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Court upholds employer's right not to hire based on high test score

"Because defendants have shown that there is rational basis for its policy, it cannot be found that the policy is arbitrary or irrational..."

On September 2, 1999, the U.S. District Court of Connecticut, 3:97CV1012 (1999) decided a case in which the plaintiff was denied the opportunity to become a police officer based on his score on a written exam. As part of the application process the plaintiff, Robert Jordan, took a written exam for the position of entry level police officer. One component of the written exam was the Wonderlic Personnel Test ("WPT") and Scholastic Level Exam. Wonderlic's User's Manual suggests a range of 20-27 for consideration as a patrol officer, and the City of New London followed that recommendation. Jordan scored a 33 on the exam, too high for consideration as a police officer. Subsequent to notification of his ineligibility for the position of police officer due to his high test score, Jordan filed suit against the City of New London.

Jordan contended there was a "violation of the Equal Protection Clauses of the United States and Connecticut constitutions stemming from the defendants' hiring practice". In deciding the basis on which the claim was to be judged, the court drew upon *Schweiker v. Wilson*, 450 U.S. 221 (1981). "Social and economic (action) that does not employ suspect classification or impinge on the fundamental rights must be upheld under the equal protection component of the Fifth Amendment when the... means are rationally related to a legitimate purpose." Jordan agreed that he is not a member of a suspect class and there is no fundamental right to employment as a police officer. Therefore, the rational basis review was used as the standard to evaluate the plaintiff's claim. Jordan

further conceded that increasing employment longevity and reducing the high costs associated with employee turnover are legitimate government purposes.

Plaintiff provided evidence that there is a lack of a definitive relationship between high cognitive ability and job satisfaction, performance and longevity. However, in the Court's opinion, the "Defendant need not show that... the policy is wise. Defendant need show only there there was reason to believe that employing the classification could be beneficial in achieving their stated goal." As the city of New London followed Wonderlic's recommendation as well as reasonably relying on professional literature that concluded, "hiring overqualified applicants leads to job dissatisfaction and turnover," they did not violate the Equal Protection Clauses.

In its opinion the court cites *Stein v. National City Bank*, 942 F.2d 1062 (6th Cir. 1991), "It is not the function of the courts to judge the wisdom of particular business policies, but to ensure that such policies are made on a rational basis." Moreover, "Because defendants have shown that there is a rational basis for its policy, it cannot be found that the policy is arbitrary or irrational." In granting summary judgment for the defendant the court said "Plaintiff may have been disqualified unwisely but he was not denied equal protection."

Association Notebook

ATP Welcomes its newest members... **Data Recognition Corporation, The Donath Group, Executrain, the Gartner Institute, Knapp & Associates International, Lotus Development Corporation, Quality Assessment Services and UNISCORE, Inc.**

ATP will present... *Computer-Based Testing: Applications for the New Millennium*, February 17, 2000 at the Carmel Valley Ranch, Carmel, CA. (see story, page 5). For information call Michelle Issing at Designing Events at 410.751.7171

The next board meeting... of the Association of Test Publishers will be held February 18, 2000 at, the Carmel Valley Ranch Resort in Carmel , CA.

Is your company listed in ATP Products and Services?... as an ATP member you are entitled to a listing in the products and services section of the ATP website along with a link to your website. For more information contact [Lauren Scheib](#), ATP Administrator at 717.755.9747.

Legal Update

Target stores charged with violating the ADA

A complaint was filed on October 6, 1999 in the Northern District of California which alleges that several civil rights violations were committed by Target Stores ("Target") against people with hearing disabilities. The complaint was brought against Target by plaintiff Gary Lundstrom under the Americans with Disabilities Act ("ADA") and relevant California law and is seeking class action status.

According to the complaint, Target discriminates against plaintiffs by refusing to provide reasonable accommodations during the employment process, and using written job examinations that are discriminatory and not job-related. Specifically, the complaint charges that Target's "denial of a sign language interpreter severely disadvantages hearing disabled applicants in the employment application process." Because most profoundly deaf individuals communicate through American Sign Language, a language not based on spoken English; the denial of an interpreter limits their ability to communicate.

Plaintiff alleges the following: In October of 1998 he applied for a stockperson position with Target Stores in Newark, California. Although requested, defendant refused to provide an interpreter for his preemployment interview, and he was forced to communicate with the interviewer by writing notes on paper. As a result, plaintiff was unable to understand all of the questions and had to ask the interviewer to repeat questions several times.

Plaintiff further alleges that he was required to complete a lengthy written examination and due to defendant's failure to provide an interpreter for the examination, he left a large number of questions unanswered. Moreover, according to Lundstrom, the examination was not necessary to evaluate his ability to perform essential functions of the stockperson position, while tending to screen out applicants with hearing disabilities.

Complainant seeks an injunction against Target's allegedly unlawful employment practices. Plaintiff also seeks compensatory and punitive damages, as well as attorney fees and costs. ATP will continue to monitor this litigation and provide any relevant updates.

ADA Complaint

U.S. Government files suit regarding LSAT

On December 6, 1999 the Civil Rights Division of the Department of Justice filed a  lawsuit in a U.S. district court (Eastern District of Pennsylvania) against the Law School Admission Council ("LSAC"). LSAC administers the Law School Admissions Test ("LSAT") which is required for admission to most law schools approved by the American Bar Association. The suit alleges that the LSAC violated the Americans with Disabilities Act ("ADA") when it failed to provide requested reasonable accommodations to four individuals with physical impairments. According to the Civil Rights Division, there is no reasonable

basis for LSAC's denial of the requested accommodations and its policy of requiring a "psychoeducational assessment" to justify such accommodations.

For a copy of the complaint contact [Lauren Scheib](#) at 717.755.9747

ATP Launches First Conference

Computer-Based Testing: Applications for the New Millennium

ATP gratefully acknowledges its conference sponsors:

Chaucery Group International

Computer Adaptive Technologies (CAT)

Galton Technologies, Inc.

Hewlett Packard

NCS/Virtual University Enterprises (VUE)

Sylvan Prometric

Thiemann, Aitken, Vohra & Rutledge

UNISCORE

The Association of Test Publishers is pleased to launch its first conference: Computer-Based Testing: Applications of the Millennium, to be held February 17, 2000 at the Carmel Valley Ranch Resort in Carmel, CA.

This premier conference, designed for all stake holders in the testing and certification process, will showcase and discuss guidelines for computer-based testing. Leaders in the rapidly changing computer-based testing field will conduct sessions focusing on the following areas of testing: design, development, delivery and administration.

The structure of this one-day conference will allow discussion of leading-edge technologies, best practices and obstacles to overcome. It will also provide networking opportunities with colleagues from such testing fields as industrial/organizational, clinical, education, certification and licensure.

Keynotes

Keynote speakers for the conference will be Dr. Ronald K. Hambleton, noted authority on item response theory, classical test theory and psychological testing, and Dr. Craig N. Mills, Executive Director for the American Institute of Certified Public Accountants. Dr. Hambleton is professor of Education and Psychology and Chairperson of the Research and Evaluation Methods Program at the University of Massachusetts at Amherst.

Dr. Mills is responsible for the Uniform CPA Licensing Examination that is scheduled to be computerized in 2003.

ATP FOCUS ON

The College Board, under the leadership of Governor Gaston Caperton looks towards the future

On July 1, 1999, Gaston Caperton became the eighth president of the College Board, the 100-year-old non-profit organization best known for the SAT® and Advanced Placement Program®. The College Board is a national membership organization of more than 3,000 schools, colleges, and other educational institutions.

Since coming to the Board, Caperton has moved quickly to launch a sweeping series of initiatives, including organizational restructuring, strengthening core programs and expanding the membership. His most ambitious effort to date has been the formation of a for-profit Internet subsidiary, collegeboard.com, to dramatically expand the resources available to parents and students as they plan for college. The new Website is tentatively scheduled to begin operation in late spring 2000. The New York Times called the venture "a natural brainchild for Mr. Caperton, the former governor of West Virginia, whose political legacy was bringing computers to his state's impoverished schools."

Caperton came to the College Board from Columbia University, where he founded, ran, and then taught in the Institute on Education and Government. Prior to his tenure at Columbia, Caperton taught at Harvard University in the spring of 1997 as a fellow at the John F. Kennedy Institute of Politics. Caperton served two highly successful terms as governor of West Virginia, from 1988-96.

Of particular concern to Caperton was improving West Virginia's education system. His comprehensive plan initially emphasized the use of computers and technology in West Virginia public schools, beginning with kindergarten through sixth grade, then expanding later to include grades 7-12.

In 1996, West Virginia's advances in education technology gained national recognition when Caperton received the Computer world Smithsonian Award. The award's sponsors called Caperton a "visionary" who "fundamentally changed the education system in America" by using technological innovations.

The Test Publisher recently asked Caperton to be a visionary again in regard to testing, technology and the new century...

<p>Q: What were some of your accomplishments as governor that prepared you to direct the College Board into the next century?</p>	<p>A: I made some pretty dramatic strides in improving West Virginia's education system from kindergarten up through college. I raised teachers' salaries. Before I became governor, our teachers salaries were so low, they used to rank 49th in the country. By the time I left office, their salaries had risen to 31st.</p> <p>I started an aggressive school building program, so by the time I left office, over 70 percent of the students in our state were enjoying new or improved schools.</p> <p>I emphasized the use of computers and technology in West Virginia public schools, beginning with</p>
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	<p>kindergarten through sixth grade, then expanding later to include grades 7-12. I knew that it wouldn't be enough to put computers in every school if teachers didn't know how to use them effectively for classroom instruction, so I created a statewide professional development initiative. This allowed us to train 19,000 teachers.</p>
<p>Q: What technological changes do you anticipate in the delivery, administration and reporting of high stakes tests over the next five years? What areas beyond these do you see an important role for technology?</p>	<p>A: Obviously we will do much more via the computer. Already, ACCUPLACER, one of our assessments that is used primarily in community colleges, is administered online. We are in the final stages of computerizing the administration of our CLEP exam. In the future, everyone who takes CLEP will take it on the computer. We are starting to pilot a computerized PSAT/NMSQT. But the technological change affecting these tests is really comprehensive. This means a lot more than students taking an exam on a computer.</p> <p>In the case of CLEP, for example, we will send all of our CLEP test centers CD-ROMS containing all 34 CLEP tests. This means that the college will have it available for students whenever they want to take them. The computer will use content specifications to prepare each exam individually, choosing different questions for each student from among the pool of available questions. This, in turn, will strengthen security. After the student takes the exam, the college and students will receive an instantaneous score. Test takers will be spared the anxiety of wondering for several weeks how they did.</p> <p>Another point that not many people might think of is this: technology will allow us to save tremendous costs on the development of some of our tests. To use CLEP again as an example: We offer 34 CLEP exams in different subject areas. Each of those exams requires a test development committee, and each test development committee has an advisory panel of 20 faculty members. These faculty advisory panels review each exam question and determine whether a student who has mastered the subject should be able to answer that question. Now consider what it costs for 680 people to come to meetings. Think about airfare, hotels, meals and honoraria. The Internet allows our faculty advisory panels to communicate more frequently than would</p>

	have ever been the case before.
Q: What are the forces that will influence and challenge the course of standardized testing in the next century?	A: Some of these forces include our changing demographics and unequal access to high quality schooling. We can expect to see new advances in our knowledge and understanding of the ways children learn, and our challenge will be to take that knowledge into account to create assessments that will help children learn.