

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiffs,

and

NASSAU COUNTY GUARDIANS
ASSOCIATION, INC., et al.,

Applicants for
Intervention as
Plaintiffs,

v.

NASSAU COUNTY, et al.,
Defendants.

COMPLAINT IN INTERVENTION

CRAVATH, SWAINE & MOORE
Attorneys for Intervenor-Plaintiffs

ONE CHASE MANHATTAN PLAZA
NEW YORK, N. Y. 10005

Tel. No. HAnover 2-3000

2. The United States initiated this action against defendants on September 21, 1977, alleging that "Nassau County was engaged in a pattern or practice of

employment discrimination against blacks, Hispanics, and females with respect to job opportunities in the Nassau County Police Department [('NCPD')] in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. ('Title VII'), the State and Local Fiscal Assistance Act of 1972, as amended, 31 U.S.C. §§ 1221, et seq. (the 'Revenue Sharing Act'), the Omnibus Crime Control and Safe Streets Act of 1968, as amended 42 U.S.C. § 3766(c)(3) (the 'Safe Streets Act'), and the Fourteenth Amendment to the Constitution of the United States".

(Consent Decree, Preamble ¶ 1.)

3. The United States and defendants entered into a Consent Decree on April 21, 1982. The purposes of the Consent Decree are two-fold: "to ensure that blacks, Hispanics and females are considered for employment by Nassau County in the NCPD on an equal basis with white males, and that the present effects of [defendants'] alleged prior discriminatory employment practices against blacks, Hispanics and females be corrected". (Consent Decree, ¶ 1.)

4. Pursuant to the Consent Decree, defendants bound themselves to "develop and to utilize qualifications and selection criteria for hire . . . within the NCPD which have no discriminatory impact or which have been validated in accordance with Title VII, and with the Uniform Guidelines on Employee Selection Procedures issued pursuant

thereto, 28 C.F.R. 50.14, 29 C.F.R. 1607, 31 C.F.R. 51.53 (hereinafter referred to as the 'Uniform Guidelines') or successor guidelines". (Consent Decree, ¶ 4.)

5. The Consent Decree expressly provides that "Nassau County shall not use a written examination . . . as a basis for selection for the rank of Police Officer in the NCPD, unless . . . such . . . test either does not have an adverse impact upon blacks, Hispanics and females, or has been validated in accordance with Title VII, and with the Uniform Guidelines or successor guidelines". (Consent Decree, ¶ 6.)

6. In an effort to comply with the Consent Decree, defendants hired ETS to develop the Nassau County Police Officer Selection Test ("NCPOST"), a written hiring examination.

7. On December 10, 1983, defendants administered the NCPOST to 19,585 applicants. The results were made public in or about May or June, 1984.

8. When the results of the NCPOST were released, the adverse impact of the examination on blacks and Hispanics was immediately apparent. The passing rate for blacks was only 40% of the passing rate for whites and the passing rate for Hispanics was less than 60% of the passing rate for whites. (See Answers of Plaintiff United States to The Nassau County Defendants' Set of Interrogatories

Accompanying First Request For Admission, appended hereto as Exhibit A, Appendix A.)

9. In view of the NCPOST's adverse impact on blacks and Hispanics, the United States determined on or about May 22, 1985, to challenge the validity of the NCPOST. Pursuant to this Court's continuing jurisdiction under the Consent Decree, a trial has been scheduled for July 15, 1985.

10. As demonstrated by Exhibit A hereto, the United States has developed a compelling analysis of the invalidity of the NCPOST which indicates that defendants will be unable to meet their burden of proving the NCPOST valid. Intervenor-plaintiffs do not intend to duplicate the discovery taken by the United States or the evidence presented by the United States at trial. To the extent the United States presses its analysis of the invalidity of the NCPOST, intervenor-plaintiffs intend fully to join in and rely upon it.

11. In or about April 1985, the United States and defendants, with the consent of this Court, agreed that defendants could proceed with their plans on May 31, 1985, to hire 105 officers selected on the basis of the NCPOST.

12. Upon information and belief, the group of applicants to be hired on May 31, 1985 is comprised of 104 whites, one black and no Hispanics. If the May 31, 1985

hiring were done without adverse impact, it would include 20 blacks and 14 Hispanics. This would increase the number of black police officers on the NCPD by almost one-third and the number of Hispanic police officers by almost one-half.

Class Action and Representative
Individual Allegations

The Intervenor-Plaintiffs

13. Intervenor-plaintiffs (described herein) sue on their own behalf and on behalf of two classes (described herein). Both classes may be certified under Fed. R. Civ. P. 23(a) and 23(b) (2).

14. Intervenor-plaintiff Winston T. Green is a black citizen of the United States and a resident of Hempstead, New York. On December 10, 1983, he applied to become a police officer with the NCPD, took the NCPOST and received a score of 78.8. He has taken the medical, physical and psychological tests for the NCPD and passed them all but has not yet been contacted with further information about his application and knows of nothing that would disqualify him from appointment to the NCPD. He believes that defendants' hiring examination may make it difficult or impossible for him to be hired because of the degree of its adverse impact against minorities, including

blacks and Hispanics. (Declaration of Winston T. Green, dated May 31, 1985 ("Green Decl."), ¶¶ 1-3.)

15. Intervenor-plaintiff Lawrence A. Haddart is a black citizen of the United States and a resident of Jamaica, New York. On December 10, 1983, he applied to become a police officer with the NCPD, took the NCPOST and received a score of 83.62. He has not yet been contacted with further information about his application and knows of nothing that would disqualify him from appointment to the NCPD but believes that defendants' hiring examination may make it difficult or impossible for him to be hired because of the degree of its adverse impact against minorities, including blacks and Hispanics. (Declaration of Lawrence A. Haddart, dated May 31, 1985 ("Haddart Decl."), ¶¶ 1-3.)

16. Intervenor-plaintiff The Nassau County Guardians Association, Inc. ("Guardians"), is a voluntary organization of black law enforcement officers within Nassau County incorporated under the laws of New York in 1970. One of the main activities of the Guardians is the recruitment of black applicants to join the NCPD. In fact, the Guardian's involvement in recruiting black applicants for the NCPD is explicitly recognized in paragraph 13(d) of the

Consent Decree, which provides that defendants' recruitment program for qualified black, Hispanic and female applicants include:

"d. Contacts with and visits to local offices of groups and associations which specifically serve (or promote the employment opportunities of) blacks, Hispanics or females (e.g., the NAACP, the Urban League, the National Organization for Women and the Nassau County Guardians), to inform them of the County's active and continuing recruitment program on behalf of blacks, Hispanics and females for the rank of Police Officer in the NCPD . . ." (Consent Decree, ¶ 13(d)).

The Guardians' recruitment efforts will be rendered meaningless if the NCPD is allowed to select applicants for employment on the basis of a test like NCPOST which because of its substantial adverse impact on members of minority groups will prevent such applicants from being hired. As long as there are relatively few black officers in the NCPD, it is easier for the NCPD to continue the discrimination against black officers which still persists in the NCPD despite the terms of the Consent Decree. (Declaration of Lorenzo Rochester, dated May 25, 1985 ("Rochester Decl.") ¶¶ 2-5.)

17. Intervenor-plaintiff Lorenzo Rochester is a black citizen of the United States and a resident of Freeport, New York. He has been a police officer with the NCPD since April 1969. He is a member and current president of the Guardians. (Rochester Decl., ¶ 1.)

The Applicant Class

18. Intervenor-plaintiffs Green and Haddart sue on their own behalf and on the behalf of the class of all unhired black and Hispanic applicants who applied for employment with the NCPD and took the NCPOST in December 1983.

19. The proposed class of unhired black and Hispanic applicants is so numerous that joinder of all members is impossible. Records indicate that 3,946 blacks and 2,675 Hispanics applied for employment with the NCPD and took the NCPOST in December 1983. (See Exhibit A, Appendix A.)

20. There are questions of law and fact common to the applicant class. Each current unhired black and Hispanic applicant applied for employment with the NCPD and took the December 1983 NCPOST. Although blacks represented 20.2% of the total applicant pool and Hispanics represented 13.7% of the total applicant pool, only three blacks (or 1.5%) and only five Hispanics (or 2.5%) were among the 198 highest-scoring persons who took NCPOST, and who will be chosen if the NCPD hires 205 police officers based upon the results of NCPOST, as it contemplates doing. (Exhibit A, p.3.) On information and belief, the group of 105 officers involved in the May 31, 1985, hiring includes only one black and no Hispanics. (See Declaration of Richard T. Seymour,

dated May 30, 1985 ("Seymour Decl."), ¶ 6.) Because of the NCPOST's substantial adverse impact on blacks and Hispanics, all black and Hispanic applicants will be denied the equal opportunities for hiring and employment with the NCPD guaranteed them under the terms of the Consent Decree and Title VII if the NCPOST is not struck down as a discriminatory and invalid hiring examination and the NCPD is not required to cure the adverse impact of any hiring based on the NCPOST results.

21. The claims of intervenor-plaintiffs Green and Haddart are typical of the claims of the applicant class. They can prevail on their own claims only by prevailing as to unhired black and Hispanic applicants generally.

22. Intervenor-plaintiffs Green and Haddart will fairly and adequately protect the interests of the applicant class. They can prevail on their own behalf only by prevailing generally on behalf of the applicant class; their interests are identical to, and thus they have no conflict with, the interests of the class.

23. As a result of their use of the invalid and discriminatory NCPOST, defendants have acted or refused to act on grounds generally applicable to the applicant class, thereby making it appropriate to grant relief with respect to the class as a whole. As a result of the events described in paragraphs 30-34 below, the United States is not

acting adequately to protect the interests of the applicant class on the issue of relief.

The Police Officer Class

24. Intervenor-plaintiffs Guardians and Lorenzo Rochester sue on their own behalf and on behalf of the class of all current black police officers on the NCPD.

25. The proposed class of present black officers is so numerous that joinder of all members is impracticable. On information and belief, there are at present approximately 65 black police officers on the NCPD.

26. There are questions of law and of fact common to the police officer class. Each present black police officer will be adversely affected in the same manner by the resulting increase in racial underrepresentation and discrimination on the NCPD if the NCPOST is not struck down as a discriminatory and invalid hiring examination and the NCPD is not required to cure the adverse impact of any hiring based on the NCPOST results.

27. The claims of the intervenor-plaintiffs are typical of the claims of the police officer class; they can prevail on their own claims only by prevailing generally as to the claims of the class.

28. The intervenor-plaintiffs will fully and adequately protect the interests of the police officer

class. They can prevail on their own behalf only by prevailing generally on behalf of their class; thus, they have no conflict with the interests of the class.

29. By their use of the invalid and discriminatory NCPOST, defendants have acted or refused to act on grounds generally applicable to the police officer class, thereby making it appropriate to grant relief with respect to the class as a whole. As a result of the events described in paragraphs 30-34 below, the United States is not acting adequately to protect the interests of the police officer class on the issue of relief.

The May 31, 1985, Hiring

30. In April 1985, with the consent of this Court, the United States and defendants mutually agreed to allow the NCPD to proceed with plans to hire 105 police officers, commencing on May 31, 1985, selected on the basis of the December 1983 NCPOST results.

31. Both the Consent Decree and Title VII prohibit defendants from selecting applicants for employment by using a hiring examination which has an adverse impact upon blacks and Hispanics and which has not been validated by defendants.

32. NCPOST has a substantial adverse impact upon blacks and Hispanics and defendants have not borne their

burden of validating the examination. The May 31, 1985, hiring, based on the NCPOST, will have a substantial adverse impact upon blacks and Hispanics.

33. On May 1, 1985 and again on May 23, 1985, counsel for intervenor-plaintiffs requested that the United States commit itself in the instant proceeding to seek relief which would cancel out the adverse impact of the May 31, 1985, hiring by requiring defendants (a) to hire blacks and Hispanics in an additional hiring scheduled for September 1985 so that, when the May 31, 1985, and September 1985 hirings are added together, blacks and Hispanics will comprise approximately the same percentage of hires as test-takers, and (b) to provide the blacks and Hispanics hired in September with back pay and retroactive seniority to May 31, 1985, so that they will be on the same footing as those persons sworn in on May 31. (See letter from Richard T. Seymour to John M. Gadzichowski, May 23, 1985, appended hereto as Exhibit B). Counsel for intervenor-plaintiffs indicated that intervenor-plaintiffs would not seek to intervene if the United States agreed adequately to protect their interests by seeking the requested relief. (Id.)

34. On May 28, 1985, the United States informed intervenor-plaintiffs that it was not prepared at the present time to make any commitment as to the relief it will

seek in this proceeding--including the relief requested by intervenor-plaintiffs. On May 30, 1985, the United States informed intervenor-plaintiffs that it could not provide a date by which a decision on relief would be made. (See Seymour Decl., ¶ 8.) As a result, the instant intervention is necessary to protect the interests of intervenor-plaintiffs and the classes they represent.

35. Because the NCPOST is an invalid and discriminatory hiring examination it should be struck down as violative of both the Consent Decree and Title VII, and the adverse impact of any hiring based on the NCPOST results should be cured.

36. If the United States refuses to seek the relief requested by intervenor-plaintiffs, which is necessary to cure the adverse impact of the May 31, 1985, hiring, the United States will be acting in violation of the terms of the Consent Decree and of Title VII.

37. The interests of the intervenor-plaintiffs and the classes they represent will be seriously harmed and their rights under the Consent Decree and Title VII eviscerated unless the NCPOST is struck down as an invalid and discriminatory examination and defendants are required to cure the adverse impact of any hiring based on the NCPOST results.

38. In the absence of curative relief of the kind sought by intervenor-plaintiffs, defendants' hiring on May 31, 1985, of 105 police officers selected on the basis of NCPOST poses a threat of serious harm to the interests of intervenor-plaintiffs and the classes they represent.

39. Despite the provisions of the Consent Decree, discrimination against minorities within the NCPD persists. Such discrimination is evidenced by the underrepresentation of blacks on the force overall and by the absence of blacks as members of key squads on the NCPD. (See Rochester Decl., ¶ 5.)

40. By permitting defendants to proceed with the May 31, 1985, hiring of 105 police officers selected on the basis of the NCPOST without also committing to seek the relief requested by intervenor-plaintiffs, the United States has failed to protect the interests of intervenor-plaintiffs Green and Haddart and of the applicant class they represent, in that they will be irreparably harmed by the denial of their equal opportunities for employment on the NCPD and by the decreased opportunity for future employment on the NCPD.

41. By permitting defendants to proceed with the May 31, 1985, hiring of 105 police officers selected on the basis of the NCPOST without also committing to seek the relief requested by intervenor-plaintiffs, the United States has failed to protect the interests of the intervenor-

plaintiffs Guardians and Rochester and of the police officer class they represent, in that they will be irreparably harmed by increased racial underrepresentation and increased opportunities for discrimination on the NCPD.

42. Because defendants' hiring based on the NCPOST--including the May 31, 1985, hiring--violates the terms of the Consent Decree and Title VII, and results in serious injury to the interests of intervenor-plaintiffs and the classes they represent, intervenor-plaintiffs join with the United States in seeking to have the NCPOST struck down as an invalid and discriminatory examination. Because the United States has not committed to seek relief adequate to cure the adverse impact of hiring based on the NCPOST--including the May 31, 1985, hiring--intervenor-plaintiffs seek relief requiring defendants to cure any adverse impact of hiring based on the NCPOST.

WHEREFORE, intervenor-plaintiffs pray for judgment

- (1) granting their motion to intervene;
- (2) certifying the classes they seek to represent;
- (3) declaring the NCPOST to be an invalid and discriminatory examination in violation of both the Consent Decree and Title VII;
- (4) granting appropriate relief curing any adverse impact of hiring based on the NCPOST results;

(5) providing such other and further relief as may be just and proper; and

(6) awarding intervenor-plaintiffs reasonable attorneys' fees and costs against all parties opposing the relief sought herein.

May 31, 1985

MAX R. SHULMAN,
Cravath, Swaine & Moore,
One Chase Manhattan Plaza,
New York, New York 10005
(212) 422-3000

and

WILLIAM L. ROBINSON
RICHARD T. SEYMOUR
Lawyers' Committee for Civil
Rights Under Law
Suite 400, 1400 Eye Street, N.W.
Washington, D.C. 20005
(202) 371-1212

By: _____
Attorneys for
Intervenor-Plaintiffs

Exhibit A