

SALARY COMPRESSION AND INVERSION IN THE UNIVERSITY WORKPLACE

by

**Edward J. O'Boyle, Ph.D.
Mayo Research Institute**

**This paper was published in the *International Journal of Social Economics*, Volume 28,
Numbers 10/11/12 2001. To retrieve the published article, go to
<http://www.emeraldinsight.com/ijse/htm>**

**Questions and comments should be directed to:
Edward J. O'Boyle, Ph.D.
Mayo Research Institute
1217 Dean Chapel Road, West Monroe, LA 71291 USA
Tel: 318-396-5779 E-mail: edoboyle@earthlink.net**

Abstract

There are two grounds in the United States for bringing a claim of race or gender discrimination: (1) discriminatory intent and (2) discriminatory effect. As to age discrimination, however, a plaintiff is allowed to bring a claim only on grounds of discriminatory intent. Our purpose herein is to argue that with regard to age discrimination in the university, discriminatory effect and discriminatory intent are one: discriminatory intent is hidden inside certain employment practices that appear to be “facially neutral” but are not. In other words, stripped of its disguises discriminatory effect that persists is discriminatory intent. This paper identifies five strategies to disguise disparate treatment as disparate impact: *resistance*, *pretense*, *evasion*, *denial*, and approval. The final section explains how a specific university employed these five strategies to hide its discriminatory intent behind discriminatory effect.

Two federal statutes are centrally important to the issue of discrimination in the workplace: the 1964 Civil Rights Act and the 1967 Age Discrimination in Employment Act (ADEA). In racial and gender discrimination lawsuits brought under the Civil Rights Act, a claim can be grounded in disparate impact or disparate treatment. Disparate treatment means that the

employer simply treats some people less favorably than others because of their race, color, religion [or other protected characteristics] . . . disparate impact [by contrast] involves employment practices that are facially neutral in their treatment of different groups but that in fact fall more harshly on one group than another and cannot be justified by business necessity¹ (*Teamsters versus United States* quoted in *Hazen Paper*, p. 609).

However, in age discrimination lawsuits brought under the ADEA, the U.S. Supreme Court has yet to rule as to whether a disparate-impact (discriminatory effect) claim can be made. At present, age discrimination can be claimed only on the grounds of disparate treatment. In January 2000, the Court in a 5-4 decision ruled that the Eleventh Amendment of the U.S. Constitution affords state agencies including state colleges and universities immunity from lawsuits filed by state employees. Thus, a state employee with an age discrimination claim may file a lawsuit only in the state court system and only under whatever state age discrimination laws may apply.

When it comes to pay, older employees in the university workplace are remarkably like older workers elsewhere. In other workplace settings, older workers traditionally are paid more than younger workers because the longer service of older workers entitles them to higher pay even when they are assigned to the same work. The higher pay for older workers can be justified if their greater experience makes them more productive. If they are not more productive, the employer has an incentive to terminate them and employ younger workers as replacements. Similarly, senior faculty normally are paid more than junior faculty on the presumption that the older faculty are more productive. Further, older workers and senior faculty have job protection in the form of “bumping rights” and tenure that younger workers and many junior faculty do not enjoy. Once terminated, older employees, whether they work in the university or elsewhere, face difficulty in finding new employment due to factors such as the higher cost of employer-provided health insurance, their greater reluctance to uproot themselves from the community where they live and to tear themselves away from other family members, and a culture that reveres youth and belittles old age.

They differ, however, in one important way. Older employees in the university workplace who hold faculty appointments are better paid than millions of older workers in other occupations and professions, and enjoy higher status than their older counterparts. Charges of age discrimination in the university workplace, therefore, may not be taken as seriously as similar charges made by workers in other workplace settings who are employed in lower-paid, lower-status jobs.

Our purpose in the following is to argue that with regard to age discrimination in the form of university faculty salary compression/inversion,² disparate impact and disparate treatment cannot be separated. Rather, the two are inextricably intertwined. Disparate treatment is hidden inside certain

employment practices in the elitist university workplace that give the appearance of being “facially neutral” but in fact are not because they rest ultimately on the view that the older longer-service faculty are inferior to younger newly-hired faculty for several reasons: the younger faculty are more energetic, more productive, have more “upside” potential, and because their doctoral studies were completed more recently have a better command of the current body of knowledge in their respective disciplines. The vastly superior teaching, research, and service records of the older faculty, most notably as compared to the experience of newly hired faculty fresh from their doctoral-degree programs, along with the College’s own practice of encouraging the senior faculty to mentor newly-hired junior faculty, are written off as inconsequential. In other words, in the university disparate impact signifies disparate treatment and reinforces it.

The data and information presented below derive mainly from depositions of selected administrative officials of Louisiana Tech University taken in a lawsuit filed against the University in September 1993 by six members of the faculty of the College of Administration and Business, including this author. University documents turned over to the plaintiffs in this lawsuit through the discovery process were a second critical source. Were it not for this lawsuit, some important informational items would not have been available for use herein. Relying on data drawn from one institution raises the issue of the generalizability of the results. This author is of the opinion that salary compression/inversion at Louisiana Tech University is especially severe and that the University approaches a *limiting* case. That is, age discrimination in other university workplaces likely is less severe than at Louisiana Tech and therefore the precise extent and scope of such discrimination elsewhere, as suggested in the Louisiana Tech evidence, likely is less pronounced than at Louisiana Tech.

The U.S. Supreme Court’s ruling in *J. Daniel Kimel, Jr. et al v. Florida Board of Regents et al* effectively denied the six plaintiffs in this lawsuit any remedy under ADEA. Writing for the majority, Justice Sandra Day O’Connor asserted the following:

States may discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest. ... Finally, because an age classification is presumptively rational, the individual challenging its constitutionality bears the burden of proving that the “facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker.” ... These decisions [in earlier cases] thus demonstrate that the constitutionality of state classifications on the basis of age cannot be determined on a person-by-person basis. Our Constitution permits States to draw lines on the basis of age when they have a rational basis for doing so at a class-based level, *even if it “is probably not true” that those reasons are valid in a majority of cases* [emphasis added].

Further, there is no remedy available under the Civil Rights Act of 1964 because all six plaintiffs are white males. Finally, in January 2000 the Louisiana Supreme Court denied the plaintiffs petition for a writ of certiorari that exhausted their remedies by affirming the state trial court’s ruling favorable

to the defendants' motion of summary judgment in 1998 to dismiss the lawsuit on grounds that the plaintiffs failed to show discriminatory intent or disparate treatment on the part of Louisiana Tech University.

Nevertheless, information from this lawsuit is relevant to a wide range of employer practices that treat workers 40 years of age or older less favorably than younger workers. Indeed, it is germane to age discrimination practices involving a federal employee in a federal-agency workplace or a private employee in a private-sector workplace where relief is sought under the ADEA. Additionally, it is pertinent to such practices involving a person working in a private-sector workplace who seeks relief under the applicable state laws banning age discrimination.

Discrimination: A Violation of the Principle of Distributive Justice

The principle of distributive justice requires that the person with the greater supervisory responsibilities in a group distribute the benefits and burdens of that group among its members in some equal or proportional fashion (see Dempsey, pp. 164-167, 204-227, 315-317 for more on justice in wages). It follows that discrimination is unlawful most fundamentally because, whenever one person or several are treated less favorably than others for reasons that are essentially arbitrary, the principle of distributive justice is breached. Examples abound: sexual harassment, bribes and kickbacks, nepotism, redlining, cronyism, racism, anti-Semitism, nativism. In other words, the law prohibiting discrimination follows the principle of distributive justice.

In the case of age discrimination in employment, the employer is the superior and the employees are the subordinates. The principle of distributive justice operates strictly in a unilateral mode: the employer is the party who is duty-bound to faithfully apply the principle of distributive justice. In matters of salary administration, employers are not free to pay their employees whatever they please. For employees doing the same work at the same level of performance, the employer is obliged to provide "equal pay for equal work." Shift differentials, holiday pay, and overtime rates do not breach distributive justice because they are based on differences that are not arbitrary. However, lower compensation for persons in a protected class than for others doing the same work at the same performance level who are not in a protected class, *ceteris paribus*, is a violation of principle of distributive justice *and* is unlawful.

There is more to justice in salary administration than distributive justice and it will serve us well to review the full range of duties under justice in such matters before proceeding any further. Specifically, there are two other principles of justice--commutative justice and contributive justice--that bear on the issue of justice in salary administration. The principle of commutative justice, often called the principle of equivalence, demands that both employer and employee (1) exchange things of equal value and (2) impose equal burdens on one another. Once they have agreed on the work to be done and the compensation to be paid that relates to their first obligation to each other under the principle of equivalence, the burden that the employee accepts is the duty to actually perform the agreed work and the burden that the employer accedes to is the obligation to pay for the work done in a timely manner. Thus, the first demand is reinforced by the common workplace expressions "a full day's work for a full day's pay" (the employee's duty) and "full day's pay for a full day's work"

(the employer's duty). Time clocks are one way to help both parties confirm that a full day's work has been done.

These two expressions under the principle of equivalence are similar to the "equal pay for equal work" required under the principle of distributive justice. They are, however, quite distinct and that distinction originates in human nature. Human beings are at once individual beings and social beings. Proof of human individuality is found, for example, in fingerprints. Proof of human sociality is reflected in human sexuality, for instance, and the human faculty of speech. The principle of equivalence defines justice in terms of the mutual obligations of the individual employer and the individual employee in their one-on-one relationship. The principle of distributive justice, on the other hand, defines justice in terms of the one person--the employer/supervisor--in the group or company who due to his/her role as the superior has greater responsibilities than all the others.

The principle of contributive justice defines the duties of each member of the group to all others who belong to the group. As with distributive justice, this principle also originates in human sociality. Contributive justice requires that, insofar as the individual member receives benefits from the group, he/she has a duty to maintain and support the group. In a union workplace, for example, everyone who benefits from collective bargaining has an obligation to pay dues to the union. There are numerous examples of ways in which contributive justice are violated in the workplace, including spreading false or misleading information, provoking trouble, "bad mouthing" others in the workplace, not to mention industrial spying and sabotage. "Doing my fair share" and "pulling my load" are common workplace expressions underscoring the importance of contributive justice to workplace harmony and productivity.

Table I presents these three principles of justice in the context of salary administration, differentiating the two that apply to the employer/supervisor, equivalence and distributive justice, and the two that apply to the employee, contributive justice and distributive justice.

Metaphors of Discrimination

Shulman asserts that two metaphors are used in economics to shed light on and give meaning to racial discrimination. The institutionalist Gunnar Myrdal stated that discrimination is a *vicious-circle*. The neo-classical Gary Becker characterized discrimination by means of a different metaphor: discrimination is a *commodity*. Myrdal saw discrimination in the United States as a moral crisis involving a clash between the fundamental equality of all human beings on the one hand and the deeply-rooted different treatment of whites and blacks on the other hand. Discrimination is a vicious circle because it has an important bearing on economic development and living conditions for black Americans that in turn help reinforce white supremacist convictions, leading to a continuation of discrimination. According to Shulman, this metaphor--that Darity and Mason (p. 65) in effect affirmed several years later--improves our understanding of the cost of *discontinuing* discrimination.

Becker represented discrimination in terms of a commodity with its own price that whites are willing to pay to segregate themselves from blacks. In the workplace, the degree of discrimination

can be measured in terms of wage differentials. In theory, market forces would reduce the extent of discrimination because of the higher costs and consequent lower profits for the employer who discriminates. To Becker discrimination is an economic anachronism. Importantly, Becker applied the metaphor of in order discrimination is a commodity to other forms such as in the case of Jews and women. This metaphor contributes to our understanding of the cost of *continuing* discrimination. Thus, in the case of workplace discrimination, the employer balances the cost of continuing the discrimination and the cost of discontinuing it. Given the tight linkage between Becker's model of discrimination and neo- classical economics, it is not surprising that his model is much more popular among economists today than is Myrdal's (Shulman 1992, pp. 432-452).

TABLE I. JUSTICE IN SALARY ADMINISTRATION

Salary Administration Involves All Three Principles of Economic Justice Simultaneously

- ▶ **For the employer/supervisor the obligation is two-fold:**
 - (1) from the principle of **equivalence** to exchange things of equal value and impose equal burdens on the employee/worker:
a full day's pay for a full day's work
 - (2) from the principle of **distributive justice** to distribute the benefits and the burdens of the work in some equal fashion among all employees/workers:
equal pay for equal work

 - ▶ **For the employee/worker the obligation is two-fold:**
 - (1) from the principle of **equivalence** to exchange things of equal value and impose equal burdens on the employer/supervisor:
a full day's work for a full day's pay
 - (2) from the principle of **contributive justice** to contribute to the maintenance and support of the work group:
doing my fair share; pulling my load
-

These two metaphors conform to the two bases for a plaintiff's claim of discrimination recognized in U.S. law today: disparate treatment (Myrdal's *vicious circle*) and disparate impact (Becker's *commodity*). In race and gender discrimination cases, a plaintiff may argue that discrimination takes either form, disparate treatment or disparate impact. The U.S. Supreme Court has ruled that in an age discrimination case, a plaintiff may argue discrimination on the grounds of disparate treatment, but as mentioned previously has not yet ruled on the issue of allowing an age-discrimination claim based strictly on disparate impact.³ If the Court admits disparate impact claims as constitutional, race, gender, and age discrimination would be seen as alike and would in effect embrace both Myrdal's model and Becker's. If the Court rules differently, age discrimination would be seen in a substantially different light, and in the case of age discrimination the Court would accept Myrdal's model but not Becker's.

Just as Myrdal saw racial discrimination in the United States as a moral crisis involving a clash between the equality of all human persons and the unequal treatment of black Americans in which discrimination is a vicious circle, older longer-service faculty members are treated by public universities in a discriminatory, vicious-circle manner. Continuing age discrimination frees resources that can be utilized elsewhere by the university, such as on new doctoral-degree programs. Discontinuing age discrimination is costly for a university because it means raising the salaries of the older longer-service faculty members to levels comparable to the salaries of the younger more recently hired faculty. To deal with the limits on spending imposed by the state through the budgeting process, university officials effectively reject the equal-pay-for-equal-work requirement for their older longer-service faculty and hope that they are so deeply rooted to the community in which the university operates that they will not leave for better-paying positions elsewhere. The fact that many stay rather than leave silently affirms the university officials and endorses their methods.⁴ Finally, constraints on operating expenditures that are used to justify the practice of paying longer-service faculty substantially less than newly-hired faculty lead inevitably to deteriorated faculty morale just as overly stringent limits on capital spending lead to “deferred maintenance” that over time results in deteriorated facilities.

Discriminatory Employment Practices

In 1990 the Board of Regents, the policymaking body for higher education in Louisiana, issued a set of eight revised guidelines for faculty salary adjustments including one that stated “A concerted effort must be made to address the problem of salary compression” (Roubique, pp. 1-2). The following year, the various university presidents were assured that “The decision on how to distribute these raise funds to eligible employees is left to each institution and its management board ...” (Casper, p. 1). Thus, Louisiana Tech University (hereafter, “the University”) along with other public universities in Louisiana had been instructed to deal with salary compression but were left free to address that problem as they and their trustees saw fit.

Based on a study of faculty salaries completed in 1993 by a three-person panel of external experts, the dean of the College of Administration and Business (hereafter, “the College”) shortly thereafter transmitted a memorandum to the president of the University in which he confirmed the existence of a “two-tier salary system” resulting in salary compression/inversion and stated “It would be desirable to end the two-tier system before doing this [CAB mission-driven] review” (Owens 1993, p. 1). The dean’s recommendations to raise the salaries of older longer-service faculty were rejected by the president of the University’s management board on grounds of “current budget restrictions” (see Reneau 1993, p. 1).

In an effort to project an image of reasonableness in such matters, university officials tell older longer-service faculty in various ways that if they are unhappy they are *free* to leave.⁵ Even when they do leave, or when they retire, it becomes necessary to replace them with higher-paid younger faculty but, instead of ending this discriminatory practice, the university continues it for the same reason: it provides some help in coping with the spending limits imposed by the budget, especially if those same officials are eager to launch costly new academic or athletic programs or to

re-accredit established programs. In Louisiana, because the public university does not directly bear the cost of its own legal defense when it is sued,⁶ the cost of continuing discrimination is further reduced.

When older longer-service faculty remain at the university, at times due to a retirement program that imposes severe penalties for leaving or tenure that is surrendered on departing,⁷ the university has an even greater incentive to continue the discrimination because its expenditures are lower than they otherwise would have been if the older longer-service faculty had left or retired.⁸ The market does not provide the necessary correction, as Becker argued, because a public university is not a profit-making or profit-maximizing organization.

As this practice of paying differential salaries continues in the short-run, the newly-hired younger faculty and university officials are reinforced in their poor opinion of older longer-service faculty by the very fact that their lower salaries are consistent with their perceived weaker performance in terms of teaching, research, and service. This lower opinion of older longer-service faculty reduces their chances for salary adjustments that would affirm equal pay for equal work and would link their pay to performance, rather than to administrative dicta,⁹ thereby breaking the vicious circle. In this regard, notice how this lower opinion is reinforced by the dean of the College in his memoranda to the vice-president of academic affairs on the subject of filling administrative and faculty positions.

In general, the intellectual capital of the faculty will benefit more by recruiting new faculty members who are in the formative stages of their careers. As these people strive to earn tenure and promotion, they are likely to be more productive than the more senior people that can meet the requirements for these administrative positions (Emery 1994, pp. 1-2).

Being forced to hire more established faculty again to maintain accreditation has several limitations. Besides the higher salaries, we are often forced into quicker tenure decisions, usually find faculty members with adequate scholarship but *limited upside potential*, and people who having moved once tend to move again leading to greater instability in the faculty (Emery 1995d, p. 3; emphasis added).

Notice as well that in his memorandum to the president of the University in September 1995 the business school dean further reinforces the lower opinion of older longer-service faculty by refusing to address salary differentials that originated in the past.

The adjustments recommended here are based on merit considerations and do not attempt to address any perceived inequities that may have developed in the past (Emery 1995b, p.1).

In addition, this dean in 1995 recommended eight faculty members for appointment as the first holders of eight endowed professorships in the College. None of the eight, at that time, had more

than eight years service when they were recommended. Subsequently, all eight were appointed to those elitist positions (see Emery 1995c, pp. 1-2). Beginning in 1997, everyone on the faculty was assigned to one of three categories corresponding to the three types of degrees awarded by the business school: doctoral, masters, and bachelors. Several of the older longer-service faculty were found lacking in the requirements for doctoral-faculty standing, even though literally everyone of them had taught at the graduate level, directed doctoral dissertations, or both.

The effect if not the actual intent of this new system was to make some faculty less equal than others and to thereby take away their sense of belonging. Baron's review of the social psychological literature reveals how categorization and differentiation are used by high-status persons to segregate themselves from low-status persons for the purpose of preserving their higher standing. This bias in favor of high-status persons, Baron states, is a major factor in pay discrimination (Baron, pp. 118, 121). The history of racial discrimination in the United States points indisputably to the role of segregation in supporting discrimination.

As the practice of paying the newly-hired younger faculty higher salaries than the older longer-service faculty continues in the long-run and the younger faculty grow older, *their* salaries fall below the newest hires, *their* sense of belonging is taken away, and the vicious circle is perpetuated with no end in sight. Indeed, university officials do not hesitate to point out that when older longer-service faculty were hired they too enjoyed the benefits of salaries that were higher than the salaries of their older colleagues on the faculty at that time. Consider the following sworn statement in July 1994 by the dean of the College.

Each of these individuals was at one time a new hire and benefited from that marketplace out there ... when they came here, and therefore, it is *unfortunately* a way of life in a great many business schools because the way the market has moved on supply and demand of faculty that we do hire (Owens 1994, p. 111; emphasis added).

And consider this sworn statement in 1995 by the next dean of the business school.

I've never looked at a budget for a university that did not have that effect [salary compression] in it. In *five decades* of experience around university faculties I have always seen that. That's just the nature of the beast as it's been in the postwar era It would have been surprising to have found something different [than salary compression] given the way the academic marketplace has functioned (Emery 1995a, pp. 14-15; emphasis added).

In 1995 the academic vice-president admitted to the problem of salary compression at the University and added that it is a problem throughout Louisiana and across the United States (see Rea, pp. 6-7). That same year, the University president agreed that there has been a discrepancy between the salaries paid to newly-hired faculty and longer-service faculty for "most of my career, not only in academia, but in business as well" (Reneau 1995, p. 79). Just as a sex-based division of labor once

established simply is taken for granted (Bielby, pp. 105-106), so too organizational inertia sustains the discrepancy in faculty salaries unless some deliberate steps are taken to intervene and end the practice. In his dissenting opinion in *EEOC versus Francis W. Parker School* Judge Cudahy asserted that

. . . not all discrimination is apparent and overt. It is sometimes subtle and hidden. It is at times hidden even from the decision maker herself, reflecting perhaps subconscious predilections and stereotypes (*EEOC*, p 1080).

To summarize, age discrimination in the form of paying higher salaries to younger recently-hired faculty is a vicious circle because once its cost-saving advantages are recognized it becomes acceptable; and once it is acceptable it becomes standard business practice; and once it becomes standard business practice it need not be re-examined; and once it no longer is re-examined it persists indefinitely as long as the cost of discontinuing the discriminatory practice is greater than the cost of continuing it.

Pay, Performance, and Ability to Pay

Pay. In order to initiate a claim of age discrimination, it is necessary to present evidence that shows that older longer-service faculty are paid less than younger recently-hired faculty. In the following, our focus is strictly on the faculty in the College with earned doctoral degrees. The youngest of the six plaintiffs in *O'Boyle et al versus Louisiana Tech University et al* was 51 years old when the lawsuit was filed in October 1993. All six are white males, and each one had at least 15 years service at the University at the time of the filing of the lawsuit. Everyone of the eleven newly-hired persons below age 40 at the time this lawsuit was filed is included the comparison group. Ten are white males; one is a white female. The oldest among the eleven was 37 years old at the time of hire. At the time of hiring, none of the eleven had more than eight years professional experience since the awarding of his/her doctorate; four of the eleven were hired in the same year their doctorate was awarded. Thus, at the time of filing everyone of the six older faculty had more than twice as many years of professional experience since their doctoral degrees had been awarded than the most experienced person in the comparison group. None of the eleven in the comparison group and none of the six plaintiffs had earned the doctoral degree from the University. Literally every University administrator in the line of authority between the president and the plaintiffs--including at different times two presidents, two vice-presidents for academic affairs, two deans of the College, and several department heads--is a white male.

In spite of salary increases during the ten-year review period ending in 1997-98, the differences between the six older faculty and the comparison group, controlling for rank and discipline, have fluctuated between a low of \$18,675 in 1994-95 and a high of \$22,900 in 1990-91. Looking at the first and last years of the review period, salary increases notwithstanding, there has been no closing of the nearly \$20,000 gap between the salaries of the six older faculty and the comparison group. It is well worth noting that for both the older faculty and the comparison group the trend over the period was generally downward in the sense that as both groups became older (1) the salaries of the six plaintiffs fell even further below the average at business schools as reported by

the American Assembly of Collegiate Schools of Business (AACSB) and (2) the salaries of the comparison group drew closer to the AACSB average. That is, as those in the comparison group grew older, they too began to experience what their older colleagues had endured for years: the vicious circle of relative salary erosion with the passing years.

Performance. Detailed information on performance is not available because performance evaluation reports are held in confidential personnel files. Even so, the data just presented reflect in a small way an accounting for performance differences in that the actual salaries of the six older faculty and everyone in the comparison group were compared to the AACSB figure in *each one's own rank and discipline*. And, if the faculty in the comparison group indeed had been more productive than the six older faculty, one would have expected the salary gap to have increased over the ten-year review period rather than remain steady at roughly \$20,000. Thus, it seems, the greater relative productivity of the younger faculty expected by University administrators was not forthcoming or was not rewarded. Either interpretation is consistent with the vicious circle metaphor of age discrimination in the university workplace.

Over the entire ten-year review period, the only independent study of faculty performance in the College was conducted in 1993 by outside experts hand-picked by university officials. Those experts reported in writing that the performance of the older longer-service faculty was "acceptable," that several among the older faculty had accumulated "an outstanding record",¹⁰ and that the salary inequities at the College were "somewhat greater" than at comparable institutions (Sandmeyer and others, pp. 6-7). Most important in this regard was their suggestion that

... the most appropriate way to address the macro salary deficit is to adjust the individual salaries of continuing faculty as opposed to hiring new faculty at high salaries (Sandmeyer and others, p. 6).

Clearly, their report does not support the claim that the lower salaries paid to the older longer-service faculty reflect their less substantial productivity as compared to the younger newly-hired faculty. Three months after that report had been filed, the dean of the College used its findings to recommend annual salary adjustments for five of the six older faculty of 16 to 24 percent (Owens 1993, Attachment A). As stated previously, his recommendations were rejected by the president of the University management board for reasons of "current budget restrictions."

Prior to the 1988 start of the review period, AACSB consultant Richard Wines stated that significant salary adjustments were required for the incumbent faculty in the College because current salaries raised serious concerns about compliance with AACSB requirements. Wines also discussed salary compression with College officials pointing specifically to one of the six who five years later initiated the age discrimination lawsuit against the University and who, he said, should be earning at least \$16,000 more than his salary of \$39,000 at that time (Wines, pp. 2-3).

Three years earlier in 1985, an accreditation report prepared for the College by the Ronald Patten, dean of the business school at the University of Connecticut, also urged higher salaries for

the incumbent faculty that, given the timing of the report and the onset in 1986 of paying significantly higher salaries for younger recently-hired faculty, would have prevented the two-tier salary system from developing.

Additional funds are needed to provide appropriate salaries with which to induce new faculty members to come to Louisiana Tech and *also to raise existing faculty members' salaries to a level that is sufficient to retain them at the University* (Patten, p. 2; emphasis added).

In his conclusion to an otherwise brief report, Patten observed that:

Stringent financial conditions are rapidly eroding the faculty's spirit, however (Patten, p. 4).

In 1979, an accreditation report prepared for the College by four external specialists asserted that salaries "are below the market for business faculty" and that efforts "should be made to identify ways and means to obtain funds to raise faculty salaries to reasonable market levels" (Solomon, pp. 7,8).

In 1977, the dean of the College in a memo to the University vice-president for academic affairs complained about an "imbalance between existing salaries and new faculty salaries" indicating the *unfairness of paying newly-hired faculty more than existing with "equal--and many times better-- credentials and years of experience"* (Owens 1977, p. 2; emphasis added). Thus, what was seen by the dean as fundamentally unfair in 1977, what he urged bringing to an end in 1993, he identified as standard business practice at business schools across the United States in 1994.

These four independent reports prepared over a period of 14 years emphasize one central fact: for many years the incumbent faculty have been significantly underpaid and their salaries should be raised to the market level. Further, the dean of the College in 1977 and again in 1993 petitioned the senior officials of the University to approve substantial raises for the longer-service faculty. Even as early as 1977 the dean of the College identified "better morale" as one of the "spinoff benefits" of raising the salaries of the existing faculty. Thus, senior University officials knew of the problem of the salaries of older longer-service faculty lagging behind the salaries of the younger recently-hired faculty at least sixteen years before the age discrimination lawsuit was filed, but did little or nothing to adhere to the principle of "equal pay for equal work." Indeed, the problem worsened starting in 1986 when the College felt compelled by AACSB and the Louisiana Board of Regents to hire more research-oriented faculty in support of its graduate-degree programs, and began paying newly-hired faculty salaries above the market rate.

Ability to Pay. Despite their arguments to the contrary, University officials had considerable discretionary funds to address the problem of salary disparities. Specifically, in each of the nine years ending in 1997-98, there were discretionary funds available ranging from a low of \$71,000 in 1993-94 to a high of \$572,119 in 1990-91. In every year except one--1993-94--there were sufficient

discretionary funds to close the salary gap between the six plaintiffs and the comparison group. These funds instead *were used principally to further raise the salaries of newly hired faculty and administrators.*

A 1974 report on the College completed by an outside expert pointed to the heart of the problem:

In my judgment the responsibilities of the [College] to new programs in the past ten years have been far greater than the resources made available to implement effectively these program (Mason, p. 4).

Thus, University prefers to blame the state legislature for not providing the funds required rather than admitting that it has sought approval for and launched new programs for which adequate funding is not assured. To illustrate, over the 1988-89 to 1997-98 period covered in the review of the salaries of the six plaintiffs in the lawsuit and the comparison group, the University initiated four new doctoral degree programs (in engineering, education, psychology, and math) in order to enhance its status as a research institution, built and opened a micromanufacturing institute, constructed or renovated several other campus facilities, and moved its football program from Division 1-AA status to Division 1-A status, all the while protesting that it did not have adequate funding for incumbent faculty salaries.

The Monopsony Power of the University

Universities operate in two labor markets: an external market where new faculty are hired in a competitive interaction that determines faculty salaries and an internal market where the universities' monopsony power assures that the salaries of the faculty already in place are determined by the university (Boal and Ransom, p. 107).¹¹ In other words, the two-tier salary system in place in the College is indicative of the monopsony power enjoyed by the University. This kind of power that allows the university to pay salaries that are higher for younger newly-hired faculty and that in the College is confirmed by the two-tier salary system is a two-edge sword. It can be used to break this vicious circle or perpetuate it. Consider Clark Kerr on this matter, speaking more generally than the university workplace.

The individuals and groups that control these ports of entry [into jobs] greatly affect the distribution of opportunities in economic society. The rules that they follow determine how equitably opportunity is spread and the characteristics for which men are rewarded and for which they are penalized (Kerr, p. 31).

In 1996 the president of the University insisted that by raising faculty salaries to the average of comparable universities in the southern region (SREB) over the three-period 1994-1996 the goal of doing away with the two-tier system in the College had been met (Reneau 1996, pp. 15-16).

. . . if you look at the range of salaries per department, per rank, . . . there is not a significant compression or inversion. That's not respect to an individual (Reneau 1996, p. 27).

Five years earlier, the University president and vice-president for academic affairs directly instructed the dean of the College to interpret the regents' guideline on achieving the goal of the SREB average as follows:

Item 4 in the guidelines means that we should increase faculty salaries toward the SREB average by overall rank and not by individual or by discipline. The Regents will judge us in two ways (1) Did we use the total monies allocated for eligible faculty, and (2) Did we increase the SREB averages. Of course, *the SREB averages will automatically increase with pay raises*, unless several new faculty have been hired at a salary less than in last year's university salary average (Reneau and Rea, p.2; emphasis added)

This distinction between measuring each rank within the College against the SREB average for that rank produces vastly different results than would be achieved by measuring each faculty member against the appropriate SREB average by rank and discipline. To illustrate, the official newsletter of the University chapter of the American Association of University Professors (AAUP) reported that, according to the 1994-95 operating budget, 77 percent of the faculty were below the SREB average (AAUP 1995, p. 3). The operating budget for the following year indicated that, In spite of substantial salary increases, 69 percent of the faculty were below that average (AAUP 1996, p. 2). Thus, the compression/inversion that is so obvious to those who disaggregate the data in order to focus on the salaries paid to individual faculty members is made to disappear in the mind of the University president by aggregating and averaging the same data by department. Shulman's comments regarding racial discrimination appear to apply here as well.

Changing the appearance of discrimination may be sufficient to mitigate the pressures to cease discrimination without incurring the costs of actually changing the discrimination itself (Shulman 1991, p. 29).

The more recent hiring of several older faculty at higher salaries that university officials point to as proof of their nondiscriminatory behavior (see Owens 1994, pp. 25-26) does not break the vicious circle because as the younger faculty grow older their salaries inevitably lag behind the salaries of the younger new hires. Further, in *McCorstin versus United States Steel*, a U.S. circuit court stated that age discrimination can occur even within the protected age group. For example, at times hiring some persons over age 40 has been used to *disguise* discrimination against other persons in the protected class (*McCorstin*, p. 754). The court added the following:

Discrimination, unfortunately, exists in forms as myriad as the creative perverseness of human beings can provide (*McCorstin*, pp. 753-754).

For older longer-service faculty, there may be no epitaph as demeaning as “nigger,” “bitch,” “kike,” “wetback,” “squaw,” “chink,” or “gook” so typical of other instances of disparate treatment, but the vicious circle of older longer-service faculty being paid less in order to ease the burden of operating within the limits of the university budget and their lower salaries being taken as evidence of their unsatisfactory performance resulting in a perpetuation of the practice indefinitely, is all that is necessary to prove disparate treatment.

This vicious circle continued at the University even after the 1993 study of faculty salaries by outside experts hand-picked by university officials established that the performance of the older longer-service faculty was not unsatisfactory. The remedy for breaking this vicious circle recommended by the experts, as noted previously, was to raise the salaries of the longer-service faculty instead of hiring new faculty at high salaries (Sandmeyer and others, p. 6). Most importantly, these three experts pointed to a problem of false stereotyping of the older faculty by some of the newly-hired faculty that is indicative of a vicious circle and disparate treatment.

The panel does not agree with the opinion of some of the “new hires” that these faculty are generally inactive and not worthy of professional respect (Sandmeyer and others, p. 7).

In his dissent in *EEOC versus Francis W. Parker School* Judge Cudahy added that

. . . the disparate impact theory of liability is designed as a means to *detect* employment decisions that reflect “inaccurate and stigmatizing stereotypes . . .” (*EEOC*, p. 1080; emphasis in the original).

Disparate impact, in other words, is one means for unmasking discriminatory practices.

Concluding Remarks

Salary compression/inversion in the College is a story that can be told in terms of five distinct positions taken by University officials and by others charged with managing the University over a period of 25 years beginning in the mid-1970s: resistance, pretense, evasion, denial, and approval. *Resistance* to salary compression/inversion refers specifically to the efforts undertaken by the dean of the College in 1977 and in 1993 to address that problem by raising the salaries of the longer-service faculty to make them more nearly equal to the salaries paid to the newly-hired faculty. It also refers to the reports prepared by external reviewers in 1979, 1985, 1988, and 1993, all of which recommended higher salaries for the incumbent faculty in the College.

Pretense refers first to the years between 1977 and 1993 when nothing substantial was done by the dean of the College to address the salary inversion/compression that he had known of from the very beginning of the period. It also refers to pretentious statements made in deposition by the dean of the College in 1994, by his successor in 1995, and by the University president in 1995, and to the negative response in 1993 from the president of the University’s management board citing

budget stringencies when the University proposed specific salary adjustments for the longer-service faculty in the College.

Evasion refers to the instructions passed in 1991 from the University president and academic vice-president to the dean of the College to interpret the guideline of increasing faculty salaries to the SREB average as raising the University average to the SREB average by rank rather than assuring that everyone on the University faculty is paid a salary that at least matches the SREB average by rank and discipline. *Evasion* also refers to the action taken by the dean of the College in 1995 when, in recommending faculty salary increases to the president of the University, he deliberately evaded the issue of any “perceived inequities that may have developed in the past.”

Evasion dramatically characterizes the sworn statements made in deposition in 1996 by the person who served from 1979 to 1996 on the management board that oversees nine public universities including Louisiana Tech University to the effect that he: (1) had no recollection of the issue of the higher salaries paid to newly-hired faculty being discussed at board meetings or on other occasions; (2) had no notion as to salary compression/inversion at the universities under the board’s supervision; (3) was only “vaguely” aware of the fact that newly-hired faculty were being paid more than older longer-service faculty; (4) had no knowledge regarding the age discrimination policies of the University; (5) did not know the meaning of the “two-tier salary system” and did not recall the president of the University who is directly responsible to board ever presenting a proposal that addressed the problem of paying higher salaries to newly-hired faculty (Davison, pp. 3, 5-6, 8, 28).

Denial refers to the University president’s sworn statement in deposition calling attention to the rough equivalence between the average University faculty salary by rank and the corresponding SREB average, even though more than two-thirds of the faculty had salaries below the SREB average. *Denial* also refers to shouldering the added costs of new doctoral-degree programs in 1979 (in engineering), in 1994 (in education, psychology, and math), and in 1998 (in engineering), of the Ph.D./M.D. program in cooperation with Louisiana State University-Shreveport begun in 1999, of the Institute for Micro-manufacturing established in 1992, and of the collegiate football program that was raised to Division I-A status in 1988, all the while decrying the lack of funds to raise the salaries of incumbent faculty.

If “silence gives consent,” it follows that officials at the University who for many years had been fully aware that salaries of older longer-service faculty routinely lagged behind the salaries of younger newly-hired faculty across the country consented to salary compression/inversion at the University and by doing little or nothing to remedy the problem embraced it as standard business practice. This silent *approval* of discriminatory behavior was noted more than 50 years ago in the case of Jews where the “gentlemen’s agreement” was standard business practice, and more recently in the case of women where the “glass ceiling” was and still is the norm. Further, Darity and Mason claim that since the passage of the Civil Rights Act in 1964 racial discrimination has become “more covert and subtle” and “is masked and rationalized by widely-held presumptions of black inferiority” (Darity and Mason, p. 65).

This covert form of discriminatory behavior against persons 40 years of age and older is no less vicious than the overt kind common many years ago in the form of signs that read, for example, “no Irish need apply” because both kinds have the same general intention: to confer benefits and superior status on some and to deny the same benefits to others by imputing an inferior status to them. In this regard, when the U.S. Senate amended the ADEA in 1974, it cited President Nixon’s remarks two years earlier as indicative of the its intent in passing the original legislation.

Discrimination based on age . . . can be as great an evil in our society as discrimination based on race or religion or any other characteristic which ignores a person’s unique status as an individual and treat him or her as a member of some arbitrarily-defined group. Especially in the employment field, discrimination based on age is cruel and self-defeating; it destroys the spirit of those who want to work and it denies the Nation the contribution they could make if they were working (U.S. Senate, p. 55).¹²

In the end, as history teaches, all that is necessary for this kind of injustice to continue is for good men and women to *approve* of it through their silence.

The intertwining of discriminatory effect and discriminatory intent and the hiding of the one inside the other through this intertwining were accomplished and perpetuated over a long period of time by University and management board officials who at various times *pretended* they were serious about eliminating salary compression and inversion, *evaded* the issue entirely, and *resisted*, *denied*, and most recently *approved* the practice, as the specific circumstances of the moment seemed to dictate. These five different stratagems--at various times employed, abandoned, and employed again--reflect in part the different personalities of a changing cast of officials responsible for managing and overseeing the University. These tactics were used (1) to preserve the College’s AACSB accreditation of its programs that required and justified paying younger newly-hired faculty market-determined salaries and (2) to realize the dreams of certain University officials and boosters in which the University evolves into a prestigious doctoral-degree granting research institution and a major player in intercollegiate football and basketball that due to budget stringencies also required and justified paying older longer-service faculty monopsonistically-determined salaries substantially below what was paid to their younger faculty colleagues.

The University’s “business-necessity” defense is vacuous because its survival did not and does not depend on a vast expansion of expensive academic, research, and athletic programs. Indeed, the establishment of these programs siphoned off the very financial resources needed to assure AACSB accreditation without resorting to salary compression/inversion and their continuation was made possible only because the University chose not to deal with the salary compression/inversion problem at all. Instead, by allowing salary compression and inversion to persist for more than 20 years, officials of the University and its management board made credible the stereotype of the older longer-service faculty as inferior to the younger newly-hired faculty thereby reinforcing the vicious circle of discrimination against the older faculty. In other words, *discriminatory effect that persists over a long period of time is not possible in the absence of discriminatory intent*. University and

management board officials with a genuine commitment to justice simply would have tackled both well before they became so deeply entrenched that in the end no one would admit there is anything untoward about those practices.

In the June 2000 decision in *Reeves v. Sanderson Plumbing Products, Inc.*, the U.S. Supreme Court ruled *unanimously* in a case relating to a disparate treatment claim filed under the ADEA that when it can be shown that the reasons cited by an employer for dismissing an employee are not credible

... the trier of fact can reasonably *infer* from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt" [emphasis added].

This ruling raises the question as to whether there are any circumstances wherein discriminatory intent can be inferred from employment practices that have a disparate impact, particularly when those practices though appearing to be facially neutral have persisted for a long time.

References

- American Association of University Professors, Louisiana Tech University chapter (1995, 1996). *Communitas*, July/August, April.
- Baron, James N. (1991). "Organizational Evidence of Ascription in Labor Markets," in *New Approaches to Economic and Social Analyses of Discrimination*, edited by Richard R. Cornwall and Phanindra V. Wunnara, New York: Praeger.
- Bielby, William T. (1991). "The Structure and Process of Sex Segregation," in *New Approaches to Economic and Social Analyses of Discrimination*, edited by Richard R. Cornwall and Phanindra V. Wunnara, New York: Praeger.
- Boal, William M. and Michael R. Ransom (1997). "Monopsony in the Labor Market," *Journal of Economic Literature*, March.
- Coger et al versus Board of Regents of the State of Tennessee et al*, 154 F.3d 296 (1998), internet version downloaded on September 3, 1998.
- Cosper, Sammie W. (1991). "Proposed Guidelines for 1991-92 Faculty Salary Adjustments," a memorandum addressed to university presidents and others, July 17.
- Darity Jr., William A. and Patrick L. Mason (1998). "Evidence on Discrimination in Employment: Codes of Color, Codes of Gender," *Journal of Economic Perspectives*, Spring.
- Davison, James (1996). Deposition in the matter of *O'Boyle, et al versus Louisiana Tech University, et al*, August 26.
- Dempsey, Bernard W. S.J. (1958). *The Functional Economy: The Bases of Economic Organization*, Englewood Cliffs (NJ): Prentice-Hall.
- EEOC versus Francis W. Parker School*, 41 F.3d 1073 (1994), internet version downloaded on October 18, 1999.
- Emery, John (1995a). Deposition in the matter of *O'Boyle, et al versus Louisiana Tech University, et al*, April 15.
- Emery, John (1995c). "Professorships," a memorandum addressed to Daniel D. Reneau, September 15.
- Emery, John (1995d). "Revised position requests, 1996-97 budget cycle," a memorandum addressed to Ken Rea, December 15.

- Emery, John (1995b). "Salary Recommendations," a memorandum addressed to Daniel D. Reneau, September 14.
- Emery, John (1994). "Search for Department Heads and Associate Deans," a memorandum addressed to Ken Rea, October 31.
- Glandon, Sidney P, Hani I. Mesak, and Joe M. Pullis (1997). "Faculty Salary Compression and Inversion in State Universities," unpublished manuscript, August.
- Hazen Paper Company et al versus Biggins*, 507 U.S. 604 (1993).
- J. Daniel Kimel, Jr. et al versus Florida Board of Regents et al*, Nos. 98-791 and 98-796, internet version downloaded on March 8, 2000.
- Kerr, Clark (1977). "The Balkanization of Labor Markets," in *Labor Markets and Wage Determination*, edited by Clark Kerr, Berkeley: University of California Press; reprinted from *Labor Mobility and Economic Opportunity*, edited by E. Wight Bakke and others (1954), Cambridge (MA): MIT Press.
- Louisiana, State of, Second Circuit Court of Appeal (1999). *Dr. Edward J. O'Boyle, et al, Appellants, versus Louisiana Tech University, et al, Appellees*, Number 32212-CA, August 17, 1999.
- Mason, Arthur (1974). "Report to the President of Louisiana Tech University," September.
- McCorstin versus United States Steel Corporation*, 621 F. 2d 749 (1980).
- Melancon, Melissa V. (1997). "The Impact of the Louisiana Lottery on Salaries in Education," a dissertation presented in partial fulfillment of the requirements for the DBA degree awarded by Louisiana Tech University, August.
- Owens, Bob (1994). Deposition in the matter of *O'Boyle, et al versus Louisiana Tech University, et al*, July 7.
- Owens, Bob (1993). "Recommended one time only: CAB 9-month Faculty Salary Adjustments, Research 'Development Grants,' and 1993 Summer Income Adjustments," a memorandum addressed to Daniel D. Reneau, May 26.
- Owens, Bob (1977). "Needs to Attempt AACSB Accreditation of Masters Programs," a memorandum addressed to Virgil Orr, January 31.

- Patten, Ronald J. (1985). "Consultant's Report, College of Administration and Business, Louisiana Tech University," attached to Dean Bob R. Owens' memo to Vice-President Daniel D. Reneau, July 23.
- Ransom, Michael R. (1993). "Seniority and Monopsony in the Academic Labor Market," *American Economic Review*, March.
- Rea, Kenneth (1995). Deposition in the matter of *O'Boyle, et al versus Louisiana Tech University, et al*, April 25.
- Reeves v. Sanderson Plumbing Products, Inc.*, No. 99-536, internet version downloaded on June 15, 2000.
- Reneau, Daniel D. (1993). "Proposed Salary Adjustment Plan," a memorandum addressed to Bob R. Owens, June 25.
- Reneau, Daniel D. (1995). Deposition in the matter of *O'Boyle, et al versus Louisiana Tech University, et al*, January 25.
- Reneau, Daniel D. (1996). Deposition in the matter of *O'Boyle, et al versus Louisiana Tech University, et al*, August 26.
- Reneau, Dan, and Ken Rea (1991). "Faculty Pay Raises," a memorandum addressed to Bob R. Owens, July 15.
- Roubique, Marvin (1990). A memorandum (no subject heading) addressed to university presidents and others, July 27.
- Sandmeyer, Robert L., Carl H. Stern, and Larry R. Trussell (1993). "A Faculty Salary Analysis," unpublished report prepared for Louisiana Tech University, February.
- Shulman, Steven (1991). "Why Is the Black Unemployment Rate Always Twice as High as the White Unemployment Rate?" in *New Approaches to Economic and Social Analyses of Discrimination*, edited by Richard R. Cornwall and Phanindra V. Wunnara, New York: Praeger.
- Shulman, Steven (1992). "Metaphors of Discrimination: A Comparison of Gunnar Myrdal and Gary Becker," *Review of Social Economy*, Winter.
- Solomon, E. Ray, Charles L. Quittmeyer, William M. Bogenes, and John T. Bale (1979). "Visitation Report," January 8.
- Teamsters versus United States*, 431 U.S. 324 (1977).

U.S. Senate (1974). "Fair Labor Standards Amendments of 1974," 93rd Congress, 2d Session, Senate Report 93-690, February 22.

Wines, Richard T. (1988). "Confidential Exit Interview Notes," May 13.

Endnotes

1. “Business necessity” is a defense that an employer may legally resort to when the financial circumstances of the firm require it to treat some workers differently than others or suffer such dire consequences as being forced out of business. For the university such dire consequences include loss of accreditation.
2. Salary compression is the hiring of lower-ranked faculty at salaries that are *below* the salaries of higher-ranked faculty but have the effect of compressing the difference between their salaries. Salary inversion is the hiring of lower-ranked faculty at salaries that are *above* the salaries of higher-ranked faculty and have the effect of inverting the common practice of paying higher salaries to the higher-ranked faculty.
3. See *Hazen Paper Company et al versus Biggins*, 507 U.S. 604,610 (1993).
4. A 1997 study stated that with length of service for faculty at Louisiana Tech University averaging 14.3 years there is relatively little faculty turnover (Glandon and others, p. 14).
5. In his sworn statement the dean of the College of Administration and Business in 1995 asserted that for any faculty member with an offer from another university that he could not match he would be “more than happy to congratulate you on your good fortune and I’ll actually come over and help you pack if you’d like. I’ve got some extra boxes” (Emery 1995a, p. 51).
6. These costs are absorbed by the State of Louisiana, Office of Risk Management.
7. In his classic 1954 article “The Balkanization of Labor Markets” Clark Kerr observed that “job rights protect but they also confine. Reduction of insecurity also brings reduction of independence” (Kerr, p. 32).
8. The Glandon study published in 1997 indicated that, taking into account other factors contributing to salary differentials, associate professors with five years of service in the business school and assistant professors with no years of service were paid more than full professors with 20 years of service (Glandon and others, pp. 16-20). Another 1997 study estimated that at 16 state universities in Louisiana with each additional year of service, *ceteris paribus*, faculty salary decreases by \$50 (Melancon, p. 134). A 1993 publication using national data from the 1970s and 1980s reported that even after controlling for publication record, education, and experience, salaries decline by as much as 0.5 percent per year of seniority (Ransom, p. 232).
9. Ransom’s analysis of evidence from several sources led him to conclude that as to their longer-service faculty universities as employers practice “monopsonistic discrimination” (Ransom, p. 221).
10. Using 18 universities as “peer” institutions and drawing on information about the faculty in the College, the three-expert panel placed everyone on the faculty in one of five performance-percentile

classes. Of the 22 older faculty thus ranked by performance, seven were placed in the median class, and none were ranked higher. It follows that these seven are the ones the experts alluded to as having “outstanding” performance records. And because three of the six were placed in the median class, it also follows that all three of those plaintiffs had “outstanding” performance records.

11. There is at least one major exception to the monopsony power of the university: in some states such as Minnesota faculty salaries are negotiated by means of a collective bargaining process. In Louisiana, however, faculty salaries are not established by collective bargaining.

12. Quoted in *Coger et al versus Board of Regents* (p. 11), a ruling by the U.S. Sixth Circuit Court of Appeals in a lawsuit filed by 17 senior faculty members at the University of Memphis alleging age discrimination.
