EMPLOYMENT DISCRIMINATION I

WELLS v. GOTFREDSON MOTOR CO.: TOWARDS DILUTION OF THE McDONNELL DOUGLAS STANDARD?

INTRODUCTION

Under Title VII of the Civil Rights Act of 1964, an employer may not discriminate against any person on the basis of race, color, religion, sex, or national origin when considering hiring or promoting an employee or in establishing any terms and conditions of employment. However, at trial, the ultimate burden of persuading the trier of fact that the employer intentionally discriminated against the plaintiff in a disparate treatment action rests with the plaintiff. The order of the burdens and allocation of proof in an individual disparate treatment action was first set out by the United States Supreme Court in McDonnell Douglas Corp. v. Green. Although the plaintiff retains the ultimate burden of persuading the trier of fact that he or she was intentionally discriminated against, the McDonnell Douglas standard allows a plaintiff to easily establish a prima facie case with a resulting presumption of discriminatory intent. The second step under this well established standard allows the employer to rebut the evidence with an explanation concerning why the plaintiff was rejected. Lastly, the

3. 411 U.S. 792 (1973). A black plaintiff alleged that he was fired due to his race and the Court found a prima facie violation of Title VII. Id. at 801-02. The employer stated that the true reason why the plaintiff was fired was his illegal participation in a demonstration blocking the main roads leading to the plant. Id. at 803. The Court held that his explanation discharged the defendant's burden. Id.
4. Id. at 802. Upon a showing by the plaintiff that he was a member of the protected class, that he applied and was qualified for the job, that he was rejected, and that the position remained open for applicants with the same qualifications, a presumption of discrimination arises in favor of the plaintiff. See text at note 16 infra.
5. See Burdine, 450 U.S. at 254-56 (noting that the burden on the defendant in
plaintiff may show that the reason offered by the employer was merely pretextual, and thus, that he or she was a victim of intentional discrimination.6

In Wells v. Gotfredson Motor Co.,7 the Eighth Circuit Court of Appeals rejected the district court finding that the plaintiff, Wells, had failed to establish a prima facie case of sex discrimination.8 The Eighth Circuit, however, affirmed the finding that Wells had failed to carry the ultimate burden of proving that the employer intentionally discriminated against her.9 Though holding that the trial court erred in not affording Wells' evidence the prima facie status with the resulting presumption it deserved, the Eighth Circuit found that the plaintiff's evidence was given all the "weight and credence" it deserved.10 Because Wells' prima facie case was never properly recognized, the issue raised is whether her evidence was ever credited with an inference of discrimination in accordance with the McDonnell Douglas standard and its underlying policy.

The Wells case is significant in that it signals a potential deviation from the McDonnell Douglas procedure. This article analyzes the Eighth Circuit's procedure in light of the broad purpose of Title VII, the established standard of proof for disparate treatment actions and the possible implications of the opinion for future employment discrimination cases.

BACKGROUND

It is clear from the language of Title VII that the intent of Congress was to assure equality of opportunity in employment and to eliminate discriminatory practices in making hiring or promotion decisions which operate to the disadvantage of one class of persons over another.11 Since Title VII has been in existence, the incidence of obvious and blatant intentional discrimination has changed to a more subtle or hidden form by those basing employment decisions on discriminatory criteria.12 Evidence of discriminatory intent may be extremely difficult to prove if the employer in

7. 709 F.2d 493 (8th Cir. 1983).
8. Id. at 496.
9. Id.
10. Id.
11. 411 U.S. at 794 (citations omitted).
some way disguises his prejudice. Since a plaintiff bears the ultimate burden of proving discriminatory intent, his success hinges upon what type of evidence he is required to produce at different stages of a trial.

In 1973, the Supreme Court, stating that Title VII tolerates no discrimination, subtle or otherwise, set forth the *McDonnell Douglas* standard for proving discriminatory intent under Title VII. Specifically, the Court stated that the plaintiff has the burden of establishing a prima facie case by showing: 1) that he is a member of a racial minority; 2) that he applied and was qualified for a job the employer was trying to fill; 3) that, though qualified, he was rejected; and 4) that, thereafter the employer continued to seek applicants with complainant’s qualifications. The Court noted that the standard would vary as the factual context of the case varied. So, in a sex discrimination case, for instance, the plaintiff meets the first step of the prima facie case by showing that she is a member of a particular gender, not a particular race.

Proving the prima facie case is the first step in the three-pronged standard for burden of proof allocation. After the plaintiff meets the initial step, a presumption of discrimination is created and the burden is shifted to the defendant to meet the plaintiff’s prima facie case by articulating some “legitimate, non-discriminatory reason” for the employee’s rejection or firing. If the defendant discharges the burden, the plaintiff is afforded a fair opportunity to show that the reason offered by the employer is merely pretextual. Thus, in the last step of the trifurcated analysis, a court would determine whether the plaintiff met his burden of proving that the employer’s conduct was motivated by discriminatory intent.

The question left unanswered by *McDonnell Douglas* was the...
exact nature of the defendant's burden in the second step of the analysis. In *Furnco Construction Corp. v. Waters*, the Supreme Court discussed the burden which shifts to the defendant once a plaintiff proves a prima facie case. The Court held that unless the defendant carries the burden of rebutting the presumption of discriminatory intent, the trier of fact can only reach the conclusion that the employer's reason was impermissible under Title VII. To rebut, however, the employer need only bring forth some evidence that the decision was based on legitimate reasons.

In 1981, the Supreme Court again addressed and clarified the burden of proof under the disparate treatment doctrine. In *Texas Department of Community Affairs v. Burdine*, the Court held that the employer does not have to persuade the court that the reasons for the plaintiff's rejection were legitimate and nondiscriminatory. The defendant must only satisfy a burden of production by explaining the reasons behind his actions and thus meeting the plaintiff's prima facie case. This will raise a genuine issue of fact as to whether the employer did intentionally discriminate against the plaintiff. If the employer cannot articulate a legitimate reason to satisfy the burden of production, then the plaintiff's "legally mandatory, rebuttable presumption" will stand and the employer will receive an adverse judgment. This burden of production also serves the important purpose of framing the factual issue with enough clarity that the plaintiff has an opportunity to prove that the reasons were mere pretext. The employer must state his reasons with clarity and specificity which must be "legally sufficient to justify a judgment for the defendant." In this way, the plaintiff

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23. *Id.* at 577-78.
24. *Id.* at 577. "A prima facie case under *McDonnell Douglas* raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." *Id.*
25. *Id.* at 577-78.
27. *Id.* at 254. Plaintiff, a female, alleged that the department failed to promote her to a supervisory position in violation of Title VII. *Id.* at 250.
29. *Id.* at 254-55.
30. *Id.* at 254.
31. *Id.*
32. *Id.* at 255-56.
33. *Id.* at 255.
can rely on the trial process to force the employer to come forward with information essential to the plaintiff's ability to prove pretext.\footnote{34}{Bartholet, supra note 12, at 1209.}

Another aspect of the \textit{Burdine} decision was its recognition of the proper weight to be afforded a Title VII plaintiff's prima facie case. The Court noted that when the defendant meets the burden of production, the presumption of discrimination created by the plaintiff's prima facie case drops from the case.\footnote{35}{450 U.S. at 255.} It went on to say, however, that the evidence adduced as part of the prima facie showing is not rendered irrelevant:

In saying that the presumption drops from the case, we do not imply that the trier of fact no longer may consider evidence previously introduced by the plaintiff to establish a prima facie case. A satisfactory explanation by the defendant destroys the legally mandatory inference of discrimination arising from the plaintiff's initial evidence. Nonetheless, this evidence and inferences properly drawn therefrom may be considered by the trier of fact on the issue of whether the defendant's explanation is pretextual. Indeed, there may be some cases where the plaintiff's initial evidence, combined with effective cross-examination of the defendant, will suffice to discredit the defendant's explanation.\footnote{36}{Id. at n.10.}

\textit{Burdine} indicates, therefore, that the prima facie case serves an important role in the Title VII trial process. It forces the defendant to articulate a specific reason for its conduct, thus narrowing the focus of the proceeding to the specific reason offered.\footnote{37}{See notes 29-34 and accompanying text supra.} If the defendant discharges its burden, the presumption drops from the case, but evidence and inferences properly drawn from the prima facie showing can still be considered by the trier of fact on the issue of pretext.\footnote{38}{See note 36 and accompanying text supra.}

The Supreme Court recently dealt with the question of how much evidence is adequate for the plaintiff to establish a prima facie case in \textit{United States Postal Service Board of Governors v. Aikens}.\footnote{39}{103 S. Ct. 1478, 1482 (1983).} Aikens charged his employer, the United States Postal Service, with racial discrimination when he was denied certain managerial level promotions.\footnote{40}{Id. at 1480.} The government strongly asserted that, to reach the proper level of proof for a prima facie case, the

\footnote{34}{Bartholet, supra note 12, at 1209.}
\footnote{35}{450 U.S. at 255.}
\footnote{36}{Id. at n.10.}
\footnote{37}{See notes 29-34 and accompanying text supra.}
\footnote{38}{See note 36 and accompanying text supra.}
\footnote{39}{103 S. Ct. 1478, 1482 (1983).}
\footnote{40}{Id. at 1480.}
plaintiff must demonstrate a probability of discrimination.\textsuperscript{41} The district court agreed with the government in that it apparently required Aikens to show, as part of his prima facie case, that he was as qualified or more qualified than those promoted.\textsuperscript{42} Even so, the government failed to persuade the district court to dismiss the action for lack of a prima facie case.\textsuperscript{43}

In addition, the defendant offered an explanation for rejecting the plaintiff.\textsuperscript{44} The Supreme Court held that the district court not only improperly required Aikens to show direct evidence of disparate treatment, but "erroneously focused on the question of a prima facie case rather than directly on the question of discrimination."\textsuperscript{45}

The Supreme Court noted that since the plaintiff had introduced evidence sufficient to establish a prima facie case and the employer had offered rebuttal evidence, the district court should have decided the ultimate factual question of discrimination rather than focusing on the issue of whether the plaintiff had established a prima facie case.\textsuperscript{46} The Court reiterated its position that the \textit{McDonnell Douglas} standard was not intended to be rigid or mechanized but to be a sensible orderly method to weigh the evidence concerning the question of discrimination.\textsuperscript{47} If the employer fails to persuade the district court to dismiss the action for lack of a prima facie case, and proceeds to rebut the plaintiff's prima facie evidence, whether the plaintiff actually made out such a case is no longer the relevant question.\textsuperscript{48} The level of inquiry proceeds to the third step of the three-pronged \textit{McDonnell Douglas} standard and the court will have enough evidence to decide whether intentional discrimination took place.\textsuperscript{49} In Aikens, then, the Court held that the proper procedure would be to focus directly on the question of discrimination rather than on whether the plaintiff established a prima facie case. Therefore, the lower court did not decide the real question of whether the employer had intentionally discriminated against Aikens.\textsuperscript{50}

\begin{itemize}
\item \textsuperscript{41} Bartholet, \textit{supra} note 12, at 1202.
\item \textsuperscript{42} 103 S. Ct. at 1481.
\item \textsuperscript{43} \textit{Id.} at 1482.
\item \textsuperscript{44} \textit{Id.} After Aikens presented his evidence to the district court, witnesses for the employer testified that he had turned down lateral job transfers that would have broadened his experience. \textit{Id.}
\item \textsuperscript{45} \textit{Id.} at 1483.
\item \textsuperscript{46} \textit{Id.} at 1482-83.
\item \textsuperscript{47} \textit{Id.} at 1482, \textit{citing} Furnco Construction Corp. v. Waters, 438 U.S. at 577.
\item \textsuperscript{48} \textit{Id.}
\item \textsuperscript{49} \textit{Id.}
\item \textsuperscript{50} \textit{Id.} at 1483.
\end{itemize}
In deciding this question, the Court stated that a trier of fact should consider all the evidence, giving it "whatever weight and credence it deserves." A prima facie case deserves the initial weight of a presumption under the McDonnell Douglas standard. By improperly focusing on the discriminatory intent question in terms of the sufficiency of the plaintiff's prima facie showing, the district court failed to accord the proper weight to the plaintiff's prima facie evidence. The Supreme Court remanded so that the district court could address the discrimination question on its proper terms.

Aikens did not change any of the substance of the McDonnell Douglas standard. The Court stated that the form of the McDonnell Douglas model should not rule the substance, and that if the plaintiff's prima facie evidence is heard and given the inference of discriminatory intent it deserves, the underlying policies of the model have been served. Implicitly, moreover, it indicated that the prima facie case possesses a significance independent of a showing of discriminatory intent.

FACTS AND HOLDING

Jackie Wells was hired by Gotfredson Motor Co. in 1974 as a service writer in the service department. For the next two years she was warned ten times, and once in the presence of the owner of the company, not to visit the front office as it kept her from her duties in the service department. In the spring of 1976, Wells told the sales manager that she was interested in a sales position. When an opening arose, the sales manager discussed the possible hiring of Wells for the position with the general manager who replied "absolutely not" due to the close proximity of the sales floor to the front office. The sales manager finally informed Wells that a man had been hired for the position because of the physical labor required in the job.

51. Id. at 1481 n.3.
52. Id. at 1481 (citations omitted).
53. Id. at 1482-83.
54. Id. at 1483.
55. See id. at 1482.
56. 709 F.2d at 494.
57. Id.
58. Id.
59. Id. at 495. The general manager testified that the main reason for denying the sales position to Wells was the concern that her habit of visiting the front office would increase if she worked in closer proximity to it. Id.
60. Id. Wells was not immediately informed of her denial and in the meantime resigned from her position as service writer in hopes of increasing her chances of getting the sales position. Id.
Wells brought suit against Gotfredson alleging that it had engaged in sexually discriminatory practices in violation of Title VII of the Civil Rights Act of 1964.61 The district court found that Wells did not establish a prima facie case and did not carry the ultimate burden of proving that Gotfredson intentionally discriminated against her.62 A motion for a new trial was denied in a memorandum opinion that further explained the court's findings of fact and law.63

On appeal, Wells contended that the district court erred in finding that she had failed to make out a prima facie case under the McDonnell Douglas standard, and erred in finding that she failed to prove intentional sex discrimination on the part of Gotfredson.64 The Eighth Circuit found that Wells did make out a prima facie case under the McDonnell Douglas standard but that the district court's finding that Wells failed to prove intentional discrimination was not clearly erroneous.65 The court reasoned that although the lower court erred in not finding a prima facie case, the error did not influence the finding that Wells did not prove intentional discrimination because the court gave the evidence all the "weight and credence it deserves."66 The court found proof of the proper weight given to Wells' prima facie evidence in the lower court's memorandum opinion denying a new trial:

After listening to the testimony of both Stratman and Eastin and carefully observing their demeanor, I conclude that the preponderance of the evidence does not support the inference urged by the plaintiff, but supports the conclusion that the failure to place the plaintiff in a sales position was for a legitimate, nondiscriminatory business reason.67

In dissent, Chief Judge Lay expressed concern that without an explicit acknowledgement of the prima facie case, the court will fail to give the proper amount of credit to the plaintiff's evidence so that she may prove her ultimate burden.68 This error amounts to a deviation from the order of proof set forth in the McDonnell Douglas standard which is designed "progressively to sharpen the in-

61. Id. at 494.
62. Id.
63. Id. See text at note 67 infra.
64. 709 F.2d at 495.
65. Id. at 496. See Fed. R. Civ. P. 52(a) (stating that the trial court's findings of facts are not to be set aside unless clearly erroneous).
66. 709 F.2d at 496. The "weight and credence" language was pulled from the Aikens decision. See note 51 and accompanying text supra.
67. 709 F.2d at 496.
68. Id. at 497 (Lay, C.J., dissenting).
ench question of intentional discrimination." The dissent's contention is that once prima facie evidence is not credited, it can only follow that the plaintiff will not be able to carry the burden of proof, without direct evidence of discrimination, because the court recognizes no inference of discrimination with which to weigh against the employer's evidence. Therefore, the only proper procedure is to remand for a new trial.

Since there was no remand, the dissenting judge warned that this sets up a dangerous and erroneous precedent in the Eighth Circuit in that trial courts may now require a plaintiff to produce more than prima facie evidence of discrimination in order for the court to decide the ultimate question of discriminatory intent in favor of the plaintiff. By deemphasizing the importance of the plaintiff's prima facie showing, the majority opinion exaggerates the effect of the defendant's articulation of a nondiscriminatory reason.

**Analysis**

In *Aikens*, the Supreme Court had maintained that the *McDonnell Douglas* prima facie standard did not require proof of discrimination. The case in no way affected the established standard of proof but simply reinforced the notion that the *McDonnell Douglas* standard was established to provide a structured process by which the court could reach the ultimate question of discriminatory intent.

Although the majority opinion in *Wells* purports to rely on the Court's reasoning in *Aikens*, it is clear that *Aikens* dictates that the case should have been remanded for proper analysis by the trial court. As in *Aikens*, the trial court never afforded plaintiff's prima facie evidence the proper degree of weight it was due. The majority opinion maintains that proper weight was given to the prima facie proof as evidenced from the statement in the district court's memorandum denying a new trial that the inference urged by the plaintiff was not supported by a preponderance of the evidence. Attempting to mollify the dissent's concern that the deci-

69. *Id.* , citing Texas Dep't of Community Affairs v. Burdine, 450 U.S. at 255 n.8.
70. 709 F.2d at 498 (Lay, C.J., dissenting).
71. *Id.* at 499.
72. *Id.*
73. *Id.*
74. 103 S. Ct. at 1483.
75. *See id.* at 1482.
76. 709 F.2d at 499 (Lay, C.J., dissenting).
77. *Id.*
78. *Id.* at 496.
sion could affect an erosion of the traditional disparate treatment standard, the majority states:

Once a plaintiff establishes a prima facie case, the legally mandatory presumption of discrimination is drawn in the absence of any rebuttal by the defendant. When the defendant produces evidence of a legitimate, nondiscriminatory reason for its actions, that mandatory presumption drops from the case but the logical inference of discrimination arising from the prima facie evidence remains.79

The court seems to be suggesting that the plaintiff's showing of a prima facie case is not rendered ineffectual by the defendant's articulation of a nondiscriminatory reason. The presumption is gone, but a logical inference of discrimination remains.80

It is difficult to understand how any logical inference of discrimination may remain when Wells was denied the initial presumption of discriminatory intent arising from her prima facie evidence.81 There is no legally mandatory presumption of discrimination which would drop in light of the employer's rebuttal evidence. Therefore, the rebuttal evidence given by the employer will prevail as there will be no logical inference of discrimination left to weigh against the employer's evidence.82

Without proper consideration of Wells' prima facie evidence, the court could not properly determine whether Gotfredson's reasons for Wells' rejection sufficiently rebutted the presumption of discrimination.83 Because this legal error may have influenced the district court's finding in favor of Gotfredson, the case should have been remanded for a new trial.84

The majority's reliance on the post-trial memorandum as proof that Wells' evidence received the proper weight—and thus that remand was unnecessary—was thoroughly denounced by the dis-

79. Id. n.1.
80. See notes 36-38 and accompanying text supra. The argument is also made in a memorandum submitted to the Eighth Circuit by James S. Watson and Jill Nagy, attorneys for Wells. See Memorandum for Appellant at 1-2, Wells v. Gotfredson Motor Co., 709 F.2d 493 (8th Cir. 1983).
81. The district court found that Wells did not make out a prima facie case under the McDonnell Douglas standard. The Eighth Circuit held that the lower court erred in this finding. See notes 61-67 and accompanying text supra.
82. In discrimination cases, the plaintiff's prima facie case has been characterized as both a presumption and an inference. Belton, supra note 28, at 1236. Here, it is characterized as a presumption. If the employer does not rebut the prima facie evidence, the court must find for the plaintiff. Id. If the employer does rebut the evidence, the presumption is gone, but a logical inference of discrimination remains. See note 79 and accompanying text supra.
83. 709 F.2d at 498 (Lay, C.J., dissenting).
84. Id.
sent. The memorandum's conclusion "that the preponderance of evidence does not support the inference urged by the plaintiff" indicates the court's failure to give the correct weight to the prima facie evidence.

When the plaintiff establishes a prima facie case, she does not urge an inference of discrimination but, rather, establishes a presumption of discrimination. If the prima facie case is not acknowledged, the presumption does not arise. Because it failed to accord Wells' prima facie evidence the weight it was due, the district court could only reach the conclusion that the preponderance of the evidence failed to substantiate Wells' claim.

The trial court deviated from the McDonnell Douglas standard when it failed to acknowledge Wells' prima facie evidence with the resulting presumption of discriminatory intent. By affirming the lower court's approach, while at the same time recognizing that Wells had established a prima facie case, the majority opinion sets up an erroneous precedent in discrimination cases arising in the Eighth Circuit.

Until the prima facie case is properly recognized, it is not possible to analyze the ultimate question of intentional discrimination in accordance with the McDonnell Douglas standard. By failing to remand after finding that Wells had established a prima facie case, the majority implies that prima facie evidence has no independent significance apart from the ultimate determination of discriminatory intent. Such an approach would have the effect of combining the plaintiff's ultimate burden in the third stage with the initial burden in the first stage, thus compressing the question of discrimination into a single step analysis.

85. Id. at 498-99 (Lay, C.J. dissenting).
86. Id. at 496.
87. Id. at 499 (Lay, C.J., dissenting).
88. The distinction is not simply one of semantics. By failing to recognize that the plaintiff had established a prima facie case, the district court did not assess the defendant's evidence in light of the initial presumption created, not merely urged, by the plaintiff's prima facie showing. See 709 F.2d at 499 (Lay, C.J., dissenting).
89. See note 19 and accompanying text supra.
90. As the dissent points out, to urge that the trial court memorandum cures the district court's error in failing to recognize Wells' prima facie showing "is a complete non-sequitur." 709 F.2d at 499 (Lay, C.J., dissenting).
91. Id. at 495.
92. Id. at 499 (Lay, C.J., dissenting).
93. See notes 15-21 and accompanying text supra.
94. See notes 52-55 and accompanying text supra.
95. See Lynn v. Regents of the Univ. of Cal., 656 F.2d 1337, 1344 (9th Cir. 1981) (stating that to require the plaintiff to show that she met the employer's subjective criteria as part of her prima facie case would be to "collapse the three step analysis into a single initial step at which all issues would be resolved").
Compressing the three-step procedure into a single step approach would impact both the court's analysis and the plaintiff's evidentiary burden in Title VII disparate treatment actions. Analytically, it would have the effect of allowing trial courts to give weight to an employer’s rebuttal evidence of a legitimate nondiscriminatory explanation without first recognizing, and crediting, the plaintiff’s prima facie showing with a rebuttable presumption of discriminatory intent. To say that a court’s improper analysis can be saved by the fact that it allegedly gave the plaintiff’s evidence all the “weight and credence” it deserved is to suggest that a court can analyze disparate treatment claims outside the scope of the McDonnell Douglas trifurcated analysis. Thus, the court can immediately move to step three without according the prima facie case the weight it is due.

Practically, the breakdown of the McDonnell Douglas standard would significantly affect the plaintiff’s initial burden of proof. Without the presumption of discrimination that arises from a prima facie case, a plaintiff would be forced to carry the burden of producing evidence of discriminatory intent in his case-in-chief to avoid a directed verdict in the defendant’s favor. No longer able to rely on the trial process to force the employer to come forward with information indispensable to his ability to prove discriminatory intent, the plaintiff would be required to present all his evidence of discriminatory intent in his case-in-chief.

Whether the Wells case will lead to such a dilution of the McDonnell Douglas standard is an open question. It appears, however, that the majority opinion has the effect of sending a signal to trial courts that the prima facie case no longer retains the significance it was intended to possess under the McDonnell Douglas standard. Apart from triggering the entire three-step process, the prima facie case establishes a presumption of discrimination that carries the plaintiff to the third step of the analysis whether or not the defendant articulates a nondiscriminatory reason. By

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96. 709 F.2d at 499 (Lay, C.J., dissenting).
97. This, in fact, is exactly what the trial court did in Wells. Rather than initially determining whether Wells had established a prima facie case, it examined her evidence on the issue of discriminatory intent and nakedly weighed it against the defendant’s articulated reason. Id. at 498-99.
98. Mendez, supra note 28, at 1149.
99. See notes 32-34 and accompanying text supra.
100. See Mendez, supra note 28, at 1149 (suggesting that the rebuttal stage would be a proper point to offer evidence of discriminatory intent under the traditional McDonnell Douglas approach).
101. See notes 35-38 and accompanying text supra.
102. This is revealed by the fact that even after the defendant satisfies its burden of production, inferences created by the prima facie showing can still be con-
affirming the district court opinion on the ground that the court had given plaintiff's evidence all the "weight and credence" it deserved, the court suggests a Title VII approach in which the prima facie case plays little or no independent role.

To Jackie Wells, the effect of the Eighth Circuit's approach is immediate and direct. Though establishing a prima facie case under Title VII, she was never afforded an opportunity to have her case analyzed under the proper disparate treatment approach.\textsuperscript{103}

To other potential Title VII plaintiffs in the circuit, the effect may be no less onerous. To the extent that the opinion can be read as increasing the initial evidentiary burden confronting the plaintiff, it will discourage injured parties from bringing viable Title VII claims. No longer able to rely upon facts within their own knowledge in bringing their claim,\textsuperscript{104} they will be reticent to assert the rights afforded them under the act.

CONCLUSION

The \textit{McDonnell Douglas} trifurcated analysis was designed to provide a rational means by which trial courts could decide disparate treatment claims under Title VII. As amplified by such cases as \textit{Texas Department of Community Affairs v. Burdine}, the three-step approach offers a precise and definite means of reaching the ultimate factual determination of discriminatory intent.\textsuperscript{105}

The prima facie case is a distinct and integral part of the analysis, with the prima facie elements being designed to embrace the most likely innocent explanations for the employer's conduct. To allow even the slightest variation from the established standard is to upset the delicate balance struck by three-pronged approach.

Hopefully, trial courts in the circuit will not interpret \textit{Wells} in a manner which divests the prima facie case of its crucial importance in the Title VII disparate treatment analysis. To the extent that the prima facie case is stripped of its legal significance, the door is left open for courts to circumvent the policy underlying Title VII and erect unwarranted barriers to parties seeking relief for illegally discriminatory conduct.

\textit{L. Fisher—'85}

\textsuperscript{103} See note 36 and accompanying text \textit{supra}.

\textsuperscript{104} See \textit{Bartholet}, \textit{supra} note 12, at 1209 (stressing that the plaintiff should not be required to engage in exhaustive discovery so as to uncover the core of the defendant's rebuttal evidence).

\textsuperscript{105} See notes 32-34 and accompanying text \textit{supra}. 
