

# Text: 'plans and goals absent'

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opened the opportunity) "all professionally qualified candidates."

Lack of understanding by departments, or simply hostility toward the concept of Affirmative Action would explain poor responses like those listed above; however, it does not explain the failure of the vice-presidents or the top administrative officials to reject these poor instances of compliance. Instead of utilizing the opportunity to educate a department about the intent of Affirmative Action and the commitment of the University to Affirmative Action, instead of refusing to authorize hiring when flagrant violations of the Affirmative Action Commitment occurred, these positions were authorized and departments understood this behavior to imply that Affirmative Action could, with the administration's blessings, be treated lightly. Considering that the HEW Compliance Statement represents a mere after the fact rationalization, it could have received token commitment, but its fate did not include even that.

For the second year of the HEW Compliance Statement, the word "and" between minorities and women is being underlined; upon that emphasis (?) will impress upon departments the importance of Affirmative Action. However, it was not in the form that the major problem—it was in the implementation. Commitment and aggressive monitoring of that form's content, that is, aggressive recruitment of minorities and women, must be forthcoming from the vice-presidents. Where the implementation is not adequate as judged by the vice-presidents and the Office of Affirmative Action, the authorization must be denied. When a department realizes that positions may be lost and subsequently budgets reduced by the continued practice of discriminatory hiring, then their talents and resources are more likely to be utilized to identify new, successful equal employment recruiting and hiring methods. More desirable, the vice-presidents will convey their commitment before punitive incentives need be applied; further through the use of positive incentives to departments that comply, other departments will follow suit. If freezing positions will not be considered by top administrative officials, then at least they must be willing to refuse authorization to a department obviously out of compliance.

It would appear, therefore, that the top administrative officials are reluctant to recognize the authority they possess to create true change in hiring procedures. Until they are willing to exercise their authority to fulfill the commitment and responsibility they have to Affirmative Action, change in hiring procedures will be minimal.

**Ethnic Information**  
The systematic collection of ethnic information has raised concern about violating the rights of ethnic persons. Laws have in the past argued against the use of ethnic information to deny employment. Therefore, it was forbidden to request ethnic data for purposes of employment discrimination. These laws speak to the use of ethnic data. Affirmative Action goals necessitate information on ethnic identity. Viable and attainable goals for recruitment are influenced by the ethnic composition of the applicant flow. If the applicant flow includes members of ethnic groups, the University is obligated to examine the past treatment of these applicants to determine if ethnically biased criteria is rejecting them. If, however, the University does not examine how minorities are processed, it will not be able to identify a part or parts of the process that are, in fact if not in intent, discriminatory against minorities. The task of compiling ethnic information is challenged and resisted on the grounds of violating the constitutional rights of individuals as well as violating laws against the compilation of this kind of material. The University is clear in its intent, i.e. to prevent discrimination on the basis of race or national identity. In its Affirmative Action thrust, the University is seeking to utilize this data to prevent discrimination against minorities; therefore, the legal intent is not being violated.

Historical patterns demonstrate that the ethnic factor was used for purposes of discrimination, even though it wasn't included in the application form. The discrimination against minorities made obvious by the number of minorities dropped out, poor jobs, poor promotion, etc., did not raise a cry of concern about violating the constitutional rights of those individuals. When the data was requested for correcting past patterns, the concern for protecting minorities received converts.

The implementation of ethnic data compilation will be crucial. If it is incorporated into the normal procedure of requesting, address, phone number and social security number, it will be more normally accepted. Where its compilation is qualified, stressed, apologized for, then it will be viewed as an imposition, as unnatural, and ethnic persons may be moved to resent this apologetic (?) intrusion into their lives.

The University will have to determine if ethnic information is necessary for self-evaluation and monitoring of employment practices. If it is necessary, and I suggest it is mandatory, then they have the responsibility for designing an effective means to compile the needed data. And it must guard against creating "straw men" in their arguments.

**Underutilization**  
Underutilization in the administrative ranks will perhaps prove the most difficult to alter. Departments with large numbers of women have developed and maintain exclusive patterns of male hiring of administrative positions. Criteria used to recruit and hire for the top administrative positions needs to be examined to determine how its sex and ethnic bias is manifested. To argue that there is no sex and ethnic bias before a thorough study occurs, represents questionable intent. This problem of discrimination in employment must be addressed through careful and thorough examination and move beyond the realm of opinion and threatened egos.

Good Faith Efforts

The University necessarily will strive to  
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establish that it demonstrated a "good-faith effort." They will argue that although goals were not achieved or only partially achieved, the effort expended was in good faith. Because a legal definition of good faith does not exist, a determination of good-faith is highly subjective. Good-faith guidelines found in one preliminary draft include: Data Collection, Reporting Procedures, Policies Developed, Results which Reflect Substantial Change, Difference in the Composition of the Work Force. The preparation, the criteria used to determine goals becomes highly important. Were goals arrived at through careful analysis and planning or were they designed to fail through poor planning, inadequate analysis, etc. Proving good faith, therefore, will involve an analysis of the preparation and planning for goals, as well as the implementation of those plans and the subsequent achievement or non-achievement of the goals themselves.

The problem of good-faith, however, extends beyond the absence of specific, objective definitional criteria. An equally important question is the validity of introducing good-faith into the legal realm. Affirmative Action as a program is created to deal with a specific problem: employment discrimination on the basis of sex, race, or national origin.

The program should seek to identify patterns of discrimination on the basis of sex or ethnic identifications occurring within the employment realm: recruitment, hiring, promotion, demotion, salaries, retention, terminations, etc. The program, then, should include a plan for altering these patterns and eliminating the discriminatory practices. If the practices or patterns change, the unlawful activity is disengaged. If the practices remain unaltered, the institution remains engaged in unlawful activity. Whether its intent or good-faith is good or bad should be inconsequential. In an oral presentation, Harry Edwards from the

University of Michigan Law School maintained: "Good intent does not redeem discriminatory procedures." He offers an expansion of this premise in his prepared text, **The Law and Personnel Policies: The Need for Equity in Minority Hiring:** The Supreme Court has recently made it clear that in measuring "discrimination under Title VII of the Civil Rights Act of 1964: "... good intent or the 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 Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation..." Once you understand that we are dealing with "effects," and not merely motives, in situations of alleged employment discrimination, then the caselaw is more easily comprehended.

Therefore, energies expended in establishing good-faith efforts; i.e. written documentation (letters in triplicate, memorandums, records of phone conversations, etc.), extensive records, etc., can represent a distortion of original intent. Individuals striving "to prove" good-faith effort might have more successfully utilized their energies meeting numerical goals. The Affirmative Action thrust must be directed at results rather than efforts.

OFFICE OF AFFIRMATIVE ACTION

The Director of Affirmative Action is a Special Assistant to the President. The potential for communication was great. The opportunity for minority input on Affirmative Action was available. Unfortunately the office was grossly underutilized. In fact, President Clark did not schedule meetings with the Interim Director; nor did he ask his Special

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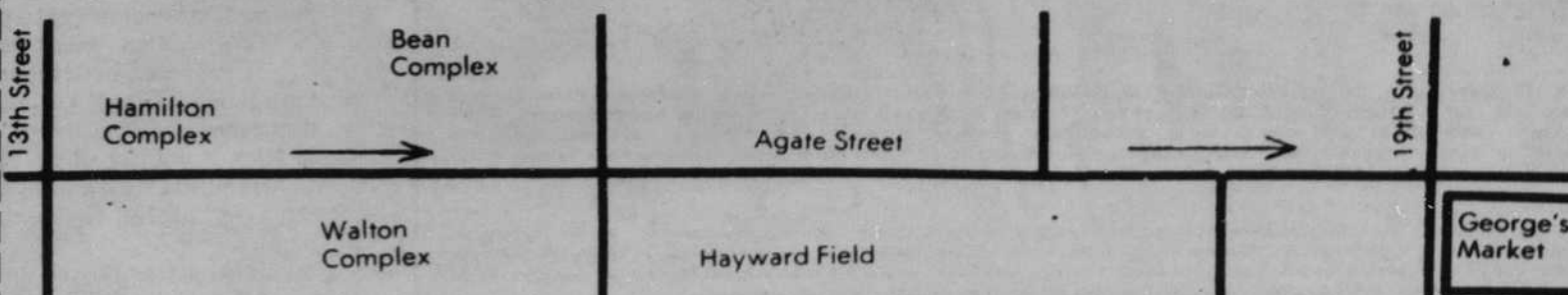
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