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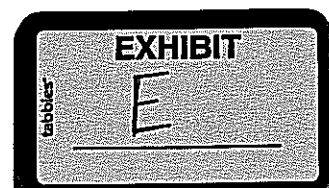
CITY OF NEW HAVEN
CIVIL SERVICE COMMISSION

IN RE:
FIRE CAPTAIN AND LIEUTENANT
PROMOTIONAL EXAMS

MARCH 11, 2004

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1 . . .Continued Verbatim Proceedings of a
2 Hearing of the City of New Haven, Civil Service
3 Commission, In re: Fire Captain and Lieutenant
4 Promotional Exams, held March 11, 2004, at 5:45 P.M., at
5 the Kennedy Mitchell Hall of Records, 200 Orange Street,
6 New Haven, Connecticut. . .

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12 CHAIRPERSON JAMES SEGALOFF: Okay. Good
13 evening, everybody. As most of you know, I assume, we
14 looked into a number of people whose names were presented
15 to us to give us some testimony and some insight into
16 some of the issues we've been dealing with. And we
17 selected three people. And they're -- two of them are
18 here with us physically today and Dr. Hornick is in --
19 Texas?

20 MS. FRANCINE HARCOURT CAPLAN: Colorado.

21 CHAIRPERSON SEGALOFF: Colorado. Aurora,
22 Colorado. And we're going to do this by phone with him.
23 And then we'll talk to Mr. Lewis and Dr. Helms.

24 As you all know, everybody, this is not a

1 departments.

2 DR. HORNICK: Sure. I'd be happy to do
3 so. I received my PhD in 1979 from Texas Christian
4 University. My degree is in psychology. My emphasis was
5 in statistical measurement and industrial/organizational
6 psychology. And I've been practicing in my consulting
7 business since 1980. So that's almost 25 years. And we
8 have worked almost exclusively in the public safety
9 arena.

10 We do entry-level and promotional testing
11 procedures for clients all over the country, doing both
12 law enforcement and firefighting selection. We work with
13 counties. We work with municipalities. We've worked
14 with several police and state agencies. For example, we
15 just developed and conducted the entry-level selection
16 process for the Rhode Island State Police. We've worked
17 with the Pennsylvania State Police and many, many others.

18 A little bit about some of the things that
19 I guess would describe us and me. We have been
20 recognized by our profession as --we were given the
21 highest award from our profession for innovative
22 procedures in the area of applied psychology, in essence,
23 recognizing us with a lifetime award for the work that
24 we've done in entry-level testing in firefighting and in

1 law enforcement. They examined some research that we had
2 done with our entry-level test and identified our
3 research for this highly prestigious award.

4 I've also served as an expert witness in
5 several court cases. I have served to help
6 municipalities defend testing or selection procedures
7 that others have created. I've never had any procedure
8 in 25 years that I have designed or conducted be
9 challenged legally. But I have been asked on many
10 occasions to serve as an expert to help cities to defend
11 procedures that others have done or that they themselves
12 have done.

13 But I've also served as an expert in
14 evaluating selection procedures from the plaintiff side.
15 I've served as an expert for unions in a couple of
16 instances where the procedures that we were arguing with
17 a particular municipality didn't meet the standards and
18 asked if I might weigh in on some of those issues.

19 I have also served as an expert with the
20 Department of Justice on behalf of the United States in a
21 landmark case of discrimination regarding -- in this
22 particular case it was specifically focused on
23 firefighter entry-level selection.

24 So we have a pretty broad-based level of

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1 experience with these kinds of issues. I think if I
2 could say in a sentence, we are probably best known for
3 our ability to be able to forge partnerships and build
4 bridges between I guess I would say concerned parties.
5 I'm quite aware from the information we've been sent that
6 right now we're in a fairly contentious environment in
7 New Haven and there are a lot of people who have certain
8 belief systems that are impacting how these test results
9 are being viewed. And it tells me, based on what I've
10 seen, that there needs to be some bridge-building here
11 because no one, I don't believe, intentionally tried to
12 create a problem. But there are issues that I'm sure in
13 the next hour we're going to be talking about.

14 CHAIRPERSON SEGALOFF: Let me just ask you
15 this. Have you had experience dealing with communities
16 that are somewhat similar to New Haven in terms of
17 demographics?

18 DR. HORNICK: Oh, absolutely. We've
19 worked --

20 CHAIRPERSON SEGALOFF: Could you tell us a
21 couple of those communities?

22 DR. HORNICK: Sure. We work a lot in the
23 Atlanta region. There are several large counties down
24 there that have similar demographics to yours. We have

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1 worked, as I said, with the Rhode Island State Police and
2 with Pennsylvania State Police.

3 CHAIRPERSON SEGALOFF: Okay. You've been
4 given some information, from what I understand, regarding
5 the situation here in New Haven?

6 DR. HORNICK: Yes. We have quite a bit of
7 information.

8 CHAIRPERSON SEGALOFF: Okay. My sense is,
9 simply as an open-ended question -- if you just want to
10 speak to some of the issues that jump out at you and give
11 us your particular views as you see they would be useful
12 to us in pursuing this question of whether or not to
13 certify this eligibility list?

14 DR. HORNICK: Okay. Unfortunately, this
15 is kind of being viewed as an all-or-none decision. And
16 I do believe that there are some other ways over time
17 that we can address this more effectively.

18 Ultimately, what we were sent were some
19 statistical information, if you will, final scores, for
20 applicants. I believe there were 77 applicants who took
21 the Lieutenant's exam and 40-something that took the
22 Captain's exam. And we were given the final scores on
23 each of the two test components, the oral board and the
24 written test, for each of those two groups. And then the

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1 computation of the final score, which, according to my
2 understanding, the weighting and combining of those
3 scores is dictated by the Civil Service Rules. Is that
4 correct?

5 CHAIRPERSON SEGALOFF: Yes.

6 DR. HORNICK: Okay. Very briefly, what we
7 did was do some standard statistical calculations on that
8 data to determine what type of adverse impact existed in
9 the test scores with regard to ethnic minorities.
10 Because there were, I think, only two females in the
11 group, it was impossible to look at women's performance
12 in a group analysis. So we did not look at that.

13 And I certainly could go into some of
14 those statistical analyses. But if I could just
15 summarize what we saw, we're seeing relatively high
16 adverse impact. And let me define that because, for the
17 sake of everyone involved, we may not all have the same
18 understanding of what we mean by adverse impact.

19 In our profession and in the legal
20 community, we identify a concept called adverse impact
21 which statistically determines how well minorities
22 perform on a testing procedure in comparison to whites.
23 Normally, whites outperform ethnic minorities on the
24 majority of standardized testing procedures. This is, in

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1 fact, the case with the data that we've seen in New
2 Haven.

3 I'm a little surprised at how much adverse
4 impact there is in these tests. And I hope at some point
5 here we'll be talking in detail about that. But my
6 conclusion is that we did have significant adverse
7 impact. Some of it is fairly typical of what we've seen
8 in other areas of the countries and other tests that
9 people have developed. But in other ways it is somewhat
10 worse than what we're typically seeing in the profession
11 practiced by others.

12 I would add that we are a -- well, let me
13 put it a bit differently. We have competed with the
14 consultant that you chose to do this process in other
15 arenas and other areas of the country. So we are a
16 direct competitor of theirs. And I want you to
17 understand that I'm not attempting to accuse or attack
18 I/O Solutions in this process. I'm simply reporting what
19 that data shows.

20 We find significantly and dramatically
21 less adverse impact in most of the test procedures that
22 we design. But I'm not sure that's a fair comparison if
23 you want to look at it in terms of what's typically done
24 by other companies in our profession.

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1 Let me stop there maybe and see what else
2 I can do here. Because I could go on for a long time
3 here.

4 MS. CAPLAN: Dr. Hornick?

5 DR. HORNICK: Yes?

6 MS. CAPLAN: This is Francine Caplan. Did
7 you get a chance to -- beside the statistics that you
8 looked over, did you get a chance to look over the actual
9 test?

10 DR. HORNICK: No. I have not had time to
11 study the test at length or in detail. We received these
12 by Federal Express about mid-morning today. I have
13 looked through them and looked a little bit at them. But
14 I have not done an in-depth analysis of any of the
15 specific items or pieces of that.

16 CHAIRPERSON SEGALOFF: And you understand
17 we can't discuss in open session here any specific
18 questions. We're all subject to confidentiality
19 agreements. But we certainly can discuss if you think
20 it's useful in a general sense the nature of the
21 questions or the results certainly from the answers to
22 those questions.

23 DR. HORNICK: Sure. On a broad scope, the
24 adverse impact on the written exam was somewhat higher

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1 but generally in the range that we've seen
2 professionally. I don't want to go into a specific
3 statistic because I think I'm just going to lose most
4 people. But there is an index that is typically
5 calculated that compares the average performance, for
6 example, of African-Americans compared to the white
7 population or Caucasian population that took the exam.
8 You can also compare Hispanics or Latinos to that white
9 population. That statistic is called a "D", as in dog,
10 statistic. And it shows numbers that are at the high end
11 of what we have seen with traditional cognitive testing
12 elements.

13 The oral board had much higher adverse
14 impact, if you will, against the Latino population that
15 took the exam than I would have expected to see. And I
16 think in comparison to some of the tests in the past, you
17 probably have seen less from some of the data that I saw.
18 I don't have any specific information from previous
19 years. But I think you all are a bit surprised as well
20 that it had as much adverse impact as it did.

21 CHAIRPERSON SEGALOFF: So let me ask you
22 this. How do you explain the adverse impact concept
23 maybe generally? And then specifically, how do you
24 explain the fact that the adverse impact here, from what

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1 you've just said, seems to be more dramatic than what
2 you've seen in other situations?

3 DR. HORNICK: I'm not sure that I can
4 explain it. What I would say is you are wedded at this
5 point to test components. For example, I believe -- and
6 I have not seen your Civil Service Rules. So I apologize
7 for my ignorance here. But I believe that your Civil
8 Service Rules dictate that you must administer a written
9 job knowledge test as one element in this promotional
10 process and that you must administer an oral board of
11 some sort, a structured oral interview, as a second
12 component. Is that correct?

13 CHAIRPERSON SEGALOFF: I assume that's so.
14 I know 40 percent of the test score was related to the
15 oral piece and 60 percent to the written.

16 DR. HORNICK: Right. Well, first of all,
17 let's talk a little bit about why I think there is
18 adverse impact in the test. One of them is I think you
19 ought to look as an agency, as an organization, as a
20 community and as a department at perhaps different types
21 of testing procedures that are much more valid in terms
22 of identifying the best potential supervisors in your
23 fire department.

24 For example, for Lieutenants and Captains,

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1 it is a first-level and second-level supervisory
2 position. The Captain and Lieutenant are fairly common
3 overlapping knowledge, skills and abilities that are
4 required to perform in them.

5 I've spoken to at least 10,000, maybe
6 15,000, firefighters in group settings in my consulting
7 practice and I have never one time ever had anyone in the
8 fire service say to me, "Well, the person who answers --
9 gets the highest score on a written job knowledge,
10 multiple-guess test makes the best company officer." We
11 know that it's not as valid as other procedures that
12 exist.

13 However, given your Civil Service Rules,
14 you are somewhat tied to that procedure as the process
15 that you must use for identifying people for promotion.

16 But there's a couple of observations I
17 could make, not specific to the test itself and items in
18 it, but to the process that you have used. I noted in
19 the literature that Tina sent that the test was not
20 customized to the New Haven Fire Department, Fire and
21 Emergency Medical Services.

22 A VOICE: Yes, it was.

23 CHAIRPERSON SEGALOFF: Actually, it was,
24 Dr. Hornick. I don't know what you got. But we did --

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1 the I/OC group did customize it, based on the information
2 we have, that they -- sent questionnaires to all the
3 Lieutenants and Captains and dealt -- and I've got a --
4 well, that's -- everything that we've got here shows that
5 in this case it was customized. Unless I'm somewhat
6 mistaken.

7 MS. TIRADO: Well, is it his opinion that
8 it wasn't customized? Or is --

9 CHAIRPERSON SEGALOFF: The question was,
10 Dr. Hornick, is it your opinion it wasn't customized or
11 was that just --

12 DR. HORNICK: It's based on several
13 things. Your procedure apparently be design precluded
14 anyone from within the organization reviewing the test
15 items.

16 MS. CAPLAN: Say that again?

17 DR. HORNICK: You had no internal members
18 of the department, subject matter experts from within the
19 department, reviewing the test content. And in some of
20 the newspaper articles and other things we noted there
21 were several criticisms by candidates levied about items
22 not being relevant to the department.

23 By not having anyone from within the
24 department review the items you inevitably get things in

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1 there that test for processes and procedures that don't
2 necessarily match up into the department.

3 MS. CAPLAN: But you didn't -- you didn't
4 get -- you weren't able to take -- did you take a look at
5 some of the questions on the test?

6 DR. HORNICK: Not at that level. So I'm
7 only drawing conclusions from what I've read and the
8 material that I've received. But let's not worry about
9 the -- maybe it's the term "customized" that is bothering
10 all of you.

11 The bottom -- the bottom line of what I'm
12 trying to say is that there are different reasons for why
13 the adverse impact occurs. And I suspect that some of
14 the criticisms that have been levied by candidates to the
15 test may or may not bear fruit when one looks at the
16 actual items.

17 If -- in my own consulting practice, we
18 like to have a panel of subject matter experts from
19 within the department who have signed confidentiality
20 agreements to actually look at the items to make sure
21 that the terminology and the equipment that's being
22 identified from standardized reading sources apply to the
23 department. So I think that might be one concern that we
24 have.

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1 I think there are probably several other
2 issues that are much more in-depth than this discussion
3 would allow, to talk about why we traditionally see
4 adverse impact in tests.

5 MS. TIRADO: Did that happen? Did fire
6 department personnel have an opportunity to look at the
7 test?

8 MS. MARCANO: No. There was no internal
9 subject matter expert review. The internal data came by
10 way of job analysis interviews and job analysis
11 questionnaires that were distributed to the department.

12 CHAIRPERSON SEGALOFF: What was done here,
13 from what information we have, by the consultant in
14 preparing this exam was that he started out with a -- or
15 used a job analysis questionnaire which they had
16 developed and apparently provided to all the Lieutenants
17 and all the -- the sitting Lieutenants and sitting
18 Captains and got back, as I under-- from what I can see
19 here, a response from most of them. And then he went
20 outside of at least the New Haven area, in one case to --
21 outside of it, to Atlanta, in another case to a city
22 apparently north of Connecticut.

23 I guess what I'd like to hear you say or
24 hear your opinion -- is that -- other than the fact that

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1 maybe there should have been, in your view, some more
2 input, if you will, from the local people, what else do
3 you see maybe could have been done differently that would
4 have -- and would it changed -- in your opinion, changed
5 the result here, this adverse impact that we've got?

6 DR. HORNICK: Would what have changed my
7 opinion? Within your procedure --

8 CHAIRPERSON SEGALOFF: We possibly -- if
9 we had done what you suggested -- and I'm not -- believe
10 me, I'm just -- we're just trying to get a sense of your
11 opinion. I'm certainly not trying to trick you. But
12 what I'm trying to understand is that from what I heard
13 you say is that it -- one thing that appears to you that
14 did not happen here is we did not get local participation
15 in the sense that you've maybe seen it in other
16 communities in developing the test. Is that -- is that
17 right?

18 MR. WEBBER: A fair statement?

19 DR. HORNICK: That's an example. I'm not
20 saying that that caused it.

21 MR. WEBBER: Okay.

22 DR. HORNICK: Adverse impact in what we
23 call cognitive skill testing has been in existence since
24 the beginning of testing in our profession. There are --

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1 there is information and literature out there that has
2 helped to identify ways to minimize some of that. But
3 it's going to -- it would be very difficult for a
4 psychologist, even someone like myself, to look at each
5 individual item and say -- let me put this differently.
6 There's an outdated term in psychology called face
7 validity or facially neutral evaluations of tests. And
8 when one looks at a test and tries to figure out if the
9 language has some bias in it, that's a very difficult
10 thing to evaluate. And it's not a very crucial process
11 to go through.

12 What I think we ought to be ought to be
13 talking about here is the broader issue of how your
14 procedures and your rules and the types of tests that you
15 are using are contributing to that adverse impact. I'm
16 not suggesting that I/O Solutions somehow created a test
17 that had adverse impacts that it should not have had.

18 MS. CAPLAN: Well, Dr. Hornick, obviously
19 the future -- we're going to have to look to the future.
20 The City will have to look itself. But right now as a
21 Commission, we have to deal with this particular this and
22 whether to --

23 CHAIRPERSON SEGALOFF: Certify.

24 MS. CAPLAN: -- certify it or not. So I

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1 guess what we want to know from you -- and you said you
2 didn't read every single question. But -- but what are
3 you actually -- what is your conclusion when you say
4 about the adverse impact and that you felt it was a
5 little bit more severe. What is your conclusion? Can
6 you give us any conclusion to our particular test? Not
7 so much what we can do in the future, but what we can do
8 -- what would your recommendation be?

9 DR. HORNICK: There are other alternatives
10 to just the written job knowledge that you used in that
11 initial stage and to the oral interview process that I
12 believe would have demonstrated less adverse impacts,
13 that I believe would have increased the likelihood of
14 getting the best candidates at the top of the list so you
15 would have identified the best possible people and you
16 would not have had artifacts in the development of the
17 test that contributed to the adverse impact that you
18 received.

19 MS. CAPLAN: Well --

20 DR. HORNICK: I mean, for example, you
21 were not using an assessment center process, which is
22 essentially an opportunity for candidates to demonstrate
23 their knowledge of the, if you will, SOP's, standard
24 operating procedures, to demonstrate how they would

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1 address a particular problem as opposed to just verbally
2 saying it or identifying the correct option on a written
3 test.

4 For example, there's concepts of situation
5 judgment tests that can be developed and designed,
6 customized within organizations that demonstrate
7 dramatically less adverse impacts that are very well
8 received by candidates that test the ability to apply
9 their knowledge as opposed to just memorize and give the
10 correct answer from a multiple choice, recognizing what's
11 the correct answer from a particular reading source.

12 So there's other procedures that I think
13 might serve your needs better.

14 With regard to the question all-or-none,
15 do we certify the test or do we not certify the test --
16 how does the expression go? You're darned if you do and
17 you're darned if you don't.

18 The newspaper articles that we have seen
19 indicate that there are threats of lawsuits regardless of
20 what approach you take. I think you need to weigh what
21 your values are and go with the best possible decision.

22 There is adverse impact in the test. That
23 will be identified in any proceeding that you have. You
24 will have industrial psychology experts, if it goes to

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1 court, on both sides. And it will not be a pretty or
2 comfortable position for anyone to be in.

3 I think what we ought to be doing is
4 perhaps looking at a way to utilize the investment of
5 your resources already. You've done the test. It
6 appears to be a reasonably good test, although it does
7 have adverse impact. So perhaps the only choice you will
8 have in the end is to certify the list as it exists and
9 perhaps only use it for the minimum that's required by
10 your rules and look at a process where all of the
11 different groups can weigh in and be involved in the
12 decision to look at some other alternative ways to deal
13 with these issues. Rewriting the Civil Service Rules, if
14 necessary, that have everyone's input so that we come up
15 with a process that gives a more valid way of identifying
16 candidates in the future while also minimizing
17 disparities that typically occur between ethnic minority
18 performance on these types of tests and Caucasians.

19 Does that help at all?

20 MR. WEBBER: No.

21 MS. CAPLAN: No. We understand all those
22 reasons. And we've ourselves thought about that for the
23 future. But right now we're dealing with what's in front
24 of us. Obviously, Civil Service reform is something that

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1 has to be talked about in the future. But we're not
2 dealing with it right this moment. We really wanted to
3 take testimony from you and a few other experts on the
4 test and on disparate results, adverse impact, and
5 particularly this test.

6 CHAIRPERSON SEGALOFF: I'm wondering if on
7 the oral part, Dr. Hornick -- as I understand it, there
8 were three assessors and they were from out-of-state and
9 there was generally an attempt to make one Hispanic, one
10 Caucasian and one African-American sitting as assessors.
11 Do you have any comment on that? Or is there a different
12 way it could have been done or a better way or some other
13 concept that's used? I understood you talked about maybe
14 in some way testing leadership or skills in a -- in a
15 little different fashion. But could you help us on that
16 part of the exam?

17 DR. HORNICK: I think there are other ways
18 to identify those skills. But the composition of your
19 oral boards I don't believe can be called into question.
20 You had -- from the information I had received, you had
21 very good diversity in the representation on those
22 panels. And I don't think that's a concern or issue that
23 you have.

24 But, yes, I think a person's leadership

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1 skills, their command presence, their interpersonal
2 skills, their management skills, their tactical skills
3 could have been identified and evaluated in a much more
4 appropriate way that would have tested their real skills
5 and not necessarily their ability to in two-and-a-half
6 minutes describe.

7 This is a -- this is really not the place
8 in this phone call to talk about some of those
9 alternatives. But I think there are much better
10 procedures for you to be able to identify those skills.

11 But I do not think that the composition of
12 those panels was a problem. No.

13 CHAIRPERSON SEGALOFF: I -- Mal?

14 MR. WEBBER: Yeah. There's a mixture of
15 administrative expertise and expertise within the fire
16 department fighting fires in the test. Did you think the
17 mixture was correct?

18 DR. HORNICK: I haven't seen the job
19 analysis data.

20 MR. WEBBER: Okay.

21 DR. HORNICK: There were two different
22 tests. Right? One for Lieutenant and Captain. So I'm
23 not prepared to really answer that. If (Indiscernible)
24 of the job analysis and the weighting of the items was

1 done appropriately, then I would guess the weight that
2 the consultant identified would have been the correct
3 one. It appears -- and, again, I have not studied these
4 items in any detail. It did appear to have some pretty
5 complex descriptions, for example, for the tactical
6 items, which would make it difficult for someone to
7 really interpret and understand that without other
8 information. For example, pictures to help identify what
9 it is that the words are trying to describe. And maybe
10 that contributed to your adverse impact. That's pretty
11 hard to judge from here in Denver with only having had a
12 little bit of time to look over those actual exams.

13 Did I answer your question?

14 CHAIRPERSON SEGALOFF: Sure. Yes. Did
15 you answer my question?

16 MR. WEBBER: Yes. Yeah.

17 CHAIRPERSON SEGALOFF: Okay.

18 MR. WEBBER: What you could do with it.

19 CHAIRPERSON SEGALOFF: Okay. Any other
20 questions?

21 We're all set, I think.

22 MS. MARCANO: I just want to correct for
23 the record that the procedures that Dr. Hornick talked of
24 earlier --

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1 CHAIRPERSON SEGALOFF: You mean the 60/40?

2 MS. MARCANO: -- insofar as 60/40 is not
3 mandated by our Civil Service Rules but an agreement
4 entered into between the Fire Union Local 825 and the
5 City back in the mid-80's that we're still operating
6 under.

7 CHAIRPERSON SEGALOFF: And that's the
8 60/40 split for --

9 MS. MARCANO: Correct.

10 MS. CAPLAN: Yes.

11 CHAIRPERSON SEGALOFF: Okay. I think
12 we're all set. Thank you very much. We appreciate that
13 you made yourself available on such a short notice. And
14 we thank you.

15 DR. HORNICK: Okay.

16 CHAIRPERSON SEGALOFF: If you'd like to
17 add anything to sum up or any other points of view that
18 you think are helpful, we're happy to hear it.

19 DR. HORNICK: Okay. Well, I think there
20 are a few things that maybe came through in this. Do you
21 want to talk about recommendations for the future? You
22 seem to want to focus this more on --

23 CHAIRPERSON SEGALOFF: We're just trying
24 to, at this point, deal with the present.

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1 MR. WEBBER: The present. We've got
2 enough.

3 CHAIRPERSON SEGALOFF: Which we have to
4 deal with. It might be very helpful once this is all
5 completed that we enter into some discussions about the
6 future. But right now, I think we're just getting
7 through the present.

8 DR. HORNICK: I certainly would offer any
9 help that I could give you here. I think there's not a
10 lot that we could do at this point on our end other than
11 serve as advice, in an advice capacity if we can. So,
12 again, I think there are some things that we need to look
13 at for the future. And we certainly would like to help
14 you if we can in that regard.

15 CHAIRPERSON SEGALOFF: Okay. Thank you
16 very much.

17 MR. WEBBER: Thank you.

18 CHAIRPERSON SEGALOFF: Good night.

19 (Whereupon, the phone call was concluded.)

20 CHAIRPERSON SEGALOFF: Do we have an
21 agenda of speakers in terms of --

22 MS. CAPLAN: Yeah. Here it is.

23 MS. BURGETT: Mr. Lewis is next.

24 CHAIRPERSON SEGALOFF: Okay. Mr. Lewis?

1 MR. LEWIS: And my only question would be
2 were those materials available for everyone at the same
3 time. And that's not for you to answer. That's just put
4 out there.

5 In looking at some of the articles that I
6 read, everyone didn't have access at the same time to the
7 materials. That may be just something that you should
8 consider.

9 A second question I looked at or pondered
10 was the time it took or the availability for -- or the
11 eligibility of a person to take the Lieutenant's exam.
12 And I understand they had to have 36 months on the
13 department and then they became eligible.

14 And the reason I ask that question is
15 because a lot of the questions or a number of the
16 questions on the Lieutenant's exam dealt with issues that
17 an apparatus driver needed to know. And if a person, an
18 individual who had not had the training or had not had an
19 opportunity to drive the apparatus, they may not be aware
20 of those questions. That put them somewhat at a
21 disadvantage. If they didn't have an opportunity to
22 drive, if they were not a driver, if they did not receive
23 the training, I think they were somewhat disadvantaged.

24 That would hold true as well, but not as

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1 set. Dr. Helms? Good evening.

2 DR. HELMS: Good evening.

3 CHAIRPERSON SEGALOFF: We'll do the same
4 format, Dr. Helms. We've got a lot of your literature.
5 But it's pretty hard to pore through it all. But maybe
6 you could tell us a little bit about yourself and then
7 we'll pick up from there.

8 DR. HELMS: All right. My name is Janet
9 Helms. I'm a professor of counseling psychology and
10 Director of the Institute for the Study and Promotion of
11 Race and Culture at Boston College. My primary area of
12 expertise is in race and culture, particularly race and
13 culture as they influence performance on tests and other
14 assessment procedures.

15 I have served on various testing
16 organizations, test development organizations, including
17 -- I was joint-chair of the Joint Committee on Testing
18 Practices, which is the national organization that
19 develops standardized tests in this country. I've also
20 been a member of the Committee on Psychology Testing for
21 the American Psychological Association.

22 My experience is not with firefighters per
23 se but is more in the general area of how race and
24 culture influence test performance more generally.

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1 CHAIRPERSON SEGALOFF: Okay. We'll let
2 you pick it up from there, if you'd like to just start
3 and --

4 DR. HELMS: All right.

5 CHAIRPERSON SEGALOFF: -- respond to some
6 of the things we're interested in hearing.

7 DR. HELMS: I'm pleased to hear the
8 Commission asking questions about why there is disparate
9 impact because I think that's an issue that has not been
10 adequately addressed at all by the established testing
11 community.

12 We know for a fact that regardless of what
13 kind of written test we give in this country that we can
14 just about predict how many people will pass who are
15 members of under-represented groups. And your data are
16 not that inconsistent with what predictions would say
17 were the case.

18 But we have very little information about
19 why it is that people of color and sometimes women
20 perform more poorly on these devices than do their white
21 male counterparts.

22 What I want to do tonight is to see if we
23 can shift the discussion somewhat from the
24 characteristics of the test to the characteristics of the

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1 test-takers and the intersection of the process of
2 developing tests and the characteristics of the test-
3 takers.

4 One of the problems we have when we talk
5 about disparate impact is that we talk about racial group
6 or ethnic group or gender group as though those terms
7 have real meaning. But we know that race -- racial
8 group, gender group, ethnic group cannot actually cause
9 behaviors. They cannot be responsible for test scores.
10 And so, therefore, we need to be looking at what kinds of
11 other factors might be accounting for why it is that
12 minorities and sometimes white women perform more poorly
13 on these kinds of tests.

14 As I looked at the materials that were
15 sent to me, I developed several ideas about what might be
16 possible factors that are related to your testing
17 situation.

18 One has to do with how the written test
19 was developed. The procedures that were used are
20 standard practice if one is planning to use the test with
21 a fairly homogeneous population. That is if we had used
22 this test only with white male firefighters, we wouldn't
23 be here this evening because there wouldn't be any
24 obvious problem.

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1 However, in this case, because of the
2 under-representation of African-American and Hispanic men
3 and women and white women at the ranks that were used in
4 developing the test, these groups were under-represented
5 in the actual definition of the kinds of knowledge that
6 were needed to be able to perform well in this test.

7 Based on the response rates, the greatest
8 weight in defining the necessary job knowledge was
9 provided by white participants. 67 percent of the people
10 who participated in defining job knowledge were white
11 men, followed by black participants, 18 percent, and
12 Hispanics, only 15 percent. Women didn't have any
13 influence on defining job knowledge. It's less than two
14 percent of the participants were involved in this phase
15 of development.

16 The reason why these numbers are important
17 is because most of the literature on firefighters shows
18 that the different groups perform the job differently.
19 That is white men perform the job in ways that are
20 different from the ways that white women perform the job
21 and ways that are different than the ways in which
22 African-American and Hispanic men perform the job.

23 This is often because the kinds of
24 experiences that are open to white male firefighters are

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1 not open to members of these other under-represented
2 groups. I do not know the extent to which this is true
3 of the environments here in this location. But
4 nationally, it's a fairly well-documented issue.

5 Nevertheless, the point here is that in
6 defining the job-relevant knowledge one needs to make
7 sure that one has sampled sufficient numbers of each of
8 the under-represented groups to make sure that their ways
9 of performing the job have been incorporated in the
10 evaluation process.

11 One also needs to assess the extent to
12 which their white counterparts are aware of such issues
13 and incorporate this awareness in their job knowledge and
14 understanding of the job.

15 If the content of the test only -- or
16 overly pertains to the job as white men perform it, then
17 the test is likely to be unfair to the under-represented
18 groups because it underestimates their job knowledge and
19 potentially overestimates the job knowledge of their
20 white male counterparts.

21 There were a number of racial and gender
22 issues that occurred to me as I looked at the data that I
23 had available to me. In addition to the possible
24 problems of the test specifications -- the job

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1 specifications of the test, there were also questions
2 about the testing conditions. In the newspaper accounts,
3 many of the people who seem to be dissatisfied with the
4 test talked a lot about the fact that different kinds of
5 experiences were available to different test-takers.

6 They talked particularly about the fact
7 there were more opportunities for training and
8 performance in the actual roles that were tested if you
9 were a white male than if you were members of the other
10 groups.

11 Because men of color and women are often
12 excluded from informal associations with their white male
13 co-workers, they are often excluded from the informal
14 mentoring that happens in these groups. There is
15 evidence to suggest that having guidance as to how to
16 behave in interviews, as well as other kinds of coaching,
17 may improve test performance.

18 It is also important to determine whether,
19 in fact, it was the case that different kinds of
20 preparation were available for people depending on their
21 racial and/or gender membership groups, as the
22 complainants in the newspaper accounts asserted.

23 Finally, the situation that never receives
24 any attention and I'm told did not receive any attention

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1 in this circumstance has to do with the test-takers
2 characteristics. No test can be a perfect measure for
3 all kinds of people. And so it is important to collect
4 background information so one can ascertain the extent to
5 which that influences test scores.

6 I had no background information other than
7 the racial and gender groups of the people who took the
8 test. And I understand that that's the kind -- only kind
9 of information that's collected.

10 But let me suggest some other kinds of
11 information that you might want to collect post-talk or,
12 if not post-talk, at least in the future. One has to do
13 with language diversity. Individuals who speak a
14 language as their first language that is not English or a
15 dialect that is not English often perform lower on tests
16 that are primarily English language tests. This is
17 because -- a number of reasons. Sometimes they do
18 because they language-switch during periods of stress.
19 And so they're unable to function as efficiently during
20 the test as their monolingual counterparts. Sometimes it
21 occurs because they have insufficient time to complete
22 the examination. But there are a variety of reasons why
23 having more than one language might adversely affect
24 one's test scores.

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1 If one looks at the performance of the
2 Hispanic test-takers, for instance, on average, they
3 would have -- they would have passed the written exam.
4 But the oral exam appears to be the place where the most
5 adverse impact occurred. And so one has to ask what
6 kinds of factors were operating that influenced their
7 test scores in that way?

8 We also know that evaluators may react
9 more negatively to people who speak accented speech. And
10 so we need to assess the extent to which that might have
11 been the case.

12 There is no information about the
13 languages, the primary languages, of the African-American
14 or, for that matter, for the white American people who
15 took the test. We need that kind of information because
16 that should be factored in to how we interpret the test
17 scores.

18 Test scores may be lower if the test-
19 takers are functioning under expectations that they will
20 not perform well on the test. We talk about that in
21 psychology as stereotype threat, fear that they will
22 confirm negative stereotypes about their group by not
23 performing well. This places the person under undue
24 stress and, rather than focusing on the test per se, they

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1 expend a lot of energy in trying to do the best that they
2 can rather than simply answering the questions.

3 Test-takers' scores might be lower if they
4 are acculturated to a non-dominant cultural group as, for
5 instance, African-Americans or Latinos often are, a group
6 in which the customs and traditions differ from the
7 larger group on which the test was developed. In that
8 case, to the extent that the test reflects the dominant
9 culture, then these test-takers may be placed at a
10 disadvantage. We need to know more about the background
11 and acculturation experiences of our test-takers.

12 Test-takers' scores might be lower if
13 their socioeconomic status is lower than the
14 socioeconomic status of the group on which the test was
15 developed. This is because they are less likely to have
16 the same kinds of exposure to experiences the test might
17 cover. We need to know more about that kind of
18 experience.

19 Test-takers are likely to score lower if
20 the test focuses on traditional ways of doing the job and
21 the test-taker, in fact, uses innovative approaches. We
22 know that it's often the case that minorities and white
23 women must use innovative approaches to do the job
24 because they don't receive the kind of mentoring that

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1 allows them to perform in the traditional kinds of ways.
2 So for -- being survivors, they might, in fact, being
3 penalized for their skill and ingenuity.

4 These are a couple of reasons or some
5 reasons why I think we need to begin to think about not
6 only the characteristics of the test but the
7 characteristics of the people as they interact with the
8 test and with the testing process.

9 CHAIRPERSON SEGALOFF: Thank you very
10 much, Dr. Helms.

11 Questions?

12 I'll just ask one as a starter. You
13 mentioned that firefighters perform the job differently.
14 I don't know if I'm stating that accurately. But maybe
15 you could expand on that. It strikes me that there's
16 some performance being a firefighter that it just doesn't
17 -- isn't affected by your -- by culture or race. I mean
18 is that fair to say? That you're on that truck and
19 you're heading down to that fire and there's someone
20 screaming on the third floor and -- and maybe I'm making
21 it too simplistic. But culture or race doesn't strike me
22 that on that kind of a situation -- these guys are all
23 rushing in there to save lives. We've had some testimony
24 about that. Is that --

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1 DR. HELMS: Well --

2 CHAIRPERSON SEGALOFF: -- fair in some
3 respects?

4 DR. HELMS: -- recognize that what we are
5 talking about is not the culture or race per se but how
6 people are treated because of the race or culture per se.
7 And so often what will happen is that women and men of
8 color have to earn their way into the brotherhood of
9 white firefighters. While they're earning their way into
10 that brotherhood, that often means that they're doing
11 things by themselves that their white male peers are
12 doing collaboratively.

13 So we have to begin to think about how --
14 not just that you are a woman or a person of color, but
15 how people react to that influences how you perform your
16 job.

17 CHAIRPERSON SEGALOFF: Okay.

18 Mal?

19 MR. WEBBER: There was a number of efforts
20 on the -- during the planning and administration of this
21 test which were taken to try to eliminate racial, sex
22 discrimination problems within the test. I am just
23 questioning whether it would be possible to completely
24 eliminate them. Because the minute you move in one

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1 direction, according to your testimony, you might be
2 affecting the other level.

3 DR. HELMS: I -- well, in a sense, you've
4 asked me two different questions. One of the things that
5 as I read the materials was done to make the testing a
6 fairer process was to examine the items for stereotypes.
7 But the fact is that stereotypes may be group-specific.
8 And so if you do not include a broad range of people in
9 that examination process, then stereotypes may still be
10 there that people are unaware of. So that's one aspect
11 of your question.

12 The other aspect has to do with whether
13 there will always be racial and/or gender differences
14 regardless of what you do. I don't know the answer to
15 that. But my thinking is that if we were to develop ways
16 to measure the characteristics that result from race and
17 gender rather than just using racial category, then we
18 could, in fact, correct scores for that kind of factor.

19 MR. WEBBER: Thank you. I think we're
20 both saying the same thing; that every effort must be
21 made to eliminate this.

22 DR. HELMS: I --

23 MR. WEBBER: But whether we will be 100-
24 percent successful none of us can ever predict.

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1 DR. HELMS: I think that's entirely true.

2 MS. CAPLAN: Dr. Helms -- and I'm trying
3 to look at both sides of this whole thing that you're
4 talking about. And as you know, the test itself, there
5 were study materials supposed to be available. And let's
6 say that everybody had the same study materials and that
7 the test itself, the questions came from those books and
8 the answers were within those study materials.

9 And I know that you didn't -- you didn't
10 want to look at the test itself. But are you saying --
11 is that -- are you saying that no matter what test, even
12 other tests that the City gives, that within every test
13 that is given there is an -- is there -- there is a --

14 CHAIRPERSON SEGALOFF: Element?

15 MS. CAPLAN: Element of -- yeah. Element
16 of problems with race and culture and gender within those
17 tests. Is that what you're saying?

18 DR. HELMS: That's what I'm saying. Since
19 1896, we've always found a disparity between blacks and
20 whites, Hispanics and whites on that kind of -- on that
21 kind of written test particularly. The disparity has
22 been about the same. It deviates by a couple of points.
23 But we can almost tell you what your disparity will be
24 even before the test is taken.

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1 And so the issue is -- for me at least
2 becomes not just describing that disparity but beginning
3 to think about what causes it. And if we can't figure
4 out what causes it, then we need to develop a new way of
5 assessing people.

6 MS. CAPLAN: Thank you.

7 CHAIRPERSON SEGALOFF: Could you share
8 with us maybe some of the -- I heard you talk about it to
9 some extent. Some of the -- if we concluded that this
10 was -- we shouldn't certify this exam and that there's a
11 better mousetrap, there's a better way to do it, tell us,
12 if you could, what would be the better way to get an exam
13 that would be likely to result in less of an adverse
14 impact, other than -- I mean we had an approach or some
15 comments by Mr. Lewis that talked about how they've done
16 it in other communities in terms of selection processes
17 from maybe -- based on race.

18 But if we just took this, tried to make a
19 new exam and make it better, could we do it? And how
20 could we do it?

21 DR. HELMS: I think that it is, again, not
22 so much the characteristics of the exam because
23 essentially even the exams that the first speaker talked
24 about had disparate impact. I think we have to begin to

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1 conceptualize the process of using tests differently. So
2 that right now what we do is we assume a test score means
3 the same regardless of the characteristics of the people
4 who would have taken it.

5 What we need to begin to do, however, is
6 to pay more attention to the experiences of the people
7 who are taking the test and develop means of measuring
8 those experiences that allow us to adjust test scores to
9 take those things into account.

10 To give you a more practical example, we
11 know, for instance, that we can reduce disparate impact
12 by knowing something about the socioeconomic status of
13 people and taking the socioeconomic status -- removing
14 that from their scores, that reduces the disparate impact
15 to some extent.

16 If we were to broaden that to include
17 things like language, remove that from people's test
18 scores, and other things as we discovered those to be
19 factors that were related to that impact, then we would
20 have a better testing process, in my opinion.

21 CHAIRPERSON SEGALOFF: Thank you.

22 MR. WEBBER: Thank you.

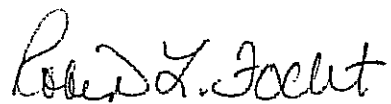
23 CHAIRPERSON SEGALOFF: I think we're all
24 set. Thank you very much.

CERTIFICATE

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In witness whereof I have hereunto set my hand and do so attest to the above, this 16th day of March, 2004.



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