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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
 DISSENT OF COMMISSIONER J. CLAY SMITH, JR., ON
 REMOVING THE APPRENTICESHIP EXEMPTION FROM THE
 AGE DISCRIMINATION IN EMPLOYMENT ACT VOTED ON

SEPTEMBER 23, 1980

The majority of the Commission, in a 3-1 vote, has approved for public comment lifting the long-standing rule of the United States Department of Labor which exempts apprenticeship programs from the Age Discrimination in Employment Act ("ADEA"). Removing this exemption permits persons between the ages of forty and seventy to compete against youth for the limited number of apprenticeship position openings.^{1/} Opening apprenticeship programs to this larger group can only decrease the number of apprenticeship positions which the youth will receive. Although some,

^{1/} Bulletin 80-37, U.S. Department of Labor Employment and Training Administration, Bureau of Apprenticeship and Training provide the following breakdown of apprenticeship availability between 1960-June, 1979

<u>Year</u>	<u>In training on January 1--</u>	<u>New Registration</u>	<u>Completions</u>	<u>cancellations</u>	<u>In training on Dec.</u>
1960	172,161	54,100	31,727	33,406	161,128
1961	161,128	49,482	28,547	26,414	155,649
1962	155,649	55,590	25,918	26,434	158,887
1963	158,887	57,204	26,029	26,744	163,318
1964	163,318	59,960	25,744	27,001	170,533
1965	170,533	68,507	24,917	30,168	183,955
1966	183,955	85,031	26,511	34,964	207,511
1967	207,511	97,896	37,299	47,957	220,151
1968	207,517	111,012	37,287	43,246	237,996
1969	237,996	123,163	39,646	47,561	273,952
1970	269,626	108,779	45,102	53,610	279,693
1971	278,451	78,535	42,071	43,104	274,024
1972	247,840	103,527	53,059	56,750	264,122
1973	243,956	133,258	43,580	49,860	283,774
1974	280,965	112,830	46,454	56,292	291,049
1975	284,562	83,018	45,765	55,338	266,477
1976	265,647	88,418	49,447	49,650	254,968
1977	253,993	107,897	54,347	44,957	262,586
1978	263,660	131,139	50,464	54,111	290,224
June 79	284,591	63,937	24,558	29,613	294,356

2.

who favor lifting the exemption, have disputed this conclusion, they fail to present any facts substantiating their conclusions. For the following reasons, I hereby dissent from the opinion of the majority.

The Labor Department's exemption read as follows:^{2/}

§860.106 Bona Fide Apprenticeship Programs.

Age limitations for entry into bona fide apprenticeship programs were not intended to be affected by the Act. Entry into most apprenticeship programs has traditionally been limited to youths under specific ages. This is in recognition of the fact that apprenticeship is an extension of the education process to prepare young men and women for skilled employment...

The Labor Department exempted apprenticeship programs from the ADEA using the power which Congress specifically gave it

1/ cont'd

June	"Minority		#Female		#Veteran	
	<u>EOP</u>	<u>Access.</u>	<u>EOP</u>	<u>Access</u>	<u>EOP</u>	<u>Access.</u>
CY 79	17.7%	18.5%	3.6%	6.4%	26.4%	24.4%
CY 78	18.2%	18.5%	3.1%	4.3%	27.9%	25.3%
CY 77	18.4%	18.9%	2.2%	3.3%	30.9%	26.8%
CY 76	18.1%	19.3%	1.7%	3.1%	34.9%	31.2%
CY 75	17.3%	18.2%	1.2%	2.2%	38.0%	35.5%
CY 74	16.4%	18.2%	.9%	1.5%	40.2%	35.5%
CY 73	15.5%	17.2%	.7%	.8%	42.4%	40.3%

2/ 20 C.F.R. §860.106 (January 9, 1969).

3.

under Section 9 of the ADEA.^{3/} Only one year after the EEOC assumed jurisdiction over the ADEA, the Commission is proposing to lift this long standing exemption for apprenticeship programs. Yet, the Commission has failed to evaluate or present to the public for comment any empirical data showing what, if any impact, this decision may have on youth employment opportunities or unemployment possibilities.^{3a/} The purpose of this dissent is to fill this void of knowledge, to invite public comment and to provide a voice for an important segment of the American population--the young.

Because the EEOC's jurisdiction is limited to employment discrimination, the broader vision of the Labor Department, which administers many laws, including apprenticeship programs and monitors youth unemployment statistics, has been lost in the transfer. Therefore, I think that it is important for the record that the effect a shift in policy will have on apprenticeship programs and their intended beneficiaries be addressed. Moreover,

3/ Section 9 of the ADEA, 29 U.S.C. §628, reads as follows:

In accordance with the provisions of sub chapter II of chapter 5 of title 5, United States code, the Secretary of Labor may issue such rules and regulations as he may consider necessary or appropriate for carrying out this Act, and may establish such reasonable exemptions to and from any or all provisions of this Act as he may find necessary and proper in the public interest.

3a/ The EEOC has a publication entitled, "EEOC 1978 Report, Minorities and Women in Apprenticeship Programs and Referral Unions," this report does not however, deal with youth unemployment or the effect that lifting the exemption will have on the youth unemployment problem. Nor does it contain a break down by age of present participants in apprenticeship programs.

4.

I think that it is also appropriate to look at the larger picture. To view the issue in this context is to view the issue consistent with how Congress originally intended for it to be viewed, from the perspective of the Labor Department and its important obligation and oversight responsibility over youth unemployment and apprenticeship programs.

Statement of the Problem of Youth Unemployment

The youth population is defined as teenagers (ages 16-19) and young adults ages (20-24). Recently, grave concern has been expressed about the inability of many youth and young adults to find employment. In this review an attempt is made to present the statistical picture of youth unemployment, to isolate the suggested causes, and identify the major analytical thrusts for explaining this phenomena as a basis for this dissent.

Basic Statistical Facts (I)

The unemployment rate gives us a standard picture of the number of people who are in the labor force and who are out of work. The following figures represent features of the unemployment rate from 1958 to 1978 as shown in table 1 and 2 for teenagers, youths and adults by sex and race.

5.

Table 1
 UNEMPLOYMENT RATES FOR FEMALES^{4/},
 1958 to 1978

Year	Females 20+		Females 16-19		Females 20-24	
	White	Nonwhite	White	Nonwhite	White	Nonwhite
1958	5.6	9.5	12.7	28.4	7.4	18.9
1959	4.7	8.3	12.0	27.7	6.7	14.9
1960	4.6	8.3	12.7	24.8	7.2	15.3
1961	5.7	10.6	14.8	29.2	8.4	19.5
1962	4.7	9.6	12.8	30.2	7.7	18.2
1963	4.8	9.4	15.1	34.7	7.4	18.7
1964	4.6	9.0	14.9	31.6	7.1	18.3
1965	4.0	7.5	14.0	31.7	6.3	13.7
1966	3.3	6.6	12.1	31.3	5.3	12.6
1967	3.8	7.1	11.5	29.6	6.0	13.8
1968	3.4	6.3	12.1	28.7	5.9	12.3
1969	3.4	5.8	11.5	27.6	5.5	12.0
1970	4.4	6.9	13.4	34.4	6.9	15.0
1971	5.3	8.7	15.1	35.4	8.5	17.3
1972	4.9	8.8	14.2	38.5	8.2	17.4
1973	4.3	8.2	13.0	34.5	7.0	17.6
1974	5.0	8.4	14.5	34.6	8.2	18.0
1975	7.5	11.5	17.4	38.5	11.2	22.5
1976	6.8	11.3	16.4	39.0	10.4	21.7
1977	6.2	11.7	15.9	39.9	9.3	23.6
1978	5.2	10.6	14.4	38.4	8.3	21.3

^{4/} Adult Rates from Economic Report of the President, 1979
 Youth Rates from U.S. Dept. of Labor, Draft - Fact Book.

Table 2
UNEMPLOYMENT RATES FOR MALES^{5/}
1958 to 1978

Year	Males 20+		Males 16-19		Males 20-24	
	White	Nonwhite	White	Nonwhite	White	Nonwhite
1958	5.5	12.7	15.7	26.8	11.7	19.5
1959	4.1	10.5	14.0	25.2	7.5	16.3
1960	4.2	9.6	14.0	24.0	8.3	13.1
1961	5.1	11.7	15.7	26.8	10.0	15.3
1962	4.0	10.0	13.7	22.0	8.0	14.6
1963	3.9	9.2	15.9	27.3	7.8	15.5
1964	3.4	7.7	14.7	24.3	7.4	12.6
1965	2.9	6.0	12.9	23.3	5.9	9.3
1966	2.2	4.9	10.5	21.3	4.1	7.9
1967	2.1	4.3	10.7	23.9	4.2	8.0
1968	2.0	3.9	10.1	22.1	4.6	8.3
1969	1.9	3.7	10.0	21.4	4.6	8.3
1970	3.2	5.6	13.7	25.0	7.8	12.6
1971	4.0	7.2	15.1	28.9	9.4	16.2
1972	3.6	6.8	14.2	29.7	8.5	14.7
1973	2.9	5.7	12.3	26.9	6.5	12.5
1974	3.5	6.8	13.5	31.6	7.8	15.4
1975	6.2	11.7	18.3	35.4	13.2	22.9
1976	5.4	10.6	17.3	35.4	10.9	20.7
1977	4.6	10.0	15.0	37.0	9.3	21.7
1978	3.7	8.6	13.5	34.4	7.6	20.0

5/ Adult Rates from Economic Report of the President, 1979
Youth Rates from U.S. Dept. of Labor, Draft - Fact Book.

7.

These charts show that:

°White male teenage unemployment rate was 15.7 percent in 1958. In 1978 it was 13.5 percent. Their unemployment rate ranged from a low of 10 percent in 1969 to a high of 18.3 percent in 1975.

°Nonwhite male teenage unemployment rate was 26.8 percent in 1958. In 1978 it was 34.4 percent. Their unemployment rate ranged from a low of 21.3 percent in 1966 to a high of 35.4 percent in 1975 and 1976.

°White female teenage unemployment rate was 12.7 percent in 1958. In 1978 it was 14.4 percent. Their unemployment rate ranged from a low of 11.5 percent in 1967 and 1969 to a high of 17.4 percent in 1975.

Nonwhite female teenage unemployment rate was 28.4 percent in 1958. In 1978 it was 38.4 percent. Their unemployment rate ranged from a low of 24.8 percent in 1960 to a high of 39.9 percent in 1977.

°White male youth unemployment rate was 11.7 percent in 1958. In 1978 it was 7.6 percent. Their unemployment rate ranged from a low of 4.1 percent in 1966 to a high of 13.2 percent in 1975.

Nonwhite male youth unemployment rate was 19.5 percent in 1958. In 1978 it was 20.0 percent. Their unemployment rate ranged from a low of 7.9 percent in 1966 to a high of 22.9 percent in 1975.

°White female youth unemployment rate was 7.4 percent in 1958. In 1978 it was 8.3 percent. Their unemployment rate ranged from a low of 5.3 percent in 1966 to a high of 11.2 percent in 1975.

°Nonwhite female youth unemployment was 18.9 percent in 1958. In 1978 it was 21.3 percent. Their unemployment rate ranged from a low of 12 percent in 1969 to a high of 22.9 percent in 1975.

°White male unemployment was 5.5 percent in 1958. In 1978 it was 3.7 percent. Their unemployment rate ranged from a low of 1.9 percent in 1969 to a high of 6.2 in 1975.

°Nonwhite male unemployment rate was 12.7 percent in 1958. In 1978 it was 8.6 percent. Their unemployment rate ranged from a low of 3.7 percent in 1969 to a high of 12.7 percent in 1958.

°White female unemployment rate was 5.6 percent in 1958. In 1978 it was 5.2 percent. Their unemployment rate ranged from a low of 3.3 percent in 1969 to a high of 7.5 percent in 1975.

°Nonwhite female unemployment rate was 9.5 percent in 1958. In 1978 it was 10.6 percent. Their unemployment rate ranged from a low of 5.8 percent in 1969 to a high of 11.7 percent in 1977.

The data further shows that teenagers have higher unemployment rates compared to the corresponding older sex and race groups with young adults in the corresponding groups being less affected by unemployment than teenagers. Adults are the least affected in the corresponding groups. However, the data shows a disadvantageous position for nonwhites in all categories with nonwhite females being the worse off. Recently, published data concludes that the current youth unemployment problem is epidemic.

Basic Statistical Facts (II)

As recently as August 21, 1980, The Wall Street Journal reported that "the rate for teenage black [joblessness] soared... to 40.3%." ^{6/} There are many youth who are counted as not being in the labor force and who do not show up in the unemployment statistics. The Employment/Population (E/P) ratios for various groups provide a clearer employment picture of various age and sex cohorts.

6/ Malabre, "Minority Report...Youth Jobless Rate of 40% for Blacks Erodes Gains," The Wall Street Journal, Vol--CXCVI, No. 37, August 21, 1980, p.1, col. 1.

°Nonwhite male unemployment rate was 12.7 percent in 1958. In 1978 it was 8.6 percent. Their unemployment rate ranged from a low of 3.7 percent in 1969 to a high of 12.7 percent in 1958.

°White female unemployment rate was 5.6 percent in 1958. In 1978 it was 5.2 percent. Their unemployment rate ranged from a low of 3.3 percent in 1969 to a high of 7.5 percent in 1975.

°Nonwhite female unemployment rate was 9.5 percent in 1958. In 1978 it was 10.6 percent. Their unemployment rate ranged from a low of 5.8 percent in 1969 to a high of 11.7 percent in 1977.

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^{6/} Malabre, "Minority Report...Youth Jobless Rate of 40% for Blacks Erodes Gains," The Wall Street Journal, Vol--CXCVI, No. 37, August 21, 1980, p.1, col. 1.

9.

From 1958-1978, as shown in tables 3 and 4, the E/P ratios for these groups displayed the following patterns:

Table 3
EMPLOYMENT POPULATION RATIO FOR MALES^{7/}
1958 to 1978

Year	Males 16+		Males 16-19		Males 20-24	
	White	Nonwhite	White	Nonwhite	White	Nonwhite
1958	79.1	72.4	47.6	42.0	76.6	71.4
1959	79.9	73.8	48.1	41.4	80.8	75.9
1960	79.4	74.1	48.1	43.8	80.5	78.4
1961	78.3	71.7	45.9	41.0	78.8	76.1
1962	78.3	72.0	46.4	41.7	79.6	76.3
1963	77.7	71.8	44.7	37.4	79.1	74.8
1964	77.8	72.9	45.0	37.8	79.3	78.1
1965	77.9	73.7	47.1	39.4	80.2	81.6
1966	78.3	74.0	50.1	40.5	81.0	82.8
1967	78.5	73.8	50.2	38.8	80.5	80.3
1968	78.3	73.3	50.3	38.7	78.6	77.9
1969	78.2	72.8	51.1	39.0	78.7	77.3
1970	76.8	70.9	49.6	35.5	76.8	73.0
1971	75.7	68.1	49.2	31.8	75.4	68.3
1972	76.0	67.1	51.6	32.4	77.1	69.5
1973	76.6	68.2	54.4	33.9	80.2	71.5
1974	76.0	66.2	54.4	32.3	79.8	69.4
1975	73.0	61.7	50.6	27.6	74.2	60.4
1976	73.4	62.0	51.6	27.2	76.8	62.2
1977	74.2	62.2	54.5	27.4	78.7	61.2
1978	N/A	N/A	56.3	29.8	76.0	61.1

^{7/} Adult Rates Based on Employment Training Report of the President, 1978 Youth Rates from U.S. Dept. of Labor, Draft - Fact Book.

Table 4
 EMPLOYMENT POPULATION RATIOS FOR FEMALES^{8/}
 1958 to 1978

Year	Females 16+		Females 16-19		Females 20-24	
	White	Nonwhite	White	Nonwhite	White	Nonwhite
1958	33.6	42.8	35.0	22.8	42.6	39.0
1959	34.1	43.2	34.8	20.3	41.4	41.6
1960	34.6	43.7	35.1	24.8	42.4	41.2
1961	34.5	42.6	34.6	23.2	42.9	38.4
1962	34.7	42.7	34.8	23.1	43.5	39.8
1963	34.0	42.7	32.9	21.3	43.8	40.1
1964	35.4	43.4	32.2	21.8	45.3	43.7
1965	36.2	44.1	33.7	20.2	46.1	47.6
1966	37.5	45.0	37.5	23.1	48.3	47.6
1967	38.2	44.8	37.7	24.8	49.9	47.4
1968	38.9	45.2	37.8	24.7	50.8	51.1
1969	40.0	45.9	39.5	25.1	53.3	51.5
1970	40.3	44.9	39.5	35.5	53.7	49.0
1971	39.9	43.9	38.6	20.1	53.0	46.3
1972	40.6	43.2	41.3	19.8	54.5	46.8
1973	41.8	44.0	43.6	22.5	57.3	47.4
1974	42.4	43.8	44.3	22.3	58.6	47.7
1975	41.9	42.3	42.6	21.9	58.1	43.6
1976	43.2	43.4	44.3	20.5	59.3	45.6
1977	44.6	43.8	46.0	20.2	61.3	45.3
1978	N/A	N/A	48.7	23.5	60.6	45.4

^{8/} Adult Rated Based on Employment Training Report of the President, 1978 Youth Rates from U.S. Dept. of Labor, Draft - Fact Book.

These charts show that:

°White teenage males had an E/P ratio of 47.6 percent in 1958. In 1978 it was 56.3 percent. Their E/P ratios ranged from a low of 44.7 percent in 1963 to a high of 56.3 percent in 1978.

°Nonwhite teenage males had an E/P ratio of 42.0 percent in 1958. In 1978 it was 29.8 percent. Their E/P ratio ranged from a low of 27.2 percent in 1976 to a high of 43.8 percent in 1960.

°Nonwhite teenage females had an E/P ratio of 35.0 percent in 1958. In 1978 it was 48.7 percent. Their E/P ratio ranged from a low of 32.9 percent in 1963 to a high of 48.7 percent in 1978.

°White male youth had an E/P ratio of 76.6 percent in 1958. In 1978 it was 76.0 percent. Their E/P ratio ranged from a low of 74.2 percent in 1975 to a high of 82.8 percent in 1966.

°Nonwhite male youth had an E/P ratio of 71.4 percent in 1958. In 1978 it was 61.1 percent. Their E/P ratio ranged from a low of 60.4 percent in 1975 to a high of 82.8 percent in 1966.

°White female youth had an E/P ratio of 42.6 percent in 1958. In 1978 it was 60.6 percent. Their E/P ratio ranged from a low of 41.4 percent in 1959 to a high of 61.3 percent in 1977.

°Nonwhite female youth had an E/P ratio of 39.0 percent in 1958. In 1978 it was 45.5 percent. Their E/P ratio ranged from a low of 39.4 percent in 1961 to a high of 51.5 percent in 1969.

°White males 16 years and over had an E/P ratio of 79.1 percent in 1958. Their E/P ratio was 74.2 percent in 1977. Their E/P ratio ranged from a low of 73.0 percent in 1975 to a high of 79.9 percent in 1959.

°Nonwhite males 16 years and over had an E/P ratio of 72.4 percent in 1958. Their E/P ratio was 62.2 percent in 1977. Their E/P ratio ranged from a low of 62.0 percent in 1976 to a high of 74.1 percent in 1960.

°White female 16 years and older had an E/P ratio of 33.6 percent in 1958. Their E/P ratio was 44.6 percent in 1977. Their E/P ratio ranged from a low of 33.6 percent in 1958 to a high of 44.6 percent in 1977.

12.

°Nonwhite females 16 years and older had an E/P ratio of 42.8 percent in 1958. Their E/P ratio in 1977 was 43.8 percent. Their E/P ratio ranged from a low of 42.6 percent in 1961 to a high of 45.6 percent in 1969.

What the E/P ratio shows is that the employment possibilities of white male teenagers has not deteriorated over the last 20 years. For nonwhite male teenagers there has been a marked fall in the E/P ratio showing that their employment prospects and labor force participation have fallen over the last 20 years.

For white female teenagers the E/P ratio shows that there has been a 13.7 percent increase in their employment rate over the last 20 years. The E/P ratio for black female teenagers shows a stable picture changing by only .7 percent in the last 20 years.

The E/P ratio for white male youth shows remarkable stability having only a .6 percent change in employment rates. The E/P ratio for nonwhite male youth has, however, fallen 10 percent during the last 20 years showing a lessened labor force participation rate for this group.

The E/P ratio for white female youth has increased by an amount of 18 percent over the last 20 years. The E/P ratio for nonwhite female youth has increased 6.4 percent in the last 20 years but has actually fallen since 1965.

Wachter and Kim^{9/} argue for other indicators for understanding the teenage experience. The authors state that the percentage of youth who are either employed or in school is only slightly

9/ Wachter, Michael L., and Choongosoo Kim, "Time Series Change in Youth Joblessness," NBER Conference on Youth Unemployment, Cambridge, Mass., May 1979.

down from 1965 levels. They argue additionally that an unemployment rate construct which treats schooling as equivalent to employment is much more useful as an indicator of the labor market position of youth with respect to jobs. Wachter and Kim note that the increasing E/P ratio for most youth groups is an indication that the economy has created jobs for youth despite their growth in numbers. The authors note that using the ratio of those employed plus those in school as a percentage of the relevant population shows less of a difference between black and white youth than the employment ratio alone. However, as the authors themselves note the increase in the percentage of black males who are both out of school and unemployed implies that the black youth population has suffered an economic decline. This finding is consistent with the implications of the other measures used.

The reasons frequently postulated for explaining what has generally been considered the worsening crisis of youth unemployment range from:

- °Demographic aspects of increased youth population;
- °Institutional constraints such as the 'high' minimum wage, government transfer programs, and child labor laws resulting in high reservation wages particularly by the less skilled;
- °Differential human capital endowments between black youth and white youth;
- °Poor youth work attitudes resulting in low job attachment;
- °The effect of rural to urban population shifts and changing industrial structures in cities.

Demographic Aspects of Increased Youth Population

In some of the literature on youth unemployment it is suggested that the post-war baby boom which continued through the late 1950's and somewhat into the 1960's is a reason for inability of labor markets to absorb all youth.^{10/} Seninger^{11/} argues that the last of the general baby boom will pass through their teenage years in 1981. This peaking of the general teenage population will occur much later for blacks. The black teenage population is seen as continuing its present growth until at least 1990. Blacks are seen as becoming an even more visible part of the youth unemployment problem. However, Seninger^{12/} argues that the high youth unemployment rates are more a function of higher general levels of unemployment than a function of the baby boom. In support of this thesis Seninger looks at the teenage-adult unemployment ratio which has been stable through 1950 and the early 1960's. Between 1963 and 1969 the teenage adult ratio rose from 3.21 to 5.51. By 1976 it had reverted to its historic base. The situation of young adults were similar though less

^{10/} Adams, Avril V., and Garth L. Mangum, "A Reassessment of Youth Unemployment," in *The Lingering Crisis of Youth Unemployment*. W.E. Upjohn Institute, 1978, pp. 125-142.

^{11/} Seninger, Stephen F., "Post War Trends in Youth Unemployment," in *The Lingering Crisis of Youth Unemployment* by Avril V. Adams, et al., Kalamazoo, Michigan, W.E. Upjohn Institute, 1978, pp. 19-34.

^{12/} Id.

15.

affected. Seninger^{13/} suggests that it was not only the baby boom, but the expanding economy from 1963 to 1969 which generated more employment opportunities for adults which together led to the growth in the teenage-adult ratio. Weakened economic expansion and higher adult unemployment, along with the decrease in teenage population growth, returned the ratio to its historic level.

Institutional Constraints on Teenage Employment

Minimum Wage

The minimum wage has often been suggested as one of the reasons for the unemployment problems of youth with low productivity. This view is supported by Freeman and Wise^{14/} who argue that increases in the minimum wage reduce youth employment, and further suggests that the increase in black youth wage rates may have contributed to the relative deterioration in the employment of black youth. Freeman and Wise^{15/} argue that white male youth earnings have declined relative to adult earnings while black male youth earnings have increased relative to adult earnings. The change in the relative wages of black and white youth is, therefore, suggested as a cause of increased black youth unemployment. Taggart and Davidson^{16/} point out that among employed teen-

13/ Id.

14/ Freeman, Richard B., and David A. Wise, "The Youth Employment Problem: Its Dimensions, Causes and Consequences."

15/ Id.

16/ Taggart, Robert and Naomi Berger Davidson, "Introduction," in the Conference Report on Youth Unemployment: Its Measurement and Meaning, U.S. Department of Labor, October, 1978.

16.

agers ages 16-19 more than 1/3 earn less than the minimum wage. They also note that for the unemployed youths 2/5 claim they would take a job that paid less than the minimum wage and another 1/5 would take a job that paid at the minimum. There is, however, no clear consensus on the disemployment effect on youth of the minimum wage.

Much of the recent literature has veered away from emphasis on the minimum wage and looks instead at "cohort overcrowding." This crowding effect is achieved by clearly defined competing groups in the labor market, which is the reason why it is essential for the EEOC to focus very carefully on this issue before lifting the apprenticeship exemption. For Wachter and Kim^{17/} the competing groups are the younger and older workers. Wachter and Kim note that the deterioration of the labor market position of youth is due to labor supply factors. The extent to which cohort overcrowding impacts on black males 16-24 years old remains a question for more careful study. Johnson and Blakemore^{18/} in looking at time series data on wages and the size of the labor force for 16+age sex groups lend some support to this crowding thesis. Their conclusion was that relative wages have a tendency to adjust to the changes in labor supply of the various groups. There

^{17/} Id.

^{18/} Johnson, George E., and Arthur E. Blakemore, "Estimating the Potential for Reducing the Unemployment Rate Consistent with Non-Accelerating Inflation: Methodological Issues," Council of Economic Advisors, March, 1978.

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was, however, no racial breakdown in their analysis. Generally, black male youth are the only group that seems to have had their employment possibilities significantly affected by the minimum wage.

Government Transfer Programs

Institutional constraints such as government transfer programs are mentioned in the same mold as the minimum wage as causing an increase in unemployment rates. However, Wachter and Kim^{19/} point out that data problems make it almost impossible to isolate the effects of government programs. One of the conceptual problems is that the government's social welfare package is an integrated program. Wachter and Kim state that the parameters of the various programs tend to change together reflecting common political pressures and the need to complement each other. An example is the parallel increase in minimum wage coverage and government transfer payments in relative terms during the late 1960's. Since almost all studies concentrate on one government program at a time, they miss these crucial interrelationships and hence, contribute too much to the single program under study.

19/ Id.

Human Capital Endowment

Kalachek^{20/} points out that teenagers are a highly heterogeneous group. Some teenagers have educational attainment greater than the average labor force member while dropouts and younger school attenders are below average.

Morse^{21/} looks at white and black male youth with similar educational endowments. Morse points out that the E/P ratio and the labor force participation rate for 16 to 19 year old black male youths not enrolled in school dropped from 49.8 to 44.0 and 64.5 to 56.0 percent, respectively. The comparable changes in the E/P ratio and the labor force participation rate for 16 to 19 year old white youths were 57.3 to 53.2 and 64.4 to 61.7 percent, respectively. Morse points out that the ratios for black males dropped relative to the ratios for white males. Additionally, the percentage of black males 16 to 19 year old not enrolled in school but having completed four years of high school increased from 20.0 to 31.0 percent; an increase of 55.0 percent. The comparable figures for white males in the same category were 37.0 to 45 percent; an increase of 22.0 percent. These figures show that there is an

^{20/} Kalachek, Edward, "Determinants of Teenage Employment," The Journal of Human Resources 4, Winter, 1969.

^{21/} Morse, Lang, "Increased Unemployment and Changing Labor Market Expectations among Black Youth," in Essays on Youth Labor Market Problems, Unpublished Ph.D. Dissertation, Department of Economics, Princeton University, 1979.

increase in the human capital of black male youth vis-a-vis white male youth which does not reflect itself in increased employment for the former. The opposite has occurred in the E/P and labor force participation figures which have decreased substantially more for black youth on the whole.

Child Labor Laws and Teenage Unemployment

Mitchell and Clapp^{22/} note that child labor laws restrict employment in certain occupations and industries for teenagers from age 14-17. School dropouts are much more likely to be affected than other teenagers since the former are potentially available for full-time work. Mitchell and Clapp use a sample of high school dropouts from the 1970 census of the population and found that at age 19, employment shifts towards sectors regulated by child labor laws. The authors also note that the impact of child labor laws is to push teenage employment into sectors where long-term job prospects are questionable.

Urbanization and Teenage Unemployment

The role of urbanization--the movement from rural to urban centers--has helped to increase the number of unemployed youth. Magnum and Seninger^{23/} argue that in an urban setting youth are far less likely to be engaged in a family enterprise and more likely

22/ Mitchell, Daniel J.B., and John Clapp, "The Effects of Child Labor Laws on Youth Employment," in the Conference Report on Youth Unemployment: Its Measurement and Meaning, U.S. Department of Labor, October 1978.

23/ Magnum, Garth L., and Stephen F. Seninger, "Coming of Age in the Ghetto: The Dilemma of Ghetto Youth Unemployment," Baltimore Maryland, John Hopkins University Press, 1978.

to seek employment. Magnum and Seninger^{24/} further argue that a growing number of minority youth are competing for jobs in a deteriorating urban labor market. One of the causes of this deterioration is that semi-skilled manufacturing jobs are disappearing from the central cities. Very little empirical work has been done on teenage labor market activity in the central cities.

In a useful study Kalachek^{25/} looked at the effect, and the relative importance of teenage intensive activities in ten SMSA's on teenage employment. This inquiry revealed that in communities where key teenage activities are underrepresented that teenagers do not significantly increase their penetration of adult type job activities. Kalachek^{26/} found that they tend to increase their share of jobs in the key activities. Kalachek notes that the industrial versatility of teenagers is quite limited but that the teenage-adult coefficients in key activities are not rigid.

Youth Work Attitudes and Job Tenure

Bad work attitudes are sometimes posited as a reason for youth unemployment. Feldstein^{27/} suggests that the "major problem is not a chronic aggregate shortage of jobs but the instability of individual employment." One of the major reasons for the chronic youth unemployment is low job attachment among those at work. It

^{24/} Id.

^{25/} Supra note 20.

^{26/} Id.

^{27/} Feldstein, Martin, "The Economics of the New Unemployment," The Public Interest, Volume 33, Fall 1973, pp. 3-42.

21.

is suggested that the reason for low job attachment stems from the fact that the jobs are unattractive and, additionally, employers have made no investment in these workers and do not hesitate to lay these workers off. Feldstein suggests that the evidence points to the highly unstable character of jobs rather than to any long-term difficulty in finding jobs. Feldstein looks at 1971, a year with a high unemployment rate, and found that the mean duration of unemployment is much lower for teenagers [8.5 weeks] than for the rest of the labor force [11.4 weeks]. Job leavers and re-entrants contributed 7.1 percent, or more than 2/3 of the unemployment among teenage experienced workers. Among 16-21 year old males, Feldstein noted that 13 percent were not in the labor force. Of the 19-24 year olds, only 1/10 stated that the inability to find a job was the reason for not working. The 20-24 year olds had a similar situation. Feldstein noted that a survey that followed the same group found that 1/4 of black males had--from October 1968--three or more spells of unemployment and about 1/2 had two or more inter-firm shifts during this period. Whites had the same proportion experiencing at least one spell of unemployment after educational differences are taken into account. Feldstein notes that whites had less multiple spells of unemployment.

Smith and Vanski^{28/} lend some support to Feldstein's position by stating that chronically high unemployment rates of teenagers can be linked to their large flows through the labor market. They

^{28/} Smith, Ralph E., and Jean E. Vanski, "The Volatility of the Teenage Labor Force Entry, Exit and Unemployment Flows" in the Conference Report on Youth Unemployment: Its Measurement and Meaning, U.S. Department of Labor, October, 1978.

claim that 1/3 of white teenagers have additional problems of lower probabilities of finding a job once unemployed. Andrisiani^{29/} appears to agree with the basic Feldstein and Smith-Vanski analysis of youth unemployment. He notes, however, that inadequate labor market information led to a high level of job dissatisfaction, turnover and frictional unemployment. Black females and poor whites were listed as those with the least adequate information. Andrisiani states that there is little empirical justification for considering youth attitudes towards work as immature or inadequate and states that the differential between youth and adult unemployment rates might possibly be closed by more adequate labor market knowledge. This inadequate labor market information leads to over ambition rather than lack of ambition. This Andrisiani suggests helps to explain the unrealistic expectations of black youth.

Osterman^{30/} looked at the different unemployment experiences of black and white youth using cross section data. He found that with respect to the duration of completed spells of unemployment

^{29/} Andrisani, Paul J., "The Establishment of Stable and Successful Employment Careers: The Role of Work Attitudes and Labor Market Knowledge," in the Conference Report on Youth Unemployment: Its Measurement and Meaning, U.S. Department of Labor, October, 1978.

^{30/} Osterman, Paul, "Racial Differentials in Male Youth Unemployment," in the Conference Report on Youth Unemployment: Its Measurement and Meaning, U.S. Department of Labor, 1978.

that there were significant racial differences which persisted even after controlling for various personal characteristics and labor market demand. Osterman found that high reservation wages could not explain black youth unemployment. Osterman notes that black and white youth were almost equally likely to quit but that blacks were more likely to quit into unemployment. This explanation, in line with Smith-Vanski, Andrisani and Feldstein, was that whites had better access to job contacts than blacks.

Summary of the Problem

Several hypotheses have been put forth in an attempt to explain teenage and youth unemployment. The increased number of teenagers seem to be a primary reason for the growth in total teenage unemployment. However, while the business cycle seems to have affected all groups of teenagers and youths, the increased unemployment experience seems, in the long run, primarily restricted to nonwhite teenagers and youth of both sexes.

The minimum wage has been tested as a possible source contributing to teenage and youth unemployment. However, no consensus has been reached despite numerous research efforts on the effect of minimum wage legislation on teenage and youth unemployment.

This survey also discovered that even though black youth had increased their educational attainment at a faster rate than white youth that this increase did not result in higher employment rates, but counter to human capital theory the black subgroups showed lesser employment potential.

Poor work attitudes among youth cannot be posited as a reason for unemployment as it was found that their attitudes did not differ markedly from those of adults. However, inadequate labor market information was seen as contributing to limiting employment possibilities. This was true particularly of blacks and the poor. This inadequate information leads to overambition rather than underambition. The evidence is not sufficient to support any finding that this overambition leads to high reservation wages or that it can account for the high quit rate.

Child labor laws may have an impact on eventual unemployment through pushing teenage employment into sectors where long-term job prospects are questionable. Lifting the apprenticeship exemption will aggravate the festering sore of youth unemployment as the supply of training diminishes and the universe of demand for jobs increases in this decade of economic uncertainty.^{31/} More work needs to be done on the effect of these laws, and the adverse impact of the EEOC's action today on the younger worker before the apprenticeship exemption is lifted and before any similar action is taken in other relevant areas.

^{31/} See e.g., Russakoff, "15,000 Apply for 70 Federal Jobs in Baltimore," Washington Post, Sept. 17, 1980, A-1, col. 2; "Unemployment Monster Grows Bigger," Washington Afro-American, August 5, 1980, p. 1, col. 1; Berry and Pine, "Jobs Goals Consensus Seen," Washington Post, April 26, 1979, E-1, col. 1; Russakoff, "26,205 Applicants seek 70 Jobs in Record Turnout," Washington Post, Sept. 20, 1980, B-1, col. 5.

25.

Overall, however, most of the hypotheses that have been postulated and tested successfully to explain in the general phenomena of teenage and youth unemployment in the 1960's and 1970's seem not as applicable to explaining the phenomenon of black youth unemployment.

The Solution

Although the experts are divided on the exact causes of the disproportionate high rate of youth unemployment, they are agreed on one thing: the cure to the problem is to create more jobs and training opportunities, such as present apprenticeship programs.^{32/} Recognizably, apprenticeship programs are only a segment of the potential training opportunities for the young. However, current economic indicators warn us to go slow, to be evaluative and to be reasonably sure that any public policy decision does not aggravate a problem that has this nation baffled. Indeed, in a recent article entitled, "Black Youths Need Jobs, Not Theories," columnist William Raspberry stated that--

Unemployment among black youth may be the most baffling socio-political problem facing America today: as intractable as the energy crisis, as politically sensitive as immigration and as inexorable as inflation...

^{32/} Accord, Hill, Herbert, Labor Union Control of Job Training: A Critical Analysis of Apprenticeship Outreach Programs and The Hometown Plans, Occasional Paper, Vol. 2, No. 1, Institute for Urban Affairs and Research, Howard University, 1-10 (1971).

Somehow, we'll have to come up not just with theories but with practical solutions... Not only urban tranquillity but a whole generation of black youngsters depend on it. (emphasis added) 33/

Creating more jobs in the 1980's will be more difficult than in previous decades. 34/ Some of the factors that are responsible for exacerbating this problem are: Some of the occupations which grew enormously in the 1960's will decline in the 1980's. The traditional picture of the American workplace as the foundry, the factory, the automobile assembly line, will no longer be accurate. Our post industrial economy is service oriented, white collar and technical; blue collar jobs will give way to white collar jobs. The impact of these changes will be felt most acutely by minority youth. 35/ But the changes are of such scope that they pose serious challenges for youth of all groups in America. 36/ Indeed, the economic conditions facing youth and young adults in this decade are perilous. 37/

Because of the serious problem of youth unemployment some steps have been taken to solve the youth unemployment problem. Legislation has been recommended to Congress which would address

33/ Washington Post, Sept. 10, 1980, A-18, col. 1.

34/ Youth Employment Initiatives, Background Report by Office of Media Liaison, The White House Press Office, January 10, 1980.

35/ Id.

36/ Id.

37/ Summer Jobless Rate for Youths Hits Highest Rate in Five Years--Bureau of Labor Statistics Reports, Daily Labor Reporter, Economic Section, August 13, 1980, No. 158, at p. B-1, (See accompanying tables).

itself specifically to the problem of youth unemployment. The White House announced that this program is built around seven principles.^{38/}

- (1) The problem of youth unemployment will not disappear in the 1980's, but rather worsen in some communities and for some groups;
- (2) The lack of basic communication, comprehensive and computational skills is the most serious barrier between these young people and successful entry into the labor market;
- (3) Basic skill efforts must be combined with the development of work experience opportunities to give youth a resume which reflects credible work experience and documents their accomplishments;
- (4) Employment and education programs spurred by the federal government must have considerably less red tape and permit youth easy access and allow for greater flexibility at the local level;
- (5) There must be renewed emphasis on providing labor market information to young people, and to those teachers, parents, guidance counselors and others who assist them in making career choices;
- (6) The problems are too large, too complex to be successfully addressed by any single institution. It is essential to have a partnership between local government, education and the business community;

^{38/} Supra note 34.

- (7) Community based and voluntary organizations must be involved in any effort to mount a youth employment program.

These seven principles which form the basis of White House youth unemployment initiatives must be principles by which the EEOC proceeds in its evaluation of the impact of lifting the apprenticeship exemption under the ADEA. The notice for comment provides no guidance for serious discussion on these principles, or on the problem of youth unemployment itself. Perhaps my colleagues believe that it is irrelevant. I do not.

The EEOC has held seminars, conducted studies and public hearings on many important subjects prior to issuing guidelines, announcing new policies, or modifying old policies. It seems to me that nothing should be done to alter the status quo of apprenticeship programs until the EEOC places the same public emphasis on youth. On this issue the EEOC should not guess its way into the new century. This issue is relevant to young people regardless of race or gender.

Indeed, Ginzberg states^{39/} that

Although this emphasis on black youth is justified by the appalling facts about their high unemployment rates and their low labor-force participation, they are not the only vulnerable group. Young whites outnumber black and other minority young people by about nine to one, which means that most of the young people who are in trouble are white. Moreover, young

^{39/} Ginzberg, Eli, Youth Unemployment, 242 Scientific American 43. 47 (May, 1980).

Hispanics also have particular disabilities in the labor market. Their experience in terms of unemployment and labor-force participation, falls about midway between that of whites and blacks, but the lack of long-term data specifically for Hispanics makes it impossible to analyze their situation in more detail.

Before closing, one argument must be aired and that is-- minorities in apprenticeship programs have been excluded on the bases of race and therefore by lifting the apprenticeship exemption older minorities would be benefited from past discrimination. This argument is also used for women. If such is the case, and the EEOC is generally aware of such conduct facing minority youth then why aren't we using our available Title VII enforcement authority to cure the situation? If apprenticeship programs are being filled disproportionately with non-minorities then unions and employers should be made aware of the EEOC's recently published Uniform Selection Guidelines, the Affirmative Action Guidelines, and other enforcement tools presently in the domain of the Department of Labor.

There are others who urge that the apprenticeship ban be lifted because--they argue--the older worker is not likely to apply for apprenticeship programs now outside ADEA. If such is the case then why should the apprenticeship exemption be lifted at all?

While there is agreement that creating more jobs is the solution to the youth unemployment problems, it would be counter-

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productive to simultaneously use other government policies to take away jobs. It is my view that the effect of the vote of the majority of the Commission is to do just that.

It may be that after the comments have been received and evaluated, the data will refute the bases for this dissent. Should that be the case, I will re-evaluate my present position. However, thus far I have heard or read nothing presented by the staff or anyone else which convinces me to vote with the majority. Therefore, I seek the assistance of the people.^{40/}

For the foregoing reasons, I respectfully dissent.^{41/}

J. Clay Smith, Jr.
Commissioner

^{40/} Hence, at this time, in view of the data contained in this opinion I believe that the exemption is reasonable under the standard established in Section 9 of the ADEA. The lawfulness of the exemption is not at issue. The sole issue is whether there exist a reasonable bases for the exemption.

^{41/} I am indebted to Atlanta University Library, Howard University Library and Denys Vaughn-Cooke (M.A.) of The Urban Institute for their valuable assistance in bringing valuable resource material to my attention.