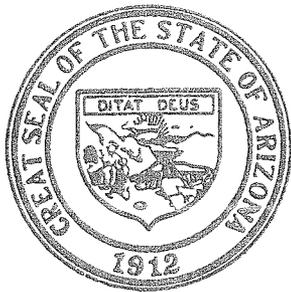


# A RESOURCE MANUAL ON AFFIRMATIVE ACTION IN EMPLOYMENT



Prepared by:  
**Affirmative Action Program  
of the  
Arizona Civil Rights Commission**

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## WHAT IS AFFIRMATIVE ACTION?

Affirmative Action means, in essence, the application of management techniques that are appropriate to insure truly non-discriminatory employment practices. It involves, first and foremost, a critical evaluation of present techniques of recruitment, training, and promotion -- and their actual results in terms of the racial and ethnic composition of a firm's overall work force, as well as within specific job classifications; such as production, clerical, technical, supervisory, ect.

### SOME CRITICAL QUESTIONS

Affirmative Action necessarily involves a review of the traditional recruitment sources, in light of the question: "Are these sources providing applicants of various racial and ethnic backgrounds?" It entails the use of the placement services of anti-poverty agencies as well as on-the-job training programs. It requires the examination of hiring standards and criteria, with this question in mind: "Do these standards and criteria -- such as tests -- really predict job performance, or do they measure other factors which do not really relate to job performance but which tend to disqualify certain groups from employment or promotion?" By the same token, firms must inquire into their practices and policies as they relate to job promotions, transfers, and assignments, in order to avoid the fact or impression that certain jobs or departments are "reserved for" or are "off-limits to" minority group members.

### WHAT'S YOUR COMPANY'S IMAGE?

A valid program of affirmative Action recognizes that, if the composition of a firm's work force is not reasonably representative of the community-at-large, the firm may be giving the impression that certain groups are "not wanted." This is especially relevant for firms that have discriminated in the past and have now changed their policies, but who have not adequately communicated this change to the groups that were previously excluded.

What is Affirmative Action? (con't)

IS YOUR POLICY CLEAR AND CERTAIN?

Management need not be told the importance of communications in making sure that its wishes are understood and implemented. The area of affirmative action is no exception. If your policy is not in writing, prepare a statement. Circulate it to all levels of management. Review it at staff and management meetings. Publish it in your house organ. Be certain that the employment posters of the Arizona Civil Rights Division (ACRD) and the Federal Equal Employment Opportunity Commission (EEOC) are prominently displayed, as required by law.

IS YOUR POLICY COORDINATED?

For greatest effectiveness, a policy of affirmative action should be coordinated by a person to whom this responsibility has been assigned. This does not minimize the responsibility of all persons who exercise personnel or supervisory authority, but it helps insure that such persons carry out their responsibilities by making them accountable on a regular basis.

PERIODIC REVIEWS

The simple device of counting can help to determine if a program of affirmative action is working well in practice. Periodic audits should be made to determine: (a) total number of minority group members employed; (b) types and levels of jobs in which they are represented; (c) departments and locations in which they are represented; (d) number hired, upgraded, and terminated in a given period of time; (e) sources of recruitment that have yielded new hires from minority groups.

Information of this sort is vital to the employer in order to assess results and to plan for future action.

HOW AFFIRMATIVE ACTION PROGRAM WORKS

The Affirmative Action Program was designed to assist the employer in recruitment and hiring of minority persons.

We believe it presents a meaningful, workable plan to significantly increase the employment of minority group members by utilizing techniques which are familiar and acceptable to personnel officials responsible for conducting the day-to-day employment operations of employers.

I. RECRUITING:

A. Establishing Continuing Relationships

In order to recruit minority group applicants for employment, the employer agrees to establish continuing relationships as defined below with the local office of the Arizona State Employment Service and the organizations listed in Appendix 3A, all of which have as an object, the improvement of employment opportunities for minority group persons.

B. Notification of Expected Vacancies in Coming Quarter

Within thirty (30) days of the date of this agreement, the employer shall estimate the number of vacancies he expects during the coming three-month period in each job which he will not be required to fill by promotion from within under a valid individual or collective contract. He will notify the local office of the Arizona State Employment Service, and each organization listed in Appendix 3A, of the title of each such job, the expected number of vacancies, the qualifications required and the starting pay, on a form to be provided by the Division, which is attached hereto as Appendix 2. A similar estimate and notification shall be made in each succeeding three-month period until this agreement is revised in accordance with the provisions of Section V, (c).

Notification of Unexpected Vacancies

Whenever a vacancy occurs in any job which (1) was not included in the quarterly estimate described in paragraph B, and (2) is not required to be filled by promotion from within under valid individual or collective contract, the employer will notify the appropriate local office of the Arizona State Employment Service and each listed organization. If practical, the notice will be by mail on a form to be provided by the Division

which is attached hereto as Appendix 3. Otherwise the notice will be by phone, and the employer will keep a record of each such notification. In addition, the employer will notify the employee and notify the minority referral agencies in the Affirmative Action Handbook of all vacancies when they occur.

D. Forms to be Given Applicants

Each listed organization will be supplied by the Division with forms in triplicate, as described in Appendix 4. Upon making a decision to refer an applicant to the employer, the organization will fill out said form, which will contain the name, address, phone number, job for which referred and qualifications of the applicant, and give two copies to the applicant with instructions that he deliver both to the employer when he applies. The copy retained by the organization will be placed in a file under the name of the employer, which will be available as a basis for Division review of the operation of this agreement.

The Arizona State Employment Service will use its own standard forms in carrying out this agreement.

E. Processing of Forms

1. When the applicant delivers copies of the form to the employer, the employer shall process the application in accordance with the provisions of Part III of this agreement, and will distribute written instructions on that procedure to appropriate company personnel. He shall note in a summary manner on the form, the disposition of the application: (i.e., hired, pending, rejected, and if rejected, the reason). The employer shall retain one copy and shall mail the other back to the sending organization, which shall place same in its file.
2. The employer will follow the procedures of the Arizona State Employment Service with respect to notification concerning the disposition of applicants referred by the service. The regulations of the service with respect to such reporting are hereby incorporated into this agreement as if fully set forth herein. The employer will retain in his own files a record of the reason for rejection and such other information as required by this agreement.

F. Private Employment Services

With respect to private employment agencies presently used, or which may be used by the employer, the employer agrees to send a letter to each such agency, requesting each said agency to send him minority group applicants, and advising each said agency that if it does not do so, he might have to terminate his relations with it because he could not lawfully utilize a referral agency which he knew would only refer white employees. The form of the letter is contained in Appendix 5. The employer agrees to keep a record of the race, color, and national origin of applicants sent from each such agency and of the disposition of each such application: and to report same as provided, on a form attached hereto as Appendix 6.

G. Advertising

The employer agrees:

1. To identify itself as an equal opportunity employer in all advertising;
2. To advertise in the minority group media described in Appendix 7A in proportion to its other advertising efforts and to report each 90 days on its general advertising and its minority media advertising activities in the preceding 90 days; and
3. To review its advertising practices during the next 90 days to determine if it is adequately meeting the requirement of fair dissemination of information to the minority community, to submit a report of its advertising practices if any, along with each 90-day report, and to make such reasonable changes and additions to its advertising practices as the Division suggests in light of the aforesaid review and report.

III. Hiring Process

A. Prompt Processing of Applications

All minority group persons contacting the employer will be specifically requested to file an application for employment regardless of whether vacancies exist. Applications for employment made by members of minority groups, either pursuant to the arrangements in Section II, or by other means, will be promptly reviewed by the employer. All applications will either be accepted, rejected, or held pending a vacancy or further evidence

of qualifications. An applicant will not be rejected because the position applied for has been filled. All such applications will be reviewed to determine if some position other than that applied for is available, either presently or prospectively for the applicant. If it is or may be, he shall be so advised. If the applicant is not hired at once, the application will be placed in an Affirmative Action File for consideration for such position. Applicants will be notified in writing of the employer's decision within five working days of the making of the application.

1. Applicants who are hired will be treated with respect to all terms, conditions and privileges of employment without discrimination on the grounds of race, color or national origin.
2. If the applicant is rejected the employer will:
  - (a) Advise him in writing of the reason;
  - (b) Send a copy of that rejection notice and information on the reason for rejection to any listed organization which referred said applicant;
  - (c) Retain a copy of the rejection notice as required by the regulations of the Equal Employment Opportunity Commission (29CFR 1602.14); and
  - (d) Submit a copy of the rejection notice to the Division in its quarterly report.
3. If the application is held pending a vacancy or for other cause not involving the disqualification of the applicant, it shall be processed in the manner described below in Paragraph B.

B. Affirmative Action File:

1. Applications of members of minority groups which are not accepted or rejected shall be placed in a separate file, to be known as an Affirmative Action File. This file shall consist of the applications of all minority group applicants who are qualified for any position with the employer, and those applicants whose qualifications have not yet been established.
2. As job vacancies occur for which no minority group applicant is then presently available, the employer will first consult the Affirmative Action File to determine if qualified applicants are available from

the minority group members listed therein.

3. Before consulting other sources for applicants, the employer will give every consideration to the hiring of applicants from this file.
4. If, after further review at the time a vacancy is available, the employer concludes that the applicant is not qualified, and cannot become qualified he should remove his name from the file and notify him and the appropriate organization and agencies in accordance with paragraph (A) (2) above. If the applicant is still considered unqualified, the employer shall note on the file the date of each review and the reason for rejection. If the employer is of the view that certain steps taken by the applicant could qualify him for employment, he shall so inform the applicant and the referring or sending institution, in writing, maintaining a copy in his file.
5. The operation of the file shall be reported as provided in Section V, infra.
6. The Maintenance and use of the affirmative action file does not require exclusion from consideration of other applicants, nor does it imply a quota system for the hiring of any racial or ethnic group.

G. All interviewers at colleges or other educational institutions will be instructed:

1. To interview all minority group persons who may be potential applicants;  
and
2. To give an application form to each such person and request him (her) to complete it and submit it;
3. To place the application in the Affirmative Action File if the person is not hired.

APPENDIX 1

To: (Name of Agency)

From: (Name of Employer)

For the purpose of providing equal opportunity to all persons seeking employment, we hereby request that you refer applicants, including minority group applicants, for employment with us. Each half-year (June 1 and December 1) we will send you an estimate of the number and type of jobs expected to become open with us, and their requirements. When circumstances require that we fill additional positions of which we have not advised you, we will notify you by letter, if practical, otherwise by phone.

<u>Job Title</u>	Estimated Vacancies in next <u>6 months</u>	<u>Qualifications</u>	Starting <u>Pay</u>
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APPENDIX 2

To: (Name of Agency)

From: (Name of Employer)

We have need to fill the following vacancies which are beyond those estimated in our last semi-annual estimate:

<u>Job Title</u>	<u>Number of Vacancies</u>	<u>Qualifications</u>	<u>Starting Pay</u>
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APPENDIX 3

To: (Name of Agency)

From: (Name of Employer)

We are taking affirmative action to recruit qualified minority applicants for employment. Please refer such persons for our consideration. You are advised that in the event you do not refer such persons for our consideration, it may be necessary for us to terminate our relations with your organization because we may not lawfully utilize a referral agency which we know refers no minority group persons. A record of the race, color, national origin of applicants sent by you will be maintained by us. Your cooperation in this effort will be greatly appreciated.

## TESTING AND ITS EFFECT ON MINORITY GROUP MEMBERS

One of the major barriers to a program of Affirmative Action in employment is the requirement that job applicants pass written tests because tests aid and abet the forces of discrimination. Employers who screen job applicants with tests, either knowingly or unknowingly, deny equal employment opportunities to the minority group members who apply for work at their establishments.

Tests are designed as instruments of discrimination. They are intended to discriminate between those with greater and lesser skills or more knowledge or aptitude in certain areas. Used with homogenous groups, they often do this with some degree of validity. When used with members of groups who differ ethnically and linguistically from the groups on whom the test norms were developed, however, tests tend to discriminate more on the basis of cultural differences and language differences than on the basis of the applicants' ability to perform the jobs for which they are being screened.

Personnel screening tests tend to screen out those minority group members who could perform the job with a high degree of proficiency and to screen in others with less ability. Thus personnel screening tests not only discriminate unfairly against minority group members, they actually prevent the employer from acquiring the services of many people with better potentialities than some of the applicants they do hire.

If the employer wishes to institute an Affirmative Action Program in his establishment, it is essential that he find more valid methods of evaluating the potentialities of the minority group members who apply for work.

TESTING

The U.S. Commission on Civil Rights has issued an excellent report on the subject entitled Employment Testing: Guide Signs, Not Stop Signs. The report notes -- and provides corroboration -- that:

" . . . . where applicant has not shared in the predominant middle class culture, the test score may significantly under-estimate his potential . . . . for many jobs the difference between an unqualified applicant and a qualified one may be a modest amount of training . . . .

(Employment Testing: Guide Signs, Not Stop Signs may be obtained at no charge). Write to the Arizona Civil Rights Division,  
1502 West Jefferson  
Phoenix, Arizona.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
WASHINGTON, D.C. 20506

March 7, 1972

Mr. J. Ford Smith  
Executive Director  
Arizona Civil Rights Commission  
1614 West Washington Street  
Phoenix, Arizona 85007

Dear Mr. Smith:

This letter is in reference to our conversation of February 7, 1972, in which we discussed the position of the Equal Employment Opportunity Commission regarding procedures to be followed when negotiating conciliation agreements.

It is important for any agency to be able to negotiate conciliation agreements within reasonable flexible limits. It is at the same time, equally important to understand the parameters of "conciliation" in the field of fair employment practices legislation. Unlike the "mediation" procedure in a labor dispute, where the goal of conciliation is to work with two opposing positions and attempt to achieve a result somewhere in the middle, negotiations regarding equal employment opportunity should never result in anything less than the establishment of a system which eliminates employment discrimination. No conciliation attempt can be satisfactory if it eliminates only some of the discrimination. Therefore, in evaluating any alternate proposals submitted by an employer, you should be certain that he has not asked you to meet him half way in the process of eliminating discrimination. What is negotiable is how we get there, not where we are going or whether we go there.

There are several other elements which should always be included in any conciliation agreement for the effort to be considered successful. These elements should therefore be looked for in evaluating any alternate proposals submitted by employers:

1. Eliminate All Discrimination: All elements of the discriminatory system must be dealt with in the conciliation agreement, including existing practices which are discriminatory because they have a disproportionate impact on minority group individuals (See: Griggs v. Duke Power) as well as practices of disparate treatment. In this connection the discussion in Griggs may be of interest.
  2. Remedy Must Be Specific: The remedial steps utilized to eliminate discrimination must be spelled out specifically and in detail, rather than enumerated in broad general language. Where there is a finding that an entire system discriminates, the remedy must contain an entirely new system to adequately replace and remedy the existing system. This requirement is important in evaluating the draft standard form agreement we submitted to you. It should be noted that a number of small elements within it, which may appear to be minor when considered by themselves, are in fact essential specific elements in an interrelated system -- all of which are necessary to its adequate functioning and operations.
  3. Verification and Reporting: The agreement must contain within it adequate record-keeping and reporting provision, so that it can be determined whether the agreement has been implemented, and how well it is working.
- 
4. Enforcement: The agreement must be signed and enforceable, and contain provisions giving the government agency overseeing it specific and immediate power to take enforcement action where necessary.
- 

If EEOC can be of further assistance to you in clarifying the role of your agency, and the responsibility of employers in eliminating discrimination in employment, please do not hesitate to get in touch with Peter C. Robertson, Director, State and Community Grant Program,

Equal Employment Opportunity Commission, 1800 G Street,  
N. W., Room 1229, Washington, D. C. 20506.

Sincerely,

A handwritten signature in cursive script that reads "William H. Brown III". The signature is written in dark ink and includes a horizontal flourish at the end.

William H. Brown III  
Chairman

UNITED STATES GOVERNMENT

# Memorandum

TO : Executive Directors, Legal Counsel,  
and Commissioners of State and Local  
Anti-Discrimination Agencies.

DATE: 4/6/71

FROM : Peter C. Robertson, Director  
State & Community Affairs

*Peter C. Robertson*

SUBJECT: Important Supreme Court Decision



Attached is the Supreme Court decision in the case of Griggs vs. Duke Power. This decision is perhaps one of the ten most important civil rights decisions of our lifetime and we hope you will give it your immediate attention.

In this case the Supreme Court holds that under the Civil Rights Act of 1964 it is illegal for an employer to use a test or an educational requirement which screens out a higher percentage of blacks than whites unless he can prove that the requirement is directly related to the specific job for which the individual is being considered. The Court said that once it is established that a particular test or standard has the effect of screening out a higher percentage of blacks than whites, the burden of proof shifts to the employer to prove that the requirement bears:

"a demonstrable relationship to successful performance of the jobs for which it was used."

The fact that the employer who was using the test did not intend its discriminatory effect was found by the Court to be irrelevant. The Court Said:

"...Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation." (emphasis by the Court)

The Court said that the EEOC Guidelines on Employee Selection Procedures, a copy of which is also attached, implements the intent of Congress. The Guidelines outline the basic minimum standards for test validation and define the term "test" in very broad terms to include all hiring, promotion and placement criteria as well as normal paper-and-pencil written tests.

As you examine this decision you may want to give consideration to the following implications:

*Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan*

1. EEOC Contracts:

For Agencies with EEOC funded contract projects it is now mandatory that the remedial agreements negotiated contain the following elements designed to eliminate discrimination and obtain compliance with the law:

- An immediate, specific pledge to immediately suspend operational use of any tests or standards which do not meet the criteria laid down in the EEOC Guidelines and the Supreme Court decision. The agreement should list the specific items to be suspended and provide that they may not be reinstated without agency approval. Note, in this connection, that in the case of Hicks vs. Crown Zellerbach the Fifth Circuit Court of Appeals suspended immediately the use of non-validated tests.
- A pledge to abide by the EEOC Guidelines on Employee Selection Procedures.
- Adequate record keeping to determine the reasons for rejection of minority group applicants in the future and a provision for review of those records.

2. All Cases:

All case investigations, whether under an EEOC project or not, should now be designed to do the following:

- Determine whether practices which appear neutral and equal on their face in fact have an unequal and discriminatory impact on blacks, Chicanos, Indians, women or other groups and identify all screening devices which have a disparate effect.
- Make sure that no conciliation agreement or cease and desist order is approved unless it eliminates all tests, etc., which violate Griggs and the Guidelines. These agreements must eliminate those practices not only as to the individually aggrieved

charging party who filed the charge but as to the entire class of individuals which he represents. Note that the Supreme Court points out very early in the opinion that the nature of the statutes which we are administering involve "class" discrimination and a responsibility to eliminate it, not just a responsibility to deal with the problem of the individual.

3. State and Local Government:

State and local agencies whose jurisdiction includes discrimination in state and local government should note that the principles applied by the Court have particularly strong application on tests now utilized for government employment. For example, several recent state cases involving city bus drivers (Boston) and policemen (California) suggest that city and state tests as part of a civil service or merit system may be illegal under the 14th Amendment to the United States Constitution if they screen out more Blacks than whites or more Chicanos than Anglos without being job related.

4. Broad Scope of This Concept:

By way of extra illustration of the broad area to which the principles outlined in the Supreme Court's decision may apply we are attaching a copy of the case Gregory vs. Litton Industry in which the principles that the Supreme Court applied to written tests were also applied to a situation in which individuals were disqualified for having an arrest record. Even though the arrest record requirement was applied equally to both Blacks and whites, the Court found that because a much higher percentage of Blacks had been arrested than was true of whites, the effect was discriminatory and therefore illegal.

5. Unions:

The impact of this decision is not limited to employers, but applied equally to tests and screening devices used by unions and employment agencies. For a discussion of how such screening devices used by referral labor unions might violate Title VII you may want to read an article entitled, "Title VII of the Civil Rights Act of 1964,"

and "Minority Group Entry into the Building Trade Unions," which appeared on pp. 328 -358, Vol. 37., of the University of Chicago Law Review.

6. Application to Other Groups:

While this memo deals with tests and standards which reject a higher percentage of Blacks than whites, the Griggs decision and the Guidelines apply equally well to tests which reject a higher percentage of any group protected by Title VII such as more Chicanos than Anglos or more women than men.

7. Support for Administrative Action:

Your agency may be particularly interested in the Court's reference (at the bottom of page 12) to EEOC Guidelines on Employee Selection Procedures. The Court states:

"The administrative interpretation of the act by the enforcing agency is entitled to greater deference."

There are significant implications for your agency in this legal concept. Most importantly, it makes clear your responsibility in your state and city to attempt to lead your courts in a broad interpretation of the law to achieve its basic purpose of eliminating discrimination in all its manifestations as quickly as possible. In an immediate and specific sense we suggest that you give serious consideration to adopting a set of guidelines on employee selection procedures similar to the attached.

SUPREME COURT OF THE UNITED STATES

No. 124.—OCTOBER TERM, 1970

Willie S. Griggs et al., } On Writ of Certiorari to the  
Petitioners, } United States Court of  
v. } Appeals for the Fourth  
Duke Power Company. } Circuit.

[March 8, 1971]

Mr. Chief Justice Burger delivered the opinion of the Court.

We granted the writ in this case to resolve the question whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites.<sup>1</sup>

<sup>1</sup>The Act provides:

"Sec. 703 (a) It shall be an unlawful employment practice for an employer—

"(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

"(4) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer . . .

GRIGGS v. DUKE POWER CO.

Congress provided, in Title VII of the Civil Rights Act of 1964, for class actions for enforcement of provisions of the Act and this proceeding was brought by a group of incumbent Negro employees against Duke Power Company. All the petitioners are employed at the Company's Dan River Steam Station, a power generating facility located at Draper, North Carolina. At the time this action was instituted, the Company had 95 employees at the Dan River Station, 14 of whom were Negroes; 13 of these are petitioners here.

The District Court found that prior to July 2, 1965, the effective date of the Civil Rights Act of 1964, the Company openly discriminated on the basis of race in the hiring and assigning of employees at its Dan River plant. The plant was organized into five operating departments: (1) Labor, (2) Coal Handling, (3) Operations, (4) Maintenance, and (5) Laboratory and Test. Negroes were employed only in the Labor Department where the highest paying jobs paid less than the lowest paying jobs in the other four "operating" departments in which only whites were employed.<sup>2</sup> Promotions were normally made within each department on the basis of job seniority. Transferees into a department usually began in the lowest position.

In 1955 the Company instituted a policy of requiring a high school education for initial assignment to any department except Labor, and for transfer from the Coal

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to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex or national origin. . . ."

<sup>2</sup> A Negro was first assigned to a job in an operating department in August 1963, five months after charges had been filed with the Equal Employment Opportunity Commission. The employee, a high school graduate who had begun in the Labor Department in 1953, was promoted to a job in the Coal Handling Department.

GRIGGS v. DUKE POWER CO.

Handling to any "inside" department (Operations, Maintenance, or Laboratory). When the Company abandoned its policy of restricting Negroes to the Labor Department in 1935, completion of high school also was made a prerequisite to transfer from Labor to any other department. From the time the high school requirement was instituted to the time of trial, however, white employees hired before the time of the high school education requirement continued to perform satisfactorily and achieve promotions in the "operating" departments. Findings on this score are not challenged.

The Company added a further requirement for new employees on July 2, 1965, the date on which Title VII became effective. To qualify for placement in any but the Labor Department it became necessary to register satisfactory scores on two professionally prepared aptitude tests, as well as to have a high school education. Completion of high school alone continued to render employees eligible for transfer to the four desirable departments from which Negroes had been excluded if the incumbent had been employed prior to the time of the new requirement. In September 1965 the Company began to permit incumbent employees who lacked a high school education to qualify for transfer from Labor or Coal Handling to an "inside" job by passing two tests—the Wonderlic Personnel Test, which purports to measure general intelligence, and the Bennett Mechanical Aptitude Test. Neither was directed or intended to measure the ability to learn to perform a particular job or category of jobs. The requisite scores used for both initial hiring and transfer approximated the national median for high school graduates.<sup>3</sup>

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<sup>3</sup>The test standards are thus more stringent than the high school requirement, since they would screen out approximately half of all high school graduates.

GRIGGS v. DUKE POWER CO.

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<sup>3</sup>The test standards are thus more stringent than the high school requirement, since they would screen out approximately half of all high school graduates.

GRIGGS v. DUKE POWER CO.

The District Court had found that while the Company previously followed a policy of overt racial discrimination in a period prior to the Act, such conduct had ceased. The District Court also concluded that Title VII was intended to be prospective only and, consequently, the impact of prior inequities was beyond the reach of corrective action authorized by the Act.

The Court of Appeals was confronted with a question of first impression, as are we, concerning the meaning of Title VII. After careful analysis a majority of that court concluded that a subjective test of the employer's intent should govern, particularly in a close case, and that in this case there was no showing of a discriminatory purpose in the adoption of the diploma and test requirements. On this basis, the Court of Appeals concluded there was no violation of the Act.

The Court of Appeals reversed the District Court in part, rejecting the holding that residual discrimination arising from prior employment practices was insulated from remedial action.<sup>4</sup> The Court of Appeals noted, however, that the District Court was correct in its conclusion that there was no finding of a racial purpose of invidious intent in the adoption of the high school diploma requirement or general intelligence test and that these standards had been applied fairly to whites and

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<sup>4</sup>The Court of Appeals ruled that Negroes employed in the Labor Department at a time when there was no high school or test requirement for entrance into the higher paying departments could not now be made subject to those requirements, since whites hired contemporaneously into those departments were never subject to them. The Court of Appeals also required that the seniority rights of those Negroes be measured on a plantwide, rather than a departmental, basis. However, the Court of Appeals denied relief to the Negro employees without a high school education or its equivalent who were hired into the Labor Department after institution of the educational requirement.

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Negroes alike. It held that, in the absence of a discriminatory purpose, use of such requirements was permitted by the Act. In so doing, the Court of Appeals rejected the claim that because these two requirements operated to render ineligible a markedly disproportionate number of Negroes, they were unlawful under Title VII unless shown to be job-related.<sup>8</sup> We granted the writ on these claims. 559 U. S. 923.

The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

The Court of Appeals' opinion, and the partial dissent, agreed that, on the record in the present case, "whites fare far better on the Company's alternative requirements" than Negroes.<sup>9</sup> This consequence would appear

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<sup>8</sup>One member of that court disagreed with this aspect of the decision, maintaining, as do the petitioners in this Court, that Title VII prohibits the use of employment criteria which operate in a racially exclusionary fashion and do not measure skills or abilities necessary to performance of the jobs for which those criteria are used.

<sup>9</sup>In North Carolina, 1960 census statistics show that, while 34% of white males had completed high school, only 12% of Negro males had done so. U. S. Bureau of the Census, U. S. Census of Population: 1960, Vol. 1, Part 33, Table 47.

Similarly, with respect to standardized tests, the EEOC in one case found that use of a battery of tests, including the Wonderlic and Bennett tests used by the Company in the instant case, resulted in 58% of whites passing the tests, as compared with only 6% of the blacks. Decision of EEOC, CCH Empl. Prac. Guide, ¶ 17,804.53 (Dec. 2, 1966). See also Decision of EEOC 70-552, CCH Empl. Prac. Guide, ¶ 6139 (Feb. 19, 1970).

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to be directly traceable to race. Basic intelligence must have the means of articulation to manifest itself fairly in a testing process. Because they are Negroes, petitioners have long received inferior education in segregated schools and this Court expressly recognized these differences in *Gaston County v. United States*, 305 U. S. 285 (1939). There, because of the inferior education received by Negroes in North Carolina, this Court barred the institution of a literacy test for voter registration on the ground that the test would abridge the right to vote indirectly on account of race. Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.

Congress has now provided that tests or criteria for employment or promotion may not provide equality of opportunity only in the sense of the fabled offer of milk to the stork and the fox. On the contrary, Congress has now required that the posture and condition of the job seeker be taken into account. It has—to resort again to the fable—provided that the vessel in which the milk is proffered be one all seekers can use. The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

On the record before us, neither the high school completion requirement nor the general intelligence test is

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shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted, as the Court of Appeals noted, without meaningful study of their relationship to job-performance ability. Rather, a vice president of the Company testified, the requirements were instituted on the Company's judgment that they generally would improve the overall quality of the work force.

The evidence, however, shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test criteria are now used.<sup>7</sup> The promotion record of present employees who would not be able to meet the new criteria thus suggests the possibility that the requirements may not be needed even for the limited purpose of preserving the avowed policy of advancement within the Company. In the context of this case, it is unnecessary to reach the question whether testing requirements that take into account capability for the next succeeding position or related future promotion might be utilized upon a showing that such long range requirements fulfill a genuine business need. In the present case the Company has made no such showing.

The Court of Appeals held that the Company had adopted the diploma and test requirements without any "intention to discriminate against Negro employees." We do not suggest that either the District Court or the Court of Appeals erred in examining the employer's intent; but good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability.

<sup>7</sup> For example, between July 2, 1965, and November 14, 1966, the percentage of white employees who were promoted but who were not high school graduates was nearly identical to the percentage of nongraduates in the entire white work force.

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The Company's lack of discriminatory intent is suggested by special efforts to help the undereducated employees through Company financing of two-thirds the cost of tuition for high school training. But Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question.

The facts of this case demonstrate the inadequacy of broad and general testing devices as well as the infirmity of using diplomas or degrees as fixed measures of capability. History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees. Diplomas and tests are useful servants, but Congress had mandated the common-sense proposition that they are not to become masters of reality.

The Company contends that its general intelligence tests are specifically permitted by § 703 (h) of the Act.<sup>8</sup> That section authorizes the use of "any professionally developed ability test" that is not "designed, intended, or used to discriminate because of race . . . ." (Emphasis added.)

The Equal Employment Opportunity Commission, having enforcement responsibility, has issued guidelines interpreting § 703 (h) to permit only the use of job-related tests.<sup>9</sup> The administrative interpretation of the

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<sup>8</sup>Section 703 (h) applies only to tests. It has no applicability to the high school diploma requirement.

<sup>9</sup>EEOC Guidelines on Employment Testing Procedures, issued August 24, 1966, provide:

"The Commission accordingly interprets 'professionally developed ability test' to mean a test which fairly measures the knowledge or skills required by the particular job or class of jobs which the

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Act by the enforcing agency is entitled to great deference. See, e. g., *United States v. City of Chicago*, — U. S. — (No. 386, O. T. 1970); *Udall v. Tallman*, 380 U. S. 1 (1965); *Power Reactor Co. v. Electricians*, 367 U. S. 396 (1961). Since the Act and its legislative history support the Commission's construction, this affords good reason to treat the Guidelines as expressing the will of Congress.

Section 703 (h) was not contained in the House version of the Civil Rights Act but was added in the Senate during extended debate. For a period, debate revolved around claims that the bill as proposed would prohibit all testing and force employers to hire unqualified persons simply because they were part of a group formerly subject to job discrimination.<sup>10</sup> Proponents of Title VII

applicant seeks, or which fairly affords the employer a chance to measure the applicant's ability to perform a particular job or class of jobs. The fact that a test was prepared by an individual or organization claiming expertise in test preparation does not, without more, justify its use within the meaning of Title VII."

The EEOC position has been elaborated in the new Guidelines on Employee Selection Procedures, 35 Fed. Reg. 12333 (August 1, 1970). These Guidelines demand that employers using tests, have available "data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior comprising or relevant to the job or jobs for which Guidelines are being evaluated." *Id.*, at § 1607.4 (c).

<sup>10</sup> The congressional discussion was prompted by the decision of a hearing examiner for the Illinois Fair Employment Commission in *Myart v. Motorola Co.* (The decision is reprinted at 110 Cong. Rec. 5662 (1964).) That case suggested that standardized tests on which whites performed better than Negroes could never be used. The decision was taken to mean that such tests could never be justified even if the needs of the business required them. A number of Senators feared that Title VII might produce a similar result. See remarks of Senators Ervin, 110 Cong. Rec. 5614-5616; Smathers, *id.*, at 5999-6000; Holland, *id.*, at 7012-7013; Hill, *id.*, at 8447; Tower, *id.*, at 9024; Talmadge, *id.*, at 9025-9026; Fulbright, *id.*, at 9599-9600; and Ellender, *ibid.*

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sought throughout the debate to assure the critics that the Act would have no effect on job-related tests. Senators Case of New Jersey, and Clark of Pennsylvania, comanagers of the bill on the Senate floor, issued a memorandum explaining that the proposed Title VII "expressly protects the employer's right to insist that any prospective applicant, Negro or white, *must meet the applicable job qualifications*. Indeed, the very purpose of Title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race or color." (Emphasis added.) 110 Cong. Rec. 7247.<sup>14</sup> Despite these assurances, Senator Tower of Texas introduced an amendment authorizing "professionally developed ability tests." Proponents of Title VII opposed the amendment

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<sup>14</sup>The Court of Appeals majority, in finding no requirement in Title VII that employment tests be job-related, relied in part on a quotation from an earlier Clark-Case interpretative memorandum addressed to the question of the constitutionality of Title VII. The Senators said in that memorandum:

"There is no requirement in Title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes; he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance." 110 Cong. Rec. 7213.

However, nothing there stated conflicts with the later memorandum dealing specifically with the debate over employer testing, 110 Cong. Rec. 7247 (quoted from in the text above), in which Senators Clark and Case explained that tests which measure "applicable job qualifications" are permissible under Title VII. In the earlier memorandum Clark and Case assured the Senate that employers were not to be prohibited from using tests that determine *qualifications*. Certainly a reasonable interpretation of what the Senators meant, in light of the subsequent memorandum directed specifically at employer testing, was that nothing in the Act prevents employers from requiring that applicants be fit for the job.

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because, as written, it would permit an employer to give any test, "whether it was a good test or not, so long as it was professionally designed. Discrimination could actually exist under the guise of compliance with the statute." Remarks of Senator Case, 110 Cong. Rec. 13504.

The amendment was defeated and two days later Senator Tower offered a substitute amendment which was adopted verbatim and is now the testing provision of § 703 (h). Speaking for the supporters of Title VII, Senator Humphrey, who had vigorously opposed the first amendment, endorsed the substitute amendment, stating: "Senators on both sides of the aisle who were deeply interested in Title VII have examined the text of this amendment and have found it to be in accord with the intent and purpose of that title." 110 Cong. Rec. 13724. The amendment was then adopted.<sup>12</sup> From the sum of the legislative history relevant in this case, the conclusion is inescapable that the EEOC's construction of § 703 (h) to require that employment tests be job-related comports with congressional intent.

Nothing in the Act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has

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<sup>12</sup> Senator Tower's original amendment provided in part that a test would be permissible "if . . . in the case of any individual who is an employee of such employer, such test is designed to determine or predict whether such individual is suitable or trainable with respect to his employment in the particular business or enterprise involved . . ." 110 Cong. Rec. 13492. This language indicates that Senator Tower's aim was simply to make certain that job-related tests would be permitted. The opposition to the amendment was based on its loose wording which the proponents of Title VII feared would be susceptible to misinterpretation. The final amendment, which was acceptable to all sides, could hardly have required less of a job relation than the first.

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not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract.

The judgment of the Court of Appeals is, as to that portion of the judgment appealed from, reversed.

Mr. Justice BRENNAN took no part in the consideration or decision of this case.

MINORITY NEWS MEDIA

Newspapers

The following newspapers specialize in news of interest to the minority community. Employment advertisements in these publications should be productive for you as a means of reaching the minority labor market.

PHOENIX

The Informant  
323 N. 16th Street  
Phoenix, Arizona 85006  
Phone: 257-9300

El Sol  
P.O. Box 1448  
Phoenix, Arizona  
Phone: 253-4948

The Voice of South Phoenix  
501 West Euclid  
Phoenix, Arizona  
Phone: 276-4013

OTHER ARIZONA CITIES

Douglas Daily Dispatch  
530 11th Street  
Douglas, Arizona 86607  
Phone: 364-3424

Gila River News  
Gila River Reservation  
P.O. Box 97  
Sacaton, Arizona

Navajo Times  
Navajo Reservation  
P.O. Box 103 and 428  
Window Rock, Arizona 86515  
Phone: 602-871-4217

(It also has circulation among minority groups throughout the country).

MINORITY NEWS MEDIA

Radio and Television

KIFN RADIO  
1975 South Central Ave.  
Phoenix, Arizona  
Phone: 258-4991

KEVT RADIO  
400 North Shawnee  
Tucson, Arizona 85702  
Phone: 624-5588

KPAZ Television  
(Tower Plaza)  
3847 East Thomas Rd.  
Phoenix, Arizona  
Phone: 273-1477

KXEW RADIO  
889 West El Puente Lane  
Tucson, Arizona 85702  
Phone: 623-3625

KCLS RADIO  
101 North Beaver  
Flagstaff, Arizona

## RECRUITMENT SOURCES

A list, not necessarily complete, of appropriate organizations and agencies in Arizona that can help to supply a greater input of minority group applicants is set forth in this section.

In addition to the listed organizations, employers should also contact schools known to have a significant number of minority students, religious and fraternal organizations, civil rights organizations, and similar groups.

Also, incumbent minority employees should be reviewed to insure that they are working at jobs which use their full potential. Promotions and transfers can be a major way of making your efforts creditable.

A number of the agencies listed can provide sensitivity workshops for supervisory personnel in private industry or wherever desired.

ARIZONA COOPERATIVE OFFICE EDUCATION  
Phoenix Union High School System

Administrator: George F. Dunn  
Consultant, Business Education  
2042 West Thomas Road  
Phoenix, Arizona

Phone: 258-8771  
Hours: 8:00 a.m. - 5:00 p.m.

SOUTH MOUNTAIN SCHOOL

Mrs. Kirk  
Head of Business Department

Cooperative Office Education:

A training program for high school seniors who develop job skills and job adjustments through an organized sequence of job experiences and related classroom instruction; a program designed to provide Arizona businesses with competent, experienced office workers; a training program jointly sponsored by the schools and businesses in which senior students are employed during a portion of the work day; a plan whereby graduating students become potential full-time employees of a cooperating business or one of a similar occupational nature.

Bureau of Indian Affairs (BIA)  
Branch of Employment Assistance  
124 W. Thomas Road  
Phoenix, Arizona 85011

Phone: 261-4164  
Hours: 8:00 a.m. -4:30 p.m.

Area Employment Assistance Officer  
James G. Gilbert

Employment Assistance Specialist  
Victor J. Swayiek

Employment contacts and referral services. Services are primarily for Indian people that relocate from reservations to Phoenix for training and employment. Referrals are given to all Indians that contact the Employment Assistance Office.

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7-STEP FOUNDATION INC.  
Phoenix Chapter  
552 W Latham  
Phoenix, Arizona  
(Present Address)

7-STEP FOUNDATION, INC  
Phoenix Chapter  
717 N. 7th Avenue  
Phoenix, Arizona  
(Future Address)

Phone: 258-7977  
Hours: 9:00 a.m. - 5:00 p.m. 24 hour answering service

State Director  
Charles Dyer

Employment Director  
Mr. Totress

Executive Director --- Stan Harwood  
Executive Secretary

The 7-Step program was born in the Kansas State Penitentiary at Lansing in the latter part of 1963. The idea for the program was first conceived in the mind of an ex-convict. Originally started as a pre-release program for former prisoners, and also in a youth program aimed at curbing juvenile delinquency through the rehabilitation of youthful offenders.

The program offers job placement, counseling, follow-up and many other services.

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JOBS FOR PROGRESS INC. (SER)  
On-Job-Training Program  
5170 W. Bethany Home Road  
Phoenix, Arizona

Phone: 258-6528  
Hours: 8:00 a.m. - 5:00 p.m.

Director  
Jese Moreno

On-Job-Training is an arrangement by which OJT agencies agree with private industry to hire a relatively unskilled person with innate potential and train him as he earns a living wage. They are taught to perform all the duties of the position that the OJT agency and firm agree under the OJT agreement.

Learning all the duties of the new job make the trainee more valuable as a member of the labor force. When this training takes place under an OJT contract, a certain portion of the cost of training is reimbursed by OJT.

The financial reimbursement to industry is not underwriting the trainee's salary but provides industry with a reimbursement for the individual that provides the training supervision. In fact, the reimbursement offsets the lack of production for the training supervisor.

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GLENDALE SER  
5170 W. Bethany Home Road  
Phoenix, Arizona

Phone: 934-3231  
Hours: 8:00 a.m. - 5:00 p.m.

Director  
Jese Moreno

MDTA and Vocational Training.

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MARICOPA TECHNICAL COLLEGE  
Student Placement Office  
106 E. Washington Street  
Phoenix, Arizona 85004

Phone: 258-7251

Contact: Paul House

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SER-CEP CENTER NO. 2  
2450 South 24th Street  
Phoenix, Arizona 85034

Phone: 252-7691  
Hours: 8:00 - 5:00

Administrator  
Manuel Trejo

SER-CEP Center No. 2 is a pre-vocational orientation center working in the area of manpower to prepare disadvantaged persons to be able to compete for and obtain training positions in a work situation or actual employment on a permanent basis in areas of employment traditionally out of their reach. Other services available are job placement and skills training.

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VETERANS ADMINISTRATION  
Federal Building - Room 2020  
230 N. 1st Avenue  
Phoenix, Arizona 85003

Phone: 261-4771

Director of Contract  
Dick Fihekis

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NEIGHBORHOOD YOUTH CORPS  
Maricopa County - City of Phoenix  
622 West Tamarisk  
Phoenix, Arizona 85041

Phone: 262-3945  
Hours: 8:00 a.m. - 5:00 p.m.

Administrator  
Robert E. Hamilton

The Neighborhood Youth Corps has three Major Divisions:

1. An in-school program which provides part-time work and on-the-job training for students of high school age from low income families.
2. A summer program that provides these students with job opportunities during the summer months.
3. An out-of-school program to provide economically deprived school dropouts with practical work experience and on-the-job training to encourage them to return to school and resume their education, or, if this is not feasible, to help them acquire work habits and attitudes that will improve their employability.

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WORK INCENTIVE PROGRAM  
324 W. Adams  
Phoenix, Arizona 85003

Phone: 258-6611  
Hours: 8:00 - 5:00

Director  
Mrs. Emogene Brayer

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Leadership and Education for the Advancement of Phoenix (LEAP)

OPERATION MAINSTREAM  
Street Maintenance Division  
324 W. Washington Street  
Phoenix, Arizona 85003

Phone: 262-6441  
Hours: 8:00 - 5:00 p.m.

Administrator  
E.C. Ferguson  
Field Supervisor  
Robert Klein

This program is designed to provide meaningful work experience, habits, and training to unemployed adult disadvantaged persons in activities to improve the social and physical environment of the community. The objective is to provide training for permanent jobs in the competitive job market. Program is designed to deal with incidence of long term unemployment and directed to employment problems and needs of older, chronically unemployed persons.

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MARICOPA COUNTY OPERATION MAINSTREAM  
4645 E. Washington  
Phoenix, Arizona 85034

Phone: 262-3721  
Hours: 8:00 a.m. - 5:00 p.m.

Administrator - J. Blane Freestone

Improve employability of hard-core unemployed. A work experience program for disadvantaged adults age 22 and above.

\* \* \* \* \*

OPERATION SER (Service Employment  
and Redevelopment)

Jobs for Progress, Inc.  
5170 W. Bethany Home Road.  
Phoenix, Arizona

Phone: 934-3231  
Hours: 8:00 a.m. - 5:00 p.m.

State Director  
Frank Quihuis

Job Development Coordinator  
Joe Marquis

Operation SER is a special demonstration program designed to increase and expand employment and training opportunities for the disadvantaged in the Southwest, with special emphasis on reaching the Spanish speaking.

The project was initiated October, 1966 in Albuquerque, New Mexico and in June, 1967 was expanded into four states, Arizona, California, Colorado and Texas.

Recently Operation SER has agreed to cooperative sponsor skill level improvement activities and to utilize the resources of agency staffs in an intense effort to work in bringing about improvement in job development areas for all of the Phoenix area's disadvantaged citizens regardless of race, creed or color.

SER is in cooperative participation with all economic development activities and works cooperatively with the industrial advisory committee that represents some 25 representatives of leading industrial firms in this area, which is essential in dealing with chronic hard-core employment problems.

Skills Bank provides services of qualified Mexican-Americans at all levels of employment. This manpower pool can also be used as a recruitment source for training programs, technical assistance and expertise regarding special manpower programming for "hard-core" Mexican-Americans.

PHOENIX OPPORTUNITIES INDUSTRIALI-  
ZATION CENTER (OIC)  
39 East Jackson Street  
Phoenix, Arizona 85004

Phone: 254-5081  
Hours: 8:00 - 5:00  
6:30 p.m. - 9:30 p.m.

Executive Director      Gene Blue  
Deputy Director

OIC "Feeder" (or prevocational training) during the day (now under CEP) and evening program to include vocational skills, Feeder (prevocational), along with Civil Service Preparatory Course and GED Preparation Course.

The OIC Feeder program (which serves as the prevocational training) consists of the following classes: Basic academic skills, i.e., reading, writing, and arithmetic; consumer education and money management; jobology (that is, job acquisition and job retention); minority history; grooming and hygiene; personal development. Feeder also includes intensive individual counseling and group counseling. Emphasis in the Feeder is on motivation and attitudinal training, supported by basic academic skills. English as a foreign language is also offered.

Vocational skills training classes are designed to meet the immediate needs of the local labor force and the business community. Subjects taught are determined by job opportunities in the area, i.e., electronic assembly, drafting, secretarial science, power sewing, basic electronics, culinary arts and restaurant practices, ect.

There is no charge to the enrollee, and no criteria to be met.

Phoenix OIC also solicits training contracts from private business and industry who are hiring "hard core" workers. OIC provides the new employees with pre-job orientation (the Feeder) and counseling, plus follow-up contact and counseling if desired. OIC also offers "urban orientation" and sensitivity workshops for supervisory personnel in private industry or wherever desired.

GREATER PHOENIX AREA  
AFFIRMATIVE ACTION RESOURCES

PHOENIX URBAN LEAGUE  
36 North Central  
Phoenix, Arizona 85014

Phone: 268-0203  
Hours: 8:30 - 5:00 p.m.

Mr. Junius A. Bowman  
Executive Director

Contact: Junius A. Bowman

The Phoenix Urban League, an affiliate of the National Urban League, is an interracial community agency using methods of education and social work.

The Urban League can (A) refer Black and other minority job applicants for direct placement; (B) establish on-job-training (OJT) programs in industry with reimbursement of training costs to participating employers; (C) provide training for persons desiring to enter apprenticeship programs.

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PHOENIX URBAN LEAGUE, ON-JOB-TRAINING  
36 South Central  
Phoenix, Arizona 85014

Phone: 254-5611  
Hours: 8:30 - 5:00 p.m.

Mr. George Dean  
Project Director

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GREATER PHOENIX AREA  
AFFIRMATIVE ACTION RESOURCES

PHOENIX URBAN LEAGUE "OUTREACH"  
APPRENTICESHIP TRAINING PROGRAM  
2001 E. Broadway  
Phoenix, Arizona

Phone: 268-0203

Contact: George Floore, Director

Trade Specialist - E. C. Boyer

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PHOENIX URBAN LEAGUE  
CONCENTRATED EMPLOYMENT PROGRAM  
(CEP Center #1)  
300 West Monroe  
Phoenix, Arizona

Phone: 252-7621

Hours: 8:00 a.m. - 5:00 p.m.

Orientation, counseling, job training referral, and follow-up service.

\* \* \* \* \*

PHOENIX NATIONAL ALLIANCE OF BUSINESSMEN  
Arizona Title Building  
111 W. Monroe - Room 704  
Phoenix, Arizona 85003

Phone: 261-4901

Metropolitan Director  
Bob Bartlett

NAB Employment Service Job Coordinator  
Tom Cooper

(Continued on next page)

(Con't)

The National Alliance of Businessmen (NAB) was organized at the behest of the President of the United States in an effort to provide a unified and coordinated approach to the fight against unemployment and underemployment. NAB can refer job applicants who are marginally qualified but trainable. Participating firms may receive reimbursement for training costs, over and above normal costs of training, upon entering into a contract with the U.S. Department of Labor.

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PHOENIX HUMAN RELATIONS COMMISSION  
332 West Washington  
Phoenix, Arizona

Phone: 262-6891 and 262-6703  
Hours: 8:00 a.m. - 5:00 p.m.

Executive Director  
Henry CABirac

Employment Specialist  
Frank Belting

Enforcement and compliance of the Phoenix Human Relations Ordinance  
#G-881.

\* \* \* \* \*



COMMITTEE FOR ECONOMIC OPPORTUNITY, INC. (CEO)  
2555 North Stone Avenue  
Tucson, Arizona 85701

Phone: 622-4896

Executive Director  
Hector Morales

A. "A" Mountain Area Council  
1814 W. San Juan Trail  
Tucson, Arizona 85713

Phone: 622-2422  
Hours: 8:00 - 5:00

E. Safford Area Council  
1625 S. 3rd Avenue  
Tucson, Arizona 85701

Phone: 622-1061  
Hours: 8:00 - 5:00

B. Manzo Area Council  
1390 W. Speedway  
Tucson, Arizona 84705

Phone: 622-5739  
Hours: 8:00 - 5:00

F. South Park Area Council  
1101 E. Silver Lake Rd.  
Tucson, Arizona 85713

Phone: 624-8323  
Hours: 8:00 - 5:00

C. Pueblo Area Council  
231 W. Ajo Way  
Tucson, Arizona 85713

Phone: 294-5442  
Hours: 9:00 - 6:00 p.m.

G. University Heights Area Council  
513-15 N. 6th Avenue  
Tucson, Arizona 85705

Phone: 622-8171  
Hours: 8:30 - 6:00

D. Rillito Area Council  
3042 North Stone Avenue  
Tucson, Arizona 85705

Phone: 623-6641  
Hours: 9:00 - 6:00 p.m.

H. Santa Cruz Area Council  
225 North Madison Ave.  
Nogales, Arizona 85621

Phone: 1-287-4430

The Committee for Economic Opportunity, Inc. is the name of Tucson's  
CEO Organization to fight poverty.

The area council offices are set up for the purpose of giving persons  
living in poverty areas a neighborhood where they can go for helpful  
referrals regarding problems of employment, finance, ect. Employers  
who really desire to understand the problems of poor people, who are  
disproportionately black, brown, and red, would do well to get acquainted  
with neighborhood councils and their staffs. The councils are staffed  
by persons living in the poverty areas.

TUCSON AFFIRMATIVE ACTION RESOURCES

OPERATION SERVICE EMPLOYMENT AND REDEVELOPMENT (SER)  
40 West 28th Street  
Tucson, Arizona 85713

Phone: 624-8629  
Hours: 8:00 - 5:00

Executive Director  
Ernest Urias

Field Representative  
Richard A. Martinez

Operation SER is a special demonstration program designed to increase and expand employment and training opportunities for the disadvantaged across the Southwest, with special emphasis on reaching the Spanish speaking.

Recently Operation SER has agreed to cooperative sponsor skill level improvement activities and to utilize the resources of agency staffs in an intense effort to work in bringing about improvement in job development areas for all of the Tucson area's disadvantaged citizens regardless of Race, Creed or Color.

\* \* \* \* \*

TUCSON COMMUNITY COUNCIL, INC. (TCC)  
3530 South 6th Avenue  
Tucson, Arizona 85701

Phone: 622-3679

\* \* \* \*

NEIGHBORHOOD YOUTH CORPS (NYC)  
Contact: Reuben Horner, Project Director

A work experience program for disadvantaged youths age 16 - 21.

\* \* \* \*

TUCSON AFFIRMATIVE ACTION RESOURCES

TUCSON MANPOWER DEVELOPMENT, INC.  
3530 South 6th Avenue  
Tucson, Arizona 85701

Phone: 622-3183

(Operation Mainstream)  
Contact: Reuben Horner, Project Director

A work experience program for disadvantaged adults age 22 and above.

\* \* \*

TUCSON INDIAN CENTER  
120 West 29th Street  
Tucson, Arizona 85713

Phone: 624-9391  
Hours: 8:00 - 5:00

Director  
Mrs. Jean Chaudhuri

Counselor  
Carole Parvello

The Tucson Indian Center is set up for the purpose of assisting Indian people in the community.

Services provided: Health referrals, an alcoholism program, cultural enrichment and orientation, employment assistance and vocational counseling, and recreation and group work services.

\* \* \* \* \*

TUCSON AFFIRMATIVE ACTION RESOURCES

TUCSON COMMISSION ON HUMAN RELATIONS  
45 West Pennington  
Suite 214  
Tucson, Arizona

Phone: 623-9401  
Hours: 9:00 - 5:00

Administrator  
Mr. Gene D. Bass

Compliance Director  
Mr. Sederico Sotomayor

The Tucson Human Relations Commission is the city agency which:

1. Administers and enforces the laws against discrimination.
2. Conducts educational programs on equal opportunity in employment, education, housing, and public accommodations.

\* \* \* \* \*

TUCSON NATIONAL ALLIANCE OF BUSINESSMEN (NAB)  
32 North Stone - Suite 710  
Tucson, Arizona 85701

Phone: 792-4510

Metropolitan Director  
T.W. Kramer

Manpower Coordinator  
Mary Haenmann

The National Alliance of Businessmen was organized at the behest of the President of the United States in an effort to provide a unified and coordinated approach to the fight against unemployment and underemployment. NAB can refer job applicants who are marginally qualified but trainable. Participating firms may receive reimbursement for training costs over and above normal costs of training upon entering into a contract with the U. S. Department of Labor.

\*\*\* \* \* \* \* \*\*

OTHER ARIZONA CITIES  
AFFIRMATIVE ACTION RESOURCES

ARIZONA RURAL EFFORT, INC.

DISTRICT# 4, Council of Governments  
377 Main Street, Room 202  
Yuma, Arizona 85364

Phone: 782-1886  
Hours: 8:00 to 5:00

Executive Director  
Robert W. Kennerly

Serving: Yuma County, Mohave County, City of Parker, City of Wellton,  
City of Somerton, City of Yuma, and City of Kingman

Contact with available low income potential employees in Yuma, Gila,  
Cochise, Graham and Greenlee Counties.

Recruitment assistance is available.

\* \* \* \* \*

OTHER ARIZONA COMMUNITIES

GUADALUPE ORGANIZATION SERVICES  
8810 South 56th Street  
Guadalupe, Arizona 85281

Phone: 967-7528  
Hours: 8:00 a.m. to 6:00 p.m.  
Saturday, 8:00 - 1:00

Director  
Lauro Garcia Jr.

The Guadalupe Organization is a non-profit community organization established and directed by residents of Guadalupe, Arizona. Incorporated in 1964, the organization has operated continuously until the present providing residents of Guadalupe and the surrounding area with the services of a community service center, credit union, health and dental clinics, job placement, adult education classes, post office and related services.

Presently the Organization operates with funds from Titles II and III and membership fees from the residents of the community.

\* \* \* \* \*

OTHER ARIZONA CITIES  
AFFIRMATIVE ACTION RESOURCES

NORTHERN ARIZONA COUNCIL OF GOVERNMENTS (NACOG)  
NORTHERN ARIZONA MANPOWER PROGRAMS (NAMAP)  
P. O. Box 57  
119 East Aspen Avenue  
Flagstaff, Arizona 86001

Phone: (602) 774-1895  
Hours: 8:00 - 5:00

Project Director: Mr. Andy Sandoval

Services Available:

1. Guidance and help to low income
2. Direct placement
3. Neighborhood Youth Corp. Program - a work experience program for youths age 16 - 21
4. Operation Mainstream - a work experience for adults age 22 and above.

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GRIGGS ET AL. *v.* DUKE POWER CO.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT

No. 124. Argued December 14, 1970—Decided March 8, 1971

Negro employees at respondent's generating plant brought this action, pursuant to Title VII of the Civil Rights Act of 1964, challenging respondent's requirement of a high school diploma or passing of intelligence tests as a condition of employment in or transfer to jobs at the plant. These requirements were not directed at or intended to measure ability to learn to perform a particular job or category of jobs. While § 703 (a) of the Act makes it an unlawful employment practice for an employer to limit, segregate, or classify employees to deprive them of employment opportunities or adversely to affect their status because of race, color, religion, sex, or national origin, § 703 (h) authorizes the use of any professionally developed ability test, provided that it is not designed, intended, or used to discriminate. The District Court found that respondent's former policy of racial discrimination had ended, and that Title VII, being prospective only, did not reach the prior inequities. The Court of Appeals reversed in part, rejecting the holding that residual discrimination arising from prior practices was insulated from remedial action, but agreed with the lower court that there was no showing of discriminatory purpose in the adoption of the diploma and test requirements. It held that, absent such discriminatory purpose, use of the requirements was permitted, and rejected the claim that because a disproportionate number of Negroes was rendered ineligible for promotion, transfer, or employment, the requirements were unlawful unless shown to be job related. *Held:*

1. The Act requires the elimination of artificial, arbitrary, and unnecessary barriers to employment that operate invidiously to discriminate on the basis of race, and, if, as here, an employment practice that operates to exclude Negroes cannot be shown to be related to job performance, it is prohibited, notwithstanding the employer's lack of discriminatory intent. Pp. 429-433.

2. The Act does not preclude the use of testing or measuring procedures, but it does proscribe giving them controlling force un-

less they are demonstrably a reasonable measure of job performance. Pp. 433-436.

420 F. 2d 1225, reversed in part.

BURGER, C. J., delivered the opinion of the Court, in which all members joined except BRENNAN, J., who took no part in the consideration or decision of the case.

*Jack Greenberg* argued the cause for petitioners. With him on the briefs were *James M. Nabrit III*, *Norman C. Amaker*, *William L. Robinson*, *Conrad O. Pearson*, *Julius LeVonne Chambers*, and *Albert J. Rosenthal*.

*George W. Ferguson, Jr.*, argued the cause for respondent. With him on the brief were *William I. Ward, Jr.*, and *George M. Thorpe*.

*Lawrence M. Cohen* argued the cause for the Chamber of Commerce of the United States as *amicus curiae* urging affirmance. With him on the brief were *Francis V. Lowden, Jr.*, *Gerard C. Smetana*, and *Milton A. Smith*.

Briefs of *amici curiae* urging reversal were filed by *Solicitor General Griswold*, *Assistant Attorney General Leonard*, *Deputy Solicitor General Wallace*, *David L. Rose*, *Stanley Hebert*, and *Russell Specter* for the United States; by *Louis J. Lefkowitz*, *Attorney General, pro se*, *Samuel A. Hirshowitz*, *First Assistant Attorney General*, and *George D. Zuckerman* and *Dominick J. Tuminaro*, *Assistant Attorneys General*, for the *Attorney General of the State of New York*; and by *Bernard Kleiman*, *Elliot Bredhoff*, *Michael H. Gottesman*, and *George H. Cohen* for the *United Steelworkers of America, AFL-CIO*.

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to resolve the question whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school edu-

cation or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as part of a longstanding practice of giving preference to whites.<sup>1</sup>

Congress provided, in Title VII of the Civil Rights Act of 1964, for class actions for enforcement of provisions of the Act and this proceeding was brought by a group of incumbent Negro employees against Duke Power Company. All the petitioners are employed at the Company's Dan River Steam Station, a power generating facility located at Draper, North Carolina. At the time this action was instituted, the Company had 95 employees at the Dan River Station, 14 of whom were Negroes; 13 of these are petitioners here.

The District Court found that prior to July 2, 1965, the effective date of the Civil Rights Act of 1964, the

<sup>1</sup>The Act provides:

"Sec. 703. (a) It shall be an unlawful employment practice for an employer—

"(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

"(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer . . . to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. . . ." 78 Stat. 255, 42 U. S. C. § 2000e-2.

Company openly discriminated on the basis of race in the hiring and assigning of employees at its Dan River plant. The plant was organized into five operating departments: (1) Labor, (2) Coal Handling, (3) Operations, (4) Maintenance, and (5) Laboratory and Test. Negroes were employed only in the Labor Department where the highest paying jobs paid less than the lowest paying jobs in the other four "operating" departments in which only whites were employed.<sup>2</sup> Promotions were normally made within each department on the basis of job seniority. Transferees into a department usually began in the lowest position.

In 1955 the Company instituted a policy of requiring a high school education for initial assignment to any department except Labor, and for transfer from the Coal Handling to any "inside" department (Operations, Maintenance, or Laboratory). When the Company abandoned its policy of restricting Negroes to the Labor Department in 1965, completion of high school also was made a prerequisite to transfer from Labor to any other department. From the time the high school requirement was instituted to the time of trial, however, white employees hired before the time of the high school education requirement continued to perform satisfactorily and achieve promotions in the "operating" departments. Findings on this score are not challenged.

The Company added a further requirement for new employees on July 2, 1965, the date on which Title VII became effective. To qualify for placement in any but the Labor Department it became necessary to register satisfactory scores on two professionally prepared apti-

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<sup>2</sup> A Negro was first assigned to a job in an operating department in August 1966, five months after charges had been filed with the Equal Employment Opportunity Commission. The employee, a high school graduate who had begun in the Labor Department in 1953, was promoted to a job in the Coal Handling Department.

tude tests, as well as to have a high school education. Completion of high school alone continued to render employees eligible for transfer to the four desirable departments from which Negroes had been excluded if the incumbent had been employed prior to the time of the new requirement. In September 1965 the Company began to permit incumbent employees who lacked a high school education to qualify for transfer from Labor or Coal Handling to an "inside" job by passing two tests—the Wonderlic Personnel Test, which purports to measure general intelligence, and the Bennett Mechanical Comprehension Test. Neither was directed or intended to measure the ability to learn to perform a particular job or category of jobs. The requisite scores used for both initial hiring and transfer approximated the national median for high school graduates.<sup>3</sup>

The District Court had found that while the Company previously followed a policy of overt racial discrimination in a period prior to the Act, such conduct had ceased. The District Court also concluded that Title VII was intended to be prospective only and, consequently, the impact of prior inequities was beyond the reach of corrective action authorized by the Act.

The Court of Appeals was confronted with a question of first impression, as are we, concerning the meaning of Title VII. After careful analysis a majority of that court concluded that a subjective test of the employer's intent should govern, particularly in a close case, and that in this case there was no showing of a discriminatory purpose in the adoption of the diploma and test requirements. On this basis, the Court of Appeals concluded there was no violation of the Act.

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<sup>3</sup> The test standards are thus more stringent than the high school requirement, since they would screen out approximately half of all high school graduates.

The Court of Appeals reversed the District Court in part, rejecting the holding that residual discrimination arising from prior employment practices was insulated from remedial action.<sup>4</sup> The Court of Appeals noted, however, that the District Court was correct in its conclusion that there was no showing of a racial purpose or invidious intent in the adoption of the high school diploma requirement or general intelligence test and that these standards had been applied fairly to whites and Negroes alike. It held that, in the absence of a discriminatory purpose, use of such requirements was permitted by the Act. In so doing, the Court of Appeals rejected the claim that because these two requirements operated to render ineligible a markedly disproportionate number of Negroes, they were unlawful under Title VII unless shown to be job related.<sup>5</sup> We granted the writ on these claims. 399 U. S. 926.

The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and re-

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<sup>4</sup> The Court of Appeals ruled that Negroes employed in the Labor Department at a time when there was no high school or test requirement for entrance into the higher paying departments could not now be made subject to those requirements, since whites hired contemporaneously into those departments were never subject to them. The Court of Appeals also required that the seniority rights of those Negroes be measured on a plantwide, rather than a departmental, basis. However, the Court of Appeals denied relief to the Negro employees without a high school education or its equivalent who were hired into the Labor Department after institution of the educational requirement.

<sup>5</sup> One member of that court disagreed with this aspect of the decision, maintaining, as do the petitioners in this Court, that Title VII prohibits the use of employment criteria that operate in a racially exclusionary fashion and do not measure skills or abilities necessary to performance of the jobs for which those criteria are used.

move barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to "freeze" the status quo of prior discriminatory employment practices.

The Court of Appeals' opinion, and the partial dissent, agreed that, on the record in the present case, "whites register far better on the Company's alternative requirements" than Negroes.<sup>6</sup> 420 F. 2d 1225, 1239 n. 6. This consequence would appear to be directly traceable to race. Basic intelligence must have the means of articulation to manifest itself fairly in a testing process. Because they are Negroes, petitioners have long received inferior education in segregated schools and this Court expressly recognized these differences in *Gaston County v. United States*, 395 U. S. 285 (1969). There, because of the inferior education received by Negroes in North Carolina, this Court barred the institution of a literacy test for voter registration on the ground that the test would abridge the right to vote indirectly on account of race. Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any

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<sup>6</sup> In North Carolina, 1960 census statistics show that, while 34% of white males had completed high school, only 12% of Negro males had done so. U. S. Bureau of the Census, U. S. Census of Population: 1960, Vol. 1, Characteristics of the Population, pt. 35, Table 47.

Similarly, with respect to standardized tests, the EEOC in one case found that use of a battery of tests, including the Wonderlic and Bennett tests used by the Company in the instant case, resulted in 58% of whites passing the tests, as compared with only 6% of the blacks. Decision of EEOC, CCH Empl. Prac. Guide, ¶ 17,304.53 (Dec. 2, 1966). See also Decision of EEOC 70-552, CCH Empl. Prac. Guide, ¶ 6139 (Feb. 19, 1970).

person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.

Congress has now provided that tests or criteria for employment or promotion may not provide equality of opportunity merely in the sense of the fabled offer of milk to the stork and the fox. On the contrary, Congress has now required that the posture and condition of the job-seeker be taken into account. It has—to resort again to the fable—provided that the vessel in which the milk is proffered be one all seekers can use. The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited.

On the record before us, neither the high school completion requirement nor the general intelligence test is shown to bear a demonstrable relationship to successful performance of the jobs for which it was used. Both were adopted, as the Court of Appeals noted, without meaningful study of their relationship to job-performance ability. Rather, a vice president of the Company testified, the requirements were instituted on the Company's judgment that they generally would improve the overall quality of the work force.

The evidence, however, shows that employees who have not completed high school or taken the tests have continued to perform satisfactorily and make progress in departments for which the high school and test cri-

teria are now used.<sup>7</sup> The promotion record of present employees who would not be able to meet the new criteria thus suggests the possibility that the requirements may not be needed even for the limited purpose of preserving the avowed policy of advancement within the Company. In the context of this case, it is unnecessary to reach the question whether testing requirements that take into account capability for the next succeeding position or related future promotion might be utilized upon a showing that such long-range requirements fulfill a genuine business need. In the present case the Company has made no such showing.

The Court of Appeals held that the Company had adopted the diploma and test requirements without any "intention to discriminate against Negro employees." 420 F. 2d, at 1232. We do not suggest that either the District Court or the Court of Appeals erred in examining the employer's intent; but good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability.

The Company's lack of discriminatory intent is suggested by special efforts to help the undereducated employees through Company financing of two-thirds the cost of tuition for high school training. But Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation. More than that, Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question.

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<sup>7</sup> For example, between July 2, 1965, and November 14, 1966, the percentage of white employees who were promoted but who were not high school graduates was nearly identical to the percentage of nongraduates in the entire white work force.

The facts of this case demonstrate the inadequacy of broad and general testing devices as well as the infirmity of using diplomas or degrees as fixed measures of capability. History is filled with examples of men and women who rendered highly effective performance without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees. Diplomas and tests are useful servants, but Congress has mandated the commonsense proposition that they are not to become masters of reality.

The Company contends that its general intelligence tests are specifically permitted by § 703 (h) of the Act.<sup>8</sup> That section authorizes the use of "any professionally developed ability test" that is not "designed, intended or used to discriminate because of race . . . ." (Emphasis added.)

The Equal Employment Opportunity Commission, having enforcement responsibility, has issued guidelines interpreting § 703 (h) to permit only the use of job-related tests.<sup>9</sup> The administrative interpretation of the

<sup>8</sup> Section 703 (h) applies only to tests. It has no applicability to the high school diploma requirement.

<sup>9</sup> EEOC Guidelines on Employment Testing Procedures, issued August 24, 1966, provide:

"The Commission accordingly interprets 'professionally developed ability test' to mean a test which fairly measures the knowledge or skills required by the particular job or class of jobs which the applicant seeks, or which fairly affords the employer a chance to measure the applicant's ability to perform a particular job or class of jobs. The fact that a test was prepared by an individual or organization claiming expertise in test preparation does not, without more, justify its use within the meaning of Title VII."

The EEOC position has been elaborated in the new Guidelines on Employee Selection Procedures, 29 CFR § 1607, 35 Fed. Reg. 12333 (Aug. 1, 1970). These guidelines demand that employers using tests have available "data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated." *Id.*, at § 1607.4 (c).

Act by the enforcing agency is entitled to great deference. See, e. g., *United States v. City of Chicago*, 400 U. S. 8 (1970); *Udall v. Tallman*, 380 U. S. 1 (1965); *Power Reactor Co. v. Electricians*, 367 U. S. 396 (1961). Since the Act and its legislative history support the Commission's construction, this affords good reason to treat the guidelines as expressing the will of Congress.

Section 703 (h) was not contained in the House version of the Civil Rights Act but was added in the Senate during extended debate. For a period, debate revolved around claims that the bill as proposed would prohibit all testing and force employers to hire unqualified persons simply because they were part of a group formerly subject to job discrimination.<sup>10</sup> Proponents of Title VII sought throughout the debate to assure the critics that the Act would have no effect on job-related tests. Senators Case of New Jersey and Clark of Pennsylvania, comanagers of the bill on the Senate floor, issued a memorandum explaining that the proposed Title VII "expressly protects the employer's right to insist that any prospective applicant, Negro or white, *must meet the applicable job qualifications*. Indeed, the very purpose of title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race or color." 110 Cong. Rec. 7247.<sup>11</sup> (Emphasis added.) Despite

<sup>10</sup> The congressional discussion was prompted by the decision of a hearing examiner for the Illinois Fair Employment Commission in *Myart v. Motorola Co.* (The decision is reprinted at 110 Cong. Rec. 5662.) That case suggested that standardized tests on which whites performed better than Negroes could never be used. The decision was taken to mean that such tests could never be justified even if the needs of the business required them. A number of Senators feared that Title VII might produce a similar result. See remarks of Senators Ervin, 110 Cong. Rec. 5614-5616; Smathers, *id.*, at 5999-6000; Holland, *id.*, at 7012-7013; Hill, *id.*, at 8447; Tower, *id.*, at 9024; Talmadge, *id.*, at 9025-9026; Fulbright, *id.*, at 9599-9600; and Ellender, *id.*, at 9600.

<sup>11</sup> The Court of Appeals majority, in finding no requirement in Title VII that employment tests be job related, relied in part on a

these assurances, Senator Tower of Texas introduced an amendment authorizing "professionally developed ability tests." Proponents of Title VII opposed the amendment because, as written, it would permit an employer to give any test, "whether it was a good test or not, so long as it was professionally designed. Discrimination could actually exist under the guise of compliance with the statute." 110 Cong. Rec. 13504 (remarks of Sen. Case).

The amendment was defeated and two days later Senator Tower offered a substitute amendment which was adopted verbatim and is now the testing provision of § 703 (h). Speaking for the supporters of Title VII, Senator Humphrey, who had vigorously opposed the first amendment, endorsed the substitute amendment, stating: "Senators on both sides of the aisle who were deeply interested in title VII have examined the text of this

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quotation from an earlier Clark-Case interpretative memorandum addressed to the question of the constitutionality of Title VII. The Senators said in that memorandum:

"There is no requirement in title VII that employers abandon bona fide qualification tests where, because of differences in background and education, members of some groups are able to perform better on these tests than members of other groups. An employer may set his qualifications as high as he likes, he may test to determine which applicants have these qualifications, and he may hire, assign, and promote on the basis of test performance" 110 Cong. Rec. 7213

However, nothing there stated conflicts with the later memorandum dealing specifically with the debate over employer testing, 110 Cong. Rec. 7247 (quoted from in the text above), in which Senators Clark and Case explained that tests which measure "applicable job qualifications" are permissible under Title VII. In the earlier memorandum Clark and Case assured the Senate that employers were not to be prohibited from using tests that determine *qualifications*. Certainly a reasonable interpretation of what the Senators meant, in light of the subsequent memorandum directed specifically at employer testing, was that nothing in the Act prevents employers from requiring that applicants be fit for the job.

amendment and have found it to be in accord with the intent and purpose of that title." 110 Cong. Rec. 13724. The amendment was then adopted.<sup>12</sup> From the sum of the legislative history relevant in this case, the conclusion is inescapable that the EEOC's construction of § 703 (h) to require that employment tests be job related comports with congressional intent.

Nothing in the Act precludes the use of testing or measuring procedures; obviously they are useful. What Congress has forbidden is giving these devices and mechanisms controlling force unless they are demonstrably a reasonable measure of job performance. Congress has not commanded that the less qualified be preferred over the better qualified simply because of minority origins. Far from disparaging job qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract.

The judgment of the Court of Appeals is, as to that portion of the judgment appealed from, reversed.

MR. JUSTICE BRENNAN took no part in the consideration or decision of this case.

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<sup>12</sup> Senator Tower's original amendment provided in part that a test would be permissible "if . . . in the case of any individual who is seeking employment with such employer, such test is designed to determine or predict whether such individual is suitable or trainable with respect to his employment in the particular business or enterprise involved . . ." 110 Cong. Rec. 13492. This language indicates that Senator Tower's aim was simply to make certain that job-related tests would be permitted. The opposition to the amendment was based on its loose wording which the proponents of Title VII feared would be susceptible of misinterpretation. The final amendment, which was acceptable to all sides, could hardly have required less of a job relation than the first.