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DAVID W. OGDEN

January 2, 1992

California Supreme Court
303 2nd Street
South Tower, 8th Floor
San Francisco, California 94107

Honorable Chief Justice and Justices of the California
Supreme Court:

We represent the American Psychological Association ("APA"), and on APA's behalf submit this letter in support of the petition to review the Court of Appeals decision in Soroka v. Dayton Hudson Corp., dba Target Stores, Case No. A052157.

APA is a voluntary, nonprofit, scientific, and professional organization with more than 108,000 members and affiliates. For a century (1892-1992), APA has been the major association of psychologists in the United States, and includes the vast majority of psychologists holding doctoral degrees from accredited universities in this country. Among APA's major functions is the "advance[ment] of psychology as a science and profession." Consistent with this goal, APA promotes the proper understanding of psychological expertise and procedures, including psychological tests and assessments. Another major function is "to advance psychology . . . as a means of promoting human welfare," and to that end, APA also has a deep commitment to the principle of individual privacy and autonomy, and strongly opposes discrimination on the basis of sexual orientation or religious belief or affiliation.

A substantial number of APA's members have expertise in the development and validation of assessment devices, including the use of such instruments for personnel selection in the employment context. More than 2500 members belong to APA's Division of Industrial and Organizational Psychology, and more than 1400 members belong to its Division of Evaluation, Measurement, and Statistics.

APA believes this Court should review the Court of Appeals ruling in Soroka because that ruling proceeds from a fundamental misunderstanding about the nature and function of the kinds of psychological assessment tools at issue. APA strenuously opposes any employment practices that discriminate against persons based upon their sexual orientation or religious views or affiliations. Invidious use of any assessment tool should be proscribed. But the ruling below does not require a showing of invidious intent or effect before psychological assessment tools are declared unlawful. Moreover, by its terms the ruling below would apparently invalidate not only questions that relate to sexual orientation or religion but also any item that, taken in isolation, does not meet the Court of Appeals' "nexus" standard.

That "nexus" standard is misguided in several ways and unless modified will have adverse effects. As applied by the Court of Appeals, the "nexus" standard requires consideration of each test question in isolation to determine whether it "specifically, directly and narrowly relate[s] to the performance of the employee's official duties." But items on psychological tests are generally significant not because responses are directly job-related in and of themselves, but because a group of responses may together provide a measure of a job-related characteristic -- such as emotional stability. It is the total test result or characteristics to which the items validly relate, not isolated items themselves, that should be job-related.^{1/} Indeed, an impressive data base demonstrates that the psychological inventories at issue in the Soroka case provide information highly pertinent to personnel decisions in regard to security or public safety positions.

By focusing on whether responses to particular items are job-related in and of themselves, the "nexus" requirement set forth by the Court of Appeals is thus entirely inappropriate in the context of psychological instruments. It would deprive employers in California of a wide range of extraordinarily useful assessment tools that identify psychological characteristics highly relevant to

^{1/} APA notes that in this case, and typically, the employer never learns applicants' responses to particular items -- only their scale scores in relation to psychological characteristics as measured by the test.

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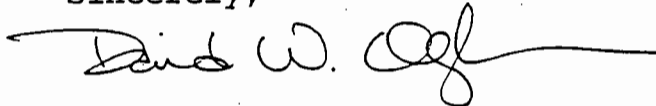
likely job performance. The Court of Appeals decision is deficient in other respects as well.

APA agrees that individuals' private lives should be shielded from unnecessarily intrusive inquiries. The public and private interests in facilitating effective hiring practices and in personal privacy can be balanced properly, however, only with a full understanding of how psychological evaluation works and how particular legal standards will affect the proper, nondiscriminatory use of valid psychological instruments in practice. The Court of Appeals' decision in Soroka lacks such an understanding. Informed review by this Court is thus essential.

For these reasons, APA supports the petition for review.

I am authorized to state that the California Psychological Association, with more than 5000 members and affiliates in this State, concurs in this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "David W. Ogden", with a long horizontal flourish extending to the right.

David W. Ogden
Counsel for the American
Psychological Association