

ATTACHMENT 1

IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA,  
DEPARTMENT OF HIGHWAYS AND  
TRANSPORTATION,

Defendants.

CIVIL ACTION NO.  
82-0933-R

AFFIDAVIT

I, William Bradford Reynolds, being first duly sworn,  
do hereby depose and state as follows:

1. I am the Assistant Attorney General, Civil Rights  
Division of the United States Department of Justice, and have  
been since July, 1981.

2. In my capacity as Assistant Attorney General for  
Civil Rights, I helped to formulate, and announced to Congress  
in testimony dated September 23, 1981, Department policy for  
the kinds of relief to be sought in cases brought by the Depart-  
ment alleging employment discrimination under Title VII of  
the Civil Rights Act of 1964, and other provisions of federal  
laws prohibiting employment discrimination. Under that policy,  
the Department of Justice does not rely on hiring or promotion

quotas, goals or other numerical formula which require or support preferences based on race, religion, sex or national origin. See my Testimony before the Subcommittee on Equal Opportunity of the House Committee on Education and Labor dated September 23, 1981, p. 5. Instead, the Department insists upon nondiscriminatory hiring and promotion, and enhanced recruitment efforts directed principally at communities that have in the past not been reached by the employer's recruitment. Id. pp. 13-16. In addition, the Department seeks specific relief for persons who have been harmed by the prior discriminatory practices of the defendant. Ibid.

3. In my capacity as Assistant Attorney General for Civil Rights, I personally reviewed the results of the Justice Department's investigation of the employment practices of the Virginia Department of Highways and Transportation. Based on that investigation and review, I signed the attached letters dated February 5 and 8, 1982 to the Attorney General of Virginia and to the Governor of Virginia, advising them of the results of the investigation and of our conclusions that the Virginia Department of Highways and Transportation was engaged in a pattern of discriminatory employment practices in violation of Title VII. The letters advised counsel of the corrective measures believed necessary, and invited the defendant to resolve the matters without contested litigation. See attachments A & B hereto.

4. I reviewed on several occasions the settlement proposals in the form of consent decrees offered on behalf of the United States by the attorneys in the Civil Rights Division. The terms ultimately agreed upon by the parties were accepted by me as being consistent with the policy of this Department and warranted by our investigation of the facts.

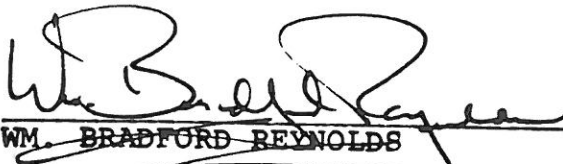
5. Accordingly, I authorized the filing of the Consent Decree, along with the complaint, in this matter.

6. I was and am satisfied that the Consent Decree tendered to the Court on December 30, 1982, did not require the defendant to engage in preferences based on race or sex for the benefit of persons who were not victims of prior practices, and that the Decree was not intended to require and did not contemplate any such preference. I would not have approved the proposed Decree if in my judgment it had done so.

7. Nevertheless, after reviewing the Court's opinion dated January 6, 1983, I again reviewed the proposed Decree in light of the opinion. I subsequently determined that the Decree did not as clearly preclude any possibility of preferences as I believe the parties intended. Accordingly, I directed that our attorneys propose to defendant that a sentence be added to paragraph 9 of the Decree and that other modifications be made to help clarify that intent.

8. As a result, counsel for the plaintiff submitted a draft decree to counsel for the defendant, and further negotiations took place. I participated in those negotiations in part through telephone conversations with the Attorney General of Virginia. As a result of these further negotiations, counsel for the defendant and plaintiff in this case have reached agreement on a modified Consent Decree.

9. On February 18, 1983, I reviewed the Consent Decree, as modified, and signed the motion for entry of the consent decree. I am satisfied that the consent decree as modified does not require or contemplate any hiring or promotion quota, goal or other numerical formula which requires or supports preferences based on race or sex; and that the decree as modified clearly reflects the policy of this Department.

  
WM. BRADFORD REYNOLDS

Sworn and Subscribed before me  
this 18th day of February, 1983

  
NOTARY PUBLIC

My Commission Expires: 7/14/84

FEB 5 1982

Honorable Gerald L. Baliles  
Attorney General of the  
Commonwealth of Virginia  
1101 East Broad Street  
Richmond, Virginia 23219

Dear Mr. Attorney General:

I am writing to inform you of the results of our investigation of employment practices of the Virginia Department of Highways. The purpose of this investigation was to determine whether Virginia Department of Highways (VDH) has afforded equal employment opportunities to blacks and females as required by Title VII of the Civil Rights Act of 1964, as amended.

We have concluded that the VDH is engaged in a pattern and practice of discriminatory employment practices with respect to blacks and females in the State of Virginia. This conclusion has been reached after an extensive investigation. We have met with VDH personnel and attorneys from your office on several different occasions requesting information that would help us to reach a conclusion in this matter.

The information available to us indicated that as of November 1980, the VDH employed approximately 11,509 persons of whom approximately 9.5% were black and 11.6% were female, while the civilian labor force for the State of Virginia is 17.2% black and 39.5% female. This number of black and female employees is disproportionately small as compared to the actual applicant flow percentages for those groups and to their availability in the labor market. These statistics standing alone constitute a prima facie case of hiring discrimination. International Brotherhood of Teamsters v. United States, 431 U.S. 324, 333-40 (1977); Hazelwood School District v. United States, 433 U.S. 309 (1977); United States

V. County of Fairfax, Virginia, 629 F.2d 932 (4th Cir., 1980), certiorari denied Jan. 12, 1981; Barnett v. W.T. Grant Co. 518 F.2d 543 (1975).

A majority of the blacks (52.5%) work in service and maintenance jobs, while only 27.6% of the whites employed work in such jobs. Approximately 70% of the female employees are assigned to clerical jobs while only 5% of the male employees are so assigned. There appears to be not one (0) black out of the more than 100 managers and officials, and few blacks or women in professional positions. The VDH utilizes subjective assignment and promotion procedures which vest discretion in supervisory personnel, almost all of whom are white males. Such procedures, coupled with the low numbers of blacks and females in the higher paying upper level job classifications of the VDH, establish discrimination in assignment and promotion, since those procedures cannot be justified by business necessity. Rowe v. General Motors Corp., supra. See, Griggs v. Duke Power Co., 1977; Fisher v. Proctor and Gamble Mfg. Co., 613 F.2d 527 (5th Cir. 1980).

Section 707 of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e(6), places responsibility on the Attorney General, if he believes a pattern or practice in violation of Federal law exists, to bring suit in the appropriate District Court. I have authorized a suit under this statute with regard to the Virginia Department of Highways.

The purpose of this letter is to advise you of the corrective action program we believe is necessary, and to solicit your cooperation in an effort to achieve such a program without contested litigation. Such a program should include:

1. The adoption and implementation of an intensive recruiting program designed to inform blacks and females of job opportunities and to attract qualified black and female applicants in numbers at least comparable to their representation in the relevant labor market, so as to correct the effects of past practices. The program should pay particular attention to the recruitment of black and female professionals, and to the recruitment of females generally for non-traditional jobs.



2. The discontinuance or reform of subjective selection procedures which have had a disparate impact on blacks and females, and the future hiring, assignment and promotion of blacks and females pursuant to fair and non-discriminatory procedures and practices.

3. Victims of past discrimination should be hired or promoted into positions that they would have attained absent past discrimination. Such relief should include back pay and related benefits, including retroactive seniority. See, e.g., Albemarle Paper Co. v. Moody, 422 U.S. 406 (1975); Franks v. Bowman Transportation Co., 424 U.S. (1976).

Any corrective action program should take the form of a consent decree.

If you wish to arrange discussions looking toward settlement of this matter, please let us hear from you within twenty (20) days from the date of this letter. If you have any questions, please feel free to contact David L. Rose, Chief of the Federal Enforcement Section, Civil Rights Division, or Squire Padgett (202) 633-3875 and Teresa Johnson (202) 633-6171, the attorneys to whom this matter is assigned.

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Sincerely,

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Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division

WBR:DLR:TJ:jm  
DJ 170-79-75

FEB 8 1982

Honorable Charles S. Robb  
Office of the Governor  
State Capitol  
Richmond, Virginia 23219

Dear Governor Robb:

This letter is to inform you that we have concluded our investigation of the Virginia Department of Highways and Transportation. Our investigation was conducted pursuant to Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. §2000e et seq.

In the attached letter to Attorney General Balliles, we explain the basis for the determination that the Virginia Department of Highways and Transportation is in violation of Title VII because it discriminates on the basis of race and sex in hiring and promotion assignments. The letter also sets forth the terms of the remedy we were seeking.

We hope we will be able to resolve this matter without contested litigation. We plan to proceed through contact with the Attorney General, in regard to our claims against the Department of Highways and Transportation, unless we are advised that other counsel has been designated.

Sincerely,

Mr. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division



DEC 5 1982

Honorable Gerald L. Baliles  
Attorney General of the  
Commonwealth of Virginia  
1101 East Broad Street  
Richmond, Virginia 23219

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The information available to us indicated that as of November 1980, the VDH employed approximately 11,309 persons of whom approximately 9.31 were black and 11.61 were female, while the civilian labor force for the State of Virginia is 17.21 black and 39.31 female. This number of black and female employees is disproportionately small as compared to the actual applicant flow percentages for those groups and to their availability in the labor market. These statistics standing alone constitute a prima facie case of hiring discrimination. International Brotherhood of Teamsters v. United States, 431 U.S. 324, 339-40 (1977); Hazelwood School District v. United States, 433 U.S. 309 (1977); United States

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Sincerely,

Wm. Bradford Reynolds  
Assistant Attorney General  
Civil Rights Division