it) can be readily observed. Second, the report should monitor the experiences of all major groups traditionally subject to discrimination in the workplace—not only racial and ethnic minorities but also women, older workers, and persons with disabilities. Third, this employment report should be part of a broader system generating parallel reports on discrimination in other aspects of daily life, including housing, education, retail sales, financial services, and public accommodations.

Such an annual report would be an appropriate capstone for the testing approach to employment discrimination described throughout this paper. Like testing, it can be broad in scope but grounded in facts, rigorous in method but vivid in presentation, and credible to researchers but relevant to advocates. Like testing, it would represent an important addition to the nation's portfolio of information on employment discrimination.

## Endnotes

1. This section is based in part on Bendick (1997). For some of the vast literature underlying this discussion, see Ehrenberg and Smith (1997, ch. 12) and Bendick (1996). Table 1 is based on U.S. Bureau of the Census (1995).
2. Their continued presence is documented by the continuing flow of antidiscrimination litigation that is won by plaintiffs or settled with substantial damages (e.g., Watkins 1997), by the continuing flow of complaints lodged annually with the federal Equal Employment Opportunity Commission and its state and local counterpart agencies, by research based on personal experiences of discrimination (Feagin and Sikes 1994), and by statistical studies. That final category is exemplified by a survey of newspaper classified advertising, which found that nine percent of job vacancy announcements contained discriminatory wording, such as specifying the age or gender of desired applicants (Kohl 1990).
3. This perception also clashes with the perceptions of the groups traditionally facing discrimination, who predominantly characterize discrimination as an ongoing problem. In the poll cited in the text, for example, more than 80 percent of African-American respondents agreed with the first statement, and 62 percent agreed with the second.
4. Prior to this date, only a handful of very preliminary studies had applied testing to employment (Culp and Dunson 1986; Riach and Rich, 1991–92).
5. Table 2 is based on the sources cited in this paragraph.
6. The only research that failed to find substantial, statistically significant discrimination is that of James and DelCastillo (1992). However, this work has been heavily criticized for methodological flaws (Fix and Struyk 1993, pp. 407–13) and has never been accepted for publication in a refereed journal.
7. It will also require cultivation of favorable case law, a process that has begun with the two cases brought by the Fair Employment Council of Greater Washington (Boggs, Sellers, and Bendick 1993). Toward this end, strategic coordination needs to be maintained among litigators applying testing, particularly in the earliest cases.



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8. For example, it might be released at congressional hearings at which cabinet-level federal officials would testify, perhaps on the model of extensively reported appearances by the chairman of the Federal Reserve Board before the Congressional Joint Economic Committee.
9. Although generating national rates of discrimination that are comparable from year to year would be one important objective of testing, another goal might be generation of rates for individual metropolitan areas. To support both goals within a reasonable budget, a sampling strategy might be used in which testing is conducted in a different subset of metropolitan areas each year, with each area tested periodically (for example, once every five years).

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