

The Myth of Affirmative Action

By

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Preface

Universally, individuals in American society seem to either condemn or embrace affirmative action policy. Many White people understand affirmative action as giving preferences to Blacks in employment and admission to colleges and universities at the expense of more deserving Whites. Consequently, they look forward to the termination of this believed unfair law and policy. Additionally, a few Blacks agreed that affirmative action is unfair and damaging. For example, U.S. Supreme Court Justice Clarence Thomas has stated that affirmative action or racial preference for Blacks prevented him from getting a job in a large law firm after he graduated from Yale law school. Also, a relative of Dr. Martin Luther King said that if Dr. King were still alive, he would be disappointed at Blacks receiving preferential treatment due to affirmative action. Even conservatives chimed in and said that affirmative action ran counter to Dr. King's teachings. A few proponents of affirmative action feel it is needed to get Blacks in colleges and secure some positions in society. Opponents and proponents of affirmative action accept that this policy exists in employment and college admissions. When the U.S. Supreme Court considers a case involving affirmative action both proponents and opponents can be seen demonstrating on the steps of the U.S. Supreme Court building. But no one stops to ponder whether Blacks are indeed benefiting unfairly from affirmative action. They just accept that Blacks are stealing jobs and unfairly getting into White colleges and universities over highly deserving Whites. For a few Blacks that condemn affirmative action, anything that Whites say must be true and correct.

However, I had always been very skeptical that Blacks in employment and college benefit from affirmative action. In employment, Black adults and Black juveniles have extremely high unemployment rates, and much higher than Whites. If there existed an affirmative action policy benefiting Blacks and employers have been forced to hire unqualified Blacks, the unemployment rate for Blacks would be zero. Also, Blacks have a high prison incarceration rate, and having a criminal record prevents many Blacks from getting jobs. Linking having a criminal record and

employment, one researcher, utilizing an experimental design, revealed that employers favored Whites over Blacks and would look more favorably on a White applicant with a felony conviction as opposed to a Black applicant without a criminal record. Further, one national probability study was conducted, and Whites, including White females, disfavored affirmative action for Blacks but favored affirmative action for White females. Taking these factors, how can Blacks benefit from affirmative action policy in employment and receive preferential treatment? If affirmative action commended in the 1960s, as Justice Thomas has written, Justice Thomas would have been hired at one of the law firms after he graduated from Yale law school in the 1970s. Affirmative action and racial preferences must be a myth.

Typically, Whites proclaim that students should get into colleges and universities based on merit and the highest scores. However, this view has absolutely no basis in law, despite Justice Thomas and Justice Scalia saying so. When Blacks filed lawsuits, contending they were discriminated against by employers when they had more education and experience than Whites, their lawsuits have been universally rejected. The courts have said that more education and more experience did not make Blacks more qualified. That being the case, a White student who scores .3 or .4 more than a Black student is not more qualified.

At the University of Texas law school in the 1960s, an applicant had to have a minimum grade of C to be admitted when most students were White males. As more students applied for admission, the minimum increased solely as a screening device. As a director of an Undergraduate Social Work program at Ohio State University, I knew that the undergraduate committee raised the minimum GPA to be admitted to the College of Social Work to alleviate the faculty reading and evaluating a high number of application folders. Moreover, the former President of Vanderbilt University instructed his admission office to get more Jewish students because Jewish students tend to score high on tests. Jewish students are in the White category, and if Jewish students raise the scores of Whites that benefits Whites in their legal action against affirmative action. Blacks are made to look inferior when the means and medians are used in court cases.

White students, represented for free by conservative organizations, filed lawsuits claiming they were not admitted to colleges or universities because of affirmative action policies giving preference to Blacks and minorities. Frequently, they claimed that they had a high GPA and were rejected for admission while Blacks who had lower GPAs were admitted. Also, they have presented mean or median of Whites compared to a lower mean or median for Blacks, allegedly proving affirmative action. First, Whites constitute many students at all major White colleges and universities. This practice existed when these higher educational institutions were created, and it was true today. Blacks constituted about five or six percent of at most universities of these student bodies. This too is a myth that Black students are receiving affirmative action in being admitted to colleges and universities. When a White student filed a lawsuit decrying affirmative action, he or she selects one or two Black students who had a lower GPA, SAT, or ACT score than him or her. Astonishingly, Deborah Brandt examined White and Black students' ACT scores at the University of Wisconsin. She found that twenty-seven (27) Black students scored between 16-20 on the ACT, which is low, and Whites and persons like Justice Clarence Thomas would say this practice is evidence of affirmative action. However, the University of Wisconsin admitted 429 White students within this range of 16-20 that same year. Also, the University of Wisconsin admitted five White students with ACT scores below 16. Finally, the University of Wisconsin admitted one White student with an ACT score of 10. Brandt called this practice affirmative action for Whites. The low scores of Whites are not revealed, but a few Blacks' low scores are.

This practice is hidden by opponents of affirmative action. As a professor, I was entitled to examine other professors' research data. A white law professor, who declared he lacked racist sentiment because he adopted a Black son, studied Black and White students' LSAT scores, examining the median scores. He concluded that Blacks should not go to elite law schools because their scores indicated that they would not be successful in law schools and bar examinations. I emailed this professor, requested his data, and told him I wanted to examine the total White and Black students and how many Whites scored below the median on the LSAT. The law professor's data consisted of over 1800 Whites and only 140 Blacks, which

meant that about 900 Whites scored below the median for their group and 70 Blacks scored below the median for their group. This study would show what the University of Wisconsin study showed. However, this professor never responded, and I did not get his data.

Another angle involving this debate over Whites scoring higher than Blacks on tests that is not discussed is revealing. Typically, Whites compared Blacks' lower scores to their higher scores. One comparator that Whites never compare is a Black athlete. Many Black athletes celebrate when they get a 17 on ACT exam, which means that they are eligible to be admitted to universities and play college sports - football or basketball. Typically, these Black athletes are coddled since they began playing sports and do not put much emphasis on academics. Whites do not compare these Black athletes' scores to their scores because Whites and Universities need these Black athletes to provide entertainment, win games, and bring in money to the university. Additionally, rich donors give their schools more money when their college teams win a national championship. While critics might say these athletes are admitted for their talents and not race, this is questionable. Almost all White universities used to have a quota system on how many Blacks could be on athletic teams. They did away with the quota system, but one football coach at Ohio State University queried why the team had slipped in not winning many games. He responded that the team had too many slow White guys and stated that the team needed more speed on the team. This explanation revealed a code for Black, and White people have always used codes when referring to Blacks.

Affirmative action has been falsely linked to quotas with respect to Blacks. However, Americans look more favorably upon quotas when quotas are benefiting White women. A federal judge said in a Florida case that it was much easier to rule in favor of affirmative action programs using quotas for women than race. Women have a much lower legal standard for courts to hold affirmative action programs constitutional than minorities, which have a much higher and tougher legal standard. Corroborating this point, Andy Geiger, former Ohio State Athletic Director, said Title IX, which mostly used quotas for women in participation in college athletics, has benefited mostly White women. The college newspaper printed a picture of the crew team and White females composed all the crew members. The

story said that Ohio State had planned to create a lighter in weight female crew team the following year. The sole reason for creating a lighter crew team was to increase the percentage of women getting more scholarships. No one criticized this policy, and the women benefiting from this quota objected at the unfairness of Blacks benefiting from affirmative action as illustrated by a national probability study.

Another facet of so-called affirmative action involves faculty. One of my professors at the University of Houston complained in class that he lost a faculty job to a Black professor because of affirmative action. He pretended to be supportive of affirmative action, saying the pendulum had to swing toward minorities because of the past, but his tone suggested he did not like that he thought he had lost the opportunity for a teaching job. Within my doctoral program at the University of Minnesota, the faculty tried to socialize me into thinking like a faculty and permitted me to attend their faculty meetings. One hot topic discussed at one of these meetings involved the strong criticisms in the Minneapolis community about the entire staff and faculty, past and present, being White except for a Japanese faculty. The Japanese faculty voiced objection to the school hiring a Black faculty. However, the other faculty overruled the Japanese faculty in favor of hiring a Black faculty. It did, and I followed his career. Subsequently, he obtained full professor and obtained a national reputation as a researcher pertaining to the Black family.

These issues led to me thinking more about affirmative action and mostly after I became a professor at Ohio State University and was chosen to be the chair of several search committees. Affirmative action meant to me that we should have a diverse pool of applicants, instead of just White males, which was the norm for years and years. Below is a typical ad from Ohio State, and it suggests getting a wide pool of individuals with disabilities, minorities, women, and veterans.

Ohio State: Ohio State is seeking to hire a recruiting assistant who has at least one year of college coaching experience. The position will support the planning and execution of the vision of the recruiting calendar (mail, video, graphics, social media, etc...), assist with on-campus recruiting, etc... Ohio State

encourages applications from individuals with disabilities, minorities, veterans, and women. EEO / AA employer.

Most graduates of doctoral programs are equal when they search for faculty positions, although some universities have stronger research programs than others. When I evaluated applicants, I looked for budding research skills and the ability to solely publish. Many graduates have no sole-authored publications. Many assistant professors can obtain tenure and promotion with support from their departments. At Ohio State, a newly hired professor taught one less class than the other faculty for the first year, teamed with an experienced, tenured professor, and obtained time off from teaching and committee work for a quarter or semester so he or she could devote full time to publishing.

This book delves into more details to explain why affirmative action is a myth when people suggest it is racial preference for Blacks. It concentrates on alleged affirmative action for Blacks in employment, colleges, and universities, because these two areas are the focus of intense criticisms. Chapter One is the introduction, providing definitions of affirmative action and touching upon critical information in this book. Chapter Two provides a discussion of social scapegoating and social problems. It states that affirmative action has become a social problem for Whites and the U. S. Supreme Court to remedy. It also discusses stereotyping and how Blacks have been stereotyped for so long. Affirmative action is akin to welfare, crime, and now critical race theory. Chapter Three discusses how Blacks have a very high unemployment rate, how few Blacks are in higher management positions, and how Blacks are vastly incarcerated, affecting adversely their employment opportunities. Chapter Four describes Title IX which forbids sex discrimination in schools, but which White girls and women have benefited tremendously. It discusses how statistics are manipulated to show disadvantages to Whites in admission but hide the fact that many Whites get into colleges with low scores that are hidden. Additionally, Blacks frequently make up 5% or 6% in many colleges and, in some cases, less than this amount. It is ludicrous to state, as many have done, that Black students are taking seats from higher scoring Whites. Chapter Five discusses affirmative action in contracts and set aside programs. Chapter Six summarizes the discussions of affirmative action

that have been presented in this book. It points out, for example, that there were not any cases in the legal literature or database where the courts have decided a more qualified White lost an opportunity for a job when an employer decided to hire a less qualified Black applicant. This type of situation is actionable legally in court, if true. Former President Donald Trump said in an interview that a highly educated Black person has an advantage over a highly educated White person in the job market. If he could, he would change to a highly educated Black person. Later, he related that he did not want a Black accountant to count his money. Donald Trump illustrates the myth that is told. In 2017, over half of White people in the United States told pollsters that Whites were at a disadvantage due to affirmative action for Blacks and Hispanics. Facts have no relevance. One could present the Black unemployment rate, the Black incarceration rate, which affected employment opportunities, multiple studies that show that employers prefer and give opportunities to Whites over Blacks and other minorities, the paltry number of Blacks in colleges and universities, and White females garnering the most from affirmative action. Nevertheless, some White people still believe that Blacks are benefiting from affirmative action and racial preferences over them because Blacks have a long history of being scapegoated.

Chapter One

Introduction

Shelby Steele, a Black scholar, has criticized incessantly affirmative action, declaring it remained more negative than positive for Blacks. He termed it as racial preference.¹ The concept of racial preference is commonly now associated with affirmative action.² In 2013, the U. S. Supreme Court returned a case for reconsideration to the Fifth Circuit Court of Appeals involving affirmative action and instructed it to use strict scrutiny because it involved race.³ Thus, affirmative action has become a major dilemma. A significant percentage of Whites believe that Blacks go to college for free, and Whites are at a disadvantage in seeking jobs and college admissions. Whites termed this reverse discrimination. The percentage of Whites believing that they are victims of reverse discrimination is correlated with and intensified by with the rise of President Donald Trump.⁴

¹ Shelby Steele, *The Content of Our Character: A New Vision of Race in America*. New York: St. Martin's Press (1990); Joe Helm, "Hate Groups Make Unprecedented Push to Recruit on College Campuses." Washington Post. accessed January 12, 2018. https://www.washingtonpost.com/local/education/hate-groups-make-unprecedented-push-to-recruit-on-college-campuses/2018/01/12/c66cf628-e4f8-11e7-833f-155031558ff4_story.html?noredirect=on&utm_term=.37524f3a5626.

² Tim J. Wise, *Affirmative Action: Racial Preference in Black and White*, (New York: Routledge, 2005).

Carl Cohen and James P. Sterba, *Affirmative Action and Racial Preference: A Debate* (Cary NC: Oxford University Press, 2003); Carl Cohen, *Naked Racial Preference: The Case Against Affirmative Action* (Lanham, MD:1995).

³ Fisher v. University of Texas at Austin et al., 2013 U. S. LEXIS 4701 (2013).

⁴ Vann R. Newkirk II, STEM Diversity Network. "Affirmative Action and the Myth of Reverse Racism," accessed August 18, 2017. <https://stemdiversity.wisc.edu/featured/affirmative-action-and-the-myth-of-reverse-racism/>. Strict scrutiny is the highest legal test used to determine the constitutionality of a law or policy involving a fundamental right, and the government frequently loses when strict scrutiny is employed as in the Son of The Son of Sam law prevented publishers and movie producers from contracting with accused persons or criminals to talk about their crimes. Simon & Schuster, as well as movie producers, has First Amendment rights. So, the U. S. Supreme Court unanimously held this Son of Sam law to be unconstitutional.

Conservative columnists and political commentators hailed and praised the near end of affirmative action and racial preference for Blacks.⁵ Like Steele, the critics of affirmative action said the end of racial preference would be positive for Blacks. Ms. Alveda King, niece of Dr. Martin Luther King, declared that her late uncle represented more Republican thinking, and if he were alive today, he would be opposed to a lot of liberal causes, including abortion, same sex marriages, and affirmative action.⁶ She, along with other conservatives, has stated that affirmative action contradicted the proposition of judging Black people on their character, not judging them on their race.⁷

Many people, including some Justices on the U. S. Supreme Court, believe that the elimination of race would make society more just and be a positive for Blacks. But that is not so. About 25 years ago, 60 Minutes presented a segment on racial discrimination and employment practices in a New York agency. An ex-employee for the agency disclosed how his agency used race although the agency did not ask for race on its applications. The agency used a code. For example, Rudolph Alexander is White, and Alexander, Rudolph is Black. All the White people in the agency knew the code, and businesses knew the race of people being referred before the people showed up. Codes for race have been used since the end of slavery, and the end of listing race in applications for college admissions and employment will not prevent codes still from being used.

Void of any valid data that supported racial preferences, critics of affirmative action took racial preference for granted and have convinced a large part of the public that Blacks have taken a lot of jobs and college admissions from more qualified and higher scoring Whites. A few

⁵ Drew Brooks, "Affirmative Action Changing for Better," *Columbus Dispatch* (Columbus, OH), June 26, 2013.

Erik Sherman, "Conservatives: Here is How to End Affirmative Action in Colleges," *Forbes*, accessed August 6, 2017, <https://www.forbes.com/sites/eriksherman/2017/08/06/conservatives-heres-how-to-end-affirmative-action-in-colleges/#179939a35bcb>.

⁶ John Blake, "Why Conservatives Call MLK Their Hero," *CNN*, accessed January 13, 2013, <https://www.cnn.com/2013/01/19/us/mlk-conservative/index.html>.

Elizabeth Flock, "Clarence Thomas Suggests Affirmative Action is Like Jim Crow," *US News*, accessed June 24, 2003, <https://www.usnews.com/news/articles/2013/06/24/clarence-thomas-suggests-affirmative-action-is-like-jim-crow>.

⁷ Blake, "Why Conservatives Call MLK Their Hero,"

supporters of affirmative action, paled in number and percentage to the critics, have argued for the continued use of affirmative action. All accept the concept of affirmative action, positively and negatively. Additionally, all the books that have been written on affirmative action either condemned it or supported it.⁸

Blacks constitute about 11% or 12% of the United States population, but they are overrepresented in the U. S. justice system. In 2016, 487,300 Blacks were imprisoned by federal and states prison systems, as opposed to 440,200 Whites.⁹ Blacks, having criminal records, make it extremely difficult in securing employment. Additionally, looking at employment and unemployment data, a national probability study involving affirmative action and race, experimental studies involving employment and race, and data surrounding college admissions, I reject the notion that affirmative action benefits Blacks. The aim of this book is to challenge the myth that Blacks benefit from affirmative action to the detriment of Whites. To this end, this book focuses upon why Blacks have been typically used as scapegoats, the myth of affirmative action for Blacks in employment, college admissions, and set asides for minority and women businesses. First, this chapter highlights some factors that make affirmative action disbelieving as it pertains to Blacks.

Several issues that are evident make the implementation of affirmative action highly questionable. That includes the lack of hard data of Blacks being favored in employment and college admissions over Whites. People, like President Trump, say it and then many people just accept it uncritically. Blacks have always had a very high unemployment rate, adults and juveniles. Also, Blacks are seldom employed exceedingly in high

⁸ Jonathan Zimmerman, "US Colleges Need Affirmative Action for Conservative Professor," *The Christian Science Monitor*, accessed December 13, 2012, <https://www.csmonitor.com/Commentary/Opinion/2012/1213/US-colleges-need-affirmative-action-for-conservative-professors>.

NPR Staff, "Affirmative Action: How Far Have We Come?" *NPR*, accessed August 15, 2010, <https://www.npr.org/templates/story/story.php?storyId=129216337>.

CNN, "Commentators Spar Over Affirmative Action," *YouTube*, accessed July 4, 2018, <https://www.youtube.com/watch?v=LBLkmQIf0Hg>

⁹ E. A. Carson, "Prisoners in 2016," *Bureau of Justice Statistics*, January 2018, Washington, DC.

management positions. Blacks are enrolled in colleges and universities in very small numbers. While Blacks' enrollment in predominately White colleges and universities was nil in the mid twentieth century, it increased steadily to 12.5% by 2020.¹⁰

A cursory Examination of Black Employment and College Issues

In 1890, almost 88 percent of Blacks worked in agriculture and domestic service fields.¹¹ In the 1950s, and earlier, Black people did not have much job choices. Determined and intelligent, Dorothy Weathers, a Black woman in the 1950s, could type 85 words a minute. But she could not find a job suitable to her skills. So, she took a job as a maid in a White couple's home, earning five dollars a day.¹² Black men did not fare much better. Many educated Black men could not find jobs other than as porters, janitors, and busboys. Shining shoes was a Black man's job. Although movies do not often depict real life, one movie was particularly salient for me. *Thieves Like Us* depicts three White bank robbers in Mississippi in the 1930s. Two drunken robbers role-played how they robbed banks. Two White females were behind spoke chairs on a table, symbolizing tellers. In the back, a White child with a blackened face with a broom symbolized a Black janitor. In the 1960s, one of my teachers at an all-Black school had a second job as a waiter, and I was washing dishes in the kitchen. He worked mostly for tips, and I earned \$21 a week. According to Justice Clarence Thomas, a strident critic of affirmative action, affirmative action began in the 1960s.

Also, in the late 1960s, the NAACP requested that a supermarket in Savannah, Georgia, where many Blacks shopped, employ a few Black cashiers. The owner of the supermarket said no, and many Blacks then

¹⁰ Melanie Hanson, "College Enrollment & Student Demographic Statistics" EducationData.org, July 26, 2022, <https://educationdata.org/college-enrollment-statistics>.

¹¹ Eduardo Bonilla-Silva, *"Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America (4th ed.)"* (Lanham: MD: Rowman & Littlefield, 2014).

¹² Kathleen Van Wormer, David Jackson III, and Charletta Sudduth, *"The Maid Narratives: Black Domesticity and White Families in the Jim Crow South,"* (Baton Rouge, LA: LSU Press, 2012).

went to another supermarket that employed one Black cashier. In 1973, I overheard a Black preacher talking about his efforts to encourage a bank in Brunswick, Georgia to employ a Black teller. At that time, and previously, the bank employed only White tellers. Pressured by the Black preacher, the bank hired a Black woman as a teller. To the preacher, this hiring represented a monumental achievement, and he bragged about his successful effort. Bonilla-Silva, a Puerto Rican, stated that when he left Puerto Rico for the United States, his mother told him to act like a King. His mother conveyed that “in this country, racial ‘others’ dark complexions are always viewed as incapable of doing much; we are regarded and treated as secondary actors only good for doing beds in hotels or working in fast-food restaurants”.¹³ A group of women faculty, consisting of Hispanic and Black, can attest to this fact by writing that they are presumed incompetent, and one faculty likened her treatment in academia to that of being a maid in academia.¹⁴

Yahoo reported statistics on its workforce and said it was like other tech companies. Yahoo reported that 50 percent of its workforce was White, 39 percent were Asians, 4 percent were Hispanics, and 2 percent were Black, with employees being male.¹⁵ In Ferguson, Missouri, a White police officer killed an unarmed Black male, resulting in massive demonstrations. Scrutiny, then, focused on Blacks’ living conditions, and reports indicated that the Black unemployment rate doubles that of Whites—5 percent for Whites and 11.4 percent for Blacks, and that difference has been the same for a number of years.¹⁶ CBS Evening News reported that the unemployment rate for Black males between 20 and 24 extended to over

¹³ Bonilla-Silva, “Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America (4th ed.).” ix.

¹⁴ Muhs G. Gutierrez y, Yolanda F. Niemann, Carmen G. Gonzalez, and Angela Harris, “Presumed Incompetent: The Intersections of Race and Class for Women in Academia.” (Logan, UT: Utah State University Press, 2012).

¹⁵ Yahoo Reveals its Mostly White, Mostly Male Workforce. NBC News. accessed June 18, 2014, <http://www.nbcnews.com/tech/tech-news/yahoo-reveals-its-mostly-white-mostly-male-workforce-n134541>.

¹⁶ Tami Luhby, “5 Disturbing Stats on Black-White Inequality,” accessed August 21, 2014, http://money.cnn.com/2014/08/21/news/economy/black-white-inequality/index.html?hpt=hp_t4.

40% in Ferguson, Missouri.¹⁷ University and college admissions show questionable statistics but in reverse. Most of the students are White, and Blacks constitute a very small percentage. So, where is the affirmative action in college admissions?

At the 50th anniversary of desegregation, the University of Georgia reported that its first Black graduate from its law school entered in 1966, its first Black lecturer became employed in 1968, its first Black basketball player appeared on the court in 1970, and its first Black football player appeared on the field in 1971.¹⁸

In 1995, Marquita Sykes conveyed that Employment Opportunities Commissions reported 91,000 employment discrimination complaints under investigation in one particular year, and less than 2 percent involved complaints of reverse discrimination or Whites complaining that they had been discriminated against by employers preferring women and Blacks to Whites.¹⁹

NBC News posted a story about a Florida prosecutor who referred to drug offenders as crack hoes and stated that U. S. Supreme Court Justice Sonia Sotomayor's appointment to the Court proved that affirmative action existed.²⁰ Additionally, this prosecutor posted on Facebook a reference to Justice Sotomayor in the following manner: "Reason enough why no country should ever engage in the practice of affirmative action again. This could be the result. Where would she [Justice Sotomayor] be if she did not hit the quota lottery? Here's a hint: 'Would you like to supersize that sir?'"²¹ Justice Sotomayor obtained degrees from Princeton and Yale, two Ivy

¹⁷ Mark Strassmann, "Ferguson Resident: 'No Jobs, No Peace, Period.'" *CBS Evening News*, accessed August 22, 2014, <http://www.cbsnews.com/news/ferguson-resident-no-jobs-no-peace-period/>.

¹⁸ Celebrating Courage, "50th Anniversary of Desegregation at UGA." accessed 2012. <http://desegregation.uga.edu/milestones/>.

¹⁹ Marquita Sykes, "The Origins of Affirmative Action," *National NOW Times*, accessed 1995, <http://www.now.org/nnt/08-95/affirmativehs.html>.

²⁰ Florida Prosecutor Kenneth Lewis Sorry for 'Crack Hoes' Facebook Post, *NBCNEWS*, accessed May 22, 2014, <https://www.nbcnews.com/news/us-news/florida-prosecutor-kenneth-lewis-sorry-crack-hoes-facebook-post-n113196>.

²¹ Florida Prosecutor Kenneth Lewis Sorry for 'Crack Hoes' Facebook Post, *NBCNEWS*.

league schools. Yet, the prosecutor did not view her as intelligent and capable of serving on the U. S. Supreme Court.

Steele and others presented no data to support their criticisms of affirmative action or racial preferences for Blacks. In the school setting, the common strategy is to point to the higher means or medians of Whites and the lower means or medians of Blacks. For example, if a White female has a GPA of 3.7, critics of affirmative action say she should automatically be admitted over a Black with a GPA of 3.3. Such an example is false and misleading. The .4 is negligible, and no college or university solely considers an applicant's GPA as the most important criterion or primary factor in admission. Further, no research exists that a person with a GPA of 3.7 would make a better lawyer and would be more ethical than a person with a GPA of 3.3. Reports are that women, and this means White women and not minority women, have benefited the most from affirmative action, but no criticisms or talk about White gender preference. Absolutely, no talk exists about affirmative action being negative for White women, and White women have been totally left out of the criticisms about affirmative action.

What Affirmative Action is, and What Was it Designed to Accomplish?

President Franklin Delano Roosevelt issued the first executive order to enact a decree prohibiting discrimination by all defense contractors by Executive Order 8802 in June 1941. Specifically, this executive order prohibited government contractors from engaging in employment discrimination based on race, color, or national origin, but this order contained no enforcement authority. As war loomed, President Roosevelt signed the Executive Order to prevent strikes or demonstrations disrupting the manufacture of military supplies. Succeeding President Roosevelt, President Harry S. Truman in 1948 ordered the desegregation of the armed services by Executive Order 9981. This order mandated that there be

equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin.²²

A few years after John F. Kennedy won the presidency in 1960, he disseminated an executive order, 10925, mandating government contractors to take **affirmative action** to ensure that all applicants are treated fairly, and that all employees are treated during employment nondiscriminatory, without regard to their race, creed, color, or national origin.²³ Unlike Presidents Roosevelt and Truman, President Kennedy utilized the words affirmative action for the first time. In 1969, Republican President Richard Nixon also furthered an affirmative action program when he tried to promote fairness in employment in the construction industry in Philadelphia. Philadelphia construction companies had to develop goals and timetables in their employment practices.²⁴ During those times, the construction workforce constituted a workforce consisting of mostly White men, and Blacks could not secure employment in construction. White men could only do construction work because of high pay.

President Nixon's executive order stated:

WHEREAS discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States.

WHEREAS it is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts; and

²² EEOC, "*The Law*." (Washington, DC: EEOC), accessed 2013a, <http://www.eeoc.gov/eeoc/history/35th/thelaw/>.

²³ EEOC, "*Executive Order 10925: Establishing the President's Committee on Equal Employment Opportunity*," (Washington, DC: EEOC, 2013b).

²⁴ Toni Lester, "Contention, Context and the Constitution: Riding the Waves of Affirmative Action Debate." *Suffolk University Law Review*, vol 39 no.67 R(2005): 119.

WHEREAS it is the policy of the executive branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government; and

WHEREAS it is in the general interest and welfare of the United States to promote its economy, security, and national defense through the most efficient and effective utilization of all available manpower; and

WHEREAS a review and analysis of existing Executive orders, practices, and government agency procedures relating to government employment and compliance with existing non-discrimination contract provisions reveal an urgent need for expansion and strengthening of efforts to promote full equality of employment opportunity; and

WHEREAS a single governmental committee should be charged with responsibility for accomplishing these objectives.²⁵

When Congress held hearings on the Civil Rights Act of 1964, it omitted sex, but women lobbied to be included. In 1968, President Lyndon Johnson signed Executive Order 11375, which included women within the parameters of affirmative action and which women had lobbied to be included.²⁶

Many institutions have endeavored to define affirmative action. The website for the Legal Information Institute at Cornell University Law School defined affirmative action as “a set of procedures designed to eliminate unlawful discrimination between applicants, remedy the results of such prior discrimination, and prevent such discrimination in the future.”²⁷ In a legal case, the U. S. Supreme Court defined affirmative action as “the desire to hire, to promote, to give opportunity and training

²⁵ EEOC. “Executive Order 10925: Establishing the President’s Committee on Equal Employment Opportunity.”

²⁶ Dara Z. Strollovitch, “Playing Favorites: Public Attitudes toward Race-and Gender-Targeted Anti-discrimination Policy.” *NWSA Journal*, Volume 10 no 3 (1998): 27-53.

²⁷ Legal Information Institute at Cornell University Law School. *Affirmative Action*. accessed 2013, http://www.law.cornell.edu/wex/affirmative_action.

on an equitable, non-discriminatory basis."²⁸ The General Accounting Office Order 2713.1 defines an "affirmative action program plan" as a plan, with goals and timetables, which is designed to overcome underrepresentation and the effects of past or present practices, policies, or other barriers to equal employment opportunity."²⁹ Affirmative action soon after it included women as well as minorities.³⁰

For federal contractors and subcontractors, affirmative action must be taken by covered employers to recruit and advance **qualified** minorities, women, persons with disabilities, and covered veterans. Affirmative action included training programs, outreach efforts, and other positive steps. These procedures should be incorporated into the company's written personnel policies. Employers with written affirmative action programs must implement them, keep them on file, and update them annually.³¹ However, affirmative action has come to be synonymously only as racial preference for Blacks, incurring strong criticisms.

Before affirmative action, applicant pools consisted of all White males and the better paying jobs went only to White males. Also, qualifications favored White males. Essentially, affirmative action promised to rectify

²⁸ Johnson v. Transportation Agency, Santa Clara County, California, et al., 480 U.S. 616 (1987).

²⁹ Dowd and all other similarly situated v. U. S. General Accounting Office, 1997 U.S. App. LEXIS 24210 (1997).

³⁰ Francis Lee Ansley, "Cost Allocation in Title VII remedies: Who Pays for past employment discrimination," *Tennessee Law Review*, 44, no. 89 (1977): 347.

Carolee Lee Bacchi, *The Politics of Affirmative Action: Women, Equality and Category Politics*. London: Sage, (1996).

Indiana Bar Association. "Annual Meeting: The Need for Diversity in Appellate Practice." *Res Gestae Indiana Bar Journal*, vol. 54 no. 1 (2010): 366.

Jeffery M. Jones, "In U. S., Most Reject Considering Race in College Admissions. accessed 2013, <http://www.gallup.com/poll/163655/reject-considering-race-college-admissions.aspx>.

Vincent N. Parrillo, *Strangers to these shores* (10th ed). (Boston Allyn and Bacon, 2012).

Franita Tolson, "The Boundaries of Litigating Unconscious Discrimination: Fire-based in Response to a Hostile Judiciary." *Delaware Journal of Corporate Law*, vol. 33 no. 2 (2008): 347-388.

Terry Jeanette Woods, "Constitutional Law - Equal Protection - Standard of Review Applicable in Sex Discrimination Cases." *Tennessee Law Review*, vol. 45 1977-1978 (1978). 514.

³¹ United States Department of Labor. *Affirmative Action*, accessed 2013, <http://www.dol.gov/dol/topic/hiring/affirmativeact.htm>.

institutional racism.³² Richard Schaefer enumerated examples of the types of institutional racism that affirmative action sought to overcome. These barriers entailed:

- 1) Height and weight requirements that are unnecessarily geared to the physical proportions of White men without regard to the actual characteristics needed to perform the job and that therefore exclude women and some minorities.
- 2) Seniority rules, when applied to job historically held only by White men, which make more recently hired minorities and females more subject to layoff - the last hired, first fired employee - and less eligible for advancement.
- 3) Nepotism-based membership policies of some unions that exclude those who are not relatives of members, because of past employment practices, are usually White.
- 4) Restrictive employment leave policies coupled with prohibitions on part-time work or denial of fringe benefits to part-time workers that make it difficult for the heads of single-parent families, most of whom are women, to get and keep jobs and meet the needs of their families.
- 5) Rules requiring that only English be spoken at the workplace, even when not a business necessity, which result in discriminatory practices toward people whose primary language is not English.
- 6) Standardized academic tests or criteria geared to the cultural and educational norms of middle-class or White men when these are not relevant predictors of successful job performance.
- 7) Preferences shown by law and medical schools in admitting children of wealthy and influential alumni, all of whom are White; and
- 8) Credit policies of banks and lending institutions that prevent the granting of mortgages and loans in minority neighborhoods or that prevent the granting of credit to married women and others who

³² Richard T. Schaefer, *Racial and Ethnic Groups* 12TH ed. (Upper Saddle River, NJ: Prentice Hall, 2010).

have previously been denied the opportunity to build good credit histories in their own names.³³

The Political Backlash against Affirmative Action

In 1990, then North Carolina Senator Jesse Helms encountered a tough reelection battle with Harvey Gantt, a Black candidate and former mayor of Charlotte.³⁴ Gantt found himself leading in the polls a week before Election Day. Then, Jesse Helms ran his ad, depicting a White male that had applied unsuccessfully for a job. The commentator said that he, the White man, should have been hired for the job, but the company had to give the job to a Black man because of affirmative action and a quota system. Showing only the White man's hands, the White man balled up his application and threw it into the trash can. Jesse Helms won the election the next week by five points.³⁵

Surreptitiously tapped into White resentment of affirmative action, this ad is credited with Jesse Helms winning reelection.³⁶ In addition, a segment on the news showed a White supremacist group who lambasted affirmative action as the cause of White men losing jobs, and this story signified a recruitment tool to solicit White men who had lost their jobs to join its organization.³⁷ These campaign advertisements and solicitations inflamed

³³ Richard T. Shaffer, *Racial and Ethnic Groups* 12th ed. 76

³⁴ Matthew Rothschild, "Jesse Helms: No more whistlin' Dixie." *The Progressive*. accessed August 24, 2001, <http://www.progressive.org/node/1790>.

³⁵ rt Harris, "Harvey Gantt's Fight to the Finish" *Washington Post*. accessed November 4, 1990. https://www.washingtonpost.com/archive/lifestyle/1990/11/04/harvey-gantts-fight-to-the-finish/d0dbacf8-bf49-41d2-a55b-4d402dea95a4/?utm_term=.ebbd5c0987b6.

³⁶ Gwen Sharp, "Anti-affirmative Action Political Ad from Jesse Helms's 1990 Campaign." *Sociological Images*. accessed May 5, 2008, <http://thesocietypages.org/socimages/2008/05/05/anti-affirmative-action-political-ad-from-jesse-helmss-1990-campaign/>.

³⁷ Darran Simon, "White Supremacists Targeting College Campuses More Than Ever, Report Says," CNN. accessed February 1, 2018. <https://www.cnn.com/2018/02/01/us/white-supremacist-propaganda-on-college-campuses/index.html>; Joe Helm, "Hate Groups Make Unprecedented Push to Recruit on College Campuses." *Washington Post*. accessed January 12, 2018. https://www.washingtonpost.com/local/education/hate-groups-make-unprecedented-push-to-recruit-on-college-campuses/2018/01/12/c66cf628-e4f8-11e7-833f-155031558ff4_story.html?noredirect=on&utm_term=.37524f3a5626.

and angered Whites to accept something that constituted mythical, misleading, false, and scapegoating reasonings.

The most prominent critic of affirmative action is U. S. Supreme Justice Clarence Thomas, who has railed against affirmative action in the Court's cases. Also, Justice Thomas discussed affirmative action in his memoir. Justice Thomas said in his memoir "in the few years following Dr. King's assassination, affirmative action (though it wasn't yet called that) had become a fact of life at American colleges and universities, and before long I realized that these blacks who benefited from it were being judged by a double standard."³⁸ The most telling comment about affirmative action is that Justice Thomas blamed it for his not getting a job after graduating from Yale Law School. He said he looked for a job in Washington, DC, Los Angeles, New York, and Atlanta. He wrote that these law firms dismissed him and doubted that his smartness as his grades suggested. Justice Thomas said an Atlanta law firm strung him along and when it hired a classmate, he withdrew his application.³⁹ Justice Thomas' words are very revealing. If affirmative action amounted to the law of the land, he would have been hired! His not being hired is proof of no affirmative action, as Whites and he defined it, or racial preference for Blacks.

Moreover, Justice Thomas did not indicate the race or sex of his classmate that secured the job in Atlanta. If the classmate were White, this might have meant racial discrimination was the cause of him not getting a job at this law firm, and Justice Thomas would never say that racial discrimination existed at this law firm or any law firms. He condemned Black people for blaming their shortcomings on the White man.⁴⁰ If the classmate were Black, it would have meant that something was wrong with Justice Thomas. Maybe, he did not interview well, displayed arrogance, or projected an unwillingness to work with others. If his classmate were Black, the law firm hired one Black graduate of Yale Law School but rejected Justice Thomas also a graduate of Yale Law School. However, he blamed

³⁸ Clarence Thomas. *My grandfather's son: A memoir*. (New York: HarperCollins, 2007) 74-75.

³⁹ Thomas, "My grandfather's son: A memoir." 74

⁴⁰ Thomas "My grandfather's son: A memoir." 75

affirmative action for his not being hired and declared he had been tainted by the beliefs of racial preference.

Incidentally, a Black male, who attended the same undergraduate school as me and majored in criminal justice, attended Ohio State University College of Law. Currently, he is a partner now in the largest law firm in Atlanta that Justice Thomas alluded. My schoolmate was not tainted by racial preference although Ohio State has an affirmative action policy. The Dean of the Ohio State University Law School told me that this Black man who attended the same undergraduate school as I was one of the top litigators in the country. Additionally, I have a White friend whose daughter graduated from Yale law school, and she is a partner in a law firm in Washington, DC. She has not been tainted by gender preference. In all his discussions of affirmative action in his memoir and affirmative action cases that he helped decide, Justice Thomas did not discuss White women receiving affirmative action and he only targeted and blamed Black people. Additionally, he does not explain how affirmative action demeans Blacks but not White women.

In *Gratz et al., v. Bollinger et al*, Justice Thomas railed against affirmative action and criticized the University of Michigan College of Literature, Science, Art policy. Justice Thomas questioned the validity of this policy because it did not permit for consideration of nonracial differences among underrepresented minority applicants. A lawful admission policy, says Justice Thomas, must permit deliberation of nonracial discrepancies among all applicants on both single allowable classifications.⁴¹ In *Gutter v Bollinger et al.*, Justice Thomas quoted from Frederick Douglas. Like Frederick Douglas, Justice wrote that he believed a Black man can achieve in every avenue of American life without the interferences of university administrators.⁴²

Justice Thomas expressed flaws in both Michigan cases. While Justice Thomas stated that a lawful admission policy must consider individual differences among all applicants, he neglected to inquire about Whites' differences. As stated, affirmative action has come to mean racial

⁴¹ *Gratz et al. v. Bollinger et al.*, 539 U. S. 244 (2003).

⁴² *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002).

preferences for Blacks only. Whites' differences are not discussed at all. Frederick Douglass stated that Black people did not want pity or benevolence, but they wanted justice. In Frederick Douglass' lifetime, violence against Black people remained rampant, and White supremacy reigned absolutely, denying them rights that most immigrants had. In the infamous, Dred Scott decision, the Chief Justice of U. S. Supreme railed against Black people, declaring how much White people despised them and saying that Black people had no rights that White people should honor.⁴³

Justice Thomas, voicing his opposition to affirmative action, recounted how slavery defenders once said Blacks benefited from slavery because it helped them to become more civilized. Also, racists defended segregation because it protected Black children from racist teachers and students.⁴⁴ When Congress considered Justice Thomas for a seat on the Supreme Court, he stated angrily that liberals resented him because he dared think for himself, and liberals did not like a Black man that thought for himself. However, Justice Thomas' repeating statements by racists and segregationists belie his independent thinking and thinking for himself. When some lawyers have cases before a court, they will create any legal arguments that they think will persuade courts in their favor. The truth of the matter was that segregationists and their lawyers did not care the least bit about Black children and wanted to protect Black children from White racists. In a similar manner, defenders of slavery rationalized the institution of slavery and that was a clear form of scapegoating. No White man that favored slavery concerned himself in helping to civilize Black people from Africa. Justice Thomas' two statements regarding affirmative action are asinine and laughable.

Additionally, Justice Thomas repeated excerpts from the Fifth Circuit Court of Appeals, by noting that Blacks clustered in certain programs at the University of Texas and "nearly a quarter of the undergraduate students in [the university's] College of Social Work are Hispanic, and more than 10% are [black]. In the College of Education, 22.4% of students are Hispanic, and

⁴³ Dred Scott v. Sandford, 60 U.S. 393 (1857).

⁴⁴ Fisher v. University of Texas at Austin et al., 2013 U. S. LEXIS 4701 (2013).

10.1 are [black].”⁴⁵ Justice Thomas went on to say “There is some evidence that students admitted as a result of racial discrimination are more likely to abandon their initial aspirations to become scientists and engineers than are students with similar qualifications who attend less selective schools.”⁴⁶ Justice Thomas concluded that minority students might have transferred towards less competitive majors because of the mismatch caused by racial discrimination in admissions.

The reason some students gravitate to social work and education are explainable, but these reasons have nothing to do with affirmative action. Hispanics are near the bottom in terms of poverty, and they have experienced racial discrimination in society. Some minority students, both Hispanic and Black, gravitate to Social Work to help their people and they see this major as striving to help oppressed groups. Most social work students are White females, and most of them concentrate in mental health, and aspire to work with middle class White women dealing with domestic violence, sexual assaults, and various other women’s issues. Ten percent of Blacks students majoring in social work at the University of Texas is not a lot of students. Also, Hispanic students have the highest dropout rate of all students,⁴⁷ and many Hispanic students that are majoring in Education at the University of Texas want to help Hispanic students in high school to stay in school.

Justice Thomas did not discuss or speculate about White females who go into social work and education and why White women majored in these disciplines. At the Ohio State University, over 90 percent of social work students are White females and when I attended the Graduate School of Social work at the University of Houston in the 1980s most students comprised White females. Within the Department of Social Work at the University of Minnesota where I obtained my Ph.D., Whites made up most of the student body. I remembered a lot of classes at the University of

⁴⁵ Fisher v. University of Texas at Austin et al., 2013 U. S. LEXIS 4701 (2013).

⁴⁶ Fisher v. University of Texas at Austin et al., 2013 U. S. LEXIS 4701 (2013); See Roger A Elliott, Christopher Strenta, Russell Adair, Michael Matier, and Janna Scott. “The Role of Ethnicity in Choosing and Leaving Science in Highly Selective Institutions.” *Research in Higher Education*, Volume 37, no. 6, (1996): 681-709. I read this entire article and I did not see what Justice Thomas summarized in his diatribe against affirmative action.

⁴⁷ Vincent N. Parrillo, “*Strangers to these shores* (10th ed).”