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IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

FEB 04 1993

Michael N. Milby, Clerk
By Deputy: *McCastro*

DOROTHY A. EDWARDS, AFRO-AMERICAN)
POLICE OFFICERS LEAGUE, THE)
HOUSTON POLICE ORGANIZATION OF)
SPANISH SPEAKING OFFICERS, LIONEL)
AARON, BENNIE CONWAY, CLEMENT BOYD)
CROSBY, JR., JOSE GARCIA, JR.)
RICHARD C. GARCIA, MARIA L.)
GUILLORY, ANTHONY R. JAMMER,)
CHARLES A. MCCLELLAND, SILAS)
MONTGOMERY, JR., CLYDE PHILPOTT,)
CARL WAYNE REED, RICHARD M.)
SPENCER, and BRUCE D. WILLIAMS,)

individually and on behalf of)
all others similarly situated,)

Plaintiffs,)

v.)

CITY OF HOUSTON,)

Defendant.)

C. A. NO. H-92-2510
Judge Lynn Hughes

CONSENT DECREE

A. Introduction and History of This Case

1. This is a class action employment discrimination suit brought by African-American and Hispanic-American police officers, the Afro-American Police Officers League, and the Houston Police Organization of Spanish Speaking Officers ["plaintiffs"] against the City of Houston ["the City"] pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., as amended by the Civil Rights Act of 1991 and the Equal Employment Opportunity Act of 1972 ["Title VII"].

2. This lawsuit has been consolidated with two earlier lawsuits, Comeaux v. City of Houston, Civil Action No. 76-H-1754, and Kelley v. Hofheinz, Civil Action No. H-75-1536, filed in this

Court in 1976 and 1975, respectively. These lawsuits challenged a variety of allegedly discriminatory practices, and the Comeaux action specifically challenged discrimination in promotional tests. By the Order entered on June 18, 1992 in Comeaux and Kelley, all claims of discrimination not involving promotional examinations have been dismissed, and the claims of discrimination involving promotional examinations have been limited to promotions for the ranks of Sergeant and of Lieutenant from January 1, 1982 on.

3. In this action, plaintiffs have challenged as discriminatory the promotional examinations for the rank of Lieutenant and for the rank of Sergeant in the Houston Police Department ["HPD"] which were administered during the period from 1982 to date and the system pursuant to which these examinations are prepared. Plaintiffs alleged in this lawsuit that the challenged examinations had the effect of disproportionately excluding African-Americans and Hispanic-Americans from promotion to Sergeant from 1982 to date, and of disproportionately excluding African-Americans from promotion to Lieutenant from 1982 to date, but were not job-related or consistent with business necessity.

4. The plaintiffs sued on their own behalf, on behalf of the African-American and Hispanic-American members of the Police Department who took a Sergeant examination from 1982 to date or who will compete for promotions to Sergeant in the future, and on behalf of African-American members of the Police Department who took a Lieutenant examination from 1982 to date or who will compete for promotions to Sergeant in the future.

5. Plaintiffs' proposed class did not include Hispanic

Americans who took Lieutenant examinations from 1982 to date, because the records of the City show that the Lieutenant examinations did not operate to exclude Hispanic-Americans from promotion to Lieutenant during this period of time. However, plaintiffs alleged that the Sergeant examination discriminatorily delayed the promotions of both African-Americans and Hispanic-Americans to the rank of Sergeant, and a delay in their promotion to the rank of Sergeant is necessarily a delay in their ability to compete for promotion to Lieutenant.

B. Certification of the Class, and Finding of Jurisdiction

6. Based upon the stipulations of the parties and the information of record, the Court certifies and defines the following class:

a. All African-Americans who are employed, or at any time since January 1, 1982 were employed, as Class A peace officers by HPD and who took a promotional examination for the rank of Lieutenant or for the rank of Sergeant which was administered at any time from January 1, 1982 to the present, and those who will compete for such promotions in the future; and

b. All Hispanic-Americans who are employed, or at any time since January 1, 1982 were employed, as Class A peace officers by HPD and who took a promotional examination for the rank of Sergeant which was administered at any time from January 1, 1982 to the present, and those who will compete for such promotions in the future.

7. This Court has jurisdiction over the claims alleged herein by virtue of 28 U.S.C. §§ 1331 and 1343 and § 706(f) of the

Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f). All of the administrative and procedural requirements to suit under Title VII have been satisfied.

C. Stipulation of Facts

8. Sec. 4(D) of the Uniform Guidelines on Employee Selection Procedures, 43 Fed.Reg. 38297 (1978), 29 C.F.R.

§ 1607.4(D), defines "adverse impact" as either a selection rate for the racial or ethnic group in question which is less than four-fifths (4/5) of the selection rate for the best-performing group, or a difference in selection rates which is both statistically and practically significant. The tables below use the term "standard deviation". The number of standard deviations is a measure of how unusual it would be for a difference of at least this magnitude to occur by chance. Social scientists commonly use a .05 significance level (probability) -- or, equivalently, one time in twenty -- as sufficient to rule out chance. This corresponds to 1.96 standard deviations. The larger the number of standard deviations, the less likely it would be to get the observed result by chance.¹ It is difficult for a test of statistical significance to detect that a modest difference is not due to chance when the size of the sample is small. For this reason, it is useful to aggregate statistical information over a period of years.

9. The challenged examinations for Sergeant have had

¹ For example, a .01 level of probability --- one time in a hundred --- corresponds to approximately 2.54 standard deviations. Three standard deviations corresponds to a .0027 level of probability, or 27 times in ten thousand. Four standard deviations corresponds to a .000063 level of probability, or sixty-three times in a million.

adverse impact against both African-Americans and Hispanic-Americans. Moreover, African-American and Hispanic-American officers who have been promoted to Sergeant have because of these examinations had to wait for promotion substantially longer than non-Hispanic whites have had to wait. The tables in the following paragraphs show the detailed information. The term "shortfall" used in the tables is the difference between the number of promotions actually received by persons of a particular racial or ethnic group and the number they would have received if they had been promoted at the same rate at which whites were promoted.

10. In the September 23, 1982 Sergeant Examination, the rate of promotion for African-Americans was only 42.9% of the rate of promotion for whites, resulting in a shortfall of 5 African-American promotions. There was no adverse impact against Hispanic-American officers on this test.

Table 1: September 23, 1982 Sergeant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	0	85	33	14
Promoted:	0	30	5	5
% Promoted:	N.A.	35.3%	15.2%	35.7%
<i>Promotion Rate as % of White Rate:</i>			42.9%	N.A.
Availability of Blacks, Hispanics:			25.0%	10.6%
Total Promotions Among All Groups:			40	40
Actual Promotions of Blacks and Hispanics			5	5
Expected Promotions of Blacks and Hispanics			10.0	4.2
---Difference Between Actual and Expected Promotions ("Shortfall"):			-5.0	0.8

11. In the November 17, 1983 Sergeant Examination, the rate of promotion for African-Americans was only 34.2% of the rate of promotion for whites, resulting in a shortfall of 8 African-

American promotions. The rate of promotion for Hispanic-Americans was only 28.5% of the rate of promotion for whites, resulting in a shortfall of 7 Hispanic-American promotions. These differences were also statistically significant at the .05 level, meaning that there is less than one chance in twenty that such a difference, or a larger difference, could have occurred by chance.

Table 2. November 17, 1983 Sergeant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	2	295	75	60
Promoted:	1	69	6	4
% Promoted:	50.0%	23.4%	8.0%	
6.7%				
Promotion Rate as % of White Rate:			34.2%	28.5%
Availability of Blacks, Hispanics:			17.4%	13.9%
Total Promotions Among All Groups:			80	80
Actual Promotions of Blacks and Hispanics			6	4
Expected Promotions of Blacks and Hispanics			13.9	11.1
---Difference Between Actual and Expected Promotions ("Shortfall"):			-7.9	-7.1
Standard Deviation:			3.4	3.1
Number of Standard Devia- tions Between Expected and Actual Promotions			-2.329	-2.299

12. In the January 31, 1985 Sergeant Examination, the rate of promotion for African-Americans was only 38% of the rate of promotion for whites, resulting in a shortfall of 11 African-American promotions. The rate of promotion for Hispanic-Americans was only 42.2% of the rate of promotion for whites, resulting in a shortfall of 7 Hispanic-American promotions. The difference between white and African-American promotion rates was statistically significant for African-Americans at the .01 level, meaning that there is less than one chance in a hundred that such a difference,

or a larger difference, could have occurred by chance. The difference between white and Hispanic-American promotion rates was statistically significant for Hispanic-Americans at the .05 level, meaning that there is less than one chance in twenty that such a difference, or a larger difference, could have occurred by chance.

Table 3. January 31, 1985 Sergeant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	5	408	87	61
Promoted:	1	111	9	7
% Promoted:	20.0%	27.2%	10.3%	11.5%
<i>Promotion Rate as % of White Rate:</i>			38.0%	42.2%
Availability of Blacks, Hispanics:			15.5%	10.9%
Total Promotions Among All Groups:			128	128
Actual Promotions of Blacks and Hispanics			9	7
Expected Promotions of Blacks and Hispanics			19.9	13.9
---Difference Between Actual and Expected Promotions ("Shortfall"):			-10.9	-6.9
Standard Deviation:			4.1	3.5
Number of Standard Devia- tions Between Expected and Actual Promotions			-2.649	-1.964

13. In the July 17, 1986 Sergeant Examination, none of the 79 African-American test-takers was promoted, so the rate of promotion for African-Americans was 0% of the rate of promotion for whites, resulting in a shortfall of 6 African-American promotions. The rate of promotion for Hispanic-Americans was only 36.7% of the rate of promotion for whites, resulting in a shortfall of 2 Hispanic-American promotions. The difference between white and African-American promotion rates was statistically significant for African-Americans at the .01 level, meaning that there is less than one chance in a hundred that such a difference, or a larger difference,

could have occurred by chance.

Table 4. July 17, 1986 Sergeant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	1	351	79	58
Promoted:	0	33	0	2
% Promoted:	0.0%	9.4%	0.0%	3.4%
<i>Promotion Rate as % of White Rate:</i>			0.0%	36.7%
Availability of Blacks, Hispanics:			16.2%	11.9%
Total Promotions Among All Groups:			35	35
Actual Promotions of Blacks and Hispanics			0	2
Expected Promotions of Blacks and Hispanics			5.7	4.2
---Difference Between Actual and Expected Promotions ("Shortfall"):			-5.7	-2.2
Standard Deviation:			2.2	1.9
<i>Number of Standard Devia- tions Between Expected and Actual Promotions</i>			-2.597	-1.125

14. In the October 29, 1987 Sergeant Examination, the rate of promotion for African-Americans was only 41.2% of the rate of promotion for whites, resulting in a shortfall of 7 African-American promotions. The rate of promotion for Hispanic-Americans was only 31.3% of the rate of promotion for whites, resulting in a shortfall of more than 6 Hispanic-American promotions. These differences were also statistically significant at the .05 level, meaning that there is less than one chance in twenty that such a difference, or a larger difference, could have occurred by chance.

Table 5. October 29, 1987 Sergeant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	3	360	97	73
Promoted:	1	63	7	4
% Promoted:	33.3%	17.5%	7.2%	5.5%
<i>Promotion Rate as % of White Rate:</i>			41.2%	31.3%

	<u>Blacks</u>	<u>Hispanics</u>
Availability of Blacks, Hispanics:	18.2%	13.7%
Total Promotions Among All Groups:	75	75
Actual Promotions of Blacks and Hispanics	7	4
Expected Promotions of Blacks and Hispanics	13.6	10.3
---Difference Between Actual and Expected Promotions ("Shortfall"):	-6.6	-6.3
Standard Deviation:	3.3	3.0
Number of Standard Devia- tions Between Expected and Actual Promotions	-1.990	-2.107

15. In the April 27, 1989 Sergeant Examination, the rate of promotion for African-Americans was only 20.8% of the rate of promotion for whites, resulting in a shortfall of 11 African-American promotions. The rate of promotion for Hispanic-Americans was only 74% of the rate of promotion for whites, resulting in a shortfall of 1 Hispanic-American promotion. The difference between white and African-American promotion rates was statistically significant for African-Americans at the .01 level, meaning that there is less than one chance in a hundred that such a difference, or a larger difference, could have occurred by chance.

Table 6. April 27, 1989 Sergeant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	7	410	129	109
Promoted:	1	61	4	12
% Promoted:	14.3%	14.9%	3.1%	11.0%
Promotion Rate as % of White Rate:			20.8%	74.0%
Availability of Blacks, Hispanics:			19.7%	16.6%
Total Promotions Among All Groups:			78	78
Actual Promotions of Blacks and Hispanics			4	12
Expected Promotions of Blacks and Hispanics			15.4	13.0
---Difference Between Actual and Expected Promotions ("Shortfall"):			-11.4	-1.0

	<u>Blacks</u>	<u>Hispanics</u>
Standard Deviation:	3.5	3.3
<i>Number of Standard Deviations Between Expected and Actual Promotions</i>	-3.235	-0.298

16. In the October 31, 1991 Sergeant Examination, the rate of promotion for African-Americans was only 27.8% of the rate of promotion for whites, resulting in a shortfall of 17 African-American promotions. The rate of promotion for Hispanic-Americans was only 31.8% of the rate of promotion for whites, resulting in a shortfall of 10 Hispanic-American promotions. Each of these differences was also statistically significant at the .01 level, meaning that there is less than one chance in a hundred that such a difference, or a larger difference, could have occurred by chance.

Table 7. October 31, 1991 Sergeant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	7	415	175	111
Promoted:	0	94	11	8
% Promoted:	0.0%	22.7%	6.3%	7.2%
<i>Promotion Rate as % of White Rate:</i>			27.8%	31.8%
Availability of Blacks, Hispanics:			24.7%	15.7%
Total Promotions Among All Groups:			113	113
Actual Promotions of Blacks and Hispanics			11	8
Expected Promotions of Blacks and Hispanics			27.9	17.7
---Difference Between Actual and Expected Promotions ("Shortfall"):			-16.9	-9.7
Standard Deviation:			4.6	3.9
<i>Number of Standard Deviations Between Expected and Actual Promotions</i>			-3.692	-2.514

17. In the aggregate, the rate of promotion for African-Americans in the Sergeant Examinations from 1982 through 1992 was

only 31.4% of the rate of promotion for whites, resulting in a shortfall of 64 African-American promotions. The rate of promotion for Hispanic-Americans was only 34% of the rate of promotion for whites, resulting in a shortfall of 34 Hispanic-American promotions.

Table 8. 1982-1991 Aggregate Sergeant Examinations

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	25	2,324	675	486
Promoted:	4	461	42	42
% Promoted:	16.0%	19.8%	6.2%	8.6%
<i>Promotion Rate as % of White Rate:</i>			31.4%	43.6%
Availability of Blacks, Hispanics:			19.2%	13.8%
Total Promotions Among All Groups:			549	549
Actual Promotions of Blacks and Hispanics			42	42
Expected Promotions of Blacks and Hispanics			105.6	76.0
---Difference Between Actual and Expected Promotions ("Shortfall"):			-63.6	-34.0
Standard Deviation:			9.2	8.1
Number of Standard Devia- tions Between Expected and Actual Promotions			-6.885	-4.203

However, when adding the shortfall figures from the individual examinations, the shortfall in African-American promotions to Sergeant from 1982 through 1992 was 62 promotions, rather than 64, and the shortfall in Hispanic-American promotions to Sergeant from 1982 through 1992 remained 34 promotions. For the purposes of settlement, the lower figure of 62 African-American promotions, based on the individual examinations, shall be used.

18. The Sergeant examinations from 1982 through 1992 caused additional adverse effects on members of the class who were promoted, as well as their adverse impact on class members who were

not promoted. African-Americans and Hispanic-Americans have tended to be clustered towards the bottoms of the lists of eligibles, and as a result have had to wait longer than whites to be promoted from a register. Table 9 shows the average number of days' wait from the establishment of a register of eligibles for Sergeant until promotion, for the period of time from 1982 through 1992, for those members of each racial and ethnic group who were promoted:

Table 9. Number of Days' Wait, from the Establishment of a Register to Promotion, for the Average Officer of Each Group Who Was Promoted to Sergeant from 1982 through 1992

	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Average Days' Wait from Establishment of Register Until Promotion:	226.0	336.3	264.3

19. These racial differences resulting from the Sergeant promotional examinations are even more pronounced when examining the delay until promotion across tests. Table 10 shows the average number of days' wait to promotion for the persons in each racial or ethnic group, starting with their first competition for Sergeant in 1982 or later, until the date of promotion:

Table 10. Number of Days' Wait from First Competition for Sergeant (1982 and later) Until Promotion to Sergeant, for the Average Officer Promoted to Sergeant from 1982 through 1992

	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Average Days' Wait from First Effort to Be Promoted (in 1982 or later), until Promotion:	615.6	783.6	780.9

Thus, both African-Americans and Hispanic-Americans on average had

to wait six months longer than whites to be promoted.

20. The challenged examinations for the rank of Lieutenant have had adverse impact against African-Americans.

21. Many fewer persons took the individual examinations for promotion to Lieutenant than did so for promotion to Sergeant. Rather than set forth the test-by-test results for each test, the following paragraphs show information for only those tests with adverse impact against African-Americans under the "4/5 rule" and a shortfall of at least one black.

22. In the September 27, 1984 Lieutenant Examination, the rate of promotion for African-Americans was only 36.6% of the rate of promotion for whites, resulting in a shortfall of 1.4 African-American promotions.

Table 11. September 27, 1984 Lieutenant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	1	123	12	13
Promoted:	0	28	1	1
% Promoted:	0.0%	22.8%	8.3%	7.7%
<i>Promotion Rate as % of White Rate:</i>			36.6%	
Availability of Blacks:			8.1%	
Total Promotions:			30	
Observed Promotions of Blacks:			1	
Expected Promotions of Blacks:			2.4	
---Difference Between Observed and Expected Promotions ("Shortfall"):			-1.4	

23. In the March 3, 1988 Lieutenant Examination, the rate of promotion for African-Americans was 0% of the rate of promotion for whites, resulting in a shortfall of 1 African-American promotion.

Table 12. March 3, 1988 Lieutenant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	0	98	11	7
Promoted:	0	10	0	1
% Promoted:	N.A.	10.2%	0.0%	14.3%
<i>Promotion Rate as % of White Rate:</i>			0.0%	
Availability of Blacks:			9.5%	
Total Promotions:			11	
Observed Promotions of Blacks:			0	
Expected Promotions of Blacks:			1.0	
---Difference Between Observed and Expected Promotions ("Shortfall"):			-1.0	

24. In the October 12, 1989 Lieutenant Examination, the rate of promotion for African-Americans was only 67.6% of the rate of promotion for whites, resulting in a shortfall of 1 African-American promotion.

Table 13. October 12, 1989 Lieutenant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	0	76	15	9
Promoted:	0	15	2	2
% Promoted:	N.A.	19.7%	13.3%	22.2%
<i>Promotion Rate as % of White Rate:</i>			67.6%	
Availability of Blacks:			15.0%	
Total Promotions:			19	
Observed Promotions of Blacks:			2	
Expected Promotions of Blacks:			2.9	
---Difference Between Observed and Expected Promotions ("Shortfall"):			-0.9	

25. In the May 23, 1991 Lieutenant Examination, the rate of promotion for African-Americans was only 54.8% of the rate of promotion for whites, resulting in a shortfall of 2.5 African-American promotions.

Table 14. May 23, 1991 Lieutenant Examination

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	1	111	19	15
Promoted:	1	32	3	6
% Promoted:	100.0%	28.8%	15.8%	40.0%
<i>Promotion Rate as % of White Rate:</i>			54.8%	
Availability of Blacks:			13.0%	
Total Promotions:			42	
Observed Promotions of Blacks:			3	
Expected Promotions of Blacks:			5.5	
---Difference Between Observed and Expected Promotions ("Shortfall"):			-2.5	

26. Table 15 shows aggregate information for all of the Lieutenant examinations from 1982 through 1991, including the 1992 promotions from the 1991 Lieutenant register of eligibles. The recent 1992 Lieutenant examination is excluded from this table because only two persons from the register compiled from that examination have been promoted.

27. In the aggregate, the rate of promotion for African-Americans in the Lieutenant Examinations from 1982 through 1992 (excluding the late 1992 test) was only 60.3% of the rate of promotion for whites, resulting in a shortfall of 5 African-American promotions. There was no adverse impact against Hispanics in rates of promotion to Lieutenant.

Table 15. 1982-1991 Lieutenant Examinations in the Aggregate

	<u>Other</u>	<u>Whites</u>	<u>Blacks</u>	<u>Hispanics</u>
Test-Takers:	5	681	90	71
Promoted:	1	113	9	12
% Promoted:	20.0%	16.6%	10.0%	16.9%
<i>Promotion Rate as % of White Rate:</i>			60.3%	101.9%

Availability of Blacks:	10.6%
Total Promotions:	135
Observed Promotions of Blacks:	9
Expected Promotions of Blacks:	14.3
---Difference Between Observed and Expected Values ("Shortfall"):	-5.3

28. The Lieutenant examinations from 1982 through 1991 caused additional adverse effects on members of the class who were promoted, as well as their adverse impact on class members who were not promoted. African-Americans have tended to be clustered towards the bottoms of the lists of eligibles, and as a result have had to wait longer than whites to be promoted from a register. The average successful African-American candidate for promotion to Lieutenant had to wait 336.3 days to be promoted from that register, compared to 226 days for whites. The average number of days' wait to promotion for the persons, starting with their first competition for Lieutenant in 1982 or later, until the date of promotion, was 783.6 days for African-Americans, compared to 615.6 days for whites.

29. Specific examination questions may not be set forth in this Consent Decree because of the Confidentiality Order herein and because of the defendant's need to preserve the confidentiality of its questions. However, copies of each of the challenged tests have been provided to counsel for plaintiffs for examination and analysis.

30. Counsel for the parties have met and have discussed in detail plaintiffs' reasons for asserting that the challenged promotional examinations are not job-related or consistent with business necessity:

a. Counsel for plaintiffs has pointed out specific questions which he contends have no possible relationship to the duties of the job for which the examination was given;

b. Counsel for plaintiffs has pointed out several specific types of questions which routinely occur on these promotional examinations and which he contends have no possible relationship to the duties of the job for which the examination was given;

c. Counsel for plaintiffs has further pointed out specific study materials chosen by the HPD Book Committee which he contends have no possible relationship to the duties of the job for which the examination was given. These materials are not confidential. Two examples from the study materials from which the May 1991 Lieutenant examination was drawn up are Thomas D. Lynch, *Public Budgeting in America* (3rd ed., Prentice Hall, Englewood Cliffs, New Jersey, 1990), and Allan M. Mohrman, Jr., *Large-Scale Organizational Change* (Jossey-Bass Publishers, San Francisco, California, 1990).

31. The defendant has made no admission as to any of the plaintiffs' contentions set forth in the preceding paragraph, but recognizes that, if the case were to be litigated to a conclusion, the defendant has the burden of proving that the test study materials for each of the challenged examinations are job-related and consistent with business necessity, that the questions asked on these examinations are job-related and consistent with business

necessity, and that the test scores on which the City has relied are job-related and consistent with business necessity. The defendant recognizes that there is substantial doubt whether it will be able to produce such evidence.

32. Plaintiffs recognize that they also face litigation risk, including the risk of further delay before a final litigated resolution can be reached. During the time since the filing of the Comeaux case sixteen years ago, some class members have left the Police Department, become incapacitated, or died. Now that this case has been filed in July 1992, it is important that relief be obtained without further delay.

D. Injunctive Relief for the African-Americans and Hispanic-Americans Harmed by the City's Use of the Challenged Examinations

1. Retrospective Relief

33. Members of the plaintiff class shall receive 96 remedial promotions to Sergeant, and 10 remedial promotions to Lieutenant, as set forth below.

34. The plaintiffs and class members [hereafter, collectively termed "class members"] receiving remedial promotions shall also receive full back seniority in rank, for both competitive and entitlement or "benefits" purposes other than pension benefits, as if they had actually been promoted on the test in question. The back seniority in rank shall not apply to pension benefits. The seniority dates shall be the dates six calendar months after the establishment of the register pursuant to which they were promoted, as set forth in the following table:

Table 16. Seniority Dates for Class Members Receiving Remedial Promotions

<u>Sergeant Register</u>	<u>Date of Seniority in Rank, for Remedial Promotions From this Register</u>
9/23/82	3/23/83
11/17/83	5/17/84
1/31/85	7/31/85
7/17/86	1/17/87
10/29/87	4/29/88
4/27/89	10/27/89
10/31/91	4/31/92

<u>Lieutenant Register</u>	<u>Date of Seniority in Rank, for Remedial Promotions From this Register</u>
9/27/84	3/27/85
3/3/88	9/3/88
10/12/89	4/12/90
5/23/91	11/23/91

35. In order to minimize any effect of these remedial promotions on members of the Police Department (including plaintiffs or class members) competing for promotions in the usual course, these promotions shall be phased in over a five-year period as follows:

Table 17. Schedule for Making Remedial Promotions

<u>Year of Promotion</u>	<u>Sergeant</u>	<u>Lieutenant</u>
1993	22	3
1994	21	2
1995	19	2
1996	18	2
1997	16	1

The defendant shall have discretion to make remedial promotions more quickly than this schedule requires.

36. A class member who receives a remedial promotion, or who is bypassed for a remedial promotion pursuant to the provisions of ¶ 39, shall be able to take a promotional examination for the

next higher rank after having served in the lower rank for one year, without regard to his or her retroactive seniority in that rank. For example, a class member receiving a remedial promotion to Sergeant with ten years of retroactive seniority as a Sergeant shall nonetheless be required to work as a Sergeant for one year before being eligible to compete for promotion to Lieutenant.

37. Although plaintiffs do not agree that the results of the challenged examinations have anything to do with qualifications, both plaintiffs and the defendant recognize that there is no presently available means of determining qualifications except for whatever information may be provided by the test scores. In order to ensure that each of the class members receiving remedial promotions is qualified (to the extent that the challenged test scores can so indicate), no class member shall receive a remedial promotion for a particular rank unless he or she has passed at least one of the promotional examinations for that rank, preferably one administered during the 1982-1992 period but on no account earlier than 1975.

38. Subject to the provisions of ¶¶ 37 and 49, the remedial promotions for a particular rank shall be made from among those plaintiffs and class members who passed one or more of the promotional examinations for that rank from 1982 to date, and who have not yet been promoted to that rank.

39. A potential conflict arises when a class member who is otherwise eligible to receive a remedial promotion is also on an eligibility list for a regular promotion, and is either reached or is reachable during the life of that eligibility list. Because of

the five-year period for phasing-in the remedial promotions, and because it is difficult to tell in advance exactly how many promotions will be made from a register of eligibles, this situation can be expected to occur. In such a situation, the class member must take the regular promotion, and may not take a remedial promotion.

40. To ensure equity for class members subject to the provisions of ¶ 39 above:

a. A class member who is bypassed for a remedial promotion pursuant to ¶ 39 shall, when he or she receives the regular promotion, receive back seniority as if he or she had received a remedial promotion instead.

b. In the event that he or she is not reached for promotion on the register of eligibles or it becomes clear that he or she will not be reached for promotion on the register, he or she shall immediately be restored to the list of persons entitled to remedial promotions in the same order as previously. In the event that he or she would already have been promoted from the list of remedial promotions if he or she had not taken the promotional examination in question, he or she shall be at the head of the list for the next remedial promotion. In the event that this situation occurs with respect to more than one class member, their respective positions at the head of the list of persons entitled to remedial promotions shall be in the same order as their original positions on such list.

c. In the last year in which remedial promotions are

being made, class members who would otherwise be entitled to one of the remaining remedial promotions and who are on a register of eligibles, but to whom the defendant certifies that it is uncertain whether they will be promoted on that register, shall have the right to elect to take a remedial promotion instead.

The provisions of this paragraph shall have priority over the provisions of other paragraphs of the Consent Decree on the allocation of remedial promotions.

41. The remedial promotions to Sergeant shall be allocated as follows, based on the shortfall figures to which the parties have stipulated above:

Table 18. Allocation of the Remedial Promotions to Sergeant

<u>Sergeant Examination</u>	<u>Number of Vacancies</u>	
	<u>Blacks</u>	<u>Hispanics</u>
9/23/82	5	0
11/17/83	8	7
1/31/85	11	7
7/17/86	6	2
10/29/87	7	7 ²
4/27/89	11	1
10/31/91	<u>17</u>	<u>10</u>
Total	62	34

42. African-Americans suffered 64.6% of the shortfall in Sergeant promotions, are receiving 64.6% of the remedial promotions to Sergeant, and shall receive this proportion of the remedial promotions to Sergeant made in each of these years: 14 remedial promotions in 1993, 14 in 1994, 12 in 1995, 12 in 1996, and 10 in

² Enough fractions of persons have accumulated to round this number up to 8.

1997.

43. Hispanic-Americans suffered 35.4% of the shortfall in Sergeant promotions, are receiving 35.4% of the remedial promotions to Sergeant, and shall receive this proportion of the remedial promotions to Sergeant made in each of these years: 8 in 1993, 7 in 1994, 7 in 1995, 6 in 1996 and 6 in 1997.

44. Five of the ten remedial promotions to Lieutenant shall be allocated as follows:

Table 19. Allocation of Five Remedial Promotions to Lieutenant

<u>Lieutenant Examination</u>	<u>Number of Vacancies Blacks</u>
9/27/84	1
3/3/88	1
10/12/89	1
5/23/91	2

45. In addition to the five remedial promotions to Lieutenant described above, there shall be five other remedial promotions to Lieutenant as a form of remedy for the delay in promotion to Sergeant which occurred as a result of the Sergeant examinations, and which in turn delayed the ability of those class members promotees to compete for promotion to the rank of Lieutenant. African-Americans shall receive two of these promotions, and Hispanic-Americans shall receive three of these promotions. The class members to receive these promotions shall be those class members promoted to Sergeant who have waited the longest times between taking their first Sergeant examination after January 1, 1982 and their promotions, and who have taken and passed the examination for promotion to Lieutenant, but who have not yet been

promoted. One such promotion shall be made per year over the five-year phase-in period, with the first such promotion going to an Hispanic-American and the further promotions alternating between African-Americans and Hispanic-Americans. The Sergeants promoted pursuant to this paragraph shall receive back seniority in the rank of Lieutenant to a date six months after the date of the next Lieutenant examination which was given at least two years after their promotion to Sergeant, subject to the conditions and limitations of ¶ 34 of this Consent Decree. The provisions of ¶¶ 39 and 40 above apply to these remedial promotions the same as to the others.

46. Counsel for plaintiffs shall within thirty days after the final approval of this Consent Decree develop a list of the class members who shall be scheduled to receive remedial promotions, and shall present it to the City for approval. The Court shall resolve any disagreements which plaintiffs and the defendant are unable to resolve by themselves.

47. In compiling the list, the individual named plaintiffs shall have priority for receiving the remedial promotions if they otherwise qualify under the standards set forth herein. The next priority shall be to use rank order on the test in question.

48. If for any reason there are not enough still-employed-but-unpromoted class members of a particular racial or ethnic group who took and passed one of the challenged tests to make up the numbers of remedial promotions for that group from that test, but there are class members of that group who failed the test in question but passed another test for the same rank within the

1982-1992 time period, such class members may be given remedial promotions for the test notwithstanding their failure of the test.

49. If for any reason these numbers still cannot be made up for a particular test by the class members of the appropriate group in question who took the test, they shall be made up from among the unpromoted class members of that group passing another test, starting with the earliest test from 1982 to date with unpromoted but passing class members.

50. If any class member declines a remedial promotion for any reason, that promotion shall go to the next-highest-ranking (or scoring) plaintiff or class member.

51. The plaintiff class shall receive each of the remedial promotions provided by the settlement. If still necessary to make up these numbers, unpromoted but passing members of the class on examinations between 1975 and 1981 may be selected, with the most recent examination prior to 1982 being used first.

52. The order in which remedial promotions shall be phased in is as follows: (1) the individual named plaintiffs satisfying the conditions set forth herein shall be promoted first, subject to the allocation of promotions as between African-Americans and Hispanic-Americans; (2) remedial promotions shall thereafter be in rank order from among test-passers and in order of test score (if known) or total score (where test score was not separately stated) among those class members who did not pass this test but passed another test for the same HPD rank; (3) the tests within the 1982-1992 time period shall be reached in chronological order, with the earliest test first; and (4) if necessary to go to a test

between 1975 and 1981 in order to make up the numbers of remedial promotions, the tests within this period shall be reached in reverse chronological order, with the most recent tests first.

E. Waiver of Back Pay

53. Plaintiffs and their class waive all claims for back pay and interest under all Federal and State anti-discrimination laws arising from the City's use of the challenged examinations.

54. Plaintiffs and their class do not waive any right they may have to seek appropriate relief against any person who, or organization which, takes any action which has the effect of unreasonably delaying any remedial promotions under this Consent Decree. This paragraph is not intended, and shall not be construed, to apply to any person or organization, whether or not a member of the plaintiff class, for making an adequately founded objection to this settlement under the procedures set forth below for determining whether this Consent Decree should be given final approval, or for pursuing that objection on appeal.

F. Prospective Relief

55. The City defendants shall continue the procedures for the development and use of promotional examinations for Sergeant and Lieutenant which were used for the development of the promotional examinations for Sergeant and Lieutenant from 1982 to date, except as follows:

- a. A firm date for the administration of the selection procedure and the final list of books (or parts thereof) or other texts shall be announced to members of the HPD at least ninety days in advance of the adminis-

tration of the selection procedure.

b. Prior to the final scoring of an examination for Sergeant or Lieutenant, the City or its expert shall conduct a log-linear analysis on the responses of all white, African-American, and Hispanic-American test-takers in order to identify any biased test items which should be excluded from the analysis. The analysis shall be conducted according to the procedure set forth in Attachment A hereto.

c. Any test item so identified in an examination for Sergeant or Lieutenant shall be discarded, and shall not be considered for any purpose in determining the results of the test. Such test items which have adverse impact against whites shall be excluded on the same basis as test items which have adverse impact against either African-Americans or Hispanic-Americans.

d. The City may continue to use its present system allowing protests of particular test items, the multiple-keying of some items where appropriate, and the discarding of other test items where appropriate.

e. The remaining items on the test shall be scored. Test-takers must achieve a score of 70% of the remaining items correct in order to pass the test and to be eligible for promotion.

f. Seniority points shall be added to the score on the written test, as is done at present, in order to obtain a rank-ordered list. The City shall post an

eligibility list as soon as possible. The City shall continue its present procedures for making promotions on a rank-ordered basis. The City shall consult with the plaintiffs herein before making any change in these procedures in the future.

g. Promotional registers of test-passers resulting from use of the new selection procedures shall remain in effect for a period of two years unless earlier exhausted.

h. In the event that any member of the HPD, of any race or ethnic group, passes a promotional examination for Sergeant or Lieutenant as originally scored, but fails the test as re-scored pursuant to the log-linear analysis, he or she shall be treated as if he or she had passed the re-scored test, and shall be ranked among the other persons who passed the re-scored test, in order of his or her combined test score on the re-scored test and his or her seniority points.

i. The September 30, 1992 Lieutenant promotional register shall be extended for one year, so that it shall expire on September 30, 1994. The extension of this list shall benefit all of the persons who passed this test, regardless of race or national origin.

j. To the extent reasonably necessary to comply with the provisions of this paragraph, the City may take a longer period of time to make promotions than the time allowed under State law, without incurring any liability

for back pay for such additional period of time.

The provisions of this paragraph supersede any provisions of The Fire and Police Civil Service Act, Texas Local Government Code chapter 143, as amended, to the contrary.

56. Nothing in this Consent Decree shall be construed to prevent any amendment of The Fire and Police Civil Service Act, Texas Local Government Code chapter 143, to create a statutory two-year life, or longer life, for promotional registers for any position in the HPD.

57. Nothing in this Consent Decree shall be construed to prevent the defendant from adopting an alternative selection procedure for promotion to the ranks of Sergeant or Lieutenant, if the promotions from such procedure have no adverse impact against African-Americans or Hispanic-Americans. The defendant shall keep counsel for plaintiffs, as well as other affected employee groups or their counsel, informed of the details of its progress in considering, evaluating, and adopting such procedures, and before any such procedure is put into effect the defendant shall so report to the Court and shall obtain and make available to counsel for plaintiffs all information regarding the likelihood that making promotions under the new procedure will result in adverse impact against African-Americans or Hispanic-Americans, and all information regarding the job-relatedness of the procedure and its consistency with business necessity.

58. Plaintiffs may make comments and suggestions to the defendant regarding such an alternative selection procedure, through their counsel or by themselves, but shall not be bound by

any such comment or suggestion, and shall remain free to challenge the new procedure herein in the event that it has adverse impact against African-Americans or Hispanic-Americans in practice, unless plaintiffs and the defendant enter into a formal agreement and stipulation to that effect, which is submitted to the Court for approval and which is approved by the Court. Other affected employee groups may also make comments and suggestions.

G. Attorneys' Fees and Costs

59. (a) The City shall pay the reasonable attorneys' fees, costs and expenses, in an amount to be negotiated by the parties or determined by the Court, for all services performed by the Lawyers' Committee for Civil Rights Under Law, and the firm of Kirk & Lindsay, and by all attorneys and paralegals employed by them, in this case and in connection with plaintiffs' effort to intervene in the Comeaux litigation, and for all reasonable future services to be performed and expenses to be incurred through the date on which the district court grants final approval to this Consent Decree. The parties shall attempt to negotiate in good faith over the amount of such recovery.

(b) Within fifteen days after the grant of preliminary approval to this Consent Decree, counsel for plaintiffs shall informally submit to the defendant their claim for attorneys' fees and expenses for work done through the date of preliminary approval, with supporting breakdowns. Within fifteen days after the receipt of this submission, the defendant shall provide its response, which shall include (1) an itemized list of each of its objections to the submission, if any, indicating the particular

items to which it objects and the reasons for the objection;
 (2) its proposed resolution of each objection; and (3) the amount which it does not contest, and contends would be a reasonable amount for the award of attorneys' fees and expenses herein. The defendant shall forthwith pay the uncontested amount. In the event that the amount of fees and expenses is litigated and plaintiffs recover an amount additional to the uncontested amount, plaintiffs shall also recover prejudgment interest on the amount of their recovery, at the rate of 10% per annum, from the thirtieth day after the receipt of plaintiffs' submission until the date of payment of the amount recovered.

(c) The procedure described in subparagraph (b) shall also be applied to the additional services performed and expenses incurred from the grant of preliminary approval to the Consent Decree until the district court's grant of final approval to the Consent Decree. Plaintiffs may make their informal submission at any time after the grant of final approval.

60. (a) The City shall pay the reasonable attorneys' fees up to a maximum of \$ 20,000 annually, plus costs and expenses (including reasonable expert fees in the amounts actually charged to counsel for plaintiffs), of plaintiffs for future services in monitoring the defendants' compliance with this Consent Decree. Plaintiffs shall have the right to seek relief from this limit in the discretion of the Court, in the event of a substantial failure by the City to comply with the provisions of this Consent Decree or a substantial effort required in connection with a proposed alternative selection procedure.

(b) The procedure and mechanism described in ¶ 59(b) shall be applied to awards of attorneys' fees under ¶ 60(a) for monitoring compliance with the Consent Decree. Plaintiffs shall decide when to submit their statements.

H. Reclassification of Peace Officers

61. This action concerns only Class A peace officers and promotions to Class A positions as Sergeant and Lieutenant. At the present time, HPD peace officers in other classes may not compete for promotions with Class A peace officers and may not compete for promotion to, or laterally transfer into, Class A Sergeant and Lieutenant positions. This prohibition shall continue for the ten-year life of this Consent Decree. There shall not within the ten-year life of this Consent Decree be any lateral transfers of HPD peace officers in other classes into Class A Sergeant and Lieutenant positions, or reclassification of HPD peace officers in other classes as Class A officers. This is being done so that there will be no reduction of promotional opportunities for class members or other Class A officers.

I. Reporting and Record-Keeping

62. At quarterly intervals after the effective date of this Consent Decree, the City shall report to plaintiffs on the steps it has taken to fulfill the provisions of this Consent Decree, including the name and date of each regular promotion and of each remedial promotion to the ranks of Sergeant and Lieutenant.

63. With respect to each examination for Sergeant and Lieutenant within the ten-year period after the grant of final approval of this Consent Decree, promptly after (a) the completion

of the log-linear analyses described above, and (b) the completion of any proceeding on the protest of the scoring of any item under the City's normal civil service procedures, the City shall provide counsel for plaintiffs with the following information:

a. a computer-readable data file containing the name, race, seniority points, and scored answers to each examination item (correct or incorrect);

b. the results of the log-linear analysis described above, showing which items were discarded; and

c. the final rank-ordered register of persons passing the test, showing the final written score, seniority point, total score, rank (if any), and race of each test-taker. Persons failing the test shall be listed alphabetically.

Plaintiffs shall have the right to check the accuracy of the log-linear analysis or any part thereof. Plaintiffs shall promptly inform the City of any errors of consequence which are found. The parties shall attempt to reach agreement on any such alleged errors. In the event that they cannot reach agreement, any party may request the Court to resolve the matter, and to re-open the case if necessary in order to resolve the matter.

64. Plaintiffs may make reasonable requests of the City for further information which would be helpful in determining any question of compliance with the Consent Decree, or which would assist in achieving its goals.

J. Retention of Jurisdiction

65. The Court shall retain jurisdiction of this case for

ten years after the Consent Decree has been given final approval by this Court. Those portions of the Consent Decree that allow a deviation from the requirements of The Fire and Police Civil Service Act, Texas Local Government Code chapter 143, as amended, may continue to be utilized for a maximum period of ten years unless extended on motion of any party for good cause shown, provided that the expiration of the ten-year period shall not limit the life of a promotional register under §§ 55(g) and -(i) above if the examination leading to that register was administered during the ten-year period. The period for retention of jurisdiction and/or continuation of these Consent Decree provisions may in the discretion of the Court be extended on motion by any party for good cause shown.

66. After the expiration of the period for retention of jurisdiction, the jurisdiction of this Court may be re-invoked upon motion of any party, for good cause shown.

K. Preliminary Grant of Approval

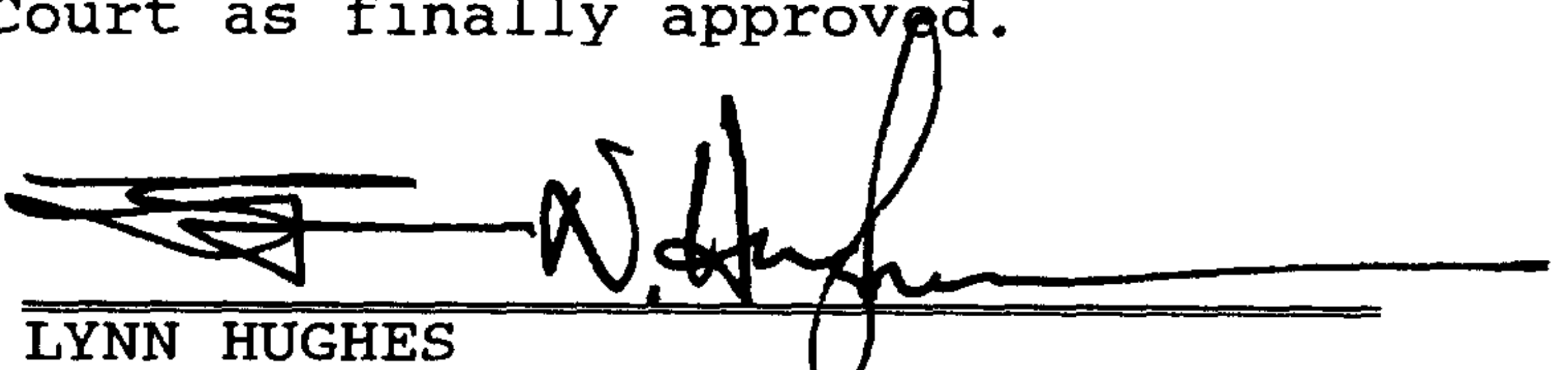
67. The Court hereby preliminarily grants approval to this Consent Decree, for purposes of providing notice to the members of the class and to all other members of HPD who may be affected, and for the holding of a hearing on the propriety of granting final approval.

68. A copy of the accompanying form of Notice, Attachment B hereto, shall be mailed to the last known address of each former police officer who took a promotional examination for Sergeant or Lieutenant from 1982 to date, and shall be given by hand to each Officer and each Sergeant still serving with the Houston Police

Department, and all other members of the Houston Police Department who are affected by this Consent Decree. The Clerk shall be informed of the date Notice was provided.

69. Simultaneously with the provision of copies of the Notice by mail and by hand, the City shall publish three times in the Houston Chronicle and the Houston Post, and shall publish once (if their deadlines allow) in the Houston Forward Times, La Voz, the Houston Police Officer Association Badge and Gun newspaper, and the Houston Police Patrolmen's Union The Sentinel newspaper, notice of the existence of this lawsuit, notice that there is a proposed settlement and that there will be an opportunity to file objections, and notice that a copy of this Consent Decree may be obtained in person or by mail from the Police Legal Services Division, 61 Riesner Street, Room 340-A, Houston, Texas 77002, between the hours of 2:00 P.M. and 4:00 P.M. on business days. The text of the published Notice is attached hereto as Attachment C.

70. Any objections to this Consent Decree must be in writing and filed with Constance K. Acosta, Esq., local counsel for plaintiffs, by 12:00 noon on March 12, 1993, or they shall not be considered. Ms. Acosta shall provide copies to other counsel of record. The hearing on objections shall be held on March 24, 1993, at 9:00 A.M. in Courtroom 11-C. In the event that no objections are filed by the deadline, the proposed Consent Decree shall stand without further Order of the Court as finally approved.


 LYNN HUGHES
 United States District Judge

Dated: February 3, 1993

WE SO STIPULATE, AND WE ASK FOR THIS:

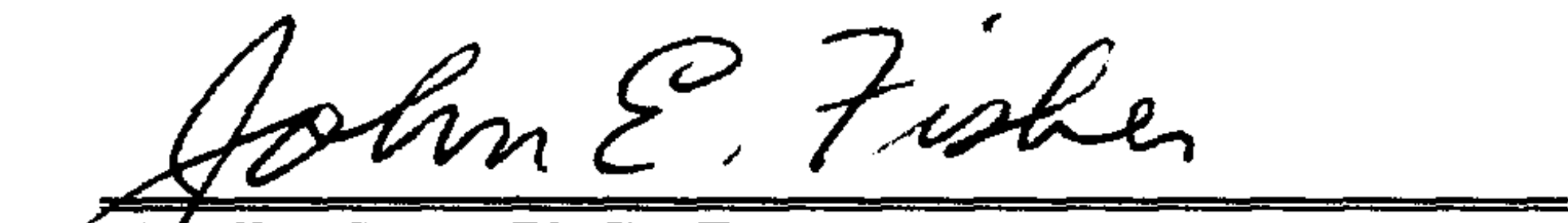


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Attorneys for Defendant City of Houston

ATTACHMENT A

DETERMINATION WHETHER A SPECIFIC TEST ITEM IS BIASED

Define RACE to be a trichotomous variable corresponding to African-American, Hispanic-American, and white.

Define ABILITY to be a four-valued variable defined by the quartiles of the written test score.

Define ITEM for each respondent to be 1 if the specific item is answered correctly and 0 otherwise.

Run the HILOGLINEAR procedure of SPSSX invoking the ASSOCIATION option of the PRINT subcommand and using the additional subcommand

DESIGN = ABILITY*ITEM*RACE.

Consider the item to have adverse impact whenever the RACE by ITEM interaction is statistically significant at the .05 level, i.e., whenever the entry in the RACE*ITEM row and the PROB column is less than .05.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

DOROTHY A. EDWARDS, *et al.*,

Plaintiffs,

versus

CITY OF HOUSTON,

Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION H-92-2510

ATTENTION: CURRENT & FORMER POLICE OFFICERS OF THE CITY OF HOUSTON

1. *Purpose.* The United States District court has ordered that you be told that the parties to this lawsuit have agreed on a settlement. The terms of the settlement will become a court order that may affect your rights.
2. *Groups Affected.* You need to study this information if you are in one of these groups:
 - A. Class A peace officers in the ranks of police officer and sergeant;
 - B. African-American and Hispanic-American Class A peace officers who have taken the promotional examination for sergeant between January 1, 1982, and December 31, 1992;
 - C. African-American Class A peace officers who have taken the promotional examination for lieutenant between January 1, 1982, and December 31, 1992;
 - D. Persons interested in taking these examinations in the future; and
 - E. Other peace officers in the Houston Police Department.
3. *Claims.* African-American and Hispanic-American Class A peace officers claim that the promotional examinations for sergeant were racially discriminatory, and African-American Class A peace officers claim that the promotional examinations for lieutenant were racially discriminatory.
4. *Agreement.* If the court approves the settlement:

A. *Promotions.*

- (1) African-Americans and Hispanic-Americans who took an examination for sergeant from January 1, 1982, to December 31, 1992, and who passed at least one of them, will receive a total of 96 remedial promotions;
- (2) African-Americans and Hispanic-Americans who took an examination for sergeant from January 1, 1982, to December 31, 1992, and who were promoted after a discriminatorily long waiting period which delayed their ability to compete for lieutenant promotions will receive five remedial promotions to lieutenant; and
- (3) African-Americans who took an examination for lieutenant from January 1, 1982, to December 31, 1992, and passed at least one examination for this rank, will receive a total of 5 remedial promotions.

B. *Preferences.* The qualified individuals who filed this lawsuit will have priority in receiving these promotions; the rest of the promotions will be made in rank order from among those unpromoted African-Americans and Hispanic-Americans passing at least one of these tests under the schedule in the court order.

C. *Back Pay.* There will be *no* back pay.

D. *Duration.* The court order will govern promotions to these ranks until April 1, 2003.

E. *Notice.* Officers will be given notice of at least 90 days of the exact date for promotional examinations for these ranks.

F. *Examination Analysis.* The City may continue to use a written examination for promotions to sergeant and lieutenant. As long as it does, before final scoring of the examinations, the City will perform a statistical analysis to identify test items that are biased against blacks, Hispanics, or whites. Items found to be biased will be removed from the tests. No test-taker will have these items included in the final score; the score of every test-taker will be recalculated on the adjusted test.

All test-takers will continue to have the opportunity to protest test questions and scoring under the civil service rules.

G. *Scores.* To be eligible for promotion, a candidate must have a final score of at least 70%, on either the original or adjusted test. A test-taker who passed the original test with a score of 70% or better shall have passed the revised test even if the adjusted test score on the revised test is below 70%;

for ranking the candidates from a particular test, the actual score on the revised test shall be used.

- H. *Seniority.* The City will continue the practice of adding up to ten points for seniority. Promotions will continue to be made on a rank-order basis.
- I. *Registers.* The registers of those eligible for promotion to sergeant and lieutenant will remain in effect for two years. The September 30, 1992, register for promotion to lieutenant will be extended to expire on September 30, 1994. This extension benefits all of the officers passing the test, regardless of race or national origin.
- J. *Other, New Requirements.* The court order does not prevent the City from adopting an alternative selection procedure for promotion to the ranks of sergeant or lieutenant if the promotions from that procedure have no differential adverse impact on African-Americans or Hispanic-Americans.

(1) The City will give specific, public, written notice of proposed changes in its officer selection process at least ninety days before the proposed effective date.

(2) The city will consult with counsel for the plaintiffs, unions and other groups, and affected officers when it is considering new procedures and furnish a written report of expected effect of the new procedure on African-Americans or Hispanic-Americans and of the relation of the new procedure to legitimate departmental interests.

(3) Consultation with the city will not constrain anyone from bringing a complaint in this case.

- K. *Timing.* The 96 remedial promotions to sergeant and the 10 remedial promotions to lieutenant will not be made at once, but they will be staggered over a five-year period. The schedule is Table 17 of the court order.

Schedule for Making Remedial Promotions.		
Year of Promotion	Sergeant	Lieutenant
1993	22	3
1994	21	2
1995	19	2
1996	18	2
1997	16	1

- L. *Additional Remedies.* The City has discretion to make the remedial promotions more quickly than this schedule requires.
- M. *Allocation.* The allocation among the groups is:

Sergeant Examination	Blacks	Hispanics
9/23/82	5	0
11/17/83	8	7
1/31/85	11	7
7/17/86	6	2
10/29/87	7	7
4/27/89	11	1
10/31/91	<u>17</u>	<u>10</u>
Total	62	34

Five of the ten remedial promotions to lieutenant will go to two African-American and three Hispanic-American sergeants who were delayed in competing for the rank of lieutenant because of the adverse impact of the sergeant examination, resulting in a discriminatory delay in their eligibility to compete for promotion to lieutenant.

The other five remedial promotions to lieutenant are allocated:

Lieutenant Examination	Blacks
9/27/84	1
3/3/88	1
10/12/89	1
5/23/91	2

- N. *Seniority.* Officers promoted as a remedy will receive full back seniority in that rank, for competition and benefits (other than pensions), as if they had actually been promoted after the test they took that has been invalidated. The seniority dates will be the six months after the establishment of the register under which they should have been promoted.

An officer who receives a remedial promotion or is bypassed for a remedial promotion because he is reachable for promotion on a register may take a promotional examination for the next higher rank after having served in the lower rank for one year, not counting the retroactive seniority in that lower rank. For example: an officer receiving a remedial promotion to sergeant with ten years of retroactive seniority as a sergeant still will have to work as a sergeant for one year before being eligible to compete for promotion to lieutenant.

- O. *Conflict.* The court order provides these rules for the officer who is scheduled to receive a remedial promotion, and who is either reached or is reachable during the life of that eligibility list:

- (1) The officer must take the regular promotion and will be bypassed on the list of remedial promotions.
- (2) To be fair to officers who are bypassed on the list of remedial promotions:
 - (a) An officer who receives the regular promotion will receive back seniority as the officer would have received in a remedial promotion.
 - (b) If the officer is not reached for promotion on the register or it becomes clear that the officer will not be reached on the register, the officer will be put back on the list of those entitled to remedial promotions where he was before being removed.
 - (c) If the officer would already have received a remedial promotion, the officer will be at the head of the list for the next remedial promotion. If more than one officer is involved, they will be restored to the list of remedial promotions in the same order as their original positions on the list.
 - (d) In the last year in which remedial promotions are being made this rule will apply: Officers who are bypassed for a remedial promotions because they are on a register of eligibles can choose to take a remedial promotion instead if the City certifies that it is uncertain whether they will be promoted on that register.

P. *Transfers & Reclassifications.* This action affects only Class A peace officers and promotions to Class A positions as sergeant and lieutenant. To avoid a reduction of opportunities for class members and for other Class A officers during the life of the court order, the city may not reclassify officers in other classes, may not allow them to compete for promotions with Class A peace officers, or compete for promotions to Class A sergeant and lieutenant positions, nor may they be transferred laterally into these positions.

Q. *Records.* The court order requires reporting and record-keeping by the City.

5. *Attorneys' Fees.* The City will pay the plaintiffs' reasonable attorneys' fees and expenses, but no agreement has been reached on the amount. The City will also pay the plaintiffs' reasonable attorneys' fees up to \$20,000 a year and expenses for monitoring the City's compliance with the court order.

6. *Copy of Court Order.* You may obtain a free copy of the proposed court order between 2:00 p.m. and 4:00 p.m. on business days from:

Legal Services Division
City of Houston Police Department
61 Riesner Street, Room 340-A
Houston, Texas 77002

7. *Objections.* If you wish to object to the proposed settlement, you must see that it is delivered by 12:00 noon on March 12, 1993, in writing to this lawyer, who represents the Hispanic-American and African-American officers who filed this suit:

Constance K. Acosta
Kirk & Lindsay
3555 Timmons Lane, Suite 700
Houston, Texas 77027

8. *Hearing.* The court will consider those objections to the settlement that are filed on time at a hearing on:

March 24, 1993
Wednesday, 9:00 A.M.
Courtroom 11-C, Eleventh Floor
United States Court House
515 Rusk Avenue
Houston, Texas

If you file a written objection by the deadline, you can come to the hearing, and you may have an opportunity to testify about your objection. Your objection will be considered even if you are not at the hearing. The court may group objections and consider some of them only on the written objections.

9. *Conclusion.* If the court order is finally approved by the court it will be binding on all present police officers who took the promotional examinations for sergeant or lieutenant from 1982 through 1992, all police officers who may be interested in taking these examinations in the future, and all African-American and Hispanic-American former police officers who took these examinations from 1982 through 1992.

The court will retain jurisdiction of this matter. On a motion for a good reason established in court, the life of the court order may be extended or otherwise modified.

LYNN N. HUGHES
United States District Judge
February 3, 1993.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

DOROTHY A. EDWARDS, *et al.*,

Plaintiffs,

versus

CITY OF HOUSTON,

Defendant.

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CIVIL ACTION H-92-2510

ATTENTION: CURRENT & FORMER POLICE OFFICERS OF THE CITY OF HOUSTON

The City of Houston has agreed to settle a lawsuit by African-American and Hispanic-American officers challenging the promotional examinations for the ranks of sergeant and lieutenant that were given from 1982 through 1992. The settlement will affect the rights of all present police officers up to the rank of lieutenant and the rights of African-American and Hispanic-American former police officers. All affected persons have the right to file an objection by noon on March 12, 1993.

The notice and court order explain the settlement and the objection procedure. You may obtain a copy of these between 2:00 p.m. and 4:00 p.m. on business days from:

Legal Services Division
City of Houston Police Department
61 Riesner Street, Room 340-A
Houston, Texas 77002

There will be a hearing on the objections on:

Wednesday, March 24, 1993
9:00 a.m.
Courtroom 11-C, Eleventh Floor
United States Court House
515 Rusk Avenue
Houston, Texas 77002.

BY ORDER OF:

LYNN N. HUGHES
United States District Judge