

# Employee Relations

## LAW JOURNAL

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## Using Situation Testing to Document Employment Discrimination Against Persons with Psychiatric Disabilities

Amir Tal, Galia Moran, Dan-Olof Rooth, and Marc Bendick, Jr.

*Many individuals with psychiatric disabilities are unemployed or under-employed, with detrimental consequences for their lives and mental health. Although prior research suggests that stigmatization and discrimination contribute to this outcome, the exact extent of such employer behavior has remained largely undetermined. This article reviews the employment situation of persons with psychiatric disabilities, considers traditional ways to analyze the role of discrimination, and proposes situation testing as a new methodology overcoming many limitations of prior research. By rigorously documenting real world discriminatory practices, situation testing can importantly influence public opinion and government policy, as well as change employers' behavior through education or litigation.*

Work plays a central role in the lives for most adults. It is therefore not surprising that opportunities for individuals with psychiatric disabilities to join the broader population in “mainstream” employment tend to enhance their quality of life. The benefits accrue not only through increased income but also through personal activity, social contacts, self-esteem, illness self-management, and integration into the community. Conversely, unemployment among persons with psychiatric disabilities tends to promote not only poverty and financial dependency but also alienation, hopelessness, lack of fulfillment, loss of self-esteem, isolation, and despair. Unemployment is a significant risk factor for mental health problems ranging from mild psychosocial stress to serious depression and suicide.<sup>1</sup> Unemployment and mental health problems

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can mutually reinforce each other in a negative cycle miring individuals in a lifetime of illness and poverty. As a result, people with an array of diagnoses ranging from major depression to schizophrenia spectrum disorders constitute one of the largest groups of recipients of public income support.<sup>2</sup>

In light of the role of job-holding in the well-being, functioning, and recovery of persons with psychiatric disabilities, the prevalence of unemployment in this population is disconcerting. For example, non-employment rates for people with psychiatric disabilities such as schizophrenia and bipolar disease are typically 80 to 90 percent.<sup>3</sup> Among those who do find employment, a psychiatric-disorder label can importantly limit their careers. In one study in the United Kingdom, 58 percent of employers reported that they would not hire someone with depression for an executive position, compared to 5 percent for a clerical position.<sup>4</sup> In a widely noted case in Israel, a person misdiagnosed with schizophrenia was denied advancement to higher executive positions and limited to only a fraction of his employment and earning potential.<sup>5</sup>

Such problems are not confined to a small number of individuals or an isolated subset of the general population. An estimated 26.2 percent of the US population age 18 and older—one adult in four—experience a diagnosable mental disorder each year, while about 6 percent cope with a serious mental illness. That translates into nearly 60 million Americans in the former category and more than 13 million in the latter. Mental disorders are the leading cause of disabilities in the United States for persons age 15 to 44.<sup>6</sup>

The gravity of non-employment for this population underlines the need to understand, and thereby potentially to change, discriminatory behavior by employers against persons with psychiatric disabilities. Unfortunately, currently available studies on this issue are relatively few in number and limited in methodology. Most research estimating the prevalence of discrimination relies on victims' self-reports, which are subject to perceptual errors as well as bias. Studies of employers typically rely on attitude questionnaires or simulated behavior, which may not correspond to their real-life behavior. The validity, accuracy, and credibility of research would be substantially enhanced if rigorous research were able to analyze real employers' behavior in actual workplace situations.

This article first reviews the employment circumstances of persons with psychiatric disabilities. It then enumerates the factors that influence their employment situation, focusing on the role of stigma and employer discrimination. Third, the article introduces *situation testing*, a relatively new but increasingly established research method for analyzing workplace practices. This method allows observation of employer behavior in actual workplace situations with controls allowing employer discrimination to be separated from other factors influencing employment outcomes. Finally, the application of situation testing to three types of

employment discrimination against persons with psychiatric disabilities is illustrated.

## **EMPLOYMENT AND PSYCHIATRIC DISABILITIES**

In the United States, large-scale population surveys consistently estimate unemployment rates among people with psychiatric disabilities to be three to five times those of their non-disabled counterparts. For example, one major survey reported 61 percent of working-age adults with mental health disabilities not holding paid employment, compared to 20 percent of the comparable general population.<sup>7</sup> These patterns tend to apply to persons at all levels of education; in another American sample, 43 percent of persons with psychiatric disabilities who held college degrees did not work, compared to 13 percent of college graduates without psychiatric disabilities.<sup>8</sup> In terms of psychiatric diagnoses, persons with schizophrenia and related psychotic disorders have the lowest employment rates.

These employment patterns are not limited to the United States. In the United Kingdom, for example, one typical study reported participation in paid employment by 20 percent of people with severe mental health problems, compared to 75 percent for the overall adult population.<sup>9</sup> This research further documented that persons with psychiatric disabilities are more likely to be employed in the "secondary labor market," where jobs tend to be unskilled, part-time, and to have high turnover, few fringe benefits, and limited opportunities to advance.

Limited income is one major consequence of this joblessness and under-employment. The economically deprived populations in industrial nations include disproportionate numbers of persons with disabilities, including psychiatric disabilities. In the United States, between one third and one half of individuals with psychiatric disabilities live at or near the federally defined poverty level of income. The relative risk for having schizophrenia is nearly eight times greater among persons in the lowest quartile of socioeconomic status than among persons in the highest quartile.<sup>10</sup>

Consistent with this observed correlation between mental illness and poverty, the relationship between mental health problems and unemployment is bi-directional. On one hand, mental health problems enhance the probability of unemployment and reduce career opportunities. On the other hand, the economic hardships generated by unemployment and under-employment hamper recovery through additional stress and reduced quality of life and community participation.<sup>11</sup> Hence, for many individuals, the interaction of unemployment and mental health problems triggers a negative cycle confining them to a lifetime of illness and poverty. For example, one study covering 150 years in New York revealed a dramatic causal relationship between unemployment and rates of psychiatric hospitalization.<sup>12</sup>

A parallel bi-directional relationship creates a substantial challenge for researchers attempting to isolate the effect of employers' discriminatory behavior from other factors affecting employment outcomes. Due to their illness, some workers with psychiatric disabilities offer significantly reduced capacity for productive work. Reduced cognitive functioning is associated with unemployment among persons with serious mental illnesses such as bipolar disease and schizophrenia. Studies have identified verbal memory, sustained attention, and executive functions as specific areas of cognitive functioning sometimes impaired in persons with serious mental illness.<sup>13</sup> Employees with depression typically have higher health-related "lost productivity time" (hours per week absent plus hour-equivalents per week of reduced performance) than their peer workers without depression—in one study, an average of 5.6 hours per week in the former group compared to 1.5 hours in the latter.<sup>14</sup>

For many decades, the general public and public policy-makers have often ascribed the limited employment of people with psychiatric disabilities to these performance issues alone. A more accurate view is that it reflects a combination of the disability itself and external social factors such as the stigma associated with mental illness and its translation into discriminatory behavior by employers.

### STIGMA AND DISCRIMINATION

Economists formally define employment discrimination as valuation in the labor market of workers' characteristics not related to the workers' on-the-job productivity.<sup>15</sup> Suppose that an employer does not hire a job applicant who is experiencing uncontrolled anxiety or depression because the employee appears not capable of reliably performing required job duties. Under the economists' definition of employment discrimination, that decision should *not* be ascribed to employer discrimination. On the other hand, suppose that employer fails to hire an actually capable job applicant based on a *stereotype* that the applicant's psychiatric disabilities make that person incapable of productive work. That action represents discrimination both as an economist would define it and as many statutes, such as the Americans with Disabilities Act (ADA), render it illegal.

The research methods in most past studies of employment among persons with psychiatric disabilities offer only limited ability to distinguish between these differing circumstances. Studies which report broad patterns of joblessness, such as the low rates of job holding among persons with psychiatric disabilities cited earlier, typically cannot separate the effects of employers' behavior from workers' behavior. Persons with psychiatric disabilities may be jobless in part because they are not capable of meeting job requirements. In addition, these persons may not apply for jobs, fearing to trade stable, publicly provided income support for uncertain earnings from employment.<sup>16</sup> In that circumstance, low rates

of labor force participation reflect *both* workers' decisions not to seek employment and employers' decisions not to hire those that do, and the separate effect of the latter cannot be accurately isolated. In a similar vein, studies estimating rates of discrimination often rely on self-reports by persons with disabilities of having experienced discrimination.<sup>17</sup> Many of these reports may be accurate. However, the perceptions by victims of discrimination may be biased in ways researchers cannot easily control. To protect their self-esteem, job seekers with disabilities may tend to attribute their lack of success to employers' prejudice rather than their own lack of competitiveness. This tendency may particularly express itself in the situation of limited information in which job seekers typically find themselves when they are not hired. When an employer declines to consider an application by stating that the job has already been filled, a job seeker typically cannot verify whether that statement is true or merely a non-confrontational way to refuse to consider her or him for other reasons, such as discrimination.<sup>18</sup>

Even studies of employers themselves typically do not provide definitive information. These studies often rely on attitude questionnaires or simulated behavior in hypothetical situations. By measuring employers' expressed views or cognitive-emotive positions, these studies contribute to understanding employer attitudes and cognitive stereotypes.<sup>19</sup> However, the relationship between these expressed attitudes and actual workplace decisions remains speculative. When an employer is asked in a research setting whether or not he or she would hire someone with a disability or is asked to react to a vignette describing a potential job candidate, there may be a significant gap between his or her response and his or her real-life hiring behavior. These discrepancies seem likely to underestimate the extent of discrimination in societies, including the United States, where the general public experiences social pressure in favor of non-discrimination and "political correctness."<sup>20</sup>

These methodological deficiencies are particularly unfortunate because there is ample reason to consider seriously the hypothesis that discrimination plays a major role in poor employment outcomes for persons with psychiatric disabilities. In some cases, employers may consciously treat job applicants with psychiatric disabilities less favorably than other job applicants. For example, employers may be personally uncomfortable with persons with psychiatric disabilities, or believe their customers or employees might be, so they deliberately and explicitly avoid hiring them.<sup>21</sup> In other cases, employer bias may be unconscious, as for example, when stereotypes cause employers to perceive job applicants with psychiatric disabilities as unqualified and unproductive even when the actual individual they are considering presents credentials demonstrating job performance and is credible in job interviews.<sup>22</sup>

Situation testing—also referred to as employment testing, employment auditing, paired-comparison testing, or simply testing—is a research technique which avoids these methodological limitations. The next section

describes this methodology and its potential role in measuring employment discrimination against persons challenged by mental illness.

## SITUATION TESTING

Situation testing is formally defined as a systematic research procedure for creating controlled experiments analyzing employers' candid responses to employees' personal characteristics.<sup>23</sup> It offers unique potential for studying the behavior of actual employers in real workplaces while maintaining the methodological rigor of a laboratory-like scientific experiment. As previously noted, economists define employment discrimination as valuation in the labor market of workers' characteristics not related to productivity. In situation testing, pairs of research assistants present themselves to employers as applicants for the same actual job vacancy. Within each pair, employee characteristics likely to be related to a worker's on-the-job productivity, such as education, work experience, professional certifications, and technical skills, are made equal by selecting, training, and credentialing testers to appear equally qualified for the positions they seek. Simultaneously, personal characteristics unrelated to job performance are experimentally manipulated by pairing testers who differ in one characteristic—in this case, a person with a psychiatric disability and one without. If testers within a pair experience substantially different responses to their job-seeking efforts, few assumptions and only limited analysis are required to interpret that difference as the employers' reaction to that one differing personal characteristic.

This interpretation is appropriate, of course, only if employers are presented with pairs of job candidates who truly appear equally qualified. This condition is relatively easy to achieve in situation testing studies involving only paper resumes, which are mailed, faxed, or emailed to employers. In these procedures, which are sometimes referred to as "correspondence testing," testers' resumes describe equivalent education, work experience, and job skills while varying resume details to avoid appearing obviously similar. The resumes must communicate the differing demographic characteristic of the testers clearly but in a manner which does not seem unnatural. In the case of psychiatric disabilities, for example, the resume for a job applicant with psychiatric disabilities might include prior employment in a "sheltered work" situation for persons with psychiatric disabilities.

Resume-based tests can probe only the initial stages of the hiring process, up to an employer's decision to invite job candidates for in-person interviews. To study the complete hiring process, it is necessary to dispatch equally qualified pairs of "live" job applicants to present their qualifications and be interviewed. Maintaining a controlled experiment in that circumstance requires substantial care at each step in the research process.

The first step in maintaining the controlled experiment is to recruit testers who meet a daunting set of requirements:

- Ability to play the job-seeker role convincingly while simultaneously making and remembering accurate observations about the hiring process;
- Willingness to approach the study objectively;
- Similarities between testing partners in general appearance and demeanor; and
- The differing demographic characteristics required by the study design.

Recruiting individuals meeting all the requirements of the position is often a time-consuming and painstaking process. In one typical study, for example, 93 potential testers were interviewed before four testers were selected to form two testing pairs.

The second step in maintaining the controlled experiment is training to make pairs of testers equally credible job applicants. During training, testers develop and memorize their false resumes, receive coaching on effective job interviewing techniques, and rehearse similar answers to common interview questions. Concurrently, testers are trained to be "human tape recorders" by drilling them to notice and remember important details of their job application experiences and instilling the value of objective observation. In well-run testing studies, tester training typically requires at least a day and a half.

A third step in maintaining the controlled experiment involves carefully managing testers' actions throughout the job application process. The two testers within a pair usually present themselves to employers in random order, with the second tester applying a few minutes after the first. Each tester documents his or her experiences as soon as practical after the event and prior to being told the experiences of her or his testing partner. Testers typically record their data in writing using pre-structured questionnaires,<sup>24</sup> and they are constantly reminded to focus on observable facts rather than to make judgments or interpretations about what they observe. Such careful management requires continuous, hands-on monitoring of each test by a trained "Test Coordinator," who usually can supervise no more than three testing teams concurrently.

The final step in maintaining a controlled experiment is to repeat the job application experiment for dozens or hundreds of job vacancies, to "average out" random circumstances which may affect the outcome in a single test. In analyzing test outcomes, the basic statistical measure is the "net rate of discrimination," which is the proportion of tests in which testers with the characteristic hypothesized to be disfavored



(persons with psychiatric disabilities) are successful, minus the proportion of tests in which testers with the characteristic hypothesized to be favored (persons without psychiatric disabilities) are successful. "Successful" is typically defined as reaching an identifiable milestone in the hiring process, such as being offered a job interview or being offered a job.

Given the net rates of discrimination observed in typical testing studies, statistically significant estimates of the "main effect" studied in the experiment—*i.e.*, whether the net rate of discrimination is above zero—have been obtained with as few as about 50 completed tests. Samples of about 100 tests have often proved sufficient to observe statistically significant effects of key circumstances on the net rate of discrimination, for example, in measuring whether discrimination is more prevalent in occupations offering higher earnings, in positions involving public contact, or in suburban locations.

The following are examples of employment outcomes which situation testing studies examining personal characteristics other than psychiatric disabilities have reported as discrimination. Similar differences in treatment are likely to be observed in tests based on mental illness status.

- A large-circulation newspaper<sup>25</sup> carried an advertisement for a supervisor at a restaurant in an affluent neighborhood. An African American tester who presented himself at the restaurant was told that he would be called if the restaurant wished to pursue his application. Minutes later, a white tester whose resume showed the same level of education and restaurant experience followed the same procedure. He was called later that day to schedule an interview, interviewed the day after that, and subsequently offered the position. The African American tester made four follow-up calls to reiterate his interest, including one shortly after the white tester refused the job offer, with no response.
- A vacancy for a receptionist in an optometrist's office was advertised in a local newspaper in a suburban neighborhood. When a tester with a Latina name and slight accent telephoned the next day to apply, she was put on hold, called Carmen when she had given her name as Juanita, and told that the office was not taking any further applications. When her testing partner with an Anglo name and no accent called 13 minutes later, she was given an appointment for an interview the following morning.
- An employment agency advertised for an "account representative" to do executive recruiting. Two white males, whose resumes and appearance portrayed them as age 32 and 57 respectively, responded by telephone and were both granted

interviews. The older tester's interview lasted 48 minutes, during which the tester was cautioned against making a precipitous career change and instructed to call back if he was still interested after reading books on sales techniques. The younger tester's interview lasted 85 minutes, during which the interviewer discussed a variety of work and non-work topics in a friendly manner and commented enthusiastically on the tester's questions and responses. This tester was invited back for a second interview, after which he was offered a job.

- An automobile service shop advertised for a technician to lubricate and repair automobiles. When a female applicant whose resume showed experience in physically demanding jobs applied for the position, the manager who interviewed her told her that "the auto lube job is hard for a woman," said that he liked her smile, and offered an alternative, lower-paid position serving coffee to customer while they waited for their cars. When her male testing partner applied several hours later, he was interviewed for the advertised job.

Some small-scale studies in the spirit of situation testing were implemented in the United States or Europe as early as the 1950s. However, only in the 1990s did these studies begin to be conducted with substantial samples and consistent methodological rigor. Examples of population groups for which situation testing studies have documented discrimination include African Americans, Latinos, women, and older workers in the United States and Arabs/Muslims and obese persons in Sweden.<sup>26</sup> Typical net rates of discrimination observed in studies of discrimination based on race or ethnicity in the United States fall in the range of 20 to 25 percent. That is, discrimination of the type readily revealed through situation testing has typically been documented for one employer among every four to five tested.

While nosituation testing research on discrimination based on physical disabilities have been published in the United States, some has been conducted in Europe. These studies, which primarily involved testers using wheelchairs, typically found net rates of discrimination above 30 percent, and as high as 48 percent.<sup>27</sup> It is likely that tests involving psychiatric disabilities would produce estimates of discrimination at least as high as for physical disabilities.

### **APPLYING SITUATION TESTING TO PSYCHIATRIC DISABILITIES**

How might testing studies for psychiatric disabilities be structured? In this section, three model testing studies are considered, each designed to address a different question about employment discrimination.

***The Equal Work Productivity Model***

The first model is labeled the "Equal Work Productivity Model" because it concerns individuals with a history of psychiatric disability who have achieved recovery to the point where their mental health condition is under control and their current on-the-job productivity is equal to their non-disabled work counterparts. While usually not revealing their disability, such persons often hold a range of jobs far beyond "entry level"—*e.g.*, politicians, journalists, actors, lawyers, scientists, and astronauts. However, despite their potential to be productive, these persons might be hampered as job applicants or employees by the stigma that a past history of mental illness would carry if it became known.<sup>28</sup>

A situation testing research procedure corresponding to this circumstance involves pairs of tester job applicants in which one applicant reveals through his resume and interview answers that he or she has been previously diagnosed with a mental illness. Exhibit 1 illustrates how that fact could be revealed in a resume by including in "work experience" a period of employment in a workplace hiring only persons coping with mental illness, as well as multi-year time gaps in the applicant's employment history. Concurrently, that tester's resume documents that the person is currently capable of fully productive work. This is signaled in the resume by the applicant's having held a responsible position for an extended period *after* the position related to the psychiatric diagnosis. In the spirit of testing, that more recent position involves a level of performance and responsibility equal to that of the most recent position on the resume of the other tester in this pair. In addition, both testers would have to be selected so that in interviews they would present no symptoms of current psychiatric problems.

**Exhibit 1. Illustrative Resumes for an Equal Work Productivity Test**

Characteristic	Tester with a Psychiatric Disability	Tester Without a Psychiatric Disability
Position sought	Restaurant or other hospitality management	Restaurant Manager or Assistant Manager
Name	Arnold Forman	David P. Johnson
Date of birth	November 23, 1977	February 1, 1980
Place of birth	Gaithersburg, MD	Lancaster, PA
Gender	male	male
Marital status	Married, 1 child	Married, 1 child
Citizenship	United States	USA
Address	14553 Crescent Place, #211 Rockville, MD 20357	194 King Street Silver Spring, MD 20316

*continued*

Using Situation Testing to Document Employment Discrimination

Characteristic	Tester with a Psychiatric Disability	Tester Without a Psychiatric Disability
Phone	(301) 555-1212	cell phone (301) 123-4567
Email	arnieform@aol.com	david.p.johnson@gmail.com
High school	Diploma, Gaithersburg West High School, Gaithersburg, MD—1995	Graduated from James Buchanan High School in Lancaster, PA, June 1998
Post-secondary education	BA, Management, Towson State U., Towson, MD—1999	BBA in Marketing, June 2002, from California University of Pennsylvania
Current employment	2004-Present. Head Waiter in a fine dining classic French restaurant, "Déjà Vu," Gaithersburg, MD. Supervise up to 15 waiters and barstaff on each shift, as well as assist waitstaff in greeting and serving guests. Chief cashier responsible for daily bank deposit. Maintain monthly shift schedule for all front of the house employees. Assist General Manager in hiring waiters and bussers.	Since January 2004: "Your Place," a special events/wedding/catering facility in Silver Spring, MD. As a general supervisor in dining room operations, I am responsible for all aspects of hiring, training, assigning, scheduling, and monitoring waiters, food runners, and table bussers. I also advise kitchen staff on menu planning and support sales staff in developing cost estimates and making sales presentations.
Prior employment	2003–2004. Waiter, "Sea Delight," a seafood-oriented casual café in Olney, MD, serving more than 400 clients a week. The restaurant is affiliated with Montgomery County Mental Health Services and provides "supported work" to employees recovering from mental illness.	June 2002 - December 2003: Luigi's, Lancaster's finest and busiest Italian style restaurant. I waited table during lunch and dinner shifts. As required, I filled in as a bartender, host, maitre d', or cashier.
Languages	English, some French	English, a little Spanish
Computer skills	Word, Excel, Power Point	Microsoft Office programs
Driver's license	yes	yes
References	Available on request	As requested

The resumes in Exhibit 1 would be appropriate when applying for full-time supervisor positions in restaurants. Such positions typically require considerable employee energy, consistent attendance, and substantial interpersonal skills. Not all persons with psychiatric disabilities would be able to meet all these requirements. However, the Equal Productivity testing model could also be applied to less demanding positions which might be manageable for other individuals with psychiatric disabilities. Examples of these jobs include part-time positions, positions involving very low stress (such as light gardening work), or positions involving only

limited interpersonal interaction (such as library book shelving). In testing such positions, the tester with a psychiatric disability could explicitly attribute his or her wanting such a job to his or her psychiatric disability, while the other tester in the same team could attribute it to a reason not related to a psychiatric disability, for example, needing part-time work to care for young children, preferring low-stress work to avoid distracting from a high stress avocation (*e.g.*, writing a novel), or simply being an unsociable person who prefers to work alone. The Equal Productivity testing model is appropriate whenever both testers in a pair offer the *same* level of productivity, whether that level is high or limited.

### ***The Work Accommodation Model***

In the Equal Productivity model, an employer is deemed not to discriminate when the two testers in a pair are treated equally. But with respect to disabilities, including psychiatric disabilities, anti-discrimination laws may impose more stringent mandates, requiring employers to employ persons with disabilities on an equal basis to other employees even if that requires accommodation for the former not required for the latter. In that circumstance, situation testing might be applied not to measure the extent to which testers are treated equally but instead the extent to which employers fulfill the mandate to accommodate.

A prominent American law imposing such a requirement is the Americans with Disabilities Act (ADA).<sup>29</sup> In prohibiting discrimination against job applicants or employees with disabilities, Section 102 of the ADA requires employers to make "reasonable accommodation" to disabilities which, in the absence of accommodation, would limit a worker's capacity to perform on the job. The only limitation on this mandate is that accommodation does not create an undue hardship on the employer.

Section 101 of the ADA defines reasonable accommodation to include "job restructuring, part-time or modified work schedules . . . and other similar accommodation." Little guidance is provided concerning accommodations specifically for people with psychiatric disabilities, and most workplaces have not developed policies or programs for them separate from persons with physical disabilities.<sup>30</sup> Studies of employers' implementation of this provision, which primarily reflect accommodations to physical disabilities, find that the majority of accommodations are relatively inexpensive (*e.g.*, making minor adjustments to desk chairs) and most frequently involve human assistance (*e.g.*, a job coach) or flexibility in work schedules.<sup>31</sup>

To test for employer discrimination with respect to persons whose psychiatric disability requires a workplace accommodation, consider the Work Accommodation Model. Here, the psychiatric disability of one tester and his or her required accommodation would be explicitly revealed to the employer as early as possible in the job application process, for

example, by being prominently stated in the applicant's resume and/or made evident by the tester's appearance or demeanor in job interviews. Exhibit 2 provides an example of a resume for a person seeking an office/administrative position in which the applicant explicitly describes the accommodations she would require to perform the job.

Exhibit 2. Illustrative Resumes for a Work Accommodation Test

Characteristic	Tester with a Psychiatric Disability	Tester Without a Psychiatric Disability
Objective	Secretarial Position on a Part-Time Basis	Part-Time Office/Administrative Work
Special needs	I am coping with bipolar disorder and am partially supported by Social Security Disability Insurance as well as a community-based rehabilitation program. I can work half-time and have done so successfully in the past (see 2008 award). My condition requires me to sit in a quiet location and take short breaks throughout the work day.	—
Name	Roseanne Harcourt	Anita Martin Daniels
Date of birth	March 3, 1972	June 23, 1973
Place of birth	Arlington, VA	Manassas Park, VA
Gender	Female	Female
Marital status	Married, 1 child	Married, 1 child
Citizenship	USA	American
Address	43109 Pleasant Valley Lane, Fairfax, VA 21223	88 Albermarle Circle, Lorton, VA 21450
Phone	(703) 866-2109	(703) 452-1267
Email	roseanneh45@hotmail.com	anita.daniels@earthlink.net
High school	Graduated from Roosevelt High, Fairfax, VA, 1990	Diploma, Manassas Park High School, 1991
Post-secondary education	A.A., Office Technology and Administrative Services, Northern Virginia Community College, 1993	Certificate in Secretarial Sciences (2 years of training), Strayer University, 2002
Employment history	2008–present: National Rehabilitation Hospital, Alexandria, VA.: Scheduling Secretary (25 hours per week), Ophthalmology Department. Administrative Employee of the Month, January 2008.	Since 1/2004: Part-time receptionist and office administrator, Fly-A-Way Travel, Lorton, VA.

*continued*

Characteristic	Tester with a Psychiatric Disability	Tester Without a Psychiatric Disability
	1993–2008: Office of Stephen G. Hansen, MD, Fairfax, VA. General office assistant in the solo practice of a dermatologist, now retired (2 days per week).	8/2002–12/2003: Insurance Verification Clerk, Admissions Department, Medstar Hospital, McLean, VA.
Computer skills	Excellent command of Word, Excel, Power Point, Access, Desktop Publisher, Peachtree. Typing 50 WPM.	Experience with all Microsoft Office programs. Rapid, accurate data entry.

In Exhibit 2, the resume for the tester without a psychiatric disability mentions no comparable accommodation. Therefore, in that pairing, observed differences in employers' responses to the two testers would directly measure the extent to which employers discriminate against job seekers with psychiatric disabilities who exercise their rights under the ADA, reflecting *both* employers' unwillingness to hire fully productive persons with psychiatric disabilities and their unwillingness to make accommodations for persons requiring them. Further tests using other tester pairings could then be used to distinguish these two components. For example, a tester with a past history of psychiatric disability (as in Exhibit 1) could be paired with a tester with the same psychiatric disability who currently requires an accommodation (as in Exhibit 2). Differences in their treatment would measure employers' unwillingness to provide the required accommodation, separately from their unwillingness to employ persons with psychiatric disabilities *per se*.

### ***The Comparative Disabilities Model***

A third model of situation testing focuses on the question of how discrimination against persons with psychiatric disabilities compares to that against persons with other types of disabilities. Prior research on stigma and discrimination often argues that, among disabilities, psychiatric disabilities are perceived as particularly threatening and uncomfortable to deal with, and therefore generate the most extensive rejection in situations such as the workplace.<sup>32</sup>

To test this hypothesis, testers with a psychiatric disability could be paired with testers with a physical disability, who are also covered by the ADA. For example, resumes could be prepared for a pair of testers in which both report periods of military service in Iraq. In one resume, the tester could state that, in combat, he or she lost both legs and uses a wheelchair for mobility. The other could state that, due to combat experiences, he or she suffers post-traumatic stress. Both conditions could be described as requiring similar work accommodation, for example, flexibility in work scheduling to attend therapy sessions offered by the

Veterans' Administration. Differences in job-hunting outcomes for these two testers would measure the extent to which employers are willing to employ persons with one type of disability more than another.

## **USES OF SITUATION TESTING RESULTS**

Social scientists know that carefully controlled research based on large, statistically representative samples produce definitive empirical evidence that should command the greatest credence. However, such studies often produce findings in the form of dry, intimidating statistics that are difficult to communicate to non-scientists. By contrast, journalists, litigators, and organizational change consultants know that vivid, individual "human interest" anecdotes often command audience attention and evoke emotional response, although they may not represent typical situations.<sup>33</sup> Situation testing simultaneously generates both vivid anecdotes *and* representative overall statistics. Thus, when properly communicated, the results of situation testing combine unusual persuasiveness with rigorous accuracy.

Harnessing this dual power, situation testing could play four important roles with respect to employment discrimination based on psychiatric disabilities.

### ***Shaping Public Perception***

The first role is shaping public attitudes. In typical opinion polls, the overwhelming majority of the general population in the United States and other industrial nations express sympathetic attitudes toward persons with mental illnesses and support their receiving therapeutic treatment. However, public attitudes turn sharply less favorable in relation to employment. In one typical opinion survey, only 54 percent of respondents agreed that persons with psychiatric disabilities can recover and lead productive lives; 59 percent felt that they were prone to violence; and only 66 percent agreed that they should have the same employment rights as anyone else.<sup>34</sup> By focusing attention on obstacles encountered by persons with psychiatric disabilities who are capable of and interested in productive work, situation testing could help to improve such perceptions and attitudes. Such public support, in turn, could influence elected officials to expand laws prohibiting employment discrimination against persons with psychiatric disabilities and ensure their vigorous enforcement.

### ***Educating Employers***

A second role is to educate employers. The results of situation testing can translate directly into effective training materials to increase employer awareness of their unconscious biases. These materials can also equip employers with practical techniques for treating job seekers



and employees more equally. For example, by re-enacting actual dialogue from job interviews reported by testers, training programs could highlight interviewers' tendencies to ask different questions and provide difference responses when interviewing applicants with and without disabilities.

### ***Litigation***

The third potential role for situation testing is in litigation enforcing anti-discrimination laws. In the United States, situation testing has been used since the 1960s to enforce anti-discrimination laws in housing and in access to public services, and this use has been upheld by the Supreme Court. In 1990, the US Equal Employment Opportunity Commission (EEOC) announced that it would accept tester evidence in support of allegations of employment discrimination, and several pioneering lawsuits have been successfully settled based on tester evidence of race or gender discrimination.<sup>35</sup> If effectively wielded, litigation can do more than obtain compensation for individuals who experienced discrimination and change the behavior of the employer directly involved. It can also induce changes in employment practices by other firms seeking to avoid similar litigation.

### ***Empower Job Seekers***

A final role for situation testing is to empower job seekers and the service providers and advocates assisting them. By forewarning job seekers about the discrimination they are likely to encounter, situation testing could ameliorate the adverse consequences on their self confidence which repeated rejections of their employment applications are likely to induce. In addition, testing would be used to identify and demonstrate self-presentation strategies which are most effective in working around employer discrimination.<sup>36</sup>

To maximize the immediate benefits for persons with psychiatric disabilities, situation testing studies can be implemented as "participatory action research." This phrase refers to studies that actively involve individuals who are directly affected by the phenomenon being studied as extensively as possible in all phases of the research itself.<sup>37</sup> In past testing studies, university students, professional actors, and adult volunteers have all performed successfully as testers. However, in a participatory action approach, actual job seekers with psychiatric disabilities could be employed whenever possible as testers, as well as in managing testing operations, analyzing test results, and interpreting their meaning and implications. This approach would allow tester training in effective job-seeking to serve double duty, not only implementing the study but also empowering participants in their own job search efforts. Participant action research might also facilitate tester recruitment and enhance the

persuasive impact of testing results. Finally, if testers are allowed to accept jobs offered to them during tests, employing real job seekers as testers would help to minimize ethical issues sometimes raised about situation testing.

### IS SITUATION TESTING ETHICAL?

The anticipated benefits of situation testing outlined in the previous section must be balanced against concerns sometimes raised about possible adverse effects on employers. In particular, by enticing employers to review applications and conduct job interviews that do not lead to hiring, situation testing imposes administrative costs on employers from which they derive no benefit. Is this procedure stealing their time and resources, to say nothing of invading their privacy?

Empirical findings from situation testing help to quantify the magnitude of such employer costs. In typical testing studies, each employer is tested once, so that the firm is asked to consider only two testing-based applications. Employers routinely screen dozens or even hundreds of applications to fill job vacancies, so two additional applications increase their work load only marginally. As many as one third of the *non-tester* applications employers routinely consider contain false information.<sup>38</sup> When job interviews are conducted for entry-level positions, they tend to average only ten to 15 minutes in length.<sup>39</sup> Together, these considerations suggest that the additional costs imposed on employers are modest and often close to invisible within their normal course of business.

A second consideration concerns violation of the principle of informed consent.<sup>40</sup> To ensure that employers and their staff exhibit their normal behavior during a test, they must remain unaware that they are being tested. Hence they cannot be asked to provide informed consent to participate in the study. This consent is often sought in scientific research to assure that human subjects understand the nature of the research being undertaken and its potential risks and costs to them, and then voluntarily decide whether or not to participate.

Seeking informed consent is particularly appropriate in studies which expose participants to substantial potential harm, for example in medical clinical trials where patients may experience pain during treatment or serious side effects. In situation testing, in contrast, employers who are unwitting participants remain unaware of their participation both during the test and afterward. The practice of keeping the identity of tested employers confidential has been consistently followed in all the dozens of employment testing studies conducted to date.<sup>41</sup> Thus, no adverse consequences affect either the firm tested or their individual employees, such as the persons who conducted job interviews. This lack of harm renders lack of informed consent largely moot.

The circumstances are substantially different, of course, when situation testing is used as evidence in anti-discrimination litigation against

a specific employer, where the employer may experience substantial consequences both financial and emotional. However, civil rights laws in the United States, including the ADA, depend on such actions for their enforcement. Private individuals or organizations conducting situation tests and bringing litigation based on testing evidence are considered "private attorneys general," enforcing the nation's laws as the US Congress has explicitly intended.<sup>42</sup> To exempt discriminating employers from being discovered through situation testing would grant persons with psychiatric disabilities a right to non-discriminatory treatment but deprive them of perhaps the most powerful means of enforcing these rights.

## CONCLUSIONS

Prior research reviewed for this article suggests that few members of the labor force are as marginalized and discriminated against as persons with psychiatric disabilities. However, that research stops short of demonstrating that conclusion definitively, measuring the prevalence of discrimination rigorously, or analyzing its processes systematically. Situation testing can provide accurate, unbiased, detailed, persuasive information about the discrimination faced by persons with psychiatric disabilities which is difficult or impossible to obtain other ways. This information can advance equal employment opportunity by informing public opinion, public policymakers, judges and juries, employers, and disabled persons themselves. Thus, the core rationale for situation testing is the scope and power of the information benefits which will accrue from applying the technique.<sup>43</sup>

## NOTES

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24. As a supplement to written questionnaires, modern technology makes possible surreptitious audio or video recording of telephone calls and face-to-face meetings. By documenting details of wording, intonation, and body language, this approach can capture often-subtle forms of bias in particularly powerful and illuminating ways. Such recording is legal in some states, where the permission of only "one party" to a conversation is required to record a conversation. However, it is illegal in other "two-party" states.
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