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NOTE: The majority and dissenting opinions of the Court of Appeals appear at pages 1 through 47 of petitioner's appendix to the petition for a writ of certiorari. The memorandum opinion and order of the District Court appears at pages 48 through 52 of that appendix.

CIVIL DOCKET

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 1086-70

ALFRED E. DAVIS, WILLIE DOSTER

vs.

1. WALTER E. WASHINGTON,
individually and in his
capacity as Commissioner of
the District of Columbia
2. JERRY V. WILSON,
individually and in his
capacity as Chief of Police
of the District of Columbia
Metropolitan Police Department
3. ROBERT E. HAMPTON,
4. JAMES E. JOHNSON,
5. L. J. ANDOLSEK, individually
and in their capacities as
Commissioners of the United States
Civil Service Commission

DATE	PROCEEDINGS
1970	Deposit for cost by
Apr. 10	Complaint, appearance filed
Apr. 10	Summons, copies (2) and copies (2) of Complaint issued defts. #1 & #2 Both serv. 4/14/70

DATE	PROCEEDINGS
1970	
Apr. 10	Summons, copies (5) & copies (5) of Compl. issued defts. #3, #4, #5 A.G. serv. 4-14-70; D.A. serv. 4-15-70; #3, 4 & 5 serv. 4-17-70.
May 4	Answer of defts. 1 & 2 to complaint; c/m 5-4-70; appearance of Hubert B. Pair, John A. Earnest and John C. Salyer. filed
May 14	Motion of counsel for pltfs. to associate Elizabeth Molodvsky as co-counsel for pltfs.; c/m 5-12-70. filed
Jun 15	Stipulation extending time for defts. 3, 4 & 5 to answer complaint to and including July 15, 1970 filed
Jun 25	Interrogatories of pltfs. to defts.; c/m 6/23/70 filed
Jun 25	Request of pltfs. for admissions of facts; c/m 6/23/70 filed
Jul 1	Objections of defts. 1 & 2 to pltf's first interrogatories; c/m 7/1/70; M.C. filed
Jul 6	Motion of defts. 1 & 2 for extension of time to respond to pltfs. request for admission of facts; P&A; c/m 7/6/70; M.C. filed
Jul 7	Stipulation of counsel extending time within which defts. may object to pltfs. interrogatories and request for admissions to and including July 27, 1970 granted (N) Gesell, J.
Jul 14	Response of defts. 1 & 2 to pltf. request for admission of facts; c/m 7/14/70 filed
Jul 23	Stipulation extending time to and including 7-27-70 that defts. 3, 4, & 5 to respond. (N) filed
Jul 27	Answer of defts 3, 4, & 5 to complaint; c/m 7-27-70; appearance of Thomas A. Flannery, Joseph M. Hannon, Mary E. Folliard. filed
Jul 27	Calendared. CD/N

DATE	PROCEEDINGS
1970	
Jul 27	Answer of defts, 3, 4, & 5 to requests for admissions; c/m 7-27-30. filed
Jul 27	Answer of defts. 3, 4 & 5 to interrogatories propounded by pltfs.; c/m 7-27-70. filed
Aug 20	Motion of pltfs. for an order compelling discovery and for reasonable expenses under Rule 37; P&A; c/m 8/18; M.C. filed
Aug 21	Request by pltfs. for production of documents under Rule 34; c/m 8/18 filed
Aug 26	Opposition of defts. 1 & 2 to motion for order compelling discovery and for reasonable expenses under Rule 37; c/m 8/26/70 filed
Aug 26	Response of deft. #2 to request for production of documents; c/m 8/26/70 filed
Aug 31	Request of pltfs. for production of documents under Rule 34; c/m 8/31 filed
Aug 31	Motion of pltfs. for an order compelling discovery under Rule 37; P&A; c/m 8/31; M.C. filed
Sep 8	Motion of John Dugan Sellers, Jr., for leave to intervene as pltf.; P&A; Exhibit; M.C.; Deposit \$5.00 by Sobol filed
Sep 11	Motion of defts. 3, 4 & 5 for enlargement of time to respond to pltf's motion to compel; P&A; c/m 9/11/70; M.C. filed
Sep 11	Affidavit of deft. Jerry V. Wilson in support of objections to pltfs' first interrogatories; c/m 9/11/70 filed
Sep 15	Motion of defts 3, 4, & 5 to strike; P & A; c/m 9-15-70; M.C. filed
Sep 15	Opposition of defts 3, 4 & 5 to motion for intervention; c/m 9-15-70. filed

DATE	PROCEEDINGS
1970	
Sep 15	Opposition of defts 3, 4 & 5 to motion to compel answers to interrogatories; c/m 9-15-70. filed
Sep 15	Opposition of defts #1 & 2 to motion of John Dugan Sellers, Jr. to intervene; c/m 9-15-70. filed
Sep 23	Motion of George Harley for leave to intervene as pltf.; P&A; Exhibit; c/m 9/23/70; M.C.; deposit \$5.00 by Elizabeth Molodovsky; appearance of Richard B. Sobol, Elizabeth Molodovsky filed
Sep 23	Motion of defts. 3, 4 & 5 for a protective order; P&A; c/m 9/23/70; M.C. filed
Sep 23	Motion of defts. 1 & 2 for postponement of hearing on objections to interrogatories and application for intervention; P&A; affidavit; c/m 9/23/70; M.C. filed
Sep 28	Opposition of defts. 1 & 2 to motion of George Harley to intervene; c/m 9/28/70 filed
Sep 29	Opposition of defts. 3, 4 & 5 to motion to intervene; c/m 9/29/70 filed
Oct 6	Order prohibiting discovery; no pleadings shall be filed without approval of Court. 10-5-70 (N) Gesell, J.
Oct 9	Motion of defts. 3, 4 and 5 to dismiss or in the alternative for summary judgment; P&A; exhibit A and B; c/m 10-9-70; M.C. filed
Oct 9	Application of pltf for reconsideration of order denied; oral arguments set for Nov. 6, 1970 at 3:30 P.M. (Rep: P. Harper) Gesell, J.
Oct 13	Letter dated 10-7-70 from Richard Sobol to J. Gesell filed 10-9-70.
Oct 13	Letter dated 10-7-70 from Richard B. Sobol to J. Gesell filed 10-9-70.
Oct 16	Motion of defts. 1 & 2 to dismiss, or, in the alternative for summary judgment exhibit; statement; P&A; c/m 10-16-70; M.C. filed

DATE	PROCEEDINGS
1970	
Oct 30	Memorandum of pltfs. in opposition to motions to dismiss and motions for summary judgment; statement; affidavits (2); exhibits A through V., c/m 10-30-70. filed
Nov 10	Affidavit of deft. #2 in response to pltfs. request for production of documents; c/m 11-10-70. filed
Nov 16	Order directing defts. to make certain information available to Court; pleadings or affidavits filed re certain questions shall be filed <i>in camera</i> and not be made part of the record; directing pltf. to file amended verified complaint within two weeks. Gesell, J.
Dec 4	Transcript of proceedings, vol. 1, pages 1-16. Reporter Phyllis P. Harper. (Court's copy) filed
Dec 7	Stipulation extending time through 12-10-70 in which pltf. may file an amended complaint and supporting documents, approved. (N) Gesell, J.
Dec 10	Amended complaint; exhibit. filed
Dec 10	Amended motion of George Harley and John D. Sellers, Jr. to intervene; amended memorandum; exhibit; affidavits (2) with exhibits. filed
Dec 10	Motion of Herbert Colclough, Jr. and Edward Jones to intervene as pltfs; memorandum; exhibit; affidavits (2); M.C. Deposit \$5.00 by Sobol; appearance of Richard B. Sobol and Elizabeth Molodovsky. filed
Dec 10	Certificate of service of amended complaint; motion to intervene, amended motion to intervene personally served 12-10-70. filed
Dec 17	Stipulation extending time for defts. to respond to pltfs. amended and supplemental complaint to and including 1-7-71. filed
Dec 18	Stipulation extending time to and including 1-7-71 in which defts. may respond to pltfs. amended complaint, approved. Gesell, J.

DATE	PROCEEDINGS
1971	
Jan 8	Stipulation extending time to and including 1-21-71 in which defts. may respond to pltfs. amended complaint, approved. (Signed 1-8-71) (N) Gesell, J.
Jan 21	Motion of defts. #1 and 2 to dismiss the amended complaint or, in the alternative for summary judgment; exhibits A, B, C,; statement; P&A; c/m 1-21-71; M.C. filed
Jan 21	Amended motion of defts. #3, 4 and 5 to dismiss or in the alternative for summary judgment; exhibits A, B; statement; P&A; c/m 1-21-71; M.C. filed
Jan 21	Opposition of defts. #1 and 2 to the amended motion to intervene; c/m 1-21-71. filed
Jan 21	Opposition of defts. #3, 4 and 5 to amended motion to intervene; c/m 1-21-71. filed
Feb 2	Reply memorandum of pltfs. in opposition to motions to dismiss or for summary judgment; statement; c/m 2-2-71. filed
Feb 3	Affidavit of Dr. David Nolan; c/m 2-3-71. filed
Feb 9	Reply of defts. #3, 4 and 5 to opposition to motion to dismiss or in the alternative for summary judgment; c/m 2-9-71. filed
Feb 22	Response of pltfs. to reply memorandum and supplemental affidavit filed in support of defts. motion to dismiss or for summary judgment; c/m 2-17-71. filed
Mar 26	Status Conference. Gesell, J.
Apr 1	Response of defts. #3, 4 and 5 to Court's inquiry; c/m 4-1-71. filed
Apr 6	Report of defts. #1 and 2 to the Court concerning the response to Court's inquiry of the defts. Robert E. Hampton, James E. Johnson and L. J. Andolsek; c/m 4-6-71. filed

DATE	PROCEEDINGS
1971	
Apr 14	Answer of pltfs. to defts. response to Court's inquiry; exhibits A through D; c/m 4-13-71. filed
Apr 19	Reply of defts. #3, 4 & 5 to pltfs. answer to response to Court's inquiry; c/m 4-19-71. filed
Apr 26	Supplemental memorandum of pltfs. respecting the proposed remand to the Civil Service Commission; c/m 4-26-71. filed
Apr 27	Memorandum opinion and order denying motion of defts. to dismiss; directing that the motion for summary judgment will remain open; and directing that there shall be no further discovery without approval of the Court. (N) Gesell, J.
Apr 27	Affidavits of Richard S. Barrett, James J. Kirkpatrick, Marjorie L. Parker. filed
May 10	Motion of defts. #3, 4, and 5 for reconsideration of opinion and order for extension of time to file a memorandum of P&A; P&A; c/m 5-10-71; M.C. filed
May 18	Motion of deft. #5 requesting an extension of time to file a memo of Points and Authorities, granted. (Fiat) (N) Gesell, J.
June 1	Supplementary memorandum of P&A in support of defts. motion for reconsideration of opinion and order; affidavit; c/m 6-1-71. filed
June 16	Stipulation extending time for pltfs. to answer motion for reconsideration of opinion and order to and including 7-14-71. filed
July 14	Memorandum of pltfs. in opposition to motion for reconsideration of opinion and order; exhibit A&B. filed
July 19	Certificate of service of mailing copy of opposition to motion for reconsideration on July 14, 1971. filed

DATE	PROCEEDINGS
1971	
July 27	Reply of defts. to opposition to motion for reconsideration; p/s 7-27-71; exhibit. filed
July 26	Stipulation extending time to and including 7-27-71 in which defts. Hampton, Johnson and Andolsek may reply to pltfs. opposition to motion for reconsideration, approved. (Signed 7-23-71) (N) Gesell, J.
July 27	Memorandum and order denying motion of deft. to have case remanded to the Civil Service Commission. Gesell, J.
Sept. 2	Answers of defts. #1 & 2 to pltffs. interrogatories; c/m 9-2-71. filed
Oct 22	Consent order directing that counsel for pltfs. may inspect and copy at expense of pltfs. whatever requested tabulations are in the possession of the Civil Service Comm., that any copies of said tabulations be shown only to the Court, attorneys of record, and to the experts advising them and not to the named pltfs; said tabulations and reproductions to be returned to defts. at the conclusion of the case; directing that any pleading or affidavit containing specific reference to information in the said tabulations be filed with the Clerk of the Court in a sealed envelope for in camera inspection and shall at no time be made part of the public record, approved. (Signed 10-21-71) (N) Gesell, J.
Dec 8	Motion of pltfs. to associate Richard T. Seymour as co-counsel for pltfs; c/m 12-7-71; M.C. filed
Dec 14	Order granting motion of pltfs. to add Richard T. Seymour as co-counsel. (N) Gesell, J.
1972	
Jan 7	Second interrogatories of pltfs. and pltf. intervenors; c/m 1-5-72. filed
Feb 22	Answers of defts #1 & #2 to interrogatories; exhibits A, B & C; c/m 2-22-72. filed

DATE	PROCEEDINGS
1972	
Apr 17	Amended answers of deft. 1 & 2 to interrogatories; c/m 4-17. filed
May 15	Motion of defts. Washington & Wilson to dismiss amended complaint or in the alternative for summary judgment; affidavit; P & A; c/m 5-15. M.C.
May 31	Reply of defts. 1 & 2 to plaintiffs opposition to motion to dismiss complaint or in the alternative, for summary judgment; affidavit; c/m 5-31.
May 31	Answer of plaintiffs to motion to dismiss or summary judgment; c/m 5-26.
Jun 2	Status Conference: Hearing re-class action & hearing on motion for preliminary injunction set for 6-20-72 at 3:00 p.m.; trial is set for 10-9-72 at 9:30 a/m. Gesell J.
Jun 7	Order granting motion of Herbert Colcough Jr. & Edward W. Jones to intervene; denying motion of defts. Washington & Wilson to dismiss or in the alternative for summary judgment. (N) Gesell J.
Jun 14	Motion of plaintiffs for partial summary judgment; statement; P & A; affidavits (3); exhibit; c/m 6-14. M.C.
Jun 15	Motion of defts for extension of time to answer or otherwise respond to motion for partial summary judgment; P & A; c/m 6-15-72; M.C. filed
Jun 16	Response of pltf's to defts motion for extension of time; c/m 6-16-72.
Jun 20	Defendants to file opposition to plaintiffs motion for Summary Judgment by 7-17-72. Motion re-class action heard & held in obedience. Gesell J.
Jul 17	Motion of defendants 1 & 2 for partial summary judgment; P & A's; Statement; c/m 7-17. M.C.
Jul 18	Motion of defendants 3, 4 and 5 for summary judgment; P & A's; Statement; Affidavit (3); Exhibits 1, B, & C; c/m 7-17. M.C.

DATE	PROCEEDINGS
1972	
Jul 19	Change of address of Richard T. Seymour to 1763 R Street, N.W.
Jul 27	Certificate of service by defendants of mailing attachments; 7-27-72; attachments 1 & 2.
Jul 31	Memorandum opinion & order granting motions of Federal defendants for Summary Judgment dismissing amended complaint as to them; granting motion of defendants District of Columbia for partial summary judgment; denying motion of plaintiffs for partial Summary Judgment; setting status conference for 9-5-72 at Noon. (Gesell J.)
Aug 17	Motion of plaintiff for a determination pursuant to Rule 54(b); c/m 8-15. M.C.
Aug 22	Request of plaintiffs for production from the District of Columbia defendants; c/m 8-22.
Aug 22	Request of plaintiffs for admissions from the District of Columbia defendants with attachment; exhibits A, B, C, D, E; c/m 8-22.
Sep 5	Motion of plaintiffs for a determination pursuant to Rule 54b & motion of plaintiffs requesting production from the District defendants, granted. (Trial date is set for 10-10-72 at 9:30 a.m.) Gesell J.
Sep 6	Plaintiffs request for production from the District defendants, granted. (Fiat) (9-5-72) Gesell J.
Sep 6	Order granting motion of plaintiffs-intervenors' motion for a determination pursuant to Rule 54(b). (9-5-72) Gesell J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed December 10, 1970]

AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. JURISDICTION

1. This is an action to enjoin violations by the defendants of rights of the plaintiffs and the class they represent, secured by the Fifth Amendment to the United States Constitution, by 42 U.S.C. § 1981, and by District of Columbia Code § 1-320. The action challenges a pattern of racial discrimination by the defendants in making promotions within the District of Columbia Metropolitan Police Department (hereinafter "the Police Department"). Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343(3), (4) and 1361, and by D.C. Code § 11-521. The amount in controversy for each plaintiff, exclusive of interest and costs, is in excess of \$10,000.00.

II. PARTIES

2. (a) Plaintiff Alfred E. Davis is a black citizen of the United States and a resident of the District of Columbia. He has been employed as a private in the Police Department since 1959. He was one of the original four men appointed "Officer Friendly," a position created in 1968 in the Community Relations Division of the Police Department. In that capacity, plaintiff Davis makes appearances on behalf of the Department in public schools throughout the city, for the purpose of improving the image of the Department. He is also president of the Brotherhood of Policemen and Citizens, a District of

Columbia group established in 1968 to combat employment discrimination against black policemen; and a member of the National Black Caucus on Police-Community Relations, a similar group established in 1967.

(b) Plaintiff Willie Doster is a black citizen of the United States and a resident of the District of Columbia. He has been employed as a private in the Police Department since 1966. He is a recruitment officer and has responsibility for the screening of applicants to the Department. He is treasurer of the Brotherhood of Policemen and Citizens.

3. This action is brought by the plaintiffs as a class action, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. The class represented by the plaintiffs is comprised of the black privates in the Department, who, in 1965 or thereafter, unsuccessfully sought promotion to the position of sergeant. The requirements for a class action under Rule 23(a) and (b)(2) are met for the following reasons:

(a) The class, as defined herein, includes approximately 250 persons; it is so numerous that joinder of all its members is impracticable;

(b) This action challenges the Department's promotional system on the ground that, in whole and in its separate parts, it results in discrimination against black applicants for promotion on grounds of race. There are questions of fact—concerning the nature of the promotional system, its predictive value, and its impact on black applicants for promotion—and questions of law—concerning the legality of the system under applicable constitutional and statutory provisions—which are common to the members of the class;

(c) As alleged more fully in paragraph 6, *infra*, both plaintiffs have applied for and been denied promotion to the position of sergeant. They have both been disqualified by the test required for promotion. In one instance,

plaintiff Davis satisfied the test requirement, but was denied promotion because of the subjective supervisors' evaluation—the second prong of the two-step promotional procedure. Plaintiffs' claims, that both the objective and subjective aspects of the promotional procedure are racially discriminatory, are typical of the claims of the class;

(d) As alleged more fully in paragraph 2, *supra*, both plaintiffs have positions of special responsibility within the Department, and are officers of a city-wide group dedicated to the protection of the employment rights of black policemen. They have 11 and 4 years' experience, respectively, as privates in the Department. They will fairly and adequately protect the interests of the class;

(e) In the application of the promotional system to all applicants for promotion, the defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief as to the class as a whole.

4. (a) Defendant Walter E. Washington is the Commissioner of the District of Columbia and in this capacity is authorized under District of Columbia Code § 4-103, as amended, to appoint, assign and promote all officers and members of the Police Department. Defendant Washington is sued individually and in his official capacity.

(b) Defendant Jerry V. Wilson is Chief of Police of the Police Department and in this capacity, subject to the supervision and direction of defendant Washington, has the responsibility for the appointment and promotion of officers and members of the Police Department. Defendant Wilson is sued individually and in his official capacity.

(c) Defendants Robert E. Hampton, James E. Johnson and L. J. Andolsek are Commissioners of the United States Civil Service Commission. Appointments and pro-

motions to and within the Police Department are made pursuant to rules and regulations adopted by the Civil Service Commission. D.C. Code § 4-103. In addition, the Civil Service Commission administers and aids in the construction of the personnel examination administered as a condition of promotion within the Police Department.

III. STATEMENT OF THE CASE

5. (a) From the inception of the Police Department, the defendants and their predecessors have discriminated on the basis of race against the promotion of black officers. As a result, although 37% of the privates in the Department are black, blacks comprise fewer than 10% of the officers above that rank. Moreover, this underrepresentation increases at each higher employment level.

(b) Promotions from private to sergeant within the Police Department are made on the basis of length of service, written personnel examinations and supervisory suitability ratings. Specifically, only officers who have satisfactorily completed three years with the Police Department will be considered. An officer must then achieve a score of 70 on a written personnel test to remain eligible. Those who achieve this passing score then receive, from their supervisory officers, a numerical evaluation, on a scale of 100, of their potential for performance at the rank of sergeant. These evaluations are then reviewed and adjusted by the Promotional Rating Board which is made up of assistant chiefs of police. Any officer who receives an evaluation of less than 70 is no longer considered for promotion. The adjusted evaluation and the test score are then averaged and a promotional list is compiled in the order of the resulting scores. For the two-year period following the compilation of the list, appointments to the position of sergeant are taken from the top of this list. The current promotional list, based on an examination given in 1969, has just been exhausted.

The last men on the list received their promotions on November 24, 1970. The next examination for promotion to sergeant is scheduled for March 27, 1971.

6. (a) In 1965, plaintiff Davis applied for promotion to the position of sergeant in the Police Department. He achieved a passing score on the promotional examination, and a suitability rating of 87 from his precinct commander. This rating was reduced to 75 by the Promotional Rating Board, and as a result he was placed 97th on the 1965 list of 98 eligible candidates. He was not reached for promotion during the two-year period for which this list was used.

(b) In 1967, plaintiff Davis again applied for promotion to the position of sergeant in the Police Department. He did not achieve a passing score on the promotional examination and was therefore disqualified from further consideration.

(c) In 1969, plaintiff Doster applied for promotion to the position of sergeant in the Police Department. He did not achieve a passing score on the promotional examination and was therefore disqualified from further consideration.

(d) Plaintiffs allege that in each instance of their application for promotion to the position of sergeant they were evaluated under standards that, for the reasons stated in paragraphs 7 and 8, discriminate against them on the basis of race.

7. (a) The written promotional examination used to evaluate candidates for promotion to the position of sergeant disqualifies or disadvantages a far greater proportion of black candidates for promotion than white candidates for promotion. It has not been shown by validation studies or otherwise to aid in predicting performance in the position of sergeant; it does not in fact aid in predicting performance in the position of sergeant.

Specifically, on the 1965 examination the white pass rate was almost four times as great as the blacks'; 21.29% of the whites passed, 5.49% of the blacks. On information and belief, the results of the 1967 and 1969 examinations were similar. Moreover, on information and belief, the promotion examination has never been validated. Nor is it predictive of performance as sergeant. See Barrett and Kirkpatrick affidavits concerning the 1965, 1967, and 1969 examinations. Two copies of each test and affidavit are submitted in camera, as appendices.

(b) The subjective evaluations of candidates for promotion to the position of sergeant disqualify or disadvantage a far greater proportion of black candidates than white candidates for promotion; they have not been shown by validation studies or otherwise to aid in predicting performance in the position of sergeant; and they do not in fact aid in predicting performance in the position of sergeant. See Memorandum In Support of Amended Complaint, p. 5.

As a result of all these factors, although 17.39% of the active applicants for promotion in 1965 were black, blacks comprised only 5.10% of those on the 1965 promotion list; and only 2.96% of those actually promoted. On information and belief, the results of the 1967 and 1969 competitions were similar.

IV. VIOLATIONS OF LAW

8. The employment practices described in paragraph 7 hereof violate the rights of the plaintiffs and the class they represent under the due process clause of the Fifth Amendment to the United States Constitution, under 42 U.S.C. § 1981 and under D.C. Code § 1-320, for the following reasons:

(a) The written promotional examination discriminates against black candidates on grounds of race because

it disqualifies or disadvantages a far greater proportion of blacks than whites, and because it has not been shown by validation studies or otherwise to aid in predicting performance in the position of sergeant; or alternatively,

(b) The written promotional examination discriminates against black candidates on grounds of race because it disqualifies or disadvantages a far greater proportion of blacks than whites, and because it does not in fact aid in predicting performance in the position of sergeant;

(c) The subjective evaluation of candidates for promotion discriminate against black candidates on grounds of race because they disqualify or disadvantage a far greater proportion of blacks than whites, and because they have not been shown by validation studies or otherwise to aid in predicting performance in the position of sergeant; or alternatively,

(d) The subjective evaluations of candidates for promotion discriminate against black candidates on grounds of race because they disqualify or disadvantage a far greater proportion of blacks than whites, and because they do not in fact aid in predicting performance in the position of sergeant.

V. EQUITY

9. There is a real and actual controversy between the parties. The defendants, their agents, employees and predecessors have failed to take action to remedy the discriminatory employment practices set forth in paragraph 7 hereof, although the discriminatory quality of these practices has repeatedly been called to their attention. Plaintiffs and the class they represent are suffering and will continue to suffer irreparable injury as a result of the discriminatory practices set forth in paragraph 7 herein. Plaintiffs are without an adequate or workable administrative remedy. Plaintiff Davis has, without suc-

cess, attempted to pursue procedures established under District of Columbia Board of Commissioners Order No. 66-1251 since 1966, and has not yet been able to secure the production of relevant material or an administrative hearing. No other administrative remedy is available to the plaintiffs. There is no remedy other than the proceeding in this Court which would not be futile or which could offer substantial relief.

VI. PRAYER

WHEREFORE, plaintiffs pray that this Court:

1. Make a determination pursuant to Rule 23(c) (1) of the Federal Rules of Civil Procedure that this action may be maintained as a class action under the provisions of Rule 23(b) (2), and that the class represented by plaintiffs is comprised of all the black privates on the force of the Department who, in 1965 or thereafter, have sought unsuccessfully to be promoted to the rank of sergeant;

2. Issue a declaratory judgment that:

- (a) The conduct of the defendants in preparing and administering the Police Department promotional examination and relying on its results in evaluating candidates for promotion from private to sergeant discriminates on grounds of race against plaintiffs and the class they represent in violation of the Fifth Amendment to the United States Constitution, 42 U.S.C. § 1981 and D.C. Code § 1-320, for the reason that: (i) the examination disqualifies proportionally more black than white applicants for promotion to the position of sergeant; and (ii) it has not been shown by validation studies or otherwise to be predictive of performance in the position of sergeant; or alternatively,

- (b) The conduct of the defendants in preparing and administering the Police Department promotional exam-

ination and relying on its results in evaluating candidates for promotion from private to sergeant discriminates on grounds of race against plaintiffs and the class they represent in violation of the Fifth Amendment to the United States Constitution, 42 U.S.C. § 1981 and D.C. Code § 1-320, for the reason that: (i) the examination disqualifies proportionally more black than white applicants for promotion to the position of sergeant; and (ii) it is not predictive of performance in the position of sergeant;

(c) The reliance by defendants Washington and Wilson on subjective supervisory evaluation of performance as a factor in determining eligibility for promotion to the position of sergeant discriminates on grounds of race against plaintiffs and the class they represent in violation of the Fifth Amendment to the United States Constitution, 42 U.S.C. § 1981 and D.C. Code § 1-320 for the reason that: (i) the evaluations disqualify proportionally more black than white applicants for promotion; and (ii) they have not been shown by validation studies or otherwise to be predictive of performance in the position of sergeant; or alternatively,

(d) The reliance by defendants Washington and Wilson on subjective supervisory evaluation of performance as a factor in determining eligibility for promotion to the position of sergeant discriminates on grounds of race against plaintiffs and the class they represent in violation of the Fifth Amendment to the United States Constitution, 42 U.S.C. § 1981 and D.C. Code § 1-320 for the reason that: (i) the evaluations disqualify proportionally more black than white applicants for promotion; and (ii) they are not predictive of performance in the position of sergeant.

3. Issue a preliminary and permanent injunction:

(a) Prohibiting the defendants from engaging in any of the aforesaid illegal practices;

(b) Requiring the defendants to develop and submit to the Court for approval a promotional system that will not discriminate against black candidates for promotion;

(c) Requiring the defendants to compile a new promotional register under a new promotional system approved by the Court;

(d) Requiring the defendants to grant members of the class who achieve the minimum established rating under the new promotional system preferred positions on the new promotional register by granting the highest positions on that register to class members who so qualify in the order of the year of their first application for promotion to the position of sergeant, and among those who applied within the same calendar year, on the basis of score under the new promotional system; and

(e) Requiring the defendants to pay to class members who achieve the minimum established rating under the new promotional system the difference in salary between the position of private and the position of sergeant from the average date of appointment from the list for which they first applied to the date of their actual appointment to the position of sergeant.

4. Award plaintiffs and the class they represent such other and further relief as may be shown to be appropriate, including costs of this action.

[Certificate of Service omitted in printing]

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

AFFIDAVIT

Alfred E. Davis, being first duly sworn, deposes and says:

1. I am a plaintiff in the attached amended complaint in *Davis v. Washington*, Civil Action No. 1086-70 in the United States District Court for the District of Columbia.

2. I have read the amended complaint, and swear that its allegations are true, to the best of my information and belief.

/s/ Alfred E. Davis
ALFRED E. DAVIS

Subscribed and sworn to before me this 9th day of December, 1970.

/s/ Marquerite E. O'Brien
Notary Public
(SEAL)

My commission expires: April 14, 1971

CITY OF WASHINGTON)
) ss.
DISTRICT OF COLUMBIA)

Willie Doster, being first duly sworn, deposes and says:

1. I am a plaintiff in the attached amended complaint in *Davis v. Washington*, Civil Action No. 1086-70 in the United States District Court for the District of Columbia.

2. I have read the amended complaint, and swear that its allegations are true, to the best of my information and belief.

/s/ Willie Doster
WILLIE DOSTER

Subscribed and sworn to before me this 9th day of December, 1970.

/s/ Marquerite E. O'Brien
Notary Public
(SEAL)

My commission expires: April 14, 1971

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed December 10, 1970]

AMENDED MOTION TO INTERVENE

For the reasons stated in the accompanying memorandum, George Harley and John Dugan Sellers, Jr., through undersigned counsel, hereby move to intervene in this action on the side of the plaintiffs, under the provisions of Rule 24(b) of the Federal Rules of Civil Procedure. In accordance with Rule 24(c), this motion is accompanied by applicants for intervention's proposed amended complaint in intervention.

[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed December 10, 1970]

AMENDED COMPLAINT IN INTERVENTION

I. JURISDICTION

1. This is an action to enjoin violations by the defendants of rights of plaintiffs-intervenors and the class they represent, secured by the Fifth Amendment to the United States Constitution, by 42 U.S.C. § 1981, and by District of Columbia Code § 1-320. The action challenges a pattern of racial discrimination by the defendants in making initial appointments to the District of Columbia Metropolitan Police Department (hereinafter "the Police Department"). Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1343 (3), (4) and 1361, and by D.C. Code § 11-521. The amount in controversy, exclusive of interest and costs, is in excess of \$10,000.00.

II. PARTIES

2. Plaintiffs-intervenors George Harley and John Dugan Sellers, Jr. are black citizens of the United States and residents of the District of Columbia. Each has a high school diploma or high school graduation equivalency certificate.

3. This action is brought by plaintiffs-intervenors as a class action pursuant to Rule 23(b) (2) of the Federal Rules of Civil Procedure. The action is instituted on behalf of all black applicants who, since the beginning of 1968, have unsuccessfully sought appointment to the Po-

lice Department. The class, which includes approximately 3,000 persons, is so numerous that joinder of all its members is impracticable. There are questions of fact—concerning the nature of the appointment system, its predictive value, and its impact on black applicants for employment—and questions of law—concerning the legality of the system under applicable constitutional and statutory provisions—which are common to the members of the class. The claims of plaintiffs-intervenors are typical of the claims of the class. Plaintiffs-intervenors will fairly and adequately protect the interests of the class. The defendants have acted and refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

4. (a) Defendant Walter E. Washington is the Commissioner of the District of Columbia and in this capacity is authorized under District of Columbia Code § 4-103, as amended, to appoint, assign and promote all officers and members of the Police Department. Defendant Washington is sued individually and in his official capacity.

(b) Defendant Jerry V. Wilson is Chief of Police of the Metropolitan Police Department of the District of Columbia and in this capacity, subject to the supervision and direction of defendant Washington, has the responsibility for the appointment and promotion of officers and members of the Police Department. Defendant Wilson is sued individually and in his official capacity.

(c) Defendants Robert E. Hampton, James E. Johnson and L. J. Andolsek are Commissioners of the United States Civil Service Commission. Appointments and promotions to and within the Police Department are made pursuant to rules and regulations adopted by the Civil Service Commission. D.C. Code § 4-103. In addition, the

Civil Service Commission administers and aids in the construction of the personnel examination administered as a condition of appointment to the Police Department.

III. STATEMENT OF THE CASE

5. Appointments to the Police Department are made on the basis of successful performance on a written personnel test, educational qualifications, character investigation, personal interviews and other factors. These criteria disqualify a far greater percentage of black than white applicants. In 1969, the ratio of hires to applications was 2 to 3 times greater for whites than for blacks. On information and belief, plaintiffs-intervenors allege that similar results were obtained in 1968 and 1970.

6. In August, 1970, plaintiff-intervenors separately visited Police Department recruitment stations to apply for appointment. They were administered different versions of the written entrance test. Each was informed that he had not passed the test, and that he could not be considered for appointment regardless of any other factor until he had passed the test.

7. The defendants discriminate on the basis of race against black applicants in making appointments by a series of practices which include, but are not limited to, the following:

(a) the use, as a condition of appointment, of a written personnel test which excludes a disproportionately high number of black applicants, and which has been shown by a validation study conducted under the auspices of the Civil Service Commission not to aid in predicting performance of black Police officers (see Appendix);

(b) the reliance, as a factor in determining eligibility for appointment, on subjective evaluations of department

interviews, which operate on a systematic basis to disproportionately disadvantage black applicants, and which do not aid in predicting performance on the Police Force;

(c) the reliance, as a factor in determining eligibility for appointment, on character investigations, which operate on a systematic basis to disproportionately disadvantage black applicants, and which do not aid in predicting performance on the Police Force.

As a result of all these factors, in 1969 the percentage of white applicants who were hired by the Police Department was two to three times greater than the blacks'.

IV. VIOLATIONS OF LAW

8. The employment practices described in paragraph 7 hereof violate the rights of plaintiffs-intervenors and the class they represent under the due process clause of the Fifth Amendment to the United States Constitution, under 42 U.S.C. § 1981 and under D.C. Code § 1-320.

V. EQUITY

9. There is a real and actual controversy between the parties. The defendants, their agents, employees and predecessors have failed to take action to remedy the discriminatory employment practices set forth in paragraph 7 hereof, although the discriminatory quality of these practices has repeatedly been called to their attention. Plaintiffs-intervenors and the class they represent are suffering and will continue to suffer irreparable injury as a result of the discriminatory practices set forth in paragraph 7 herein. Plaintiffs-intervenors are without an adequate or workable administrative remedy.

VI. PRAYER

WHEREFORE, plaintiffs-intervenors pray that this Court:

A. Make a determination pursuant to Rule 23(c) (1) of the Federal Rules of Civil Procedure that this action may be maintained as a class action under the provisions of Rule 23(b) (2), and that the class represented by plaintiffs is comprised of all black applicants who, since the beginning of 1968, have unsuccessfully sought appointment to the Police Department.

B. Issue a declaratory judgment that the employment practices set forth in paragraph 7 herein are violative of the rights of plaintiffs-intervenors and the class they represent under the due process clause of the Fifth Amendment to the United States Constitution, under 42 U.S.C. § 1981 and under D.C. Code § 1-320.

C. Issue a preliminary and a permanent injunction:

(1) prohibiting the defendants from engaging in any of the practices listed in paragraph 7 herein;

(2) requiring the defendants to adopt standards for employment that will not discriminate against black applicants on grounds of race;

(3) requiring the defendants to notify class members of the adoption of the new standards, and to invite them to reapply;

(4) requiring the defendants to employ members of the class who meet the entrance qualifications of the Police Department in preference to all other applicants, and among class members, in the order of their dates of application;

(5) requiring the defendants to pay to class members who are so employed the salary of the lowest rank of

private, from the date of their first rejection by the Police Department until their date of employment, less the amount actually earned during this period.

D. Award such other and further relief as may be shown to be necessary or appropriate.

[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed January 5, 1972]

PLAINTIFFS' AND PLAINTIFF-INTERVENORS'
SECOND INTERROGATORIES

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, plaintiffs and plaintiff-intervenors hereby direct the following interrogatories to all the defendants in this matter. Pursuant to Rule 33(a) defendants shall serve copies of answers and objections, if any, within 30 days of service of these interrogatories.

- I. For each of the years 1968, 1969, 1970 and 1971, state separately:
 - (a) The total number of applicants for appointment to the Metropolitan Police Department;
 - (b) The total number of black applicants and the total number of white applicants for each year;
 - (c) The total number of applicants to whom the Police Department applicant test was administered;
 - (d) The total number of white and the total number of black applicants to whom the Police Department applicant test was administered;
 - (e) The total number of black applicants who passed the test and the total number of black applicants who failed the test;

- (f) The total number of white applicants who passed the test and the total number of white applicants who failed the test;
 - (g) The total number of black applicants and the total number of white applicants who were offered appointment to the Metropolitan Police Department.
- II. For each of the years 1968, 1969, 1970 and 1971 state the number of black applicants and the number of white applicants who scored at each score level on the applicant test. The answer to this interrogatory should be in the form of a list, for each year, indicating (a) each score level attained by any applicant in descending order; (b) the number of white applicants who achieved that score level; (c) the number of black applicants who achieved that score level.
- III. State the passing score on the test administered to applicants by the Metropolitan Police Department.

[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed February 22, 1972]

ANSWERS OF THE DEFENDANTS WASHINGTON
AND WILSON TO PLAINTIFFS' AND PLAINTIFF-
INTERVENERS' SECOND INTERROGATORIES

James M. Murray, having been first duly sworn under oath, deposes and says that he is Administrative Services Officer, in the Administrative Services Bureau of the Metropolitan Police Department, and upon information and belief gives the following answers on behalf of the defendants Washington and Wilson to the second set of interrogatories received from the plaintiffs and plaintiff-intervenors:

1. (a) The total number of applicants for appointment is approximately:

1968—	2556
1969—	3554
1970—	5093* (Adjusted 8366 Field Tested)
1971—	3749* (Adjusted 4510 Field Tested)
TOTAL	<u>14952*</u> (or 19,013)

* Field Recruiting Terms from MPD Recruiting Branch tested the following applicants outside of the Washington, D.C. area on field recruiting trips:

<i>Civilian</i>	1970	—	2953 tested
	1971	—	714 tested
	1968 - 1969	—	unavailable
<i>Military</i>	1970	—	320 tested
	1971	—	47 tested
	1968&1969	—	unavailable
<i>Field Total</i>	1970	—	3273
	1971	—	788
Adjusted Total	1970	—	8366
	1971	—	4510

These statistics represent the total number of applicants tested locally and in the field by the Metropolitan Police Department Recruiting Branch. Not reflected in these statistics is the number of applicants tested independently by the United States Civil Service Commission in military reservations and in out-of-state testing centers. No field statistics are available for 1968 or 1969. It is assumed that the listed statistics approximate the numbers who presented themselves for examination, since the examination is the first formal step in the application process and no one is precluded from taking the examination. At the Beginning of the examination the examiner explains this point and reads the qualifications from the brochure attached hereto as Exhibit "A", with modification for the weight for female applicants. Some few applicants have been observed to leave after this explanation in spite of the notification of the right to take the examination anyway.

(b) The total number of applicants as outlined in Interrogatory 1(a) above for the appropriate years were tallied to extract the number of black personnel. The number of black personnel in each category was deduced from the total number of personnel as reflected in the recruiting records for each respective year. The results from this deduction then became the "Other" figure. The figure "Other" as opposed to "White" was used in order to account for personnel in minority groups other than "Black".

<i>Locally</i>	1968	—Black	1695	Other	861	Total	2556
	1969	—Black	2499	Other	1055	Total	3554
	1970**	—Black	3508	Other	1585	Total	5093**
	1971**	—Black	2350	Other	1399	Total	3749**
							14952**

** Excluding Field Trips.

Field Trips

Civilian	1970	—Black	690	Other	2263	Total	2953
	1971	—Black	132	Other	582	Total	714
Military	1970	—Unavailable				Total	320
	1971	—Unavailable				Total	47

(1968 and 1969 statistics are unavailable)

(c) See statistics in Answer 1(a).

(d) See statistics in Answer 1(b).

(e) See also exhibits attached hereto.

BLACK LOCALLY TESTED

1968	—	773	Passed	
		922	Failed	
1969	—	1035	Passed	
		1464	Failed	
1970	—	1526	Passed*	(Field Civilian 340 Passed)
		1982	Failed	(Field Civilian 330 Failed)
1971	—	991	Passed*	(Field Civilian 82 Passed)
		1359	Failed	(Field Civilian 50 Failed)

(f) Also see charts attached.

OTHER LOCALLY TESTED

1968	—	729	Passed	
		132	Failed	
1969	—	892	Passed	
		163	Failed	
1970	—	1383	Passed*	(Field Civilian 1992 Passed)
		202	Failed	(Field Civilian 271 Failed)
1971	—	1235	Passed*	(Field Civilian 511 Passed)
		164	Failed	(Field Civilian 71 Failed)

(g) No statistics are kept on the total number “qualified for appointment but not appointed.” However, the following were appointed from examinations given nation-

* No racial breakdowns are available for Field Military Testing Trips.

wide and from the ranks of police cadets, who are appointed without additional testing: **

1968	—Black	300	Other	502	Total	802
1969	—Black	495	Other	596	Total	1091
1970	—Black	767	Other	1015	Total	1782
1971	—Black	328	Other	443	Total	771
<hr/>						
TOTAL						4446**

II. See exhibits attached hereto which are divided into a “pass chart” and a “fail chart” for each year. The “pass chart” lists ratings and the “fail chart” shows number of correct answers.

III. The passing score is 40 correct answers which gives a passing rating of 70. A Transmutation Table from the Civil Service Commission is enclosed. It should be noted that since there is no waiting list, the important first step toward appointment is to get a score of 40 (70 rating).

/s/ James M. Murray
JAMES M. MURRAY

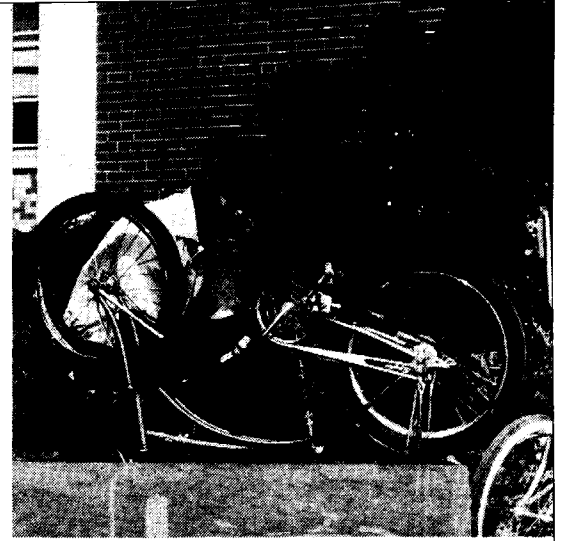
Subscribed and sworn to before me this 18th day of February, 1972.

/s/ Pauline B. Cypress
Notary Public, D.C.

My Commission expires: June 30, 1976

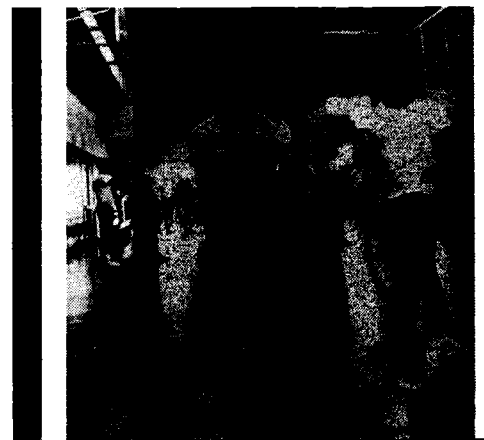
[Certificate of Service omitted in printing]

** Excluding military returnees and certain undercover officers.

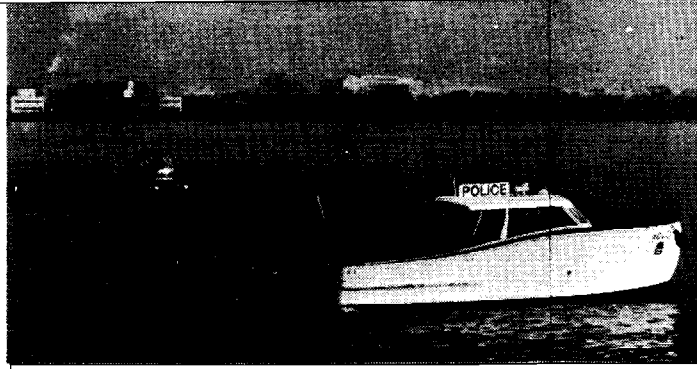


Cities are *people*.
The Metropolitan Police Department in the nation's capital needs young men and women who want to make a career of working *with* people, of working *for* people.

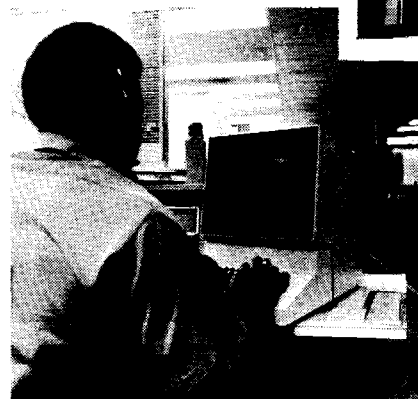
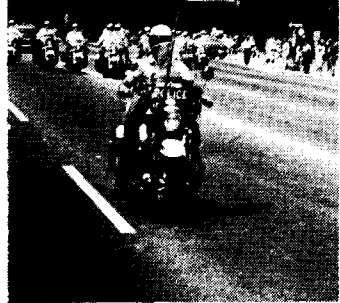
The Challenge:



If you are that kind of person we would like to talk to you right now.



Can YOU handle a job like this?



...A Challenge



NOW

Washington, D.C.

Metropolitan Police Department

METROPOLITAN POLICE DEPARTMENT
THE RECRUITMENT BRANCH
300 Indiana Ave., N.W.
Washington, D.C. 20001

TO

FIRST CLASS
Permit No. 36281
WASHINGTON, D.C.

The Opportunity:



It's here . . .
 A career with the MPDC is all you can make of it!
 Education . . . all the way through college.
 Advancement . . . it's fast and sure.
 The challenge . . . it's as big as you can make it.
 Variety . . . no two days are the same. Responsibility . . . it's big and it's yours . . .

Requirements:

- MUST BE A U.S. CITIZEN
- BETWEEN 20-29 YEARS OLD
- 5'7" TO 6'5" TALL
- WEIGH A MINIMUM OF 140 LBS.
- 20/60 VISION CORRECTABLE TO 20/20
- PASS A WRITTEN U.S. CIVIL SERVICE EXAM
- HAVE EXCELLENT CHARACTER

AND HAVE A HIGH SCHOOL DIPLOMA OR A CERTIFICATE OF EQUIVALENCY ISSUED BY A RECOGNIZED DEPARTMENT OF EDUCATION—OR ONE YEAR EXPERIENCE AS A SWORN OFFICER OR MEMBER OF A PRINCIPAL MUNICIPAL POLICE FORCE OF A CITY WITH A POPULATION OF 500,000 OR MORE PERSONS.

Veteran's Administration offers additional benefits to Police Officer trainees during the first 12 months of on-the-job-training for those who have had 181 days or more of active military service. Officers who qualify will receive a minimum of \$1,134 tax exempt allotment, prorated on a monthly basis.

In Washington, D.C. the written examination is given on a "walk-in" basis. YOU NEED NOT APPLY IN ADVANCE, but may report for the examination at the U.S. Civil Service Commission at 19th and E Streets, N.W. on:

The 2nd and 4th Saturdays of each month at 8:30 A.M.

Or, visit the Metropolitan Police Examination Center, 3214 Pa. Ave., S.E., which is open Monday from 5 P.M. to 11 P.M., Tuesday thru Friday 8 A.M. to 11 P.M., Saturday, 9 A.M.-5 P.M. Call 626-2689 for exact times tests are given.

Benefits:

Salary

Begin to earn \$8500 a year at the start of training with periodic increases for satisfactory service.

Advancement

Advancement in rank is according to merit, with the best qualified persons being selected for higher positions on the basis of suitability and demonstrated knowledge and skill. All ranks above Officer and below Inspector are attained through competitive Civil Service examination.

Education

The Recruit Training Program of the Metropolitan Police Department has been given accreditation by the American University. Six college credits are awarded toward a Certificate in Police Administration. Thereafter, three fourths of the cost of tuition for courses in Police Administration offered by the American University in Washington will be paid by the Department. Certificates are earned after thirty credit hours of work.

Health Benefits

Medical and surgical care are furnished without cost. Thirteen days sick leave are earned each year and can be accumulated without limitation. Injuries and illnesses resulting from the performance of duty are not charged against earned sick leave.

20 Year Retirement

Officers may retire after 20 years service at 50 per cent of full salary. Retirement benefits increase thereafter at the rate of 2 per cent per year to a maximum of 80 per cent.

AN EQUAL OPPORTUNITY EMPLOYER

From the Chief:



LAW ENFORCEMENT IS THE MOST REWARDING CAREER OPEN TO A YOUNG MAN OR WOMAN TODAY. THE CHALLENGES THAT FACE TODAY'S PROFESSIONAL POLICE OFFICERS ARE IMMENSE, BUT SO ARE THE REWARDS.

IF YOU ARE INTERESTED IN A CAREER THAT MAKES A DIFFERENCE, A CAREER THAT COUNTS, FILL OUT THE ATTACHED APPLICATION AND MAIL IT TO ME TODAY.

WAW-010



EXHIBIT "B"

202
OVR Number 737-1199

Please leave under desk glass

TRANSMUTATION TABLE *Property of Det. & Charlet*
50 ITEM TEST

40 RIGHT ANSWERS REQUIRED FOR RATING OF 70

No. right answers	RATING	No. right answers	RATING
80	100	60	85
79	99	59	84
78	98.5	58	83.5
77	98	57	83
76	97	56	82
75	96	55	81
74	95.5	54	80.5
73	95	53	80
72	94	52	79
71	93	51	78
70	92.5	50	77.5
69	92	49	77
68	91	48	76
67	90	47	75
66	89.5	46	74.5
65	89	45	74
64	88	44	73
63	87	43	72
62	86.5	42	71.5
61	86	41	71
		40	70

1110 - 111026

100	99	98.5	98	97	96	95.5	95	94	93	92.5	92	91	90	89.5	89	88	87	86.5	86	85	84	83.5	83	82	81	80.5	80	79	78	77.5	77	76	75	74.5	74	73	72	71.5	71	70		
			1			2		1	4	1	2	1	2	6	2	3	5	5	9	5	6	7	7	5	6	10	9	14	15	15	6	12	11	10	20	14	26	17	18	18	NEGRO	
						1	2	2	1		1			1	3	3		3	1	3	6	2	2	1	2	3	2	2	7	5	3		1	4	3	9	4	2	3			
															1												1	2									1	1				-6
	1		1	1		2	1	1	2	3	2	1	2	2	5	3	2	3	3	3	5	9	2	3	1	3	6	9	6	6	7	6	5	2	10	9	14					
1	1	1	1	2		1	2	1			2			1	3			1		3		1		1		1		1												2		
						1	1		2	1	3			2	5	4	7	4	5	5	7	8	7	8	9	7	6	14	12	6	10	16	21	5	18	10	17	12	30			
						1														1			1		1		1		1	1	1						1					
			1	1	1	1	3	3	5	1	4	1	5	7	10	8	8	11	10	7	6	8	11	18	9	24	15	23	15	22	20	11	24	22	24	37	30	47				
						1	2	1	2	1	4	3	2	3	4	7	9	8	7	4	8	5	5	2	6	5	10	10	13	18	10	18	17	16	19	29						
1	1	2	1	3	2	4	2	7	14	7	13	8	15	10	16	27	28	24	32	31	37	41	33	31	53	46	37	63	55	68	53	64	67	64	69	73	89	102	90	143	(1526)	

100	99	98.5	98	97	96	95.5	95	94	93	92.5	92	91	90	89.5	89	88	87	86.5	86	85	84	83.5	83	82	81	80.5	80	79	78	77.5	77	76	75	74.5	74	73	72	71.5	71	70				
						2	2	6	4	3	1	2	6	11	7	8	8	16	9	7	9	6	11	9	7	6	11	9	6	9	7	3	3	3	4	4	8	1	7	6	1	3	12	WHITE
	1	1	1			1	2	1	5	1	3		3	1	2	3	1	2	4	3	1		1	1				1	1		1	1	2	1	1	1	1	4	2	1	3			
4	1		1	1		2	5	1	1	5	2	4	2	3	1		1	1		2	1	1					1	1	3	3	1	1	2	1		1	1	1				-52		
3		2	2	3		4			2	2	1	1	1	3	1	2	2		3	1	1					2	1	2		1		1		1	1	1						-44		
1	1	2	2	1	2	6	1	3	3	6	2	3	7	3	3	5	5	9	2	3	3	2	3	5	1	6	2	4	1	4	2	4	4	1	2	2		1	4					
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	1	7	7	9	15	13	8	3	16	14	13	13	14	10	14	18	7	12	8	9	4	13	14	9	10	7	10	5	8	9	4	6	11	7	4	5	11	3	2					
						2	8	7	1	6	8	8	8	8	9	6	9	4	12	7	14	12	6	6	6	4	8	7	11	8	6	11	9	7	8	6	4	8	5	11				
9	3	18	18	15	28	28	37	25	30	45	45	47	41	48	43	43	55	33	50	40	52	44	38	40	38	28	32	34	35	33	31	35	31	42	26	29	33	29	20	42	(1383)			

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39				
							1	1	1			2	2	2	6	4	9	5	7	8	21	17	19	15	22	17	21	14	23	26	29	24	18	26	23	17	17	24				
									1			1	2	4	1	2	1	2	6	5	3	1	3	6	2	5	4	2	5	2	8	4	18	8	7	5	2	5				
										1		3	3	4	4	4	2	1	3	6	6	1	1	6	10	9	5	6	2	6	6	6	7	11	5	4	5	5				
										1		2	2	5	9	12	9	14	12	10	21	17	18	25	22	21	19	20	20	24	25	18	23	25	20	18	16					
															1					1	1	1												1	1							
				1		1	1	2	3	2	1	6	8	4	8	9	11	11	10	17	21	15	30	20	29	26	23	22	22	26	90	24	16	32	36	29	25					
												3	2	1	7	6	8	11	8	8	7	12	16	25	14	20	23	22	17	24	17	18	21	15	24	30	7					
					1		2	2	4	4	3	7	18	26	21	35	39	36	52	49	66	69	68	91	104	91	97	86	94	93	109	116	96	106	108	113	91	85				
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39				
												1									1	2		3	2	2	3	1	1	4	3	1	5	3	1	3	2	3				
																								1				1	1	1									8			
																			1		1	1					1		2		1		1	1	2	2	1					
																		2		1	1	1				1	1	1	2	3	1	2	3	2	2	5	5	2				
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												1				2					2		2		2	2	3	1	3	2	4		1	1	3	5	5					
												1				2					2		2	3	2	3	2	2	2	3	4	5	5	6	4							
												1				2					2	4	1	1	3	6	3	6	5	7	12	8	8	15	8	10	11	11	11	18	22	27

198

202

1971-PASSED

99	98.5	98	97	96	95.5	95	94	93	92.5	92	91	90	89.5	89	88	87	86.5	86	85	84	83.5	83	82	81	80.5	80	79	78	77.5	77	76	75	74.5	74	73	72	71.5	71	70
		1		2	2	2	4	7	4	3	5	5	8	4	11	11	12	5	10	13	9	5	11	13	12	7	18	15	18	9	19	15	18	13	18	13	18	13	
1								1	1				1									1	1		2				1	2	2	6	1	1	1	1	1	1	
		1		1	2		1	3	4	3	2	7	1	3	3	4	5	2	5	5	7	6	7	10	13	6	7	9	8	11	12	11	10	9	18	14			
				2	1				3				3	1	2		3	1	2	1	1			3	2	2	6		8	2	5	1	2	5	5				
	1	1	1		2	2	2	3	8	3	2	5	5	5	7	10	8	5	5	11	16	7	18	8	11	8	6	13	11	13	13	9	14	19	18	12	11		
		1		2				2	4		2	1		1	3	3	6	1	2	2			2	5	3	5	3	1	5	5	4	5	7	1	7	9			

NEGRO

99	98.5	98	97	96	95.5	95	94	93	92.5	92	91	90	89.5	89	88	87	86.5	86	85	84	83.5	83	82	81	80.5	80	79	78	77.5	77	76	75	74.5	74	73	72	71.5	71	70	
1	1	3	8	11	8	9	11	12	6	18	11	19	11	18	9	12	19	14	13	9	13	18	19	15	10	16	12	8	18	11	9	4	9	3	3	9	5	11	3	
					1	1														2	1	2		1																
	3	8	5	7	8	10	9	8	4	7	7	7	10	11	12	5	11	8	8	5	8	12	16	9	9	12	5	4	5	9	6	8	8	3	11	3	7			
					3	5	3		1	1	2	1	3	1	1	7	2	1	2		3	1	3	4	3		4		1	8	3	1	1				2			
3	1	4	9	4	5	8	7	6	12	17	9	1	2	1	2	1	2	1	2	1	2	1	3	1	1	2	3	2	3	2	1	3		4	3	5	1	2		
					3	2	4	2	3	2	2	5	3	3	3	3	8	6	3	4	1	10	5	1	1	2	3	2	3	2	1	3		4	3	5	1	2		

991

WHITE

1225

1971- FAILED

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	NEED	
								3	2	2	2	4	4	5	9	10	17	12	18	16	10	19	14	19	19	21	14	24	21	20	23	17	24	17	29	22	19	18		
												1				1	1		1		1	1	2			1	1	2	2		1			1			1	1		
									1	3	1	1	1	5	3	3	5	8	8	9	12	3	14	13	17	19	13	18	15	14	15	19	19	19	25	23	12	22		
															1	1		3	1	3	5	1	2			1	1	4	3	5	8	8	3		1	7	4	4	3	
								1	3	1	1	1	4	4	4	9	4	12	11	12	15	16	17	20	19	20	18	17	20	22	17	21	16	12	17	14	16	19	17	
												1			1			1	2	2		3	4	4	2	4	5	3	2	4	6	12	8	5	6	4	5	8		
								1	6	4	6	4	11	9	14	23	19	35	31	39	45	44	42	54	57	63	64	54	70	71	59	73	66	59	61	78	70	59	68	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	NEED	
																			1	1	2		1	2		1	3	1	2	2	4		7	1		5	6	4	4	
																					1													1		1				
																11					2						2	1												
																												1		1	1	2	3		2	2				

1359

NEED

164

1968 - FILED

NUMBER of CORRECT ANSWERS

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39											
										1		1		2	1	8		1	5	6	2	7	3	8	6	10	9	6	12	8	12	5	10	17	14	9	10	6	-17										
										1			1	3	5	4		5	6	8	9	7	11	9	11	6	14	18	20	12	10	12	10	16	12	12	11	12	-										
											4	3	2	3	5	2	7	10	13	17	15	14	12	19	14	25	14	28	29	41	32	24	32	27	29	30	31	18	-										
(CHART 1/2)																																																	
											2	4	4	3	8	11	14	7	16	24	31	26	28	26	36	31	41	37	52	61	61	54	41	52	60	53	51	52	36	(9)									
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(CHART 1/4)																																																	
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed June 14, 1972]

MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs and plaintiffs-intervenors hereby move this Court for a partial summary judgment as to the legality of the tests used to select applicants for entry level positions as police officers in the Metropolitan Police Department.

These parties request that the Court:

1. Declare that said tests are unlawfully discriminatory and thereby in violation of the due process clause of the Fifth Amendment to the United States Constitution;
2. Enter a permanent injunction barring use of this test and any substitute test or selection procedure not presently in use for choosing among applicants for entry level positions as police officers unless and until such test or other selection procedure has been validated in accordance with Guidelines on Employee Selection Procedures of Equal Employment Opportunity Commission;
3. Enter a further injunction requiring defendants to notify class members of the modified selection procedures, to invite them to reapply and to give each of them priority consideration for appointment to new openings in order of their dates of application.
4. Defer the determination of other and further relief on this issue, including the grant of back pay for the period of unlawful exclusion and the fixing of compensatory hiring requirements, until trial and final decision of the action as a whole.

As grounds for this motion, plaintiffs and plaintiffs-intervenors state:

1. That said test has a highly discriminatory impact in screening out black candidates;
2. That said test bears no relationship whatsoever to job performance;
3. That the cumulative impact of defendants' reliance on said test for a period of many years has been to grossly reduce the number of blacks entering the Metropolitan Police Department in violation of the lawful rights of the plaintiffs, the plaintiffs-intervenors and of the class which they represent;
4. That there is no issue of material fact as to this issue and plaintiffs and plaintiffs-intervenors are entitled to this summary judgment as a matter of law.

This motion and the grounds therefor are more fully developed in the attached supporting memorandum and affidavits.

[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed April 27, 1971]

AFFIDAVIT

Dr. Richard S. Barrett, first being duly sworn, deposes and says:

1. I live at Five Riverview Place, Hastings-on-Hudson, New York. I am Director of Research of the School Division of the Center for Urban Education, 105 Madison Avenue, New York City, N.Y. The views expressed in this affidavit are my own and do not necessarily represent the position of the Center for Urban Education.

2. I was principal investigator of a study sponsored by the Ford Foundation and reported in *Testing and Fair Employment*, by Kirkpatrick, J.J., Ewen, R.B., Barrett, R.S., and Katzell, R.A., New York University Press 1968. I have consulted on testing with the United States Air Force, Standard Oil (New Jersey), Lever Brothers, and the Equitable Life Assurance Society.

3. I have examined *Test 21* of the United States Civil Service Commission, Series No. 15 (b), June 1962, Series No. 173, February 1970, and Series No. 121, February 1970. I have reviewed *Examination for Promotion in the Metropolitan Police Department of the District of Columbia: Uniform Sergeant*, Series 30, October 1965, and for *Sergeant and Detective Sergeant*, Series 31, October 1967, and Series 32, June 1969. I have also reviewed *Relation of D.C. Police Entrance Test Scores to Recruit School Performance of White and Negro Policemen* by David L. Futransky, November 1967.

4. I have formed the opinion that the use of these tests is likely to discriminate against Negro candidates for employment or promotion. My opinion is based solely on the documents that I have listed above; additional information on the tests might change the reasoning and conclusions set forth below.

5. Test 21 is typical of aptitude tests that rely heavily on verbal material. It includes items on the interpretation of proverbs, vocabulary, analogies, reading and interpreting short passages, and general knowledge. There is ample documentation of the fact that Negroes tend to score lower on such items than do whites. It is essential that study be made to demonstrate an adequate relationship between scores on the test and actual job performance (*criterion related validity*) for Whites and Negroes before its use is accepted as non-discriminatory.

6. The research study of Test 21 by D. L. Futransky leaves many questions unanswered including the comparability of the Negro and White populations, the fairness and reliability of the standards against which the validity of the test was established, and the nature of the recruit training program, so the following conclusions drawn on the basis of the study must be tentative.

7. The study indicates that test scores of both white and Negro candidates are positively correlated with grades in Recruit School. However, only for whites is there a positive correlation between grades and a rating of job performance. Also, for whites only, there appears to be a positive correlation between test scores and performance ratings, but the statistics are incomplete, and the statistical significance of the result is not reported.

8. This study shows no benefit for using the tests in selection of Negroes, since no relationship is shown between test score and job performance. The fact that some relationship appears between test scores and Recruit

School grades is of no significance since no one fails Re-cruit School and grades there do not correlate with later performance. The study itself properly questions the value of the use of a passing score of 40 as now required. The only way to establish value for the test for selecting Negroes is to substantially lower the passing score—preferably to eliminate it—and then to see if, on the basis of results on a sample, a passing score can be justified. Without further information, I could not suggest the appropriate lowered passing score for such a test; but it is doubtful whether a minor downward adjustment to 35, as suggested in the report, is sufficient. The objective should be to reduce it to the lowest possible level. Absent a showing that a particular passing score is justified, the test is serving no organizational purpose, and, since Negroes can be expected to do poorly on the test, it can be concluded in the absence of contrary evidence that it is discriminating unfairly.

9. The examinations for promotion to Uniform Sergeant and to Sergeant and Detective Sergeant were studied in the absence of any data regarding their effectiveness; the D. L. Futransky study did not cover these tests. The following comments, therefore, are made about the general issues involved in the use of such tests.

10. The efficacy of tests can sometimes be determined by *content validity* rather than *criterion related validity*. Content validity exists to the extent that the tasks required of the test constitutes a sample of what is done on the job, as with a typing test for typists, or a welding test for welders. However, this content validity cannot be based on a mere superficial resemblance between test items and the job. This is "face validity" which is universally recognized to be of little value. Rather, content validity demands that a thorough job analysis be made to show that the test behavior is in fact a sample of job behavior. Even superficial acquaintance with a police

sergeant's duties supports the conclusion that answering hypothetical questions about incidents involving police intervention, or interpreting regulations is not a sample of police work since there is a vast gulf between writing about action and taking action, and between knowing regulations and applying regulations wisely. Therefore, the test cannot be justified on the ground of content validity, unless supported by careful and complete job analyses.

11. If the police department wishes to justify these promotion tests on the basis of *criterion related validity* rather than *content validity*, an empirical study is required to determine whether the test predicts job performance with sufficient accuracy to be useful, and, if a passing score is to be used, what score is appropriate. If possible, data on whites and Negroes should be treated separately. Without such a study, no one will know whether the test discriminates unfairly. Again, since Negro candidates typically do less well than whites, especially on a test that emphasizes reading skill as does this series, it is likely that the test discriminates unfairly.

/s/ Richard S. Barrett
RICHARD S. BARRETT

Signed and sworn to before me, this — day of —
—, 1970.

/s/ James D. Talbot
JAMES D. TALBOT
Notary Public

AFFIDAVIT

[Filed April 27, 1971]

December 8, 1970

I, James J. Kirkpatrick, being duly sworn, say and depose:

1. The following is a brief resume of my professional qualifications.

Dr. James J. Kirkpatrick is an industrial psychologist, having received his Ph.D. degree from Syracuse University in 1953. His professional experience includes having served as project director for the American Institute for Research in Pittsburgh, followed by twelve years in full-time management consulting as a principal in the firm of Harless and Kirkpatrick Associates in Florida. His consulting experience includes the areas of personnel selection, training, management evaluation and development, and market and motivation research. Returning to the academic and research field, he directed a two-year study of testing and fair employment at New York University under a Ford Foundation grant. In 1967 he came to California as Professor of Manpower Management in the School of Business Administration at California State College at Long Beach, where he is continuing his research interests.

Dr. Kirkpatrick is a Diplomate in Industrial Psychology of the American Board of Examiners in Professional Psychology. He also is a Fellow in the American Psychological Association. Listed in *American Men of Science*, the *Advertising Research Foundation Directory of Motivation Research*, the *Marquis' Who's Who in the South and Southwest* and *World's Who's Who in Commerce and Industry*, he is the author of

numerous publications in the personnel and management fields. In response to the critical need for guidelines regarding the employment of minority groups, he has written *Testing and Fair Employment*, published in 1968 by the New York University Press, and has served in a number of court cases as an expert witness.

2. Opinions regarding the entry examination for police (U. S. Civil Service Commission Test No. 21) based on reviewing the test itself and the report "Relation of D. C. Police Entrance Test Scores to Recruit School Performance and Job Performance of White and Negro Policemen" prepared by David L. Futransky, November, 1967.
 - a. The evidence contained in the report for the validity of the test is so weak and conflicting that I conclude that its value for the selection of Negro police applicants has not been demonstrated. My conclusion is based on the following facts:
 - (1) On the first page of the report, under Highlights of Findings, 3., it is stated "For the Negro officer, Test 21 (40 and above) does not predict differences in on-the-job performance." This statement was made in terms of supervisory ratings of job performance.
 - (2) Using the number of negative incidents as an indicator of job performance, those Negroes scoring best on Test 21 actually had *more* negative incidents (57%) than those Negroes scoring lower on the test (37%)—the opposite of what would be expected for the test to have positive validity for the selection of Negro applicants. (Table 6).
 - (3) Using the number of positive performance incidents as a measure of job success, there

was no appreciable difference between high scoring and lower scoring Negroes (30%-29%, respectively). (Table 7).

- (4) On page one, paragraph 6 under Highlights of Findings, it is stated "The Negro group has a lower separation rate than the white group. (Table 2)" Considering the fact that a lower separation rate is often considered an indication of job success in personnel research studies, it is difficult to reconcile this result with the fact that whites scored higher than Negroes on Test 21. These findings certainly show that the test used in the routine way would not be appropriate for Negroes, even if it were concluded that it were valid for whites. In fact such a test procedure suggests that Test 21 might be unfair to Negroes.
- (5) It is stated on page one, paragraph 1, that Test 21 shows "a reasonably high relationship to performance in Recruit School for both white and Negro appointees." This one statement might appear to offer some indication of validity for the test for Negroes. However, it is admitted on Page 6 that performance in the school (as measured by achievement tests) is not significantly related to job performance as rated by supervisors. Also, to attempt to establish validity of an entry test solely on the basis of an achievement test is a somewhat questionable procedure in personnel research, and in addition, in this instance, the process is further confounded by the fact that individuals were allowed to repeat the achievement test if they do poorly at first (page three, paragraph 1), and it is not clear which results are being reported.

- (6) It is admitted on page one of the report (paragraph 2. *Test Scoring Standards*) that it would involve little risk on the part of the Department to admit applicants in the scoring range of 35 to 40, although the passing score on the entry test had been 40, because with a cutting score of 40, all selectees complete Recruit School. Especially since Negroes on the average score lower than whites on the entry test, it would seem necessary to lower this cutting score, perhaps even lower than 35. In other words, why hold to even 35 since the data don't demonstrate job validity for Negroes and there is even some indication of unfairness in that while Negroes don't score as high on the entry test, they have longer job tenure than whites?
- b. A review of Test 21 indicates to me that it is somewhat similar to other tests that my research, as reported in *Testing and Fair Employment*, as well as test validation research published by others, has found to be lacking in validity for Negroes, and in some instances unfair to Negroes.
3. Promotion Examination. No research study was given to me for the "Examination for Promotion to Uniform Sergeant in the Metropolitan Police Department of the District of Columbia (Series 30, October, 1965)," although I did have the opportunity to review this promotion test. On the basis of that review, I conclude the following:
 - a. There is a need to perform a comprehensive job analysis in devising such a test, and I have no knowledge of such a job analysis study being conducted to develop this test.
 - b. There may be a significant degree of cultural bias in the promotion test that would work against the

Negro because the test items involve the reading of rather lengthy and complicated paragraphs. Some such tests, placing a premium on reading ability, have been found to place the Negro at a disadvantage in competition with whites, e.g. *Testing and Fair Employment*.

- c. Furthermore, it is possible that the written problem situations presented in this test, while seeming to describe practical situations, do not in reality relate to performance in similar real life situations.
- d. While this promotion test seems to have "face" validity, evidence based on hard data should be produced to justify its value in terms of "content" validity. "Content" validity is not assumed just on the basis of faith.

/s/ James J. Kirkpatrick
JAMES J. KIRKPATRICK

/s/ Harold F. Stemm
Notary Public
Dec. 8, 1970

CITY OF WASHINGTON)
) ss.
 DISTRICT OF COLUMBIA)

[Filed April 27, 1971]

AFFIDAVIT

Before me, the undersigned authority, personally came and appeared C. TERRENCE IRELAND, Ph. D., known to me, who, after having first been duly sworn, did depose and say:

1. My name is C. Terrence Ireland. I am a citizen of the United States and a resident of the District of Columbia. I am a tenured Associate Professor of Statistics at George Washington University in the District of Columbia. My professional qualifications are as follows:

I received the degree of Bachelor of Arts in mathematics from Cornell University in 1960, and the degree of Doctor of Philosophy in mathematical statistics from George Washington University in 1967. I have spent one year at this University on a National Aeronautics and Space Administration fellowship, and I have taught in the Department of Statistics at this University continuously since 1966. I am a member of the Institute of Mathematical Statistics of the American Statistical Association, of the American Association for the Advancement of Science and of the Association for Computing Machinery, all of which are professional societies.

I have been selected as a "referee"—a person to whom a professional journal submits proposed articles for comments and suggestions before the articles receive editorial clearance for publication—by three professional journals: the *Journal of the American Statistical Association*, *Biometrics*, and the *American Statistician*. I have co-authored articles and reports appearing in the *Journal of the American Statistical Association*, in *Biometrika*, and in

Biometrics. I have several years of experience in developing computer programs and in analyzing complicated data with the assistance of computers.

I have served as a consultant for the following agencies or organizations:

Department of Defense
 District of Columbia Office of Crime Analysis
 George Washington University Social Research Group
 George Washington University Hospital
 Office of Economic Opportunity
 Washington Regional Medical Program

2. I have been given, by counsel for plaintiffs in *Davis v. Washington*, C.A. No. 1086-70 (D.D.C.), the following tables of actual pass/fail statistics on recent applicant examinations, for locally-tested applicants, and for field-tested civilian applicants, for positions as policemen with the Washington Metropolitan Police Department:

A. *Locally Tested Applicants*

	1968	1969	1970	1971
Black Passed	773	1,035	1,526	991
Blacks Failed	922	1,464	1,982	1,359
Other Passed	729	892	1,383	1,235
Other Failed	132	163	202	164

B. *Field Tested Civilian Applicants*

	1970	1971
Blacks Passed	340	82
Blacks Failed	330	50
Other Passed	1,992	511
Other Failed	271	71

I have been informed by counsel for plaintiffs that these statistics have been taken from the Answers of the Defendants Washington and Wilson to Plaintiffs' and Plaintiffs-Intervenors' Second Interrogatories, and that these Answers define "Other" as including both whites and persons in minority groups other than black.

3. It is a commonly accepted statistical technique to examine the degree of the difference in two sets of data, to see if the difference is large enough to be considered important. For example, if a statistician is asked to examine the different pass/fail statistics for locally-tested black applicants and locally-tested white applicants in 1968, the first thing he would ordinarily do is analyze the data to see if the difference is statistically significant. If the difference is not statistically significant, or if the degree of significance is very low, the difference can be disregarded as unimportant. The higher the degree of significance, the more important the difference.

I have performed these calculations for each set of test results listed in the tables in paragraph 2, and I have concluded that the difference in pass-fail rates between black and white applicants are statistically significant, to a very high degree of significance, for both locally-tested and field-tested civilian applicants for each year in which there is data.

4. If the Police Department had used some other selection mechanism instead, one which produced in each year the same total number of passes and the same total number of failures, but did so without any racial impact, the expected differences would have been:

A. Locally Tested Applicants

In 1968, 223 more blacks, and 223 fewer others, would have passed.

In 1969, 319 more blacks, and 319 fewer others, would have passed.

In 1970, 477 more blacks, and 477 fewer others, would have passed.

In 1971, 404 more blacks, and 404 fewer others would have passed.

B. *Field-Tested Civilian Applicants*

In 1970, 192 more blacks, and 192 fewer others, would have passed.

In 1971, 27 more blacks, and 27 fewer others, would have passed.

For both groups, in all years for which there is data, such a racially neutral selection mechanism would have resulted in 1,642 more black applicants, and 1,642 fewer other applicants, passing and thus eligible for appointment.

5. Using commonly accepted statistical tools, it is possible to calculate the probability, in each of these six situations, that any truly racially neutral selection device could have produced this or a greater level of disproportion in scoring patterns, *i.e.*, that the same scoring patterns might have occurred by chance. In other words, there is always a possibility, no matter how remote, that a particular disproportion, or a greater disproportion, in scoring patterns might be the product of chance. Using these statistical tools, it is possible to discover the size of this possibility, and thus the weight that should be given to it.

In order to perform this analysis, it is necessary to assume that, in each of the six sets of test results, there was the same distribution of qualifications—in terms of real ability to perform a policeman's job—among the black applicants as there was among the white applicants. After making this assumption, the question for each set of test results becomes: What is the probability that any racially neutral selection device could produce this or a more disproportionate pattern of scores when the two racial groups have the same distribution of real qualifications? The answer to this question shows the size of the possibility that these results could have occurred by chance.

I have performed this analysis for each of the six sets of test results listed in paragraph 2. The statistical analysis used is commonly known as the Chi-Square test, and is also known as Pearson's X^2 test. As noted above, this is a commonly accepted statistical test. In reading these probability figures, it is important to remember that "10 to the 10th power", for example means that 10 zeros should be added to 1 to get the number described. "One chance in 10 to the 4th power" thus means "one chance in 10,000", and "one chance in 10 to the 10th power" means "one chance in ten billion" (10,000,000,000).

For each set of test results, and under the assumption explained above, the probability that a racially neutral selection device could have produced this or a more disproportionate level of results, *i.e.*, that it could have been obtained by chance, is:

<u>Test</u>	<u>Probability</u>
1968 Local Test:	less than 1 chance in 10 to the 85th power
1969 Local Test:	less than 1 chance in 10 to the 131st power
1970 Local Test:	less than 1 chance in 10 to the 206th power
1971 Local Test:	less than 1 chance in 10 to the 186th power
1970 Field Test:	less than 1 chance in 10 to the 85th power
1971 Field Test:	less than 1 chance in 10 to the 10th power
All Six Tests:	less than 1 chance in 10 to the 703rd power

It is extremely rare for a statistician to work with probabilities so small, so rare that the tables ordinarily used by statisticians do not even extend to probabilities so small. A probability so small is, frankly, difficult for even a statistician to grasp. It can be put into more human terms by answering this sample question for each set of test results: If the applicant examination were given once a minute to groups of white and black applicants having the same characteristics as the group of white and black locally-tested applicants in 1968, and if the test is racially neutral and black applicants have the

same distribution of real qualifications as white applicants, how long would we have to give the test in order to expect that the 1968 locally-tested pass/fail rate, or a more disproportionate pass/fail rate would occur once?

The answer for each set of test results is:

<u>Test</u>	<u>How Long Should We Expect to Give the Test in Order to Expect That This, or a More Disproportionate Pass/Fail Rate, Would Occur Once, if the Test is Racially Neutral?</u>
1968 Local Test	Once a minute for more than one hundred billion years.
1969 Local Test	Once a minute for more than one hundred billion years.
1970 Local Test	Once a minute for more than one hundred billion years.
1971 Local Test	Once a minute for more than one hundred billion years.
1970 Field Test	Once a minute for more than one hundred billion years.
1971 Field Test	Once a minute for 189 years.

6. I have read over and fully understand the above statement.

/s/ C. Terrence Ireland
C. TERRENCE IRELAND

Subscribed and sworn to before me this 12th day of June, 1972.

/s/ Paul W. Kellerman
Notary Public

(SEAL)

My Commission expires: Feb. 28, 1975

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed July 17, 1972]

MOTION OF DEFENDANTS WALTER E.
WASHINGTON AND JERRY V. WILSON
FOR PARTIAL SUMMARY JUDGMENT

The defendants Washington and Wilson move the Court to enter on order granting them partial summary judgment as to the aspects of this litigation relating to the entrance examination, hereinafter referred to as Test 21, criteria upon which members of the Metropolitan Police Department are hired, for the following reasons:

1. The complaint as regards Test 21 fails to state a claim upon which relief can be granted.
2. Test 21 is a valid means of determining whether or not an applicant for employment with the Metropolitan Police Department possesses sufficient basic skills requisite to master the curriculum which he must study in the Training Academy.
3. Test 21 has been analyzed and empirically validated for use for the purpose of which it is given.
4. Test 21 is valid for the purpose for which it is given since it is predictive of success in the Training Academy.
5. Test 21 is not administered to applicants for employment in order to determine how they will perform as police officers generally, but for the limited purpose of determining the ability of applicants to successfully complete the training school.
6. Plaintiffs seek relief that would, in effect, result in the establishment of a racial quota system, a practice

which is prohibited to any extent by Section 1-320, D.C. Code, 1967 ed., Supp. V, and by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

The affidavit of James M. Murray, Administrative Services Officer of the Metropolitan Police Department, is attached hereto and made a part hereof.

/s/ C. Francis Murphy

[Certificate of Service omitted in printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed July 18, 1973]

AFFIDAVIT OF JAMES MURRAY

DISTRICT OF COLUMBIA, ss:

James M. Murray, having first been duly sworn under oath, deposes and says that he is the Administrative Services Officer, Administrative Services Bureau of the Metropolitan Police Department and in that official capacity makes the following statements relative to the efforts of the Metropolitan Police Department in recruitment and hiring of police officers:

1. I was appointed as Personnel Director in August, 1969, at the time Jerry Wilson became Chief of Police. It was clearly understood that, along with revamping the personnel system, I would launch a recruitment effort, a significant portion of which would be directed towards increasing the numbers of blacks in the department. During the first six months I was Personnel Director, the following results were achieved:

	Auth. Strength	Blk. %	On Board Beginning of Month			Appointments By Month		
			Total	Blk.	Wht.	Tot.	Blk.	Wht.
Aug. 69	4,100	30.2	3,677	1,114	2,563	87	46	41
Sept. 69	4,100	30.8	3,725	1,148	2,577	133	61	72
Oct. 69	4,100	31.4	3,823	1,203	2,620	86	45	41
Nov. 69	4,100	31.9	3,852	1,231	2,621	70	36	34
Dec. 69	4,100	32.1	3,886	1,248	2,638	50	26	24
Jan. 70	4,100	32.1	3,908	1,265	2,643	128	65	63
							279	275

Except for the month of September, 1969, more than 50% black hiring was accomplished. This contrasted with the following results for the previous six months:

Feb. 69	4,100	28.1	3,338	941	2,397	91	37	54
Mar. 69	4,100	28.3	3,397	963	2,434	121	46	75
Apr. 69	4,100	28.7	3,492	1,003	2,489	75	29	46
May 69	4,100	29.8	3,542	1,057	2,485	97	51	46
June 69	4,100	30.0	3,592	1,078	2,514	87	28	59
July 69	4,100	30.0	3,643	1,095	2,548	68	26	42
						<u>217</u>	<u>322</u>	

As will be noted, in the previous six months, only one month out of six achieved more than 50% hiring of blacks.

It was in January, 1970 that the White House requested us to step up our recruitment dramatically, in order to achieve a 5,100 man department by the summer of 1970. The only way to achieve such a massive effort was to change the policy I had instituted in my first month of putting the bulk of our recruiting resources into recruiting locally and to go all out nationwide on all fronts.

Even as the necessity of the nationwide effort became evident, I continued to direct considerable attention at black recruiting, both locally and in our recruitment trips around the country. Locally, we attained the following results, between January 1, 1970 and September 4, 1970:

LOCAL EFFORT

Time								
Periods	1/ 1/70	1/ 1/70	1/ 1/70	1/ 1/70	1/ 1/70	1/ 1/70	1/ 1/70	1/1/70
Covered	to	to	to	to	to	to	to	to
By This Report	7/15/70	7/22/70	7/29/70	8/10/70	8/17/70	8/24/70	8/24/70	9/4/70

TEST RESULTS

	2685		2791		2858		3010		3181		3287		3465	
Total	Blk	1938	Blk	2023	Blk	2063	Blk	2175	Blk	2279	Blk	2362	Blk	2435
Tested	Wh	697	Wh	768	Wh	795	Wh	835	Wh	902	Wh	925	Wh	980
		1318		1421		1467		1561		1679		1744		1853
Total	Blk	766	Blk	803	Blk	824	Blk	880	Blk	936	Blk	979	Blk	1039
Passed	Wh	552	Wh	618	Wh	643	Wh	681	Wh	743	Wh	765	Wh	814
		593		615		642		722		774		813		905
Reported	Blk	321	Blk	334	Blk	345	Blk	396	Blk	425	Blk	449	Blk	501
for Duty	Wh	272	Wh	281	Wh	297	Wh	326	Wh	349	Wh	364	Wh	404

As will be noted, these results were obtained by shifting the bulk of the local recruiting efforts to recruiting larger numbers of blacks. But the fact is, in spite of the proportion of blacks and white who pass and fail Test 21, we were still able to achieve hiring of more than 50% black in the local area.

Our efforts in other cities did not achieve the same kind of success for several reasons: many of the black citizens and leaders in other cities reacted to our efforts in one of two ways: either they were hostile to all efforts from police departments or else they were not happy that we were coming to their city to recruit their young black men whereas their own police departments, in some instances, did not appear to be making significant efforts to attract them.

Even with this problem, however, we attained significant increases in the total number of blacks coming into the department.

2. After I was promoted to Administrative Services Officer in July of 1970, Chief Wilson and I selected Deputy Chief Tilmon O'Bryant, a black official, to be the first Deputy Chief in charge of Personnel and Training. Among his other duties Deputy Chief O'Bryant supervises the hiring and the promotion examination process. For my replacement as Personnel Director Deputy Chief

O'Bryant and I selected Mr. Waldell Longus, a black civilian.

3. The success of the local effort at black recruitment of the Metropolitan Police Department has been widely recognized on January 25, 1971, the New York Times noted that only the District of Columbia, among the nation's large cities, could "lay claim to any real success in significantly increasing the number of blacks on its force." That article, in its entirety is attached hereto as Exhibit "A".

One of the reasons why we achieved some credibility in the community in connection with our recruitment drive is that we were sincere in our intentions and we obtained results. Beyond this, however, we did not look on recruitment as an isolated activity. We set out to improve all aspects of the police personnel system, to provide justice and equity to all officers. Part of this was an improved probationary review process, part of it was providing a vehicle for rejecting applicants cases to be reviewed in the presence of the applicant. Part was improving the disciplinary process. In addition, conscientious attention was paid to assignments of officers, to integrating the scout cars, to improving community relations, to improve training. We felt and feel strongly that it is not sufficient to attempt to recruit persons into the system, but one must prove to the individuals that they will be treated fairly and will have ample opportunity for development and advancement after they get in.

Due to my involvement in minority recruitment, and due to the results achieved by the Department's effort in that direction, I was selected as a consultant and as a member of the Board of Directors of the Center for Criminal Justice Agency Organization and Minority Employment Opportunities of the Marquette University Law School. The immediate objectives of the Center are as follows:

1. To greatly increase recruitment of minority citizens into the ranks of police agencies throughout the nation; and
2. To improve career development opportunities for minority personnel entering, and within, the ranks of police agencies throughout the nation.

On behalf of the Center I have gone to Cincinnati, Ohio, and to Kansas City, Missouri, to provide advice and assistance to the chiefs of police in these jurisdictions in recruiting more black persons into their police departments. I have attended numerous conferences, sponsored by the Center, where I made presentations concerning black recruiting. Some of these were at Phoenix, Denver, Chicago, and here in Washington. Last December, on behalf of the Public Personnel Association and the International Chiefs of Police, I conducted a three day seminar on recruiting in Biloxi, Mississippi. A considerable portion of this presentation was devoted to minority recruiting.

Recently, I was one of two outside consultants selected by the International Association of Police Chiefs and the National Civil Service League to assist in conducting the Police Personnel Selection and Promotions Workshop in St. Petersburg, Florida, for participants from many jurisdictions throughout the country. The thrust of the seminar was on the EEOC Guidelines and court decisions relating to police selection and promotions.

This month I was invited, among others, to Boston to give recommendations to the Massachusetts Civil Service System, the Governor's office, and the police department concerning litigation involving use of the entrance examination in use there. I have been invited by the Police Foundation to act as a consultant at a special conference on minority recruiting.

In addition I was the recipient of the Charles H. Cushman Award for 1971, presented by the Eastern Region Public Personnel Association, on account of the success of the Department's success in minority group recruiting:

"In recognition of his conspicuous success in minority group recruiting resulting in his receiving national recognition in police circles as the authority on minority recruiting."

It is our belief, based admittedly on our experience here, that the way to succeed in recruiting minorities is to have a commitment from the top down. This message is not always received well in other cities where there is a belief that there must be gimmicks which can be helpful. We have attempted to be innovative, to involve the community in our recruiting to the extent interest has been expressed, and to continually improve. We do not believe that the percentage or the numbers of blacks we have recruited is the best we can do and we are trying to improve. However, given the circumstances of the necessity of a massive drive in a short period of time, we do believe we accomplished something unprecedented in terms of police departments around the country.

4. The foregoing exposition of my activities in the field of minority recruiting is in many respects merely an extension of the Department's commitment to minority recruiting. Were it not for that commitment, I would not have had the opportunity to be so thoroughly involved in minority recruiting. The Court can be assured that in policy and practice the Metropolitan Police Department adheres to equal opportunity for all applicants for employment and promotion.

5. The Department's recruiting efforts have resulted in recruitment for approximately 44% blacks from August 1, 1969 (when Jerry V. Wilson became Chief of

Police and I joined the Department) to April 1, 1972. Even though there is no legal requirement that public employees be hired on a racial quota system based on population ratios, it is significant to note that, according to the 1970 Census the total population of the District of Columbia was 756,500 with 209,300 white citizens and 547,200 black citizens.

The total population of the District in the 20-29 age group was reflected to be 142,161 with the racial contrast being as follows:

Black	Males	42,447
	Females	<u>53,352</u>
		95,799
White	Males	22,711
	Females	<u>23,651</u>
		46,362

The 20-29 age group is that age group from which new officers are recruited. When viewed from the standpoint that for our recruiting purposes the "local" or metropolitan Washington area is a radius of 50 miles, a rate of hiring blacks of 44% is demonstrative of the success of the Department's effort to recruit blacks since that percentage is significantly higher than their proportional representation in the "local" recruiting area.

Upon becoming Administrative Services Officer, Deputy Chief O'Bryant and I selected a civilian training expert. Over the period of the past year and a half, we have vastly revamped our training program. We have gone out into the field and determined what necessary and desirable performance objectives the officers were expected to carry out and we are building our training program around these. It is called the systems approach to training. We are one of the first police departments in the country to attempt it and we are the most successful. Within the next six months, the new program will be fully

operative. Among other features of this training, it will concentrate on developing proficiency as against the traditional subject matter teaching approach. Every officer will be required to become proficient in a variety of areas prior to going into the field (this, as against passing courses in subject matter areas). Our new program is eliciting nationwide interest, particularly on the part of those departments involved in litigation over selection standards.

However, because this program will be implemented between July and December 1972, there has been no opportunity to correlate it with Test 21. Until such time as the Civil Service Commission attempts to correlate their Test 21 as against our new training program I have no opinion as to the validity of the test. However, I am certain that the new training program correlates extremely closely with performance in the field.

/s/ James M. Murray
JAMES M. MURRAY

Subscribed and sworn before me this 17th day of July, 1972.

/s/
Notary Public, D.C.

My Commission expires: 4/14/73.

APPENDIX "A"

[N.Y.T., Jan. 25, 1971]

RECRUITING OF NEGRO POLICE
IS A FAILURE IN MOST CITIES

By PAUL DELANEY

Special to The New York Times

WASHINGTON, Jan. 24—The cry of the 1960's for more black policemen has lowered to a whisper today, with only the District of Columbia among the nation's major cities able to lay claim to any real success in significantly increasing the number of blacks on its force.

From New York to New Orleans to Seattle, most departments have at best been able to add only a few blacks and to increase only barely the percentage of blacks among the total.

"Our recruitment of blacks has never been highly successful," Clarence Giarusso, superintendent of the New Orleans Police Department, said in a typical summation.

Responding to the racial crisis of the last decade, many cities announced at least a desire to have more black policemen, while some conducted recruitment drives. Black leaders and policemen do not believe many of the recruitment efforts were serious, and, at any rate, few of the efforts were successful.

Washington was the most successful, and Chicago and Atlanta got fairly good results.

Other cities employed gimmicks that failed or merely stepped up their traditional recruitment programs that had not worked in the past. Among those cities were

Milwaukee, Charlotte, N. C., Seattle, New Orleans, Charleston, W. Va., Dallas and Portland.

New York Up Slightly

New York City's major recruitment project is the state-financed cadet training program, which tutors minority group members in an effort to help them pass police exams.

Sgt. William Perry, coordinator for this four-year-old program, said it had trained and placed on the force more than 400 members of minority groups. He termed the results "an upsurge," although the percentage of blacks on the force has risen only from 5 per cent to 7.5 per cent of the last decade.

A survey of recruitment efforts found the following:

- Recruitment drives that achieved any measure of success occurred in cities with large and vocal black populations. Success was a result of very aggressive campaigns, and the drives usually followed serious racial disturbances.
- Drives in most cities failed completely. The percentage of blacks on some forces is the same as it was a decade ago and in some cases has actually declined.
- Police officials said they were desperately searching for Negroes for their departments, but in actuality little was being done in many places.
- Discrimination on forces is still a problem that hurts recruitment. Many forces have token representation of blacks in the upper ranks, while some have none at all.
- In the black community, the image of the police is still very negative. Black youngsters just do not want to be policemen. This attitude, combined with discrimination on the force, seems to be the major reason police recruiters meet with stiff resistance.

Demands of the 60's

The need for black policemen became apparent during the sixties with the steady increase in crime in black communities and rioting in the cities. Along with more policemen, some blacks, mostly militants, were demanding community control of the police. The latter issue faded even before the efforts to recruit.

In Berkeley, Calif., however, a fight is under way over a plan to reorganize the police force into three community-ruled zones—one "black," one "white" and one "campus," for the University of California area.

The most aggressive campaign to recruit blacks was conducted in Washington. However, the situation here is not typical: it has the biggest percentage of black residents of any city, 75.

Four years ago, blacks made up only 17 per cent of the capital's force of 3,100 men. In September, 1968, the percentage was up to 24.4 per cent, or 786 blacks of 3,207 men. By last August, 1,000 blacks more had been added, for a total of 1,797 of 4,994, or 35.9 per cent.

Washington did it by setting up recruit-mobiles in black sections, where written exams were given; recruiting on military bases; changing physical standards, such as lowering the height requirements and modifying the eye requirement, and changing the requirements on certain illnesses such as asthma and hay fever; conducting a "re-cruit-in-moviethon," where applicants and their dates attend free showings of Jim Brown and John Wayne movies, and a "radiothon" in which applicants were solicited over the radio and taxicabs were sent to pick them up and bring them to the station to take their tests.

Chicago has 2,100 black policemen on a force of 12,678, or 16.5 per cent. The city is one-third black. There were 1,842 Negroes on the force in 1967 and 2,037 last spring.

Atlanta's force of 942 has 260 blacks, or 28 per cent. The percentage is up five points from the annual total during the last decade, according to Superintendent Robert Lane, who is in charge of training.

Quota Charges Made

In New York, 2,400 of the 31,700 policemen are black, or 7.5 per cent. For years the percentage of blacks had remained at about 5 per cent, causing some blacks to charge the department with maintaining a quota system.

The Detroit force has 567 blacks out of nearly 5,100, about 12 per cent. Nearly 500 have been put on since 1966, with the bulk coming after the 1967 riots. The percentage of Negroes on the force in 1960 was 2.

Statistics in some other cities show Los Angeles with 350 blacks on a force of 6,705, or 5.2 per cent; Milwaukee, 50, of 2,096, or 2.3 per cent; Charleston, W. Va., 10 of 150, or 6.6 per cent; Charlotte, 22 of 459, or 4.5 per cent; San Francisco, 85 of 1,755, or 4.8 per cent; Dallas, 32 of 1,640, or 1.9 per cent; New Orleans, 83 of 1,359, or 6.1 per cent; Boston, 60 of 2,807, 2.1 per cent; Miami, 74 of 719, or 10 per cent; Hartford, 60 of 500, or 12 per cent; and Providence, 18 of —, or 4.5 per cent.

In Philadelphia the number of blacks on the force has been declining the last few years. Philadelphia had 1,431 blacks on a force of 6,893, or 20.8 per cent, in 1967. This was down last year to 1,347 blacks out of 7,242, or 18.6 per cent.

"To get blacks, the only thing a police department has to do is to tell blacks they want black officers and mean it," commented Deputy Chief Tilman O'Bryant, one of the two top ranking blacks on the Washington force.

"You don't just go on the record in saying you want black officers," he said. "You've got to use just a little

more effort to convince them you mean it. We've convinced the community here we mean it."

Many departments conduct recruitment drives by appointing a black to patrol the ghetto, sometimes with a small staff. Some use community organizations, such as the Urban League

Other cities advertise in black papers and on radio stations aimed at the black community. Some departments have saturated the ghetto with posters, signs and billboards. The poster-billboard approach worked in Washington but apparently is failing in Philadelphia, where posters praise "the black in blue" and admonish residents to "cop in, don't cop out" and urge blacks to "join [Police Commissioner Frank] Rizzo's team." Philadelphia even hired a black advertising concern in an effort to stem the decline in blacks on the force.

Such efforts help most forces barely to maintain their current percentage of blacks.

Tests Prove Barrier

A big problem is getting blacks who can pass the written tests, Larry Niles, recruitment officer with the Los Angeles police, said, "Negroes have more difficulty getting through the written tests. The tests give us people with over 100 I.Q. Whether it is a culturally fair test is another question." Detroit is attempting to eliminate the white middle-class "cultural bias" of its present tests.

Black policemen are convinced the tests are used to discriminate against them. White officials defend the exams as necessary to assure qualified officers. A black policeman in Indianapolis said the test issue was a "sham," that "if an applicant is wanted on the force, the tests wouldn't keep him off."

The testing problem has caused some cities to take steps, as New York has done, to help blacks to pass.

Seattle has a training program to improve skills, while Boston intends to initiate one.

However, the major recruitment problem among blacks appears to be the negative image of the police in the black community, compounded by discrimination on the forces.

Regarding image, Deputy Chief Spurgeon Davenport of Indianapolis, highest ranking black on the force, said he had talked a black school teacher into joining the force, but a few days ago the teacher called.

"He told me to forget it, that he would not join the force because the image was too bad and his friends had already started kidding him about it," Chief Davenport said.

Many white officials are cognizant of the image problem. The Public Safety Director in Louisville, Ky., George C. Burton, commented, "It is a problem and we're working on it."

Mr. Burton's black assistant director, A. Wilson Edwards, said the department had created the image problem. He cited the fact that the city had only 42 blacks on its force of 624. He feels, though, the image is changing.

Discrimination in promotion is also a problem. Mr. Edwards said that many departments had at least one black in the upper ranks. But some, including Milwaukee, Charlotte and Dayton, Ohio, do not. In several cities, San Francisco and Portland included. The ranking blacks are sergeants.

Mr. Edwards, a veteran of 30 years on the force, retired as lieutenant in 1966 after helping set up police units in several African and Asian countries. He recalled years of bitter frustration in trying to get a promotion himself.

“Every time they gave the captain’s exam and I finished first or second, they held the promotion list for a year,” he said. “They gave the exams again and the same thing happened. I took the test five times. When I finally finished out of the top three, from which the appointment was made, the job was filled. I stopped taking it.”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed July 18, 1972]

DEFENDANTS HAMPTON, SPAIN AND
ANDOLSEK'S MOTION FOR SUMMARY JUDGMENT

Defendants Hampton, Spain and Andolsek, by their attorney, the United States Attorney for the District of Columbia, respectfully move the Court for summary judgment in their favor on the ground that there is no genuine issue as to any material fact and that defendant is entitled to judgment as a matter of law.

Defendants Hampton, Spain and Andolsek incorporate into their motion for summary judgment, by attachment hereto, the affidavits of Dr. Donald J. Schwartz, Personnel Research Psychologist, Personnel Research and Development Center, United States Civil Service Commission; Dr. Mary L. Tenopyr, Personnel Research Psychologist, Acting Chief of Personnel Research Programs, United States Civil Service Commission; Miss Diane E. Wilson, Personnel Research Psychologist, Personnel Measurement Research and Development Center, United States Civil Service Commission. Furthermore, defendants incorporate herein and submit for the Court's convenience by attaching hereto the affidavits of Drs. David M. Nolan, Albert P. Maslow and William A. Owens which affidavits have previously been submitted to the Court. Defendants also attach hereto and incorporate herein Exhibit 1, the Relation of D.C. Police Entrance Test Scores to Recruit School Performance and Job Performance of White and Negro Policemen by David L. Futransky and Exhibit II, the Recruit Training Curriculum of the Metropolitan Police Department.

In support hereof, defendants Hampton, Spain and Andolsek submit a statement of material facts as to which there is no genuine issue and a memorandum of points and authorities.

[Certificate of Service omitted in printing]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed July 18, 1972]

STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE

1. The plaintiffs-intervenors are black applicants who failed to achieve a passing score on the Metropolitan Police Entrance Examination (hereinafter "Test 21").

2. The defendants are the Commissioners of the United States Civil Service Commission, Walter E. Washington, Commissioner of Washington, D.C., and Jerry Wilson, Chief of Police of Metropolitan Police Department of the District of Columbia.

3. Test 21 is the entrance examination given by the United States Civil Service Commission (hereinafter "the Commission") to all applicants for the Metropolitan Police Department of the District of Columbia.

4. Test 21 is a straightforward test of verbal ability and consists of vocabulary, reading comprehension, interpretation of reading passages and general information items.

5. Test 21 is designed to predict performance in the position of police recruit.

6. The job of a police recruit, which lasts for seventeen weeks, is to succeed in learning the duties of a policeman.

7. Test 21 is a highly accurate predictor of success in the positions of police recruit for both blacks and whites.

8. All policemen must succeed in performance of duties as a police recruit before becoming a permanent member of the police force.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title omitted in printing]

[Filed July 18, 1972]

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS HAMPTON, SPAIN
AND ANDOLSEK'S MOTION FOR SUMMARY
JUDGMENT*Statement of Facts*

On September 8, 1970, plaintiff John Sellers moved to intervene in the instant lawsuit alleging that the Metropolitan Police Entrance Examination (hereinafter "Test 21") discriminated against plaintiff on the basis of his race and that the use of this test violated his rights under the due process clause of the Fifth Amendment to the Constitution. Plaintiff Sellers sued on his own behalf and on behalf of all members of the class which was defined by plaintiff Sellers as consisting of all black applicants who took Test 21 and were denied appointment to the Metropolitan Police Force because of their low scores on the test. Plaintiff George Harley moved to intervene for the same reasons as plaintiff Sellers on September 23, 1970. Plaintiffs have been permitted to intervene and a determination as to class has been deferred until the Court decides whether there is any merit to plaintiffs contentions.

Test 21 is a straightforward test of verbal ability and consists of vocabulary, reading comprehension, interpretation of reading passages and general information items. It is used to predict the success of applicants in the Metropolitan Police Training Academy. In order to become a full-fledged police private, an applicant must first suc-

cessfully complete the program at the Training Academy. While a person is in training at the Academy, he is called a police recruit.

In 1967, a criterion related validity study was done by the Civil Service Commission in order to ascertain whether Test 21 was in fact an accurate predictor of the success of police recruits at the Training Academy. See Exhibit I. Part of the study was reported in *Relation of D.C. Police Entrance Test Scores to Recruit School Performance of White and Negro Policemen* by David L. Futransky, November, 1967 (hereinafter "Futransky Study"). The Futransky Study firmly established that there was a positive relationship for both blacks and whites between their Test 21 score and their success at the Training Academy. The Study further examined, although this was not its primary purpose, the relationship between Test 21 and the policeofficer's job rating. It was found that for the one job rating examined, there was a positive correlation for whites between Test 21 results and the job rating while for blacks there was a negative correlation between Test 21 results and the job rating.

Defendants have had five psychologists examine Test 21 and the Futransky study. In addition, one psychologist examined the curriculum at the training academy while gathering material for a further validity study of Test 21. All six psychologists have filed affidavits in this action and they uniformly concur that Test 21 accurately predicts success at the Training Academy. Furthermore, they maintain that relating an entrance test to a training program is a more reliable method of measuring the validity of the test than by relating the entrance test to one job performance rating. This method of validation is supported by the case law as a perfectly proper way of showing the job-relatedness of an entrance test. *Buckner v. Goodyear Tire and Rubber Co.*, 339 F.Supp. 1108 (N.D.

Ala. 1972) ; *Spurlock v. United Airlines, Inc.*, 330 F.Supp. 228 (D. Col. 1971) ; *c.f. Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

Plaintiffs contend that Test 21 discriminates against blacks because the test fails to establish that blacks who do poorly on the test and poorly in the recruit school do poorly on the job.

To deny blacks entry into the police force because they have failed a test, which is correlated with recruit school grades which have no consequence, is to make meaningless academic performance more important than actual job performance. Plaintiff's Motion for Summary Judgment at 5.

Plaintiffs ask the Court to enjoin the use of the test, since it is not job-related, and to set up guidelines for any proposed substitute test. Furthermore, plaintiffs asks that all members of their as yet undefined class be notified of the Court's opinion and that they be given priority consideration when new openings on the police force are to be filled.

Argument

Plaintiffs have not stated a claim on which relief can be granted because they have failed to show that the Police Entrance Examination is not in accordance with the applicable legal standards.

It is well settled that employment with the federal government, in the absence of constitutional, statutory or regulatory rights, can be regulated at the will of the appointing officer. *Cafeteria Workers v. McElroy* 367 U.S. 886, 896-899 (1961) ; *Holden v. Finch*, 144 U.S.App. D.C. 310, 446 F.2d 1311, 1315 (1971). See *White v. Berry*, 171 U.S. 366, 378 (1898).

Defendants Hampton, Spain and Andolsek contend that plaintiffs are not entitled to relief because they have not

shown that defendants violated their constitutional, statutory or regulatory rights. *Eberlein v. United States*, 257 U.S. 82, 83 (1921); see *Hargett v. Summerfield*, 100 U.S.App.D.C. 85, 243 F.2d 29, 32, *cert. denied*, 353 U.S. 970 (1957); *Mendelson v. Macy*, 123 U.S.App.D.C. 43, 356 F.2d 796, 799-80 (1966).

- (A) The Police Department Entrance Examination (hereinafter "Test 21") meets the standards set by the applicable regulations and statutes

The only regulations applicable to the instant cause of action are the Civil Service Commission regulations at 5 C.F.R. § 300.¹ Plaintiffs do not assert that Test 21 does not meet the requirements of the Commission regulations, and for this reason, defendants contend that plaintiffs cannot recover on the basis that defendants failed to comply with the governing regulations. 5 U.S.C. § 3304 is the statute that prescribes the relationship between civil service examinations and civil service jobs. In this statute, Congress laid down the following job-relationship standards:

- (a) The President may prescribe rules which shall provide, as nearly as conditions of good administration warrant, for—
- (1) open, competitive examinations for testing applicants for appointment in the competitive service which are practiced in character and as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointment sought.²

¹ The appointment of officers to the Metropolitan Police Department is subject to Commission regulations by virtue of 4 D.C. § 103.

² This section was originally enacted as part of the Civil Service Act of 1883, 22 Stat. 403.

Plaintiffs have not alleged that the Commission has improperly implemented the statute and therefore, the interpretation of the statute is not in issue.

(B) The use of the Police Entrance Examination (Test 21) does not violate any of Plaintiffs Constitutional Rights

Plaintiffs contend that defendants have violated their constitutional right to due process because they use as an entrance test an examination which has not been shown to be job related. Plaintiffs base their contention that Test 21 must be job-related on the decision of the Supreme Court in *Griggs v. Duke Power Co.*, 401 U.S. 424 (.971). In *Griggs, supra*, the Supreme Court set a job-relationship standard for the private sector employers which has been a standard for federal employment since the passage of the Civil Service Act in 1883. In that act Congress has mandated that the federal government must use “. . . examinations for testing applicants for appointment . . . which . . . as far as possible relate to matters that fairly test the relative capacity and fitness of the applicants for the appointments sought.” 5 U.S.C. § 3304 (a) (1).³ Defendants contend that they have been following the job-related standards of *Griggs, supra* for the past eighty-eight years by virtue of the enactment of the Civil Service Act which guaranteed open and fair competition for jobs.

Defendants submit that the Court in *Griggs* did not rule on how an employer must show that a test is related to the jobs for which it is used. The *Griggs* Court was only called upon to choose between (1) defendant's position that its test met legal requirements because it was developed by psychologists and raised the level of its work force and (2) plaintiffs' position that only a test shown to be job-related met legal requirements. *Griggs v.*

³ The Metropolitan Police Entrance Examinations are subject to this provision by virtue of 4 D.C. Code § 103.

Duke Power Co., supra, 401 U.S. at 431. In the case at bar, both defendants and plaintiffs agree that the tests must be job-related but they disagree on *how* the job-relationship must be shown.

Defendants contend that they have shown that Test 21 is job-related by demonstrating that Test 21 predicts success in the recruit training program. *Buckner v. Goodyear Tire and Rubber Company*, 339 F.Supp. 1108 (N.D. Ala. 1972); *Spurlock v. United Airlines*, 330 F.Supp. 228 (D. Col. 1971); see *Castro v. Beecher*, 334 F.Supp. 930, 942 (D. Mass. 1971), *aff'd* in part, — F.2d — (1st Cir. 1972). A criterion related validity study was performed by the Civil Service Commission in 1967 and was reported in *Relation of D.C. Police Entrance Test Scores to Recruit School Performance of White and Negro Policemen* by David L. Futransky (hereinafter "Futransky Report"). The study showed that Test 21 was an accurate predictor of success at the Training Academy of both white and blacks. See Affidavit of Albert R. Maslow at paragraphs 7, 8, 11; Affidavit of William A. Owens at paragraphs 4, 9; Affidavit of David M. Nolan at paragraphs 4, 6, 7. In other words, individuals who did well on the test performed on an above average level at the Academy. See Maslow Affidavit at Paragraph 8.⁴ Furthermore, from December of 1967 to December of 1970 the percentage of blacks on the police force has increased from 25.4 per cent to 36.5 per cent. This is an increase of 228 per cent for black officers compared with an increase of 47 per cent for white officers. See Maslow Affidavit at paragraph 10. Clearly, if the test were discriminating on the basis of race there would not be the great increase in black officers.⁵

⁴ Every police recruit must successfully complete the Police Training Academy before he or she can become a full-fledged police officer. See Exhibit II.

⁵ The number of blacks recruited from August 1, 1969 to April 1, 1972 was 1413 while the number of whites was 1780. The per-

The test is used to screen unqualified persons and not to screen persons because they are black. The Supreme Court in *Griggs, supra*, 401 U.S. at 430, 434 specifically upheld that kind of employee selection process.

Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has prescribed. What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification.

* * * *

Indeed, the very purpose of Title VII is to promote hiring on the basis of job qualifications, rather than on the basis of race or color.

Test 21 is a straightforward test of verbal ability and is concerned with reading comprehension and interpretation of reading passages. The curriculum at the Training Academy includes "149 hours of instruction on all subjects pertaining to law and law related subjects pertinent to the function of [the police] department." Appendix at 6. Furthermore, a police recruit has a total of 321 hours of instruction on such subjects as the police manual, report writing and court procedures. Appendix at 6. In order to successfully complete the Training Academy requirement, a person must possess at least a minimum of word comprehension and reading skills. Test

centage of recruits who were black was 44.2%. See Defendants Washington and Wilson's Motion for Summary Judgment.

21 measures reading skills at a minimum level. See Affidavit of Diane Wilson.⁶

Three recent cases have affirmed the principle that the jobrelatedness of an entrance test can be validated by showing the positive relationship between the test and the training program. In *Buckner v. Goodyear Tire and Rubber Company*, *supra*, the plaintiffs attacked a job entrance examination as not being job-related while the defendant-employer claimed that it met the legal job-relationship requirements because the defendant-employer had demonstrated that the test was related to success in the defendant-employer's apprenticeship training program. The Court held that the showing of a relationship between the test and the training program was a legally acceptable method for determining that a test is job-related. In *Spurlock v. United Airlines, Inc.*, *supra*, the court held that an employer had established the job-relatedness of a college degree requirement for pilots by a study showing that the degree is related to success in the pilot training program.

Statistical studies made by United establish that there is indeed a direct and substantial correlation between successful completion of the training pro-

⁶ The necessity for a higher level of education for our police forces was stressed by the United States Court of Appeals for the First Circuit in *Castro v. Beecher*, *supra*, 4 E.P.D. at 6002. The court cited as validating a high school degree requirement the President's Commission on Law Enforcement and Administration of Justice, "The Challenge of Crime in a Free Society" and its underlying Task Force Report: The Police. The Court also cited the 1968 "Report of the National Advisory Commission on Civil Disorders." Significantly the Court held:

The point is, . . . , that a high school education is viewed as a bare minimum for successful performance of a policeman's duties. These reports and the subsequent action of the Massachusetts legislature constituted a deliberate value judgment that professionalization of the police is a major goal in our increasingly complex society.

gram and a college degree, especially when that degree is in science related areas. *Spurlock v. United Airlines, supra*, 330 F.Supp. at 235.

Finally, in *Castro v. Beecher*, 334 F.Supp. 930 (D. Mass. 1971), *aff'd in part*, 4 E.P.D. par. 7783 (1st Cir. 1972), the Court found that an entrance test for the Boston Police Department was not job-related because the employer did not demonstrate its job-relationship by either a rational or empirical (criterion-related) validity study. During the course of its opinion, the trial court indicated that one of the ways the employer could show that the test was related to the job was by relating it to the police training courses.

Nor has there been any attempt to prove by empirical [criterion-related] validation that although on their face these questions seem not to be rationally related to a policeman's job and thus predictive of the ability of persons successfully to be policemen or at least *successfully to be trained as policemen*, the facts are that these tests do test such ability. (Emphasis added.) *Castro v. Beecher, supra*, 334 F.Supp. at 942.

We submit that the record establishes that defendants have met the legal standards announced in *Buckner, supra*, *Spurlock, supra*, and *Castro, supra*. In his affidavit, Dr. Maslow explains in great detail how Test 21 predicts success in recruit school. For example, in paragraph 8, he reports the statistical relationship between Test 21 scores and grades in recruit school, and in paragraph 11, how the content of the test is representative of the kind of academic ability an individual must have to succeed in recruit school. Dr. Mary L. Tenopyr states in her affidavit that "for both blacks and whites scores on Test 21 are related statistically to job performance in D.C. Police training" and that "[t]hroughout the history of industrial psychology, verbal ability tests like

Test 21 have consistently been found to be useful predictors of success in training based upon the use of words". See Tenopyr Affidavit at paragraph 8. Miss Diane Wilson, a Personnel Research Psychologist at the Commission, who in 1969 as part of a study of the validity of Test 21, reviewed the written materials used by recruits at training academy, concluded that "(1) successful completion of recruit school training requires a relatively high level of verbal ability (that is, ability to read and understand written language in terms of interpretation of reading passages, vocabulary, etc.); and that (2) the level of verbal ability measured by Test 21 is, at most, no higher than that required for successful completion of recruit school as determined by the final grade average attained by the recruit." See Wilson Affidavit. Dr. Donald J. Schwartz, in his affidavit, concurs and states that "Test 21 has been professionally validated, i.e., shown to be job-related, because by a criterion-related validity study the Government has shown that Test 21 has a significant positive correlation with the MPD [Metropolitan Police Department] recruit school." Schwartz Affidavit at paragraph 5. Drs. William Owens and David Nolan agree with the aforesaid opinions. See Owens and Nolan Affidavits.

Plaintiffs assert that defendants' showing of the relationship between the test and recruit training is of no value because (1) poor performers in the training program managed to complete the program; and (2) poor performers in the training program did not become poorer performers on the job. We disagree. We submit that it is clear that an employer meets his burden of showing the job relationship of a test when the employer relates a test to a training program. *Buckner v. Goodyear Tire and Rubber Co.*, *supra*, *Spurlock v. United Airlines, Inc.*, *supra*.

With regard to plaintiffs' first argument, rather than being a symptom of a problem with the test, we submit that the fact that poor performers in the training course are able to complete the program further establishes the value of the test. The Metropolitan Police Department gives Test 21 in order to eliminate those persons who cannot learn the duties of a policeman, and we contend that the fact that most applicants complete the training program shows that the test does what it is supposed to do and is consequently valid. See *Douglas v. Hampton*, 338 F.Supp. 18, 21 (D.D.C. 1972). Moreover, in *Buckner v. Goodyear Tire and Rubber Co.*, *supra*, 339 F. Supp. at 1115, n.7, the court, in a footnote, indicated:

7. It is at least of some significance that since the tests were utilized no one selected for the program has failed in either the academic or practical phases of training, though a few have dropped out before completion.

As to plaintiffs' second point, the Commission, in addition to its research concerning the relationship of Test 21 to recruit school, compared the relationship of those scoring 51 and below on Test 21 to one job performance rating and certain negative and positive job performance incidents⁷ and the relationship of those scoring 52 and above on Test 21 to one job performance rating and the same negative and positive performance incidents. See Exhibit 1 at 6-8. Whites scoring well on Test 21 had an above average performance rating and more positive incidents than negative incidents while whites doing poorly on Test 21 had a correspondingly low job performance rating and more negative incidents than positive

⁷ Negative job performance incidents are either a below average performance rating, resigning with prejudice, a trial board proceeding, or other formal disciplinary action. Positive job performance incidents are having received a commendation or having been appointed to a position of responsibility. See Exhibit 1 at 6-7.

ones. Blacks did not conform to this pattern. Blacks scoring below 51 on the test had a similar job performance rating and a similar number of negative and positive incidents as blacks scoring above 52 on the test. See Exhibit 1 at 6-8.

Drs. Tenopyr and Schwartz (experts in psychological measurement, have analyzed what conclusions can be drawn from the Futransky study concerning the relationship of Test 21 to performance after recruit school. Both have found that the study is inconclusive on the question of whether Test 21 is related to post-training job performance. See Tenopyr Affidavit at paragraph 9-12. Dr. Schwartz stated that:

There is insufficient data to determine the relationship between job performance after completion of Recruit School and scores on Test 21. To determine such a relationship, it will be necessary (a) to select better criterion measures; (b) conduct the study under more controlled conditions; and (c) use correlational techniques similar to those used to determine the relationship in Finding (1) [Test 21 is favorably related to the Training Program]. Schwartz Affidavit at paragraph 11.

Dr. William Owens explains the meaning of the test versus job performance results for blacks:

As a measure of ultimate job performance or proficiency, Test 21 appears to predict positively for whites, but near zero for blacks. The meaning of such results should, however, be evaluated with caution since the criterion is the average rating of one judge on 9 traits, is of unknown reliability and is probably based upon little direct observation of typical job behaviour. In short, the criterion of Recruit School Average is very substantially superior, as a

criterion, to the criterion of job performance. See Owens Affidavit at paragraph 7.

Plaintiffs suggest that Test 21 should be determined to be of little value because of its negative correlation between blacks success of the test and one job performance rating. We submit that five psychologists found that Test 21 was a valuable selection device because "a success in training criterion" is a good measure of a test's value while a job rating and similar criterion are poor measures. Dr. Maslow points out the importance of using a training criterion and the problems with using rating and explains why changing conditions sometimes prevent a test from predicting after school success. Maslow Affidavit at paragraphs 11 and 13. Dr. Nolan states that there is no discrimination as long as Test 21 predicts success in recruit school for blacks and whites and he notes that it is a common practice in both business and educational circles to use tests that predict training success. Nolan Affidavit at paragraph 7. Lastly, Dr. Schwartz states that ratings are not as reliable criteria as school performance.

Rating may not be adequate indices of job performance. As Professor Lee J. Cronbach, a well-known reputable authority on psychological testing, says (Cronbach, L. J., *Essentials of Psychological Testing* (3rd ed.), New York: Harper & Row, 1970, p. 127): 'A common type of criterion is the rating or grade . . . Industrial predictors are validated against ratings by supervisors. These ratings are not entirely satisfactory as criteria. The judge may not know the facts about the person. Often a rating reflects the personal relation between the man and supervisor rather than the quality of the man's work. When a test fails to predict a rating, it is hard to say whether this is the fault of the test or of the rating.' See Schwartz Affidavit at paragraph 9.

In summary, defendants submit that they have shown that Test 21 is properly related to the needs of recruits at the Police Training Academy. This showing meets the standard set by the Supreme Court in *Griggs, supra*. The test-training relationship has been held to be sufficient to meet the *Griggs* job-relatedness standard by two district courts, *Buckner v. Goodyear Tire and Rubber Co., supra*; *Spurlock v. United Airlines, Inc., supra* and has been positively referred to in dicta by a third, *Castro v. Beecher, supra*. Undeniably, a police recruit must have the minimum reading skills in order to complete the curriculum at the Training Academy and of course, in order to become a police private a recruit must graduate from the Training Academy. Test 21 merely makes certain that a potential recruit has the minimum skills in reading and verbal ability. The need for more intelligent and qualified policemen and policewomen has been one of the main priorities of most major cities in the last decade. In the same vein, it has been recognized that minority groups must have better representation on police forces. We submit that the Metropolitan Police Department has been a leader in the recruitment of minorities and this is reflected in the statistic showing that 36.5 per cent as of 1970 of the police force in Washington is black. Test 21 is an important part of the MPD's drive for a better qualified and yet representative police force.

Defendants contend that plaintiffs have been unable to show that defendants have acted arbitrary or capriciously in using Test 21 since Test 21 is an accurate predictor of the success of recruits in the Training Academy. *Cafeteria Workers v. McElroy, supra*. Therefore, defendants submit that the Executive has the widest possible discretion in the matter of appointments and that in the case at bar defendants have acted within that discretion. *Keim v. United States*, 177 U.S. 290 (1890).

WHEREFORE defendants Hampton, Spain and Andolsek respectfully move the Court to grant their motion for summary judgment.

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