

## Supreme Court Addresses Race Bias Proof Issue.

The United States Supreme Court recently issued a ruling making it somewhat easier for plaintiffs in race discrimination cases to succeed with their claims. Two black employees of Tyson Foods, Inc., sued the company when they sought promotions to shift manager positions but two white males were selected instead. Suit was brought under Title VII of the Civil Rights Act of 1964, which makes intentional race discrimination in employment illegal.

The plaintiffs produced evidence that the plant manager, who made the hiring decision, had referred to them as “boys.” The Eleventh Circuit Court of Appeals (the circuit in which Alabama federal courts are located) held that use of such term, without some other modifier (such as “black”), was insufficient to indicate discriminatory intent. The Supreme Court disagreed, stating that a court may not assume that the term, standing alone, is always “benign.” Instead, a “speaker’s meaning may depend on various factors including context, inflection, tone of voice, local custom, and historical usage.” In other words, a court must consider the latter factors to properly determine whether use of such a term reflects race bias. *Ash v. Tyson Foods, Inc.*, No. 05-379 (Feb. 21, 2006).

Tyson Foods had also taken the position that the plaintiffs were not hired for a permissible reason, namely, the individuals selected were better qualified. The plaintiffs challenged this reason, claiming it was a mere “pretext” (a “smoke screen” to cover up the real, discriminatory reason). To show pretext, they introduced evidence indicating that they, in fact, had superior qualifications. The Court of Appeals had stated that, to support an inference of pretext, a disparity in qualifications had to be so dramatic as to “virtually jump off the page and slap you in the face.” While not stating what the standard should be, the Supreme Court did reject that statement as “unhelpful and imprecise.” It did cite an Eleventh Circuit case in which the following statement of when a difference in qualifications might provide the basis for finding pretext: the “disparities in qualifications must be of such weight and significance that no reasonable person, in the exercise of impartial judgment, could have chosen the candidate selected over the plaintiff for the job in question.” *Id.*

One clear lesson from this case is the need for care by supervisors and other officials involved in hiring decisions in their workplace remarks. Language that, while not reflecting bias overtly or by itself, has negative racial or gender connotations due to history and usage may end up as evidence with respect to a discrimination claim.