

The Bill Blackwood
Law Enforcement Management Institute of Texas

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Viability of Affirmative Action
as a Concept in the Field of Public Service

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by
Kirk A. Jackson

La Marque Police Department
La Marque, Texas
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ABSTRACT

For nearly fifty years, America has been fighting to ensure civil rights for all persons. Over this time span, America has been grappling with ways to guaranty that every citizen has equal opportunities. In the latter part of the twentieth century, the Government of the United States realized that something had to be done to put an end to the injustices suffered by minorities. President Lyndon Johnson, with the creation of the Civil Rights Act of 1964, implemented a federal policy, which we now know as affirmative action. Since the beginning of affirmative action, there has been resistance to its use from both citizens and Government officials. Even today, affirmative action is a topic that many shy away from, either because of misunderstanding, disapproval or public opinion. One reason for this attitude may be that affirmative action was not defined when it was implemented. When two surveys were conducted, one survey of police professionals and one of a diverse group of citizens, the idea of affirmative action was one most preferred to not comment on. Even though the majority of all polled agreed that affirmative action is a concept that is essential to the health of the nation, few can agree on how it can be implemented. This author believes that affirmative action is a concept necessary to the collective health of this great nation. Without the cultural knowledge and understanding that comes with affirmative action, America will forever be place wrought with misunderstanding, distrust, and ultimately prejudice to races and ethnicities different from our own.

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INTRODUCTION

Modern police agencies within the United States have faced a complicated necessity during the past decade. That necessity has been in trying to implement an Affirmative Action policy. Some members of the government, the public, and officers who are already employed with the various police departments have opposed the implementation of affirmative action. That opposition was based on the belief that affirmative action rewards minorities with jobs, promotions, or other opportunities based on the person's status as a minority and not on the qualifications of that person. The blame for this misunderstanding rests somewhat on the shoulders of Presidents Johnson and Nixon. Renshon (2001) says that when affirmative action entered into the scene of American politics in the early 1960s, it was not explained and basically implemented "behind their backs" (p. 113). Affirmative action is a very important aspect of public service. The main reason for this is the need for a police force that mirrors, as closely as possible, the cultural and ethnic diversity of the community that it serves. Having a culturally diverse police force will help the police department be better in touch with the needs of those in the community.

Before an effective affirmative action policy can be implemented, police department chiefs and government officials must first grasp a true definition of affirmative action. The definition of affirmative action, as stated by Dr. Christopher Porter at Texas A&M's Institute of Executive Development (2002), is "a process in which employers identify problem areas, set goals, and take positive steps to guarantee equal employment opportunities for people in a protected class."

In this research paper, the author will attempt to answer the question, “Is affirmative action a viable concept in the field of public service?” This author will attempt to answer this question in order to aid the La Marque Police Department in understanding that affirmative action is a viable concept and is essential to the effectiveness of the police department in the community that it serves.

During the course of this research, this author intends to rely on pre-existing information as well as three surveys as source material for this report. This author will present a survey to a selection of law enforcement professionals, as well as to a random selection of citizens of Galveston County. Out of the latter two surveys, one will be presented to a selection of adults in the community and the second will be presented to a group of high school students.

With this information, this author believes that it will be revealed that affirmative action is a viable concept if implemented properly. If it is used in a discriminatory way, that is, hiring persons based solely on their race, it will be doomed for failure from the beginning. If it is used to fill the police department ranks, from equally qualified applicants, to match as closely as possible the ethnic make up of the citizens it will result in a police department better suited to serve its citizens. Further, it will give the citizens a better feeling of cooperation with the police department by displaying an image that the police department is a part of the community and not just a policing force.

REVIEW OF LITERATURE

In the early 1960s, the United States of America was suffering from very turbulent times. In the United States, particularly in the southern states, the civil rights of many Americans were in extreme danger. Official oppression and civil rights abuses were prevalent; as was social and governmental tolerance of hate groups such as the Ku Klux Klan. The official policy of the government included the segregation and discrimination of minorities. With that policy, came the miss-representation of minorities in the work force, most notably the African American race. The menial, low wage, jobs such as laborers and servants were filled by the minorities, while the higher wage and publicly held jobs were reserved for non-minorities.

During that era, the federal government in Washington D.C. realized that the abuses occurring in the south could no longer be tolerated. They realized that something had to change in order to protect the integrity and image of the United States of America. Long (1996) reports that in 1964, President Lyndon Johnson signed the Civil Rights Act, thus creating the Equal Employment Opportunity Commission (E.E.O.C.). At first, the E.E.O.C. had very little power but that soon changed. The E.E.O.C. was charged with the responsibility of remedying the previous wrongs perpetrated against minorities in the work place. With that responsibility came the birth of affirmative action.

The passage of the Civil Rights Act of 1964, according to Long (1996), prohibited the “discrimination on the basis of race, color, religion, sex, or national origin.” (p. 13)

“That law also said that it should not be interpreted to require any employer to grant preferential treatment to any individual or to any group” (p. 13).

With that being the case, it would be easy for one to confuse the true meaning of affirmative action. One obvious reason for the confusion of how to implement affirmative action was that the government failed to define affirmative action. The majority of people would assume that the definition of affirmative action would have been clearly defined in these modern times. The author also shared that assumption when a legal definition was sought from the Texas Attorney General’s Office. When asked for a legal definition, the Texas Attorney General’s Office reported that their office was not allowed to release legal definitions and that the author would have to seek a definition from the local District Attorney’s Office. When the Galveston County District Attorney’s Office was asked for the definition of Affirmative Action, no answer could be given. After getting the same result from various sources in the private sector, two descriptions of Affirmative Action were obtained. The American Psychological Association’s Office of Public Communications, in a pamphlet titled “How Affirmative Action Benefits America,” defines Affirmative Action as “a remedy for both past and continuing discrimination based on race, ethnicity, and gender” (American Psychiatric Association, 1999). The definition of affirmative action, as stated by Dr. Christopher Porter at Texas A&M’s Institute of Executive Development on June 17, 2002, is “a process in which employers identify problem areas, set goals, and take positive steps to guarantee equal employment opportunities for people in a protected class” (Dr. C. Porter, lecture at Texas A&M, June 17, 2002). While these were merely descriptions, the author is still without a legal definition of affirmative action.

Given the fact that affirmative action is so vaguely defined, the personnel in each profession must realize the meaning behind affirmative action and implement it accordingly. Affirmative action was created to remedy the misrepresentation of minorities in the workforce. Since this author is using this paper to address affirmative action in public service, the theme of discussion will be affirmative action as applied to public service. This author offers the opinion that affirmative action is best implemented as the policy of filling the ranks of a public service agency from a pool of equally qualified applicants so that the agency mirrors, as closely as possible, the community that it serves.

Many will offer the argument that affirmative action is reverse discrimination. The author can only assume that this argument is based on the concept that affirmative action is the policy of hiring minorities, regardless of qualifications. If one were to use that concept of affirmative action, it would not be reverse discrimination but, by definition, discrimination. According to The American Heritage Dictionary of the English Language (2004), discrimination is defined as, “treatment or consideration based on class or category rather than individual merit; partiality or prejudice.” Using that definition, the act of hiring a person, based on race, sex, ethnicity, national origin, etc., regardless of qualifications is discrimination. To reiterate that argument, Title VII of the Civil Rights Act of 1964 states, “it shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin” (United States, 88th Congress, 1964)

A Civil Service agency is further hindered in the hiring of minorities due to strict hiring mandates. According to Miller (1998) the Texas Firemen's and Policemen's Civil Service Law, Section 143.026, states that the names of the persons having the three highest grades on the civil service test shall be forwarded to the chief executive, and subsection B states, "the chief executive shall appoint the person having the highest grade unless there is a valid reason why the person having the second or third highest grade should be appointed." This mandate complicates the hiring of minorities in order to insure that the police ranks mirror the racial make-up of the community.

To apply a practical scenario to this Civil Service mandate, the La Marque Police Department receives three names from the Civil Service Board as the three top scores on the test. The first and third names are white males. The second name is that of a black female. Unless a valid reason can be produced that eliminates the first white male as a candidate, the La Marque Police Department is mandated to hire him. As is the case with most small departments, meaning those with thirty or so sworn personnel, hiring is probably done one or two at a time. Therefore, the opportunity to hire a minority in good faith with affirmative action might be lost.

Affirmative action faces many critics in public service. The argument that the community will suffer when the less qualified applicant is chosen has been well articulated. According to Rauch (2000), John Lott, a statistical economist, used a Justice Department database of almost five hundred American cities from 1985 to 1994. He then examined about twenty police forces that had been mandated to add minorities and women. Lott found that "increasing black officers' share by 1 percentage point increases property crime by 4 percent and the same increase raises the murder rate by 1.9 percent

and overall violent crime by 4.8 percent” (p. 1183). In the author’s opinion, although Lott’s research appears to have merit, this author must offer the argument that Lott’s research appears biased. If Lott has examined twenty agencies that were not under the same mandate, would his findings have been different? Another contradiction that this author would like to offer is that there was no mention of the crime rate increase or decrease nationwide during the time frame of Lott’s research. Although Lott’s research appears to be a valid argument, the data seems to be skewed to validate his argument.

METHODOLOGY

Can affirmative action be effectively used in the field of public service? There was a survey handed out to twenty-seven (27) police officers in supervisory roles from departments throughout Texas that were represented at LEMIT LCC Module II in February of 2003. Each supervisor completed his or her survey and returned it during that module. The survey asked the following nine questions:

1. What is your rank at your department?
2. Are you in a position at your Department wherein you have even the slightest role in your Department’s hiring process?
3. What is your definition of Affirmative Action?
4. Do you feel that Affirmative Action is discrimination? If your answer is yes, please give a brief reason why.

5. On a scale of 1 through 10, how important do you feel that it is for the racial make-up of a public service entity to mirror the demographics of the population that it serves?
6. Do you know the demographics of the community that your agency serves?
7. Do you feel that Affirmative Action can be effectively used in the field of public service? If your answer is no, please give a brief reason why.
8. Do you feel that discrimination against the hiring of minorities is prevalent in your Department?
9. Do you feel that discrimination against the hiring of minorities is prevalent in Law Enforcement in Texas?

A second survey was sent out to a group of twenty adults comprised of both White, African American, and Hispanic males and females. The survey was intended to judge the public's view of Affirmative Action and its importance in our society. The survey asked the following six (6) questions:

1. What is **your own** definition of affirmative action?
2. Do you feel that affirmative action is discrimination? If your answer is yes, please give a brief reason why.
3. In your opinion, what are the benefits of affirmative action?
4. In your opinion, what are the negative aspects of affirmative action?
2. On a scale of 1 through 10 (1 being the lowest and 10 being the highest), how important do you feel that it is for the racial make-up of a public service entity to mirror the demographics of the population that it serves?
3. What is your gender and race?

The third survey was presented to a group of fifteen high school students at the La Marque High School. That survey was designed to get an idea of the number of teenagers who would consider law enforcement a possible career choice. That survey asked the following four questions:

1. What is your age?
2. What is your gender?
3. What is your race / ethnicity?
4. Would you ever consider a career in Law Enforcement? If you would, please give some insight into the reasons for your answer.

FINDINGS

When the topic of affirmative action is addressed, many shy away from the conversation for fear of being viewed as not politically correct. The author conducted a survey of twenty-seven (27) police officers in supervisory roles; the survey addressed affirmative action. Out of the twenty-seven (27) surveys, seventeen (17) were received completed and one (1) discarded because it was received incomplete (63.0% return rate) (Table 1).



Table 1

Surveys handed out to law enforcement professionals.

Out of those seventeen (17) surveys, nine (9) of the polled (52.9%) answered that they believe that affirmative action is discrimination, seven (7) responded that they do not believe that affirmative action is discrimination, and one (1) of the fourteen responded that it is, and is not discrimination; depending on the method that affirmative action is implemented.

All of those polled (100%) who answered that affirmative action is discrimination, gave reasons that can be summarized into the answer that affirmative action gives preference to race, ethnicity, sex, and all other factors, which describe a protected class, over qualifications.

The survey asked, with “yes” or “no” responses, if the person polled believed that affirmative action could be effectively used in the field of public service. The responses were almost equally divided between “yes” and “no.” Nine (9) of those polled (52.9%) answered “yes” while seven (7) answered “no.” One (1) of the included surveys did not have this question answered. A subsection to the question was provided for a brief reason

why those who answered in the negative did so. One (1) of those polled, and who answered “no,” unfortunately failed to give a reason. Three (3) of those polled indicated that the reason for their response in the negative was based on their belief that affirmative action is, in summary, discrimination. One did indicate that even though they felt that Affirmative Action could not be effectively applied, they felt that it possibly could if implemented in the recruitment process in order to increase the number of minority applicants.

Those polled were asked on a scale of 1 through 10, how important it was that the racial make-up of a public service entity mirrors the demographics of the community that it serves. Through the answers, it appeared that the scale was notably leaning toward the consensus that the racial make-up mirroring the demographics of the population was important. Only one (1) of those polled listed the importance at two (2). Out of the remainder of the responses, five (5) placed the importance at a rating of five (5), four (4) at a rating of seven (7), two (2) at a rating of eight (8), one (1) at a rating of nine (9), and four (4) at a rating of ten (10) (Table 2).

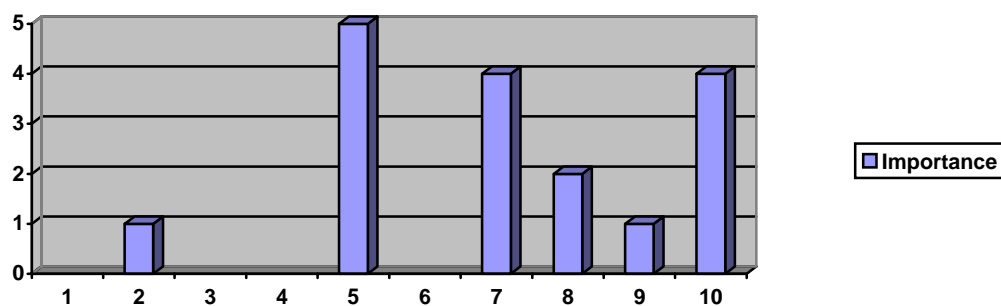
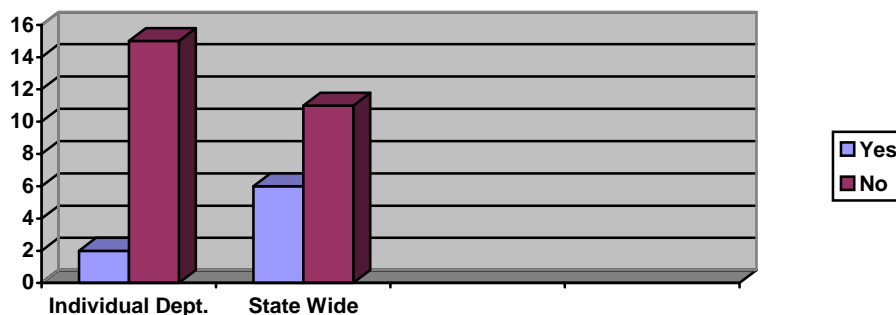


Table 2

Importance of the racial make-up of a department equaling the demographics of the population that it serves.

The last two questions that were asked of the group of polled law enforcement supervisors were, whether or not they felt that discrimination against minorities was prevalent in his or her respective department and whether or not discrimination against minorities was prevalent in law enforcement in the state of Texas. In response to the question of whether or not they felt that discrimination against minorities was prevalent in their respective agencies, fifteen (15) responded in the negative while only two (2) responded that they felt there was discrimination. When the question was expanded to include all of Texas, the scales tipped only slightly. Eleven (11) of those polled indicated that they did not believe that there was discrimination against minority police officers state-wide, while six (6) indicated that they felt that there was discrimination against minorities. What this set of statistics shows is that thirty-five percent (35%) of those polled believe that there is discrimination against minorities in Texas (Table 2). The fact that law enforcement professionals provided that opinion makes its impact even harder to dispute.



The findings show that slightly more than half of those polled believe that affirmative action can be effectively used in the field of public service but that the overwhelming majority feel that it is very important that the racial make-up of the public service entity and the demographics of the population it serves be as equal as possible.

This indicates that although some believe that affirmative action is not a viable concept when used in police work, the majority agrees that the adequate representation of minorities in a police force is necessary. Given the above statistics, the field of law enforcement must find a way to insure that minorities are properly represented in the ranks.

When this author sent surveys out to twenty adults asking for input on their opinions of affirmative action, it was quite disheartening when none of the surveys were returned. The questionnaire was sent out to a homogenous group of African-Americans, Whites, and Hispanics. The only identifying information requested on the survey was race and gender as an attempt to get as candid answers as possible.

The author then sent out surveys to a selection of fifteen (15) teenage high school students. Out of those fifteen (15) surveys, only four (4) were returned (26.7%). One (1) of the surveys was discarded due to an invalid answer to why the teenager, an eighteen year old “other” male, would consider a career in law enforcement. The teenager unfortunately answered that he would consider a career in law enforcement so that he could “speed and not get tickets.” Out of the remaining three (13) surveys, two (2) were eighteen-year-old African-American males and the third was a seventeen-year-old white male. All three answered that they would consider a career in law enforcement and all three reasons why can be summarized into a desire to make their community a safer place and to make a difference in their society.

DISCUSSION/CONCLUSIONS

In order to determine whether or not affirmative action is discrimination, a description of affirmative action must first be identified. The author will provide the argument that affirmative action is not discrimination if the following definition is used. Affirmative action is not discrimination if it is the policy of utilizing recruitment of minorities to increase an applicant pool in order to help an agency to mirror the population that it serves. That policy does not choose a person based on race, but instead increases the number of historically disadvantaged persons in the applicant pool.

How can public service use affirmative action effectively? The question that arises in the author's mind is that, given the scrutiny that public servants fall under, will it be possible to find any two persons with the same qualifications? This question does not apply as much to smaller entities as much as it does to large agencies. The small applicant pool that small agencies have to choose from dictates that equally qualified applicants will virtually never be encountered. Larger agencies enjoy a much larger applicant pool and the likelihood that a white male and a minority, each with equal qualifications, might be encountered. In that case, that large agency will be able to choose the applicant who will aid the agency in mirroring the community. The smaller agency must somehow ensure that the applicant pool they are choosing from is one that will make it possible to have equally qualified minority and non-minority applicants.

The question of whether or not affirmative action is a viable concept in the field of public service is dependent upon several factors. The first factor that affects affirmative action in public service is public opinion as well as the attitude among law

enforcement professionals toward affirmative action. The second factor is how the public's opinion of affirmative action contrasts with the definition and opinion held by law enforcement professionals. Law enforcement professionals need to place a greater emphasis on the education of themselves, their subordinates, and the community that they serve toward the purpose and necessity of affirmative action. Affirmative action is very important to the effectiveness of law enforcement's ability to be community-oriented and of the overall health of communities. Law enforcement officers and administrators need to understand that the policing of, and police interaction with, minority communities requires a knowledge of cultural differences that are not enjoyed by all officers. That knowledge of cultural differences is obtained when numerous officers of different cultural backgrounds are employed within a department.

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