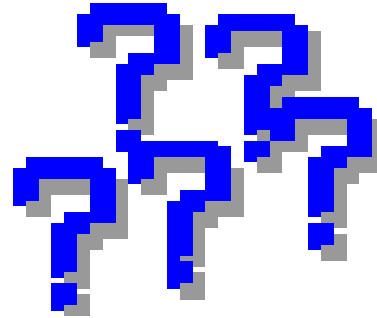
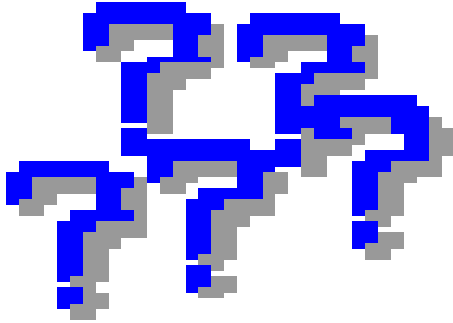


What does *THAT* have to do with being a cop?

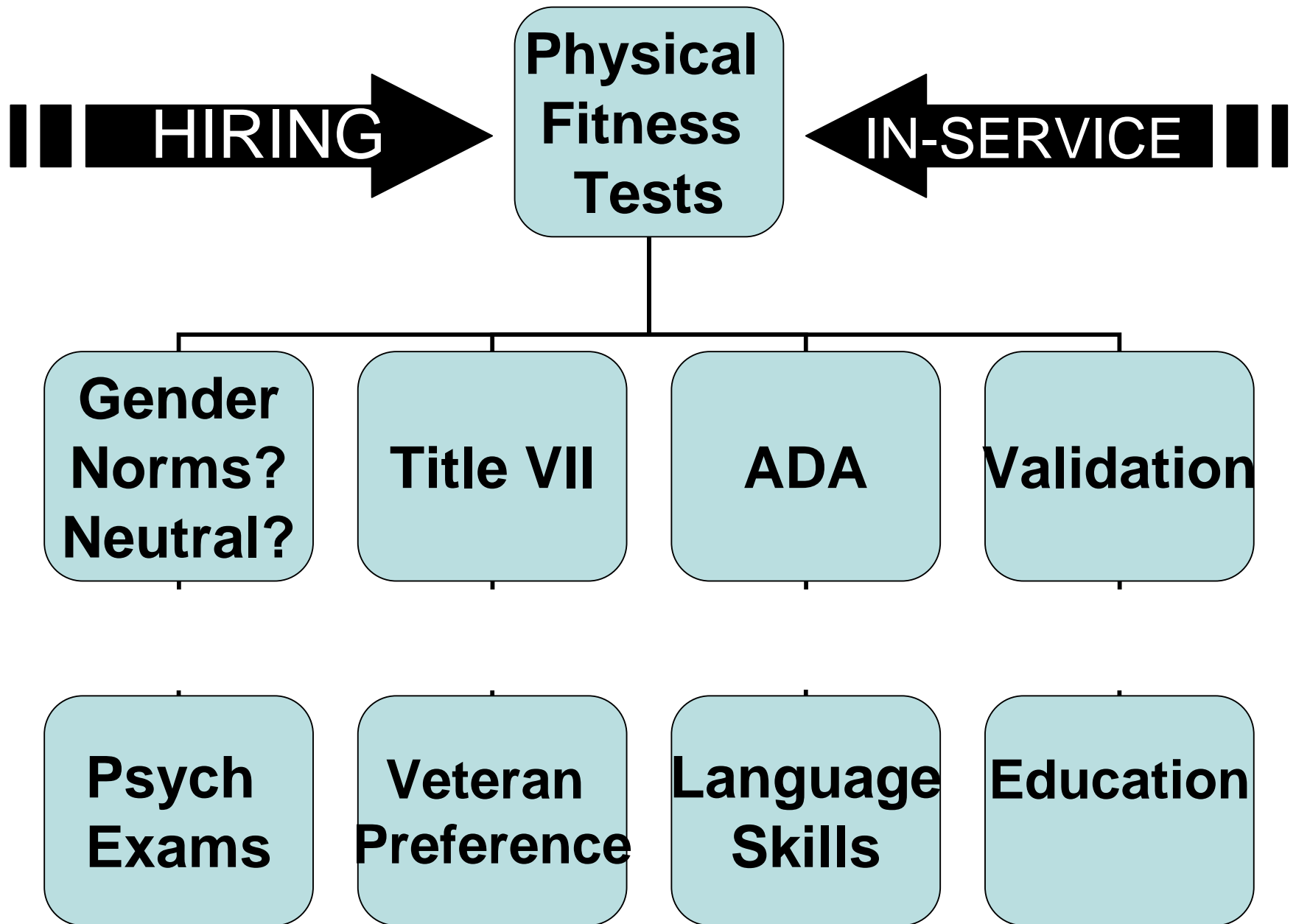


Alan Andrews

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Physical Fitness Tests



- Gender-Age Norms or Gender Neutral?
- Title VII
- ADA
- Standards of Proof
- Test Analysis
- Validation
- In-Service Officers

Title VII

- Adjusting standards or scores to accommodate age and/or gender differences violates Title VII.
- Standard with disparate impact unlawful unless consistent with business necessity and is job related.

Minimum Qualifications Test

- Lanning v. S.E. PA. Trans. Autho., rev'd, 308 F.3d 286 (3d Cir. 2002)
- Plaintiffs challenged screening test requiring applicants to run 1.5 miles in 12 minutes.



Lanning (cont.)

- **Holding: Business necessity requires proof that cut-off score measures minimum qualifications necessary for successful performance of job.**

–Lanning I rev'd; district ct. ordered to apply above test and make findings and conclusions.

–Lanning II: Sufficient evidence (including expert testimony) supported conclusion that 1.5 mile/12 minute test measured minimum job qualifications for a successful transit officer.

Some POPAT Requirements

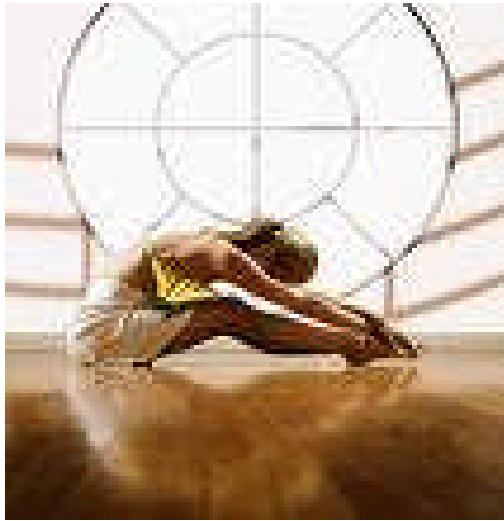


include scaling
walls, but...



**Correlation to walls
officers encounter
in the field may be
difficult.**





Gender-Age Norms

- Test results adjusted to accommodate age and gender differences.
- Used to determine general physical fitness



Gender Neutral



- Same Job=Same Standard
- Minimal physical requirements for police officer position

Disparate Impact

- Prima facie case established by statistics showing disparate impact on protected group.
- **Defenses:**
 - Did not cause disparate impact
 - Plaintiff's statistics wrong; offer own statistics
 - Admit disparate impact but argue job-related and business necessity

Disparate Impact: gender neutral tests

- United States v. Erie, 411 F.Supp 2d 524 (W.D. Pa. 2005)

•Holding: Physical agility test (PAT) had disparate impact on female applicants and was neither job related for position of entry-level police officer nor consistent with business necessity.

Disparate Impact (cont.)

(1) 19 officers performing standard-setting exercise did not show that PAT's 90-second passing score established minimum level necessary to perform successfully as police officer;

(2) city did not prove PAT's 90-second cutoff score was consistent with business necessity.

Standards of Proof & Validation

- Manifest relationship
 - Close Approximation
 - Minimum qualification
 - Public Safety
- Criterion-related
 - Content
 - Construct
 - State Standards

Standards of Proof

- (1) Manifest Relationship Test
 - Most widely used
 - Court will uphold if test carries out legitimate business purpose
- (2) Close Approximation Test
 - Content of test correlates to job behaviors



Standards of Proof (cont.)



- **(3) Minimum Qualifications Test**

- Used in Lanning I/strictest standard
- Cutoff score measures minimum qualifications necessary for successful job performance

- **(4) Spurlock Public Safety Doctrine Test**

- Test accounts for safety concerns
- Not used since Civil Rights Act of 1991 passed

Test Validation

EEOC approves three validation tests:

(1) Criterion-Related Validity Study

- Performance test statistically related to job performance

(2) Content Validation Study

- Test content adequately matched to job description

(3) Construct Validity Study

- Test measures particular job characteristic
AND

- Characteristic is related to job performance

Use of Experts



- Important for establishing validity of tests
- Most influential when experts trained in SIOP *Standards* and/or *Principles*
- **BEWARE:** Test users liable if test invalid, not the test creator

Job Task Analysis

- Important for supporting the validity of any tests
- Has to be done on a continuous basis to account for any changes in the job requirements

Physical Fitness and In-Service

“I do my job just fine; I can’t pass those physical tests; whatcha gonna do, fire me?” –Off. Kris Kreme



Physical Fitness In-Service



- Grandfathering
- Fitness vs. Wellness
- Mandatory vs. Voluntary
- Military Model
- Discipline issues & impacts

ADA; age discrimination; ADA accommodations for new hires based on accommodations for veterans

Educational Requirements



- What does a degree mean really?
- Does a degree requirement measure or accurately predict the performance the agency wants?
- What about cognitive, reading and writing tests?

Language Skills

- Measurement?
- Use in field?
- Hiring preference vs.
compensation adjustment program



Veteran Preference



Legal, but...

Does
Deployment =
Successful
Employment



Psychological Examinations

- State -
mandated
- What is tested?
- Is test culturally
or racially
biased?