

Are Bias Statistics Nonsense?

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Patterns of job segregation in a range of industries have lately been receiving particular attention from Congress. At a November 1987 hearing conducted by the Senate Labor and Human Resources Subcommittee on Labor, for example, Sen. Howard Metzenbaum (D-Ohio) noted that in the construction industry, while women held only 10 percent of professional positions and 2 percent of skilled craft positions, they held 80 percent of office and clerical jobs.

In August 1988, the House Government Operations Committee issued a report on minority employment in the airline industry. The panel found that while blacks were underrepresented in professional posts, they were overrepresented among unskilled workers, comprising 31 percent of such airline employees compared with 20 percent of unskilled workers in other industries.

Also in August, as part of the move to place Congress under federal employment discrimination law, Rep. Lynn Martin (R-Ill.) released a survey revealing striking disparities between the pay of male and female members of House committee staffs. The report showed that 69 percent of the women earned less than \$40,000 a year, compared with only 28 percent of the men. Martin singled out the House Energy and Commerce Committee as having an especially poor record, with women making up 84 percent of the panel's employees who earned less than \$20,000.

The ostensible point of these statistics is to demonstrate that the businesses in question have systematically discriminated against minority or female workers. Perhaps they have. But the comparisons that "support" that contention are the sheerest nonsense - and in some cases, dangerous nonsense.

Consider first the construction industry. A wide range of factors accounts for the high female representation in clerical jobs, including societywide limitations on female opportunity. Whether construction companies exclude women from more lucrative professional and craft positions, however, has

a negligible impact on women's representation in the clerical labor pool.

The construction industry may well discriminate against female candidates for professional and craft jobs. The 10-percent figure for craft positions seems quite low in an absolute sense. Still, the real issue is whether they are low in relation to female representation in those relevant labor pools. About this the large female representation among clerical workers tells us nothing. There would be a high number of women in clerical jobs in an industry regardless of whether that industry fairly employed women in professional and craft jobs.

In fact, to the extent the 80-percent figure, which is about five percentage points below the national average, says anything about discrimination in the construction industry, it suggests that women may be discriminatorily excluded from clerical jobs at construction companies.

In the airline industry, the question is whether minorities have been excluded from professional positions, particularly as pilots. That minorities are overrepresented in unskilled positions, it ought to be clear, is again not meaningful evidence that they are being denied jobs as pilots. High minority representation among unskilled airline employees is a good sign for minorities who have accepted those jobs over other options. And it would be exceedingly unfortunate if the airlines came to believe that they could improve their image regarding the treatment of minority professional applicants by reducing the number of minority unskilled workers.

This misuse of employment data is nothing new. Almost two decades ago, after an exhaustive study of the American Telephone & Telegraph Co., the Equal Employment Opportunity Commission found that job segregation at AT&T was far more extensive than that observed in the United States as a whole. The finding was widely cited in descriptions of how serious was AT&T's discrimination against women.

Yet to say that AT&T was more segregated than the nation at large was to say simply that AT&T was a

telephone company. As such, it had a great many operator and clerical positions, which would have been mainly held by women regardless of whether the company discriminatorily excluded women from other jobs. Again, the overwhelming female representation in the clerical labor market may well be influenced by discrimination against women throughout society, but the practices of even as large an employer as AT&T will not materially affect that labor market. Given the near absence of women from many of its better-paying jobs, AT&T had probably engaged in sex discrimination with respect to those slots. But statistical comparisons that relied on high concentrations of women in low-level positions were not a correct way to prove such discrimination.

Justices Crunching Numbers

This term, the Supreme Court is considering such an analysis in *Wards Cove Packing Co. V. Atonio*. In 1987, the U.S. Court of Appeals for the 9th Circuit, sitting *en banc*, ruled that an employer had discriminatorily excluded minorities from higher-level jobs. The circuit based its decision not on evidence that the company failed to hire minorities in proportions commensurate with their representation in the labor market for higher-level positions, but on data that minorities made up a disproportionately larger segment of the employer's unskilled work force. In the Supreme Court, *Wards Cove Packing* has argued, rightly, that to uphold the 9th Circuit's ruling would be to give employers an incentive to exclude minorities from unskilled positions. In fact, it is probable that the longstanding focus on a group's overrepresentation in lower-level jobs has already caused a number of businesses to limit minority opportunity in such jobs.

Rep. Martin's study of the wage structure of congressional committee staffs is but a variation on the same flawed theme. Women will be well-represented in low-paying clerical and administrative jobs for congressional panels regardless of whether they are treated justly in selection for higher-paying positions. Of the 55 House Ways and Means Committee staffers earning more than \$40,000 a year, 25, or 45 percent, were women. Ordinarily this would suggest that Ways and Means fairly considers women for its better-paid jobs as acknowledged by Martin. Yet because 94, or 80 percent, of the 118 staffers who earned less than \$40,000 were also women, Ways and Means' record appeared essentially the same as that of the other

House panels with respect to the principal factor cited in Martins survey.

At Ways and Means, men were about 2.7 times as likely as women to earn more than \$40,000 (56 percent of the men compared with 21 percent of the women); while overall, male congressional staffers were only 2.3 times as likely as female congressional staffers to earn more than \$40,000 (72 percent compared with 31 percent). Any study of a single employer (or industry), however, that attempts to show discrimination by comparison of the proportion in the company of total male and female employment above certain salary levels - or by comparison of average salaries or by any other comparison influenced by the high female representation in clerical positions - ultimately can be shown to be meaningless.

The potential for absurdity in the use of such statistics has been vividly demonstrated in the EEOC's monitoring of employment policies in the federal government. The commission relies on average pay grade at an agency as a principal indicator of race and sex discrimination. Because it employs several hundred black residents of the Washington, D.C. area as guards, the National Gallery of Art invariably shows the greatest gap between white and minority average pay.

Many who use these types of comparisons in appraising a firm's or industry's employment policies recognize that the approach has imperfections. But given the difficulty of characterizing a record succinctly and comprehensibly, they regard such comparisons as relevant, if partial, pictures of an employer's treatment of women and minorities. Often, however, the picture is not merely partial, it is wrong. Just as significant, reliance of these improper comparisons sends an unfortunate message to employers who never before thought they could hire too many minorities or too many women.