CHRISTINE—THE CRAFT WITHOUT AN ANCHOR:
CRAFT V. METROMEDIA

I. INTRODUCTION

Title VII of the Civil Rights Act of 1964[1] provides that:

> (a)It shall be an unlawful employment practice for an employer—
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> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, *sex*, or national origin . . . .[2]

Christine Craft, former anchorwoman of KMBC-TV Channel 9, in Kansas City, Missouri, brought a sex discrimination suit against the station's owner, Metromedia, Inc.[3] The action arose out of the termination of her employment as co-anchor of the evening news. Ms. Craft alleged that during her term of employment, the management of KMBC engaged in a pattern and practice of intentional discrimination against her based on her sex. She also claimed that she was judged more by her appearance than were her male colleagues.[4] The case had drawn national attention because it raised the question of whether or not station managers must apply the same criteria of physical appearance to women as to men when they appear on camera in news programs.

The District Court for the Western District of Missouri held that the actions taken by Metromedia in regard to Craft's appearance were not sexually discriminatory, but were merely grooming and dress standards routinely applied throughout the industry, and were thus outside the proscriptions of Title VII.[5]

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[1] §§ 701-716, 42 U.S.C. §§ 2000e to 2000e-17 (1976 & Supp. V 1981) [hereinafter cited as the Act].

[2] *Id.* § 703(a)(1), 42 U.S.C. § 2000e-2(a)(1) (emphasis added).

[3] Craft v. Metromedia, Inc., 572 F. Supp. 868 (W.D. Mo. 1983) [hereinafter cited as *Craft*].

[4] *Id.* at 869-70.

[5] *Id.* at 876-79. A retrial on a separate fraud claim, an issue which is beyond the scope of this Comment, was decided in favor of Craft. Craft v. Metromedia, Inc., No. 83-0007-CV-W-8 (W.D. Mo. Jan. 13, 1984). *See infra* notes 60, 71.

This Comment will examine whether the district court was correct in applying the general rule found in earlier grooming and dress code cases to the *Craft* case. Part II will examine the history and background of Title VII of the Civil Rights Act. Part III will trace the line of grooming and dress code cases to the present time. Part IV will set out the facts, holding and reasoning of the *Craft* decision, which will be critically analyzed in Part V. And Part VI presents three possible approaches future courts may follow when determining whether the general grooming code rule should be applied in a particular case.

II. Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964[6] was designed to provide equal employment opportunities for minorities. Although the Act was originally directed at racial and ethnic discrimination, its final version also prohibited employment discrimination based on sex. This addition was offered one day prior to the passage of Title VII, as a floor amendment in the House, without any prior legislative hearing or debate. The addition of "sex" as a proscribed basis of discrimination was a last-minute attempt by opponents of the Act to "clutter up" the bill in order to block its passage.[7] The bill, with the amendment barring sex discrimination, was nevertheless quickly passed.[8] The late introduction of the sex amendment precluded extensive legislative debate and discussion, making it difficult to ascertain the congressional intent behind this provision of Title VII. Despite this difficulty, Congress has consistently demonstrated its intent to carry out the amendment's underlying policy—providing equal employment opportunities for women.

The prohibition against sex discrimination is not absolute. Unlike discriminatory treatment based on race or color, discrimination premised on sex may be justified under certain circumstances. Section 703(e) of the Act provides:

> Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees . . . on the basis of [their] religion, sex, or national origin in those certain instances where religion, sex, or

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[6] §§ 701-716, 42 U.S.C. §§ 2000e to 2000e-17 (1976 & Supp. V 1981).

[7] *See* 110 Cong. Rec. 2577 (1964) (remarks of Representative Smith); *id.* at 2581-82 (remarks of Representative Green).

[8] *See* 110 Cong. Rec. 2804-05 (1964); *id.* at 14,511; *id.* at 15,896. *See generally Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964*, 84 Harv. L. Rev. 1109 (1971).

national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise . . . .[9]

Much of the litigation in the area of sex discrimination focuses on the meaning of the words "bona fide occupational qualification," (BFOQ) and when an employer may properly assert this justification as a defense to an employment practice.[10] Many courts have turned to the guidelines issued by the Equal Employment Opportunity Commission[11] (E.E.O.C.) for direction when deciding whether or not an employment practice falls within the scope of this exception. Under the E.E.O.C. guidelines, sex may qualify as a BFOQ only where the job clearly calls for employees with the particular characteristics of one sex. This would apply where authenticity or genuineness is required for the job, as in the case of an actor or actress.[12] Most courts have consistently emphasized the need to narrowly interpret the bona fide occupational qualification exception so as not to destroy the purpose of section 703(a) of the Act by allowing the exception to swallow the rule.[13]

III. Grooming Standards and Dress Codes under Title VII

The grooming standard defense asserted by Metromedia rests upon the right of a private employer to establish dress and grooming standards for his employees.[14] This right has been challenged by many employees as a discriminatory employment practice based upon sex in violation of Title VII.[15] Although Title VII does not specifically address itself to an employer's dress or grooming policies, such policies are generally considered "terms and conditions" of employment within the meaning of the Act.[16] An employer may not utilize a dress or appearance policy as an indirect means of circumventing the dis-

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[9] Civil Rights Act of 1964 § 703(e), 42 U.S.C. § 2000e-2(e) (1976).

[10] *See generally* Sirota, *Sex Discrimination: Title VII and the Bona Fide Occupational Qualification*, 55 Tex. L. Rev. 1025 (1977).

[11] Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.1 (1983). The guidelines prohibit a refusal to hire a woman based on "assumptions of the comparative employment characteristics of women in general" (for example, higher turnover rate than men) or on "stereotyped characterizations of the sexes" (for example, women are less aggressive than men). *Id.* § 1604.2(a)(1)(i)-(ii). The guidelines also prohibit a refusal to hire based on the "preferences of coworkers, the employer, clients or customers . . . ." *Id.* § 1604.2(a)(1)(iii).

[12] *Id.* § 1604.2(a)(2) (1983).

[13] *See generally* Sirota, *supra* note 10.

[14] *Craft*, 572 F. Supp. at 877.

[15] *See* cases cited *infra* notes 20-50.

[16] *See, e.g.*, EEOC Dec. (CCH) ¶ 6231 (1971).

crimination proscribed by Title VII.[17] It has been recognized, however, that employer dress and grooming standards are not *per se* violative of Title VII, merely because such policies may be different for, or have a different impact on males and females.[18] An examination of the factual settings in which the issue of grooming standards and sex discrimination has arisen in the past, and the general rule that has evolved from these cases, should prove helpful to better understand the holding and rationale of the *Craft* decision.

A. *Hair Length Requirements*

The majority of the grooming cases arising under a Title VII cause of action has concerned the right of male employees to wear their hair as long as their female co-workers.[19] Until approximately 1975, the courts were divided on whether the prohibition of long hair on males is sexually discriminatory when the same restrictions are not imposed on female employees. The district court decisions were split.[20] Similarly, the circuit courts lacked uniformity.[21] The

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[17] *Id.*

[18] *See, e.g.*, Willingham v. Macon Tel. Publishing Co., 507 F.2d 1084 (5th Cir. 1975)(en banc); Baker v. California Land Title Co., 507 F.2d 895 (9th Cir. 1974), *cert. denied*, 422 U.S. 1046 (1975).

[19] *See* cases cited *infra* notes 20-38 and accompanying text. *Cf. infra* notes 39-56 and accompanying text.

[20] The following cases have found hair rules *not* to be violative of Title VII: Bujel v. Borman Food Stores, 384 F. Supp. 141 (E.D. Mich. 1974)(hair length mentioned in employer's grooming guide for male employees only); Boyce v. Safeway Stores, 351 F. Supp. 402 (D.D.C. 1972)(grooming standard relating to head and facial hair of male employees having regular contact with the public); Baker v. California Land Title Co., 349 F. Supp. 235 (C.D. Cal. 1972)(hair length policy for male employees only), *aff'd*, 507 F.2d 895 (9th Cir. 1974), *cert. denied*, 422 U.S. 1046 (1975). *See generally* Wells v. Aetna Casualty & Sur. Co., 6 Fair Empl. Prac. Cas. (BNA) 826 (D.D.C. 1973)(unwritten hair length grooming standard for male employees). *See also* Dripps v. United Parcel Serv. of Pa., 381 F. Supp. 421 (W.D. Pa. 1974)(Employer's rule forbidding welders from wearing beards was a sound BFOQ based on reasonable concern for safety and showed no sex discrimination.), *aff'd*, 515 F.2d 506 (3d Cir. 1975); Rafford v. Randle E. Ambulance Serv., 348 F. Supp. 316 (S.D. Fla. 1972)(A policy of no beards or moustaches related to men only. The court noted, "The discharge of pregnant women or bearded men does not violate the Civil Rights Act of 1964 simply because only women become pregnant and only men grow beards. In neither instance are similarly situated persons of the opposite sex favored . . . . [D]iscrimination between different categories of the same sex is not unlawful discrimination by sex." *Id.* at 320.).

The following cases have found hair rules to be violative of Title VII: Aros v. McDonnell Douglas Corp., 348 F. Supp. 661 (C.D. Cal. 1972)(Different dress and grooming code for male and female employees relating to allowable hair length is "discriminatory on the basis of sex" within the meaning of Title VII.); Donohue v. Shoe Corp. of Am., 337 F. Supp. 1357 (C.D. Cal. 1972)(different hair length standards for male and female salespersons *prima facie* violation of Title VII). *See also* Roberts v. General Mills, Inc., 337 F. Supp. 1055 (N.D. Ohio 1971)(An employer's rule, that men must wear hats while women may wear hairnets when working with food, deprived male employee of equal employment opportunities.).

[21] The following cases have found hair rules *not* violative of Title VII: Dodge v. Giant Food,

E.E.O.C., however, has consistently held that an employer has engaged in an unlawful employment practice by maintaining a hair length policy which allows female employees to wear their hair longer than male employees.[22] The E.E.O.C. decisions, and the federal cases which have found sex discrimination, have equated the situation to other types of discrimination covered under Title VII. In *Aros v. McDonnell Douglas Corp.*,[23] the court stated that "[t]he issue of long hair on men tends to arouse passions of many in our society today. In that regard, the issue is no different from the issues of race, color, religion, national origin and equal employment rights for women, all of which are raised in Title VII."[24] Similarly, in *Donohue v. Shoe Corp. of America*,[25] the court noted that:

> In our society we too often form opinions of people on the basis of skin color, religion, national origin, style of dress, hair length, and other superficial features. That tendency to stereotype people is at the root of some of the social ills that afflict the country, and in adopting the Civil Rights Act of 1964, Congress intended to attack these stereotyped characterizations so that people would be judged by their intrinsic worth.[26]

In late 1974 and early 1975, the previously divided courts resolved the earlier controversy. The prevalent position of the courts is that hair rules and regulations do not constitute unlawful discrimination under Title VII. This view is uniformly demonstrated in circuit[27]

Inc., 488 F.2d 1333 (D.C. Cir. 1973)(regulation which prohibited men from wearing long hair while providing that long hair on women must be secured); Fagan v. National Cash Register Co., 481 F.2d 1115 (D.C. Cir. 1973)(requirement that male employees with customer contact keep their hair neatly trimmed and combed).

Willingham v. Macon Tel. Publishing Co., 482 F.2d 535 (5th Cir. 1973) found hair rules to be violative of Title VII. However, the Fifth Circuit, en banc, reversed this decision in 1975. *See Willingham*, 507 F.2d 1084 (5th Cir. 1975)(en banc).

[22] *See* EEOC Dec. (CCH) ¶ 6395 (1974); EEOC Dec. (CCH) ¶ 6373 (1972); EEOC Dec. (CCH) ¶ 6364 (1972); EEOC Dec. (CCH) ¶ 6343 (1972); EEOC Dec. (CCH) ¶ 6256 (1971); EEOC Dec. (CCH) ¶ 6231 (1971). *But see* EEOC Dec. (CCH) ¶ 6318 (1971)(The Commission will allow an employer to make a business necessity defense if the employer can show that it maintains its hair length or beard restriction for the safe and efficient operation of its business.).

[23] 348 F. Supp. 661 (C.D. Cal. 1972).

[24] *Id.* at 666.

[25] 337 F. Supp. 1357 (C.D. Cal. 1972).

[26] *Id.* at 1359.

[27] Barker v. Taft Broadcasting Co., 549 F.2d 400 (6th Cir. 1977)(An employer's grooming code which limited manner in which hair of men could be cut and limited manner in which women could style their hair did not violate the Civil Rights Act.); Earwood v. Continental S.E. Lines, Inc., 539 F.2d 1349 (4th Cir. 1976)(Sex differentiated grooming standards, that are not used as a pretext to exclude either sex from employment, do not contravene Title VII.); Longo v. Carlisle DeCoppet & Co., 537 F.2d 685 (2d Cir. 1976); Knott v. Missouri Pac. Ry., 527 F.2d

as well as district court[28] decisions. Only the E.E.O.C. decisions have consistently rejected this view.[29]

The uniformity of the federal court decisions came after the decisions in *Baker v. California Land Title Co.*[30] and *Willingham v. Macon Telegraph Publishing Co.*[31] In *Baker*, the court held that a private employer may require male employees to adhere to different dress and grooming standards than female employees, and that such a practice does not constitute an unfair employment practice within the meaning of the Civil Rights Act.[32] The court noted that the Civil Rights Act refers to immutable characteristics which an employee has no power to alter, such as race, national origin, color or sex, rather than personal modes of dress or cosmetic effects over which a person has complete control.[33]

The *Willingham* case, decided only a few months after *Baker*, was the most dramatic development in the area of grooming standards and Title VII. The Fifth Circuit, *en banc*, reversed the Circuit's panel decision,[34] leaving all circuit courts in complete agreement on the hair length controversy. The *Willingham* court, in an 11-4 decision, held that an employer's grooming code, requiring different hair lengths for male and female job applicants and employees, constituted discrimi-

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1249 (8th Cir. 1975); Willingham v. Macon Tel. Publishing Co., 507 F.2d 1084 (5th Cir. 1975) (en banc) (A grooming code requiring different hair lengths for males and females constituted discrimination on the basis of grooming standards, not on the basis of sex, and is therefore outside the proscription of the Civil Rights Act.); Baker v. California Land Title Co., 507 F.2d 895 (9th Cir. 1974)(The Civil Rights Act refers to immutable characteristics rather than to personal modes of dress or cosmetic effects.); *cert. denied*, 422 U.S. 1046 (1975).

[28] Rogers v. American Airlines, 527 F. Supp. 229 (S.D.N.Y. 1981)(A prohibition against an all-braided "corn row" hairstyle was not sexually discriminatory since it was an even-handed policy prohibiting both sexes from wearing a hairstyle which was more often adopted by women.); Hearth v. Metropolitan Transit Comm'n, 436 F. Supp. 685 (D. Minn. 1977); Miller v. Missouri Pac. Ry., 410 F. Supp. 533 (W.D. Mo. 1976); Thomas v. Firestone Tire & Rubber Co., 392 F. Supp. 373 (N.D. Tex. 1975); Jahns v. Missouri Pac. R.R., 391 F. Supp. 761 (E.D. Mo. 1975); Wamsganz v. Missouri Pac. R.R., 391 F. Supp. 306 (E.D. Mo.), *aff'd*, 527 F.2d 1249 (8th Cir. 1975); McConnell v. Mercantile Nat'l Bank at Dallas, 389 F. Supp. 594 (N.D. Tex. 1975); Morris v. Texas & Pac. Ry., 387 F. Supp. 1232 (M.D. La. 1975); *see also* Allen v. United Parcel Serv., 14 Fair Empl. Prac. Cas. (BNA) 888 (N.D. Cal. 1977); Druia v. Delta Airlines, 13 Empl. Prac. Dec. (CCH) ¶ 11,441 (E.D. Mich. 1976); Shardron v. Seaboard Coastline R.R., 9 Empl. Prac. Dec. (CCH) ¶ 10,038 (S.D. Ga. 1975); Kearney v. Safeway Stores, 14 Fair Empl. Prac. Cas. (BNA) 55 (W.D. Wash. 1975).

[29] *See supra* note 22.

[30] 502 F.2d 895 (9th Cir. 1974), *cert. denied*, 422 U.S. 1046 (1975).

[31] 507 F.2d 1084 (5th Cir. 1975)(en banc), *rev'g*, 482 F.2d 535 (5th Cir. 1973).

[32] *Baker*, 507 F.2d at 898.

[33] *Id.* at 897.

[34] *Willingham*, 507 F.2d at 1087.

nation on the basis of grooming standards, rather than on the basis of sex, and was therefore outside the proscription of Title VII of the Civil Rights Act.[35] The court placed the grooming standards within the purview of the employer's right to exercise his informed judgment of how to run his business, rather than within the mandates of equality of employment.[36] Furthermore, the *Willingham* court concluded that the objective of maximizing individual freedom by eliminating sexual stereotypes, even if viewed as a worthy goal, may not be read into the Civil Rights Act.[37] Only distinctions relating to immutable characteristics or legally protected rights are safeguarded. Even these distinctions do not violate the Act if they are applied to both sexes.[38] The *Willingham* doctrine remains a viable tenet in modern cases, and it underlies the reasoning of the *Craft* decision discussed below.

B. *Weight Limitation Cases*

The problem of maximum weight requirements, as an employer grooming standard, has been most frequently raised in cases involving airline defendants.[39] Most airlines require that their female flight attendants do not exceed a maximum weight in proportion to their height and body size based on standard height/weight charts. An applicant's failure to meet the set weight limit results in disqualification for the job, or once hired, results in discharge or suspension.[40]

One major issue in these weight cases is whether weight is an immutable characteristic or not. In *Cox v. Delta Air Lines*,[41] the court stated that weight is neither an immutable characteristic nor a constitutionally protected category.[42] Plaintiff, a flight attendant discharged from duty because she exceeded the maximum weight, alleged that she was being discriminated against because more women are proportionally overweight. The court found plaintiff's theory to

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[35] *Id.* at 1091-92.

[36] *Id.* at 1091.

[37] *Id.* at 1092.

[38] *Id.* at 1092-93.

[39] *See* cases cited *infra* notes 40-46 and accompanying text.

[40] *See, e.g.*, Gerdom v. Continental Airlines, 692 F.2d 602, 604 (9th Cir. 1982)(The airline maintained a policy whereby all hostesses were weighed once a month in full uniform. If this procedure revealed any excess, a weight reduction program was imposed. The hostess was required to lose two pounds per week and her progress was checked. If she failed to meet the scheduled loss, the hostess was suspended and eventually dismissed.), *cert. dismissed*, 103 S. Ct. 1534 (1983); *see also* cases cited *infra* notes 41-46.

[41] 14 Fair Empl. Prac. Cas. (BNA) 1767 (S.D. Fla. 1976), *aff'd*, 553 F.2d 99 (5th Cir. 1977).

[42] *Id.* at 1767.

be inadequate since weight is subject to one's control and not an unchangeable characteristic entitled to Title VII protection.[43] A direct analogy was drawn to the hair length cases where the circuit courts unanimously concluded that standards which allow women, but not men, to wear long hair are not unlawful employment practices.[44] The Fifth Circuit's reasoning in *Cox* has been followed by more recent district court decisions.[45] Some courts, however, have reached contrary results based on the facts of those particular cases.[46]

C. *Dress Code Cases*

Dress codes have also been subject to Title VII challenges where an employer imposes qualitative differences in dress rules for male and female employees.[47] For example, the dress code may require female employees to wear skirts or dresses at all times and/or require male employees to wear neckties at all times. In general, so long as the requirements are equivalent for men and women with respect to the burden that they impose, and the requirements are equally enforced, there is no violation of Title VII.[48] These cases are often reconciled

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[43] *Id.*

[44] *See supra* notes 19-38 and accompanying text.

[45] Air Line Pilots Ass'n Int'l v. United Air Lines, 480 F. Supp. 1107 (E.D.N.Y. 1979)(Maximum weight restrictions were not in themselves discriminatory; however, disparate treatment was found in the application of the standards where airline more frequently and severely disciplined females as compared with males was discriminatory.); Air Line Pilots Ass'n Int'l v. Western Airlines, 23 Fair Empl. Prac. Cas. (BNA) 1042 (N.D. Cal. 1979)(Differing weight standards for males and females is not sex discrimination since weight is a controllable aspect of one's personal appearance and not a "fundamental aspect of life."). *See* Jarrell v. Eastern Air Lines, 430 F. Supp. 884 (E.D. Va. 1977)(Different maximum weight requirements for males and females of the same height, which take physiological differences into account, do not violate Title VII.), *aff'd per curiam*, 577 F.2d 869 (4th Cir. 1978); *see also* Leonard v. National Airlines, 434 F. Supp. 269 (S.D. Fla. 1977)(The court took judicial notice of the fact that flight attendants enjoyed a reputation of competence and "good looks". As long as the weight program was neither artificial, arbitrary nor unnecessary, an employer may make management decisions regarding factors over which an employee has control.).

[46] Gerdom v. Continental Airlines, 692 F.2d 602 (9th Cir. 1982)(The airline's policy of a strict weight requirement was facially discriminatory since the policy applied to an intentionally all-female job classification. Weight limitations, however, are not grooming standards.), *cert. dismissed*, 103 S. Ct. 1534 (1983); Association of Flight Attendants v. Ozark Air Lines, 470 F. Supp. 1132 (N.D. Ill. 1979)(question of fact whether different weight charts for males and females are discriminatory when potential compliance by females is more difficult and is a health hazard); Laffey v. Northwest Airlines, 374 F. Supp. 1382 (D.D.C. 1974)(weight restrictions only for female flight attendants violated Title VII, unless defendant can show that female attendants were rendered physically incapable of performing duties because of weight.), *aff'd*, 567 F.2d 429 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

[47] *See* cases cited *infra* notes 48-56 and accompanying text.

[48] *See* Fountain v. Safeway Stores, 555 F.2d 753 (9th Cir. 1977)(Requirements that male

with the holdings in the "haircut" cases which held that Title VII does not prohibit employers from making employment decisions on the basis of grooming and dress.[49] The dress code cases have found that an application of Title VII in this area is limited to employment policies which discriminate on the basis of immutable characteristics, characteristics which are changeable but involve fundamental rights and characteristics which are changeable but significantly affect the employment opportunities afforded to one sex.[50]

The courts, however, have found violations of Title VII relating to dress codes where an employer requires only one sex to wear uniforms.[51] For example, a violation was found in *Laffey v. Northwest Airlines*,[52] where the airline forbade female cabin attendants to wear eyeglasses but made no such provisions for male cabin attendants.

Similarly, an employer requiring females to wear sexually provocative uniforms may, by itself, be evidence of sexual harassment. Since the employer is required to maintain an atmosphere which is free of sexual harassment, this type of dress code has been found to violate Title VII.[53] In the area of dress code litigation, unlike the hair

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employees wear a tie do not violate Title VII where comparable standards for women are present; attire regulations may be relaxed for one sex without a corresponding relaxation for the other.); Lanigan v. Bartlett & Co. Grain, 466 F. Supp. 1388 (W.D. Mo. 1979)(A rule that prohibited female employees from wearing pants in the executive portion of defendant's office was not a violation of the Civil Rights Act.); *see also* Blowers v. Lawyers Coop. Publishing Co., 25 Fair Empl. Prac. Cas. (BNA) 1425, 1447 (W.D.N.Y. 1981)(A more detailed restrictive standard of dress for females, requiring females who wear slacks to wear a coordinating tunic top or jacket, did not violate Title VII where plaintiffs offered no evidence that adherence to these standards affected their opportunities or reduced their ability to perform their work.). *Contra*, EEOC Dec. (CCH) ¶ 6156 (1970)(An employer violated Title VII by requiring females to wear dresses when males were allowed to wear casual sportswear—especially in view of the fact that the employer only provided men's bicycles for employee use in traveling from one building to another within its industrial complex.).

[49] *See, e.g., Lanigan*, 466 F. Supp. at 1392 ("The court believes that there is no principled distinction between the rationale of the 'haircut' cases and this [dress code] case."). *See also* cases cited *supra* notes 27-38.

[50] *Lanigan*, 466 F. Supp. at 1391.

[51] Carroll v. Talman Fed. Sav. & Loan Ass'n of Chicago, 604 F.2d 1028 (7th Cir. 1979)(Only female employees were required to wear "appropriate business attire."), *cert. denied*, 445 U.S. 929 (1980). *See also* Equal Employment Opportunity Comm'n v. Clayton Fed. Sav. & Loan Ass'n, 25 Fair Empl. Prac. Cas. (BNA) 841 (E.D. Mo. 1981)(Only female employees were required to wear uniforms and contribute to purchase of uniforms.).

[52] 374 F. Supp. 1382 (D.D.C. 1974), *aff'd*, 567 F.2d 429 (D.C. Cir. 1976), *cert. denied*, 434 U.S. 1086 (1978).

[53] Equal Employment Opportunity Comm'n v. Sage Realty Corp., 507 F. Supp. 599 (S.D.N.Y. 1981)(female lobby attendant forced to wear a bicentennial uniform which exposed her thighs, parts of buttocks, and flesh above waist); Marentette v. Michigan Host, Inc., 506 F. Supp. 909 (E.D. Mich. 1980)(waitress required to wear sexually suggestive clothing while waiters were not).

and weight cases, the courts appear more willing to find violations of Title VII.[54] However, even in this category, the courts note the distinction between reasonable[55] and unreasonable[56] dress codes.

Having examined the major categories in which grooming standards and dress codes have been challenged under Title VII, an analysis of the *Craft* decision may now be better understood.

IV. Craft v. Metromedia, Inc.[57]

A. *Factual Background*

Christine Craft filed a four count complaint against Metromedia, Inc. on January 5, 1983, arising out of the termination of her employment as co-anchor of the evening news at KMBC-TV 9 in Kansas City, Missouri. Count I of her complaint alleged that Metromedia, the owner of KMBC-TV, discriminated against her on the basis of sex in violation of Title VII of the Civil Rights Act of 1964.[58] Ms. Craft asserted that she was subject to a rigorous dress code and constant criticism of her appearance regarding dress, makeup and hairstyle, while her male counterparts did not receive such treatment.[59] The remaining three counts are not relevant to the present discussion and will not be analyzed here.[60]

Christine Craft began working at KMBC-TV 9 in December, 1980, as co-anchor of the evening news. Prior to the signing of her employment contract, Ms. Craft expressed her interest in the position so long as it did not involve a "make-over" of her appearance, as she had experienced in a previous job as host of a segment of a CBS Sports Spectacular entitled "Women in Sports."[61] The news director of KMBC explained to Ms. Craft that the station had a consultant who

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[54] *See, e.g.*, cases cited *supra* notes 51-53.

[55] *See* cases cited *supra* notes 48-50 and accompanying text.

[56] *See* cases cited *supra* notes 51-53 and accompanying text.

[57] 572 F. Supp. 868 (W.D. Mo. 1983).

[58] *Id.* at 869-70.

[59] *Id.* at 876.

[60] Count II alleged that defendant paid plaintiff less than her similarly situated male co-anchor in violation of the Equal Pay Act of 1963, 29 U.S.C. § 206(d)(1982). Count III alleged that defendant made intentional fraudulent misrepresentations to induce plaintiff to accept employment. Count IV alleged that defendant's actions toward plaintiff, even if lawful, were intended to injure her and therefore constituted a *prima facie* tort. *Craft*, 572 F. Supp. at 870. *See infra* notes 69-71.

[61] *Craft*, 572 F. Supp. at 870-71. While at CBS, plaintiff's appearance was altered by network makeup specialists. Her hair was cut short and bleached blonde, and she was required to use black eyebrow pencil and dark red lipstick. *Id.* at 871.

worked with on-air personnel in various areas including makeup, clothing, and delivery. Craft admitted her lack of expertise in matters of makeup and hair-styling and indicated her willingness to work with a consultant on her appearance.[62]

Shortly after Craft began her duties as co-anchor, the station's manager and director found her on-air makeup and clothing to be inappropriate on several occasions. The defendant, with the assistance of its consultants, attempted to teach Craft the necessary skills in makeup and clothing. When this approach proved ineffective, management acquired clothing for plaintiff and suggested how it should be worn.[63] At that time, Media Associates, a media consulting firm retained by KMBC, conducted four focus group discussions to examine television viewers' perceptions of KMBC's news programs.[64] The response to Craft and her appearance was overwhelmingly negative. After this study, management found it necessary to implement a clothing calendar for plaintiff and monitor her appearance closely. As a follow-up to the focus groups, a telephone survey was conducted by Media Associates. The results of this survey concluded that Craft was having an extremely adverse impact on KMBC's acceptance among its viewers.[65] Consultants from Media Associates met with the station's management and recommended that Craft be replaced immediately. Management resisted at first but then agreed to remove plaintiff as co-anchor and reassign her to the position of general assignment reporter at no loss in pay or other contractual benefits.[66] Craft did not accept her reassignment and, shortly thereafter, left Kansas City to return to her previous job in California.[67]

In August, 1983, a jury of two men and four women, sitting only in an advisory capacity under rule 39(c) of the Federal Rules of Civil

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[62] *Id.*

[63] *Id.* at 872.

[64] *Id.* at 872-73. A focus group is an accepted technique whereby a small group of individuals with similar demographic characteristics meet to discuss a given subject. Although the results are not statistically significant because of the small sample used, the results may suggest possible trends and areas for further research. *Id.*

[65] *Id.* at 873-74.

[66] *Id.* at 874. The court (citing Haines v. Knight-Ridder Broadcasting, Inc., 25 Empl. Prac. Dec. (CCH) ¶ 31,650 (D.R.I. 1980)) found that consultant reports and ratings routinely serve as a basis for personnel changes. The court stated that the station's management was entitled to rely on the results of the telephone survey since the survey was found not to be sexually biased but was a routine procedure to evaluate many areas of news operation and was conducted by persons experienced in the field of broadcast research. *Id.* at 878-79.

[67] *Id.* at 875.

Procedure,[68] found that Metromedia sexually discriminated against Craft in violation of Title VII of the Civil Rights Act of 1964.[69] The District Court, in an opinion by Judge Joseph E. Stevens, did not follow the advisory verdict of the jury[70] and entered judgment in favor of Metromedia, finding no discrimination.[71]

B. *Holding and Rationale*

The District Court held that the actions taken by Metromedia in regard to Craft's appearance, including instruction in makeup and clothing, acquisition of clothing, and implementation of a clothing calendar with close monitoring of her appearance, were not sexually discriminatory within the proscriptions of Title VII but were necessary and appropriate measures considering plaintiff's shortcomings.[72]

Judge Stevens began his reasoning with the theory that Title VII was not intended to interfere with a private employer's promulgation and enforcement of personal appearance regulations. Different dress and grooming requirements for male and female employees do not constitute an unfair employment practice under the Civil Rights Act.[73]

Stevens analogized the Craft situation to earlier decisions which have considered grooming and dress standards, such as the "hair"

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[68] There is no right to a jury trial in a discrimination action brought under Title VII of the Civil Rights Act. *See, e.g.*, Harmon v. May Broadcasting Co., 583 F.2d 410 (8th Cir. 1978).

[69] *Craft*, 572 F. Supp. at 870. (*See supra* note 60 for Counts II, III, and IV.) The jury returned a verdict for Metromedia under Count II. On Count III, the jury found in favor of Craft and awarded actual damages of $375,000 and punitive damages of $125,000. Count IV was abandoned during trial and was not submitted to the jury. *Id. See infra* note 71.

[70] The court noted that "this court is 'at liberty to accept or reject the advisory verdict.' " *Id.* at 870 (quoting Chicago & N.W. Ry. v. Minnesota Transfer Ry., 371 F.2d 129, 130 (8th Cir. 1967)).

[71] *Craft*, 572 F. Supp. at 882. As to Count II, the district court denied plaintiff's motion for a new trial on the Equal Pay Act claim. On Count III, the court denied defendant's alternative motions for judgment notwithstanding the verdict or for remittitur, but granted defendant's motion for a new trial on the fraud issue. *Id.* Judge Stevens found that the jury award of $500,000 was excessive and the result of "passion, prejudice, confusion or mistake on the part of the jury" attributable to instructional errors and to "incessant and overwhelming trial publicity" warranting a new trial on this issue. *Id.* at 881-82. A retrial solely on the fraud issue (Count III) took place on January 4, 1984, in the western district of Missouri (S.W. Division at Joplin, Mo.). Judge Stevens presided over the second trial as well. On January 13, 1984, the twelve member sequestered jury awarded Ms. Craft $325,000 in damages, $225,000 in actual damages and $100,000 in punitive damages. Craft v. Metromedia, Inc., No. 83-0007-CV-W-8 (W.D. Mo. Jan. 13, 1984).

[72] *Craft*, 572 F. Supp. at 876-79.

[73] *Id.* at 879.

cases.[74] The *Craft* court, quoting *Fagan v. National Cash Register Co.*,[75] stated:

> Perhaps no facet of business life is more important than a company's place in public estimation. That the image created by its employees dealing with the public when on company assignment affects its relations is so well known that we may take judicial notice of an employer's proper desire to achieve favorable acceptance. Good grooming requirements reflect a company's policy in our highly competitive business environment. Reasonable requirements in furtherance of that policy are an aspect of managerial responsibility.[76]

The court noted that dress code decisions are aimed at a company's choice of how to run its business and not to its obligation to provide equal employment opportunities.[77] An employer is not required to account for an employee's personal preferences regarding grooming or dress habits.[78]

Applying the rule from earlier grooming cases to the *Craft* facts, the court found that Metromedia's standards of appearance were not discriminatory *per se* since both men and women were required to maintain a professional, business-like appearance in accordance with community standards.[79] The evidence showed management's consistent concern about all on-air personnel without regard to sex, but with regard to the peculiar characteristics of each employee.[80] Craft had difficulty with her appearance, therefore, management, as it had done with other employees, found it necessary to offer her advice, criticism and assistance tailored to fit her individual needs.[81] Since

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[74] *Id.* at 877.

[75] 481 F.2d 1115 (D.C. Cir. 1973).

[76] *Id.* at 1124-25.

[77] *Craft*, 572 F. Supp. at 878 (quoting *Lanigan*, 466 F. Supp. at 1392).

[78] *Id.*

[79] *Id.* at 877-78.

[80] *Id.* at 875. The court found that other employees, both male and female, were subject to specific grooming standards when management detected an individual problem. (For example: a female weekend co-anchor was educated on makeup and clothing with analysis and recommendations made in areas of weight and hairstyles; a male co-anchor was given directions regarding his choice of shirts while on-air; a male reporter was told to blow-dry his hair, try contact lenses and change his on-air makeup; a male weekend weatherman was told to lose weight and improve his wardrobe; a male reporter was told to lose weight and improve his wardrobe; a male newscaster was told to change his hairstyle.) *Id.*

[81] *Id.* at 872-73. Judge Stevens, in dicta, stated that, "[Craft's] affinity for the casual beach life and her apparent indifference to matters of appearance required defendant to formulate and implement corrective measures appropriate to her unique circumstances." *Id.* at 879.

television is a visual medium, reasonable dress and grooming requirements are critical to a station's economic well-being.

The court concluded by saying that Metromedia's actions toward Craft were not based on sex, "with one notable and ironic exception: but for the fact that she is a female, plaintiff would not have been hired as a co-anchor in December, 1980, regardless of her other abilities.[82] Thereafter, defendant's treatment of plaintiff was the result of factors other than sex."[83]

V. Analysis of the Craft Decision and the Future Outlook in Grooming and Dress Code Litigation

The *Craft* court's conclusions of law on the grooming issue are brief.[84] As noted earlier, Judge Stevens discussed Metromedia's right as an employer to promulgate reasonable grooming and dress standards and then found that the standards used were not enforced in a sexually discriminatory manner.[85]

The vast majority of grooming and dress code cases, in the past ten years, have shown a trend towards allowing an employer the right to exercise his informed judgment as to how he can "best run his shop."[86] The general rule that has evolved from these cases is that even though dress or grooming policies may be different or have a different effect on males or females, they are not discriminatory *per se*.[87] In light of this general rule, the *Craft* decision appears to be correct. However, a closer analysis of the court's opinion reveals that the *Craft* decision may not be as matter-of-fact as Judge Stevens found it to be.

The holding in the *Craft* case, more so than in the hair length cases, gives an employer enormous discretion in imposing dress and appearance requirements on his employees. Furthermore, allowing an employer to promulgate and enforce such standards in all situations may lead to abuse. When an employer is given the opportunity to utilize a subjective standard in making an employment decision, such as Metromedia's decision to reassign Craft based on grooming and dress standards, the presence of the employer's underlying personal biases or discriminatory stereotypes is always a risk. The use of

[82] Based on research and the presence of co-anchors at KMBC's competitors, management determined that KMBC should adopt a co-anchor format, and in order to "soften" the "cold" image of its news presentation, it decided that the co-anchor should be a woman. *Id.* at 871.

[83] *Id.* at 879.

[84] *Id.* at 876-79.

[85] *Id.*

[86] *See* cases cited *supra* notes 14-56.

[87] *Id.*

"grooming codes" are susceptible to employer practices which, under a facade of apparent neutrality, may indirectly circumvent the discrimination proscribed by Title VII.

Most "hair" cases typically involve a grooming standard that, although not completely objective, reasonably may be measured. A typical "hair length" rule may state that an employee may not keep his hair more than one inch over the ears or below the collar of his shirt. This objective quality is especially present if the rule is written, but even an unwritten rule leaves less room for subjectivity than other forms of dress and grooming codes. The *Craft* case, however, leaves more subjectivity and room for personal bias in the criteria involved—Ms. Craft's hairstyle, choice of clothing and whether or not her makeup is properly applied.

There is nothing inherently unlawful about the use of subjective criteria when an employer makes a management decision.[88] The Eighth Circuit has noted that "[subjective criteria] are not to be condemned as unlawful per se, for in all fairness to applicants and employers alike, decisions about hiring and promotion in supervisory and managerial jobs cannot realistically be made using objective standards alone."[89] However, when subjective criteria are the focus of a discrimination claim, the court should exercise greater caution in applying a general rule which may advance an employer's hidden biases. A two-tier analysis may be helpful. The court should first examine the particular facts of the case before it in detail. This was done in the *Craft* case at length by Judge Stevens.[90] The court should then decide whether to apply the general rule of the "similar" cases. It is here that the *Craft* decision lacks merit. The court automatically applied the general grooming rule found in the more objective hair and dress code cases without determining whether the cases are indeed compatible in view of the more subjective nature of the grooming standards in *Craft*. The general rule which holds that dress codes are not *per se* unlawful discrimination has evolved from the approach taken in the "hair" cases.[91] If it is determined that the *Craft* case, or similar cases, allows too much discretion and subjectivity in the hands of the employer, courts should not automatically borrow the more objective general grooming rule.

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[88] *See* Rogers v. International Paper Co., 510 F.2d 1340 (8th Cir. 1975), *vacated and remanded on other grounds*, 423 U.S. 809 (1975), *enforced*, 526 F.2d 722 (8th Cir. 1975).

[89] *Id.* at 1345.

[90] *Craft*, 572 F. Supp. at 870-76.

[91] *See supra* notes 19-38 and accompanying text.

The summary rationale used by the *Craft* court is also not sufficient when one is dealing with such an important issue—the right to be free from employment discrimination based on one's sex. Even if a more in-depth inquiry will result in the same conclusion, the court should nevertheless examine all the relevant factors typically examined in grooming and dress code cases before applying the general rule.

One factor commonly discussed in grooming cases, not mentioned in *Craft*, is whether the standards relate to "immutable" or changeable characteristics. As noted in Part III, some courts have suggested that Title VII forbids discrimination only on the basis of immutable characteristics.[92] This argument would in fact strengthen the *Craft* decision, since none of the requirements related to immutable characteristics. The *Craft* court failed to consider another factor often considered by other courts: whether Metromedia's grooming standards affected Craft's "fundamental rights"—an aspect of fourteenth amendment protection.[93]

The *Craft* court concluded that there was no discrimination based on sex since both men and women were required to maintain a professional, business-like appearance.[94] Furthermore, the court noted that management was concerned with all on-air personnel's peculiar characteristics regardless of sex.[95] However, this analysis begs the question. The court is merely saying that there were standards for both males and females which have been enforced at times in the past. The court does not examine whether there is equal enforcement of these standards or whether the differing requirements for males and females are equivalent to the burden they impose on each sex.[96] What does it mean to maintain a professional appearance "consistent with community standards"? Is the burden to sustain this appearance equivalent for males and females? What if the community practices sex discrimination?

VI. Alternative Approaches

When subjective criteria are the focus of a sex discrimination claim in a grooming code case, courts must be cautious in applying the

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[92] *See, e.g.*, *Baker*, 507 F.2d at 897; *Fagan*, 481 F.2d at 1125; *Bujel*, 384 F. Supp. at 145.

[93] *See, e.g.*, *Earwood*, 539 F.2d at 1351; *Willingham*, 507 F.2d at 1092-93; *Lanigan*, 466 F. Supp. at 1391.

[94] *Craft*, 572 F. Supp. at 877.

[95] *Id.* at 878. *See supra* note 80.

[96] *See supra* notes 48-53 and accompanying text.

general "grooming rule." A grooming or dress code should not be used as a neutral facade to cover up an employer's personal biases or stereotypes.

There are three alternatives the courts may follow when faced with future grooming cases that differ factually from the "hair" cases. The court may, as it did in *Craft*, find the presence of a grooming code which is applied to both males and females and then invoke the general rule finding no discrimination. As discussed in the analysis of the *Craft* decision, this approach ignores important factors that should be examined in any sex discrimination suit. Some of the factors include an analysis of whether there are immutable characteristics present, the presence of fundamental rights, whether there is equal enforcement to both sexes and an equal burden imposed on each sex, and whether the code itself can be objectively or subjectively measured. As noted in Part V, this approach may lead to employer abuse. Allowing an employer to utilize a dress or appearance policy, without drawing a line as to when it becomes unlawful under Title VII, may allow the perpetuation of sex discrimination while hiding behind the protection of a so-called "grooming code."

A second approach, when dealing with a highly subjective appearance standard, is to examine the subjective criteria to see if its use was meaningfully employed in a professional or intelligent manner before applying the general grooming code rule. A factor that should be considered under this approach is whether adherence to the grooming rule is necessary to successful job performance. Another factor is whether the standard is reasonable and rational. Examination of similar business or industry practice may be supplied as evidence to answer this question. The courts must also look to see if the appearance standards are unduly vague or arbitrary. Safeguards should be instituted against intrusions of bias such as the use of an appeals or review committee. It is not clear from the summary *Craft* reasoning whether the case would have come out the same way under this approach.

The third and probably most viable approach would invoke a "business necessity" type test that is analogous to the bona fide occupational qualification defense.[97] An employer may invoke a BFOQ defense where discrimination is found if it is "reasonably necessary to the normal operation of the particular business or enterprise."[98] Although the BFOQ defense is not usually applicable in grooming code

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[97] *See supra* notes 9-13 and accompanying text.

[98] Civil Rights Act of 1964, § 703(e), 42 U.S.C. § 2000e-2(e)(1976).

cases,[99] a similar type of business necessity test may nevertheless be invoked. The test under this approach would be for the court to balance the right of the employer to run his business in a manner which he perceives to be economically profitable against the harm resulting to the individual employee's life-style as a result of the employer's decision.

Under this third approach, Metromedia's rights clearly outweigh Ms. Craft's rights; therefore, the court's conclusion appears to be correct. This is not to say that it would turn out this way in all grooming cases but, because of the particular factual setting in this case, Metromedia should prevail. As the facts demonstrate, the defendants met their burden of proof by a preponderance of the evidence under this test.[100] Metromedia demonstrated the importance of Craft's appearance in view of her highly visible role as co-anchor of the evening news,[101] her below average aptitude in matters of clothing and makeup,[102] the negative results from the focus group discussions,[103] which were confirmed by the follow-up telephone survey,[104] and KMBC's consistent concern over the appearance of all its on-air personnel, both male and female.[105]

The court recognized the importance of television as a visual medium, and that reasonable requirements are critical to Metromedia's well-being.[106] Decisions about news anchors are made primarily on the basis of ratings or other measurements of the size of a viewing audience. Ratings are very important in the television industry because they have a direct effect on revenues paid by advertisers.[107] In view of these findings, Metromedia's right to promulgate and enforce

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[99] Since grooming rules are typically held to be outside the proscriptions of Title VII, and thus not sexually discriminatory, the BFOQ justification (a defense used by employers in a sex discrimination suit) is usually not applicable in a grooming code case. *See supra* notes 27-50 and accompanying text.

[100] In general, the burden of proving the alleged sex discrimination is on the plaintiff at all times, and she bears the ultimate burden of proving that defendant intentionally discriminated against her because of her sex in violation of Title VII (*see, e.g.*, Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981)). However, in the third approach noted in the text, when highly subjective criteria are involved, the defendant must also meet the burden of proving that the subjective criteria are reasonable, not arbitrary, and are necessary to run his business efficiently. The plaintiff will still have the usual burden described by the Supreme Court in *Burdine*.

[101] *Craft*, 572 F. Supp. at 873-76.

[102] *Id.* at 872-73.

[103] *Id.*

[104] *Id.* at 873-74.

[105] *Id.* at 875.

[106] *Id.* at 877.

[107] *Id.* at 876.

reasonable standards typical in the industry was a crucial concern. On the other side of the scale, the harm resulting to Christine Craft's lifestyle was minimal. The standards were applied only when she was "on-air," a small portion of the day, and no permanent changes were required which would carry over to her personal life, unlike a plaintiff who is required to cut his hair or shave his beard.

VII. Conclusion

The initial purpose of the Civil Rights Act has been to abolish race discrimination, and, more recently, it has been applied to sex discrimination. As the *Craft* case demonstrates, females in television are still expected to give substantial attention to wardrobe, makeup and hairstyles. Evidence shows that local stations tend not to employ women anchors over the age of forty.[108] This prejudice and discrimination may not lie with a station's management but with the demands of the public reflected in the ratings. It would be unfair for a court to punish the broadcaster when the unfair standards are applied by a discriminatory public.

Since the *Willingham*[109] and *Baker*[110] decisions, courts have shown a trend towards allowing an employer to promulgate and enforce grooming and dress codes as part of his right to exercise his informed judgment as to how he can "best run his shop."[111] Even when a dress or grooming policy is different or shown to have a different effect on males and females, the policy is not discriminatory *per se*.[112]

Although the court was correct in applying the general grooming code rule in the *Craft* case, courts should be cautious in applying this rule in every dress and grooming code litigation. Employer grooming standards often contain very subjective criteria. When a subjective definition is used in making an employment decision, the risk of inherent bias or discrimination by an employer is always present. The use of a grooming code must *not* be made susceptible to employer

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[108] A survey by Audience Research & Development, a Dallas news consulting company, recently showed that out of 1,200 local news anchors across the country, 48 percent of the men and only 3 percent of the women were over the age of 40. While only 16 percent of the men were over age 50, there were no women in local anchor jobs in this age category. N.Y. Times, Aug. 6, 1983, at 44, col. 4.

[109] *Willingham*, 507 F.2d at 1085. *See supra* notes 30-38 and accompanying text.

[110] *Baker*, 507 F.2d at 895. *See supra* notes 30-38 and accompanying text.

[111] *See supra* notes 27-48 and accompanying text.

[112] *Id.*

practices which, although appearing to be neutral, indirectly circumvent the discrimination proscribed by Title VII of the Civil Rights Act.

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