

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO.
v.	)	77-C-1881 (FXA)
	)	
NASSAU COUNTY, et al.,	)	
	)	
Defendants.	)	
_____	)	

SUPPLEMENTAL ANSWERS OF PLAINTIFF UNITED  
STATES TO DEFENDANTS' FIRST SET OF INTERROGATORIES

Plaintiff United States, by and through its undersigned counsel, hereby supplements its Answers to Defendants' First Set of Interrogatories as follows:

INTERROGATORY NO. 1

Set forth the full name and business address of each person whom plaintiff United States of America expects to call as an expert witness at the trial of this action, the subject matter with respect to which each such person is expected to testify, the opinions with respect to which each such person is expected to testify and a summary of the grounds for each such opinion.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO.1

Based upon the current state of plaintiff United States' pre-trial discovery and preparation, as well as upon defendant Nassau County's answers to the United States' Second Set of Interrogatories to the County, the United States expects to

call Erich P. Prien, PhD., and Bernard R. Siskin, PhD., as expert witnesses at the trial of this action. The business addresses of Drs. Prien and Siskin previously were provided to Nassau County in the Answers of the United States to the County's First Set of Interrogatories to the United States.

Dr. Prien, an industrial psychologist, will testify that it is his opinion that the Nassau County Police Officer Selection Test ("NCPOST") was not developed, and has not been validated, in accordance with the Uniform Guidelines and the standards of the profession. In this regard, Dr. Prien was consulted with respect to those interrogatories of the Nassau County Defendants' Interrogatories accompanying First Request for Admission which bore upon the requirements of the Uniform Guidelines and the standards of the profession generally, as well as the application of those requirements and standards to Educational Testing Service's ("ETS") development and attempt to validate and present evidence of the validity of the NCPOST (see, eg., that portion of plaintiff United States' Answer to Interrogatory No. 1 with respect to Request for Admission No. 2).

Dr. Siskin, a Forensic Economic Statistician, will testify as to the adverse impact of the NCPOST upon blacks and hispanics, as well as to the design and application of statistical analysis, methodology and procedure, both generally and as pertaining to the issue of the validity of the NCPOST

(see, e.g., that portion of plaintiff United States' Answer to Interrogatory No. 1 with respect to Request for Admission No. 2).

Should the Nassau County defendants require any more specificity with respect to the matters and opinions to which Dr. Prien and Dr. Siskin will testify, plaintiff United States reiterates its long-standing offer to make these individuals available for deposition.

Nassau County may be misconstruing the order of proof in the trial of a Title VII testing case, such as this. Under Griggs v. Duke Power Company, 401 U.S. 424 (1971), when the lawfulness of a selection device is challenged, the plaintiff has the initial burden of demonstrating that the selection device has adverse impact. The burden then shifts to the defendant to come forward with evidence demonstrating the validity of the device. The plaintiff then has an opportunity to rebut that evidence presented by the defendant. Nassau County has not yet advised the United States (as was requested in the United States' Second Set of Interrogatories, served October 2, 1984) of the identify of each of those persons it expects to call as an expert witnesses, the subject matter of his expected testimony, or the opinions (and bases therefor) to which each of those persons is expected to testify. Thus, the United States is precluded from responding more fully to these

Interrogatories at this time. However, the United States recognizes its obligation to supplement its answers and to those Interrogatories, pursuant to Rule 26, F.R. Civ.P., to the extent that it is able.

INTERROGATORY NO. 19

For each of the persons identified in answer to Interrogatory Nos. 1 and 2, supra, state whether he performed any analysis into the validity of the 1983 Police Officer Examination administered by the Nassau County defendants. If so, identify each such analysis, setting forth:

- (a) The data analyzed;
- (b) The source from which the data was obtained;
- (c) The period of time to which the data applies;
- (d) The identity of all persons making or assisting in the analysis;
- (e) The methodology employed;
- (f) The results obtained;
- (g) The conclusions drawn;
- (h) When the analysis was made;
- (i) Whether the analysis has been reduced to writing and, if so, identify the person having custody of such document and the title of such document.

SUPPLEMENTAL ANSWER TO INTERROGATORY NO. 19

ERICH P. PRIEN

Yes, Dr. Prien has analyzed the validity of the NCPOST.

(a) In addition to that data previously identified in the Answer to Interrogatory No. 19 of Plaintiff United States to Defendants' First Set of Interrogatories, Dr. Prien has

analyzed the Final Report on the validity of the NCPOST; a copy\_ of Dr. Richard Thornton's doctoral dissertation; Exhibit 22 attached to the deposition of Nassau County; the testimony of Drs. Rosenfeld, Thorton, Thompson and Sharf; an article by Barry Morstain entitled "Minority-White Differences on a Police Aptitude Exam: EEO Implications for Police Selection," Psychological Reports, Vol. 55, (1984), 515-525 (Attachment B hereto); and Computer Printouts 1 through 25 attached to the Answers of Plaintiff United States to the Nassau County Defendants' Set of Interrogatories accompanying First Request for Admission.

(b) The United States provided this data to Dr. Prien.

(c) Not applicable.

(d) Dr. Prien was unassisted in his analysis.

(e) Dr. Prien analyzed the validity of the NCPOST in light of the requirements of the Uniform Guidelines and the standards of his profession.

(f),(g) Dr. Prien has concluded that the NCPOST was not developed, and has not been validated, in accordance with the requirements of the Uniform Guidelines and the standards of the profession.

(h) Dr. Prien's analysis has been intermittent since August 1984.

(i) Dr. Prien's analysis is ongoing and has not been reduced to writing.

BERNARD R. SISKIN

Yes, Dr. Siskin has performed a statistical analysis relative to the issues of the adverse impact of the NCPOST and its validity. Dr. Siskin's analysis has provided the basis, in part, for the United States' Answers to Nassau County Defendants' Response to Request for Set of Interrogatories accompanying First Request for Admission which bear upon the adverse impact of the NCPOST, on the design and application of statistical analysis, methodology and procedure, both generally and as pertaining to the issue of the validity of the NCPOST.

(a) In addition to that data previously identified in the Answer to Interrogatory No. 19 of Plaintiff United States to Defendants' First Set of Interrogatories, Dr. Siskin has reviewed: the Final Report on the validity of the NCPOST; Govt. Exs. 4A, 4B and attached to the Rubin deposition of 10/15/84; Govt. Exs. 4C, 18, 19, 20, 21, 22 and 23 attached to the Stevens deposition of 10/15/84 1184; extracts of information drawn from NCPD personnel files which were attached as exhibits to the depositions of James Garside on 10/18/84 and 10/25/84.

(b) The United States provided this data to Dr. Siskin. -

(c) Not applicable.

(d) See, Answer to Interrogatory No. 19 of Plaintiff United States to Defendants' First Set of Interrogatories,

(e) Appropriate statistical analysis, methodology and procedure.

(f) and (g) The results obtained are embodied in Computer Printouts Nos. 1 through 25, attached to the Answers of Plaintiff United States to the Nassau County Defendants' Set of Interrogatories accompanying First Request for Admissions. Other computer printouts were made by Dr. Siskin. These computer printouts are of an interim nature, fill four (4) eleven-inch by eleven-inch by seventeen-inch cardboard cartons, and are available for inspection by the Nassau County defendants during usual business hours, at the United States Department of Justice in Washington, D.C.

(h) Dr. Siskin's analysis has been intermittent.

(i) Please refer to Plaintiff United States' Answer to Interrogatory No. 19, (f) and (g), supra.

SUPPLEMENTAL INTERROGATORY NO. 22

For each person identified in answer to Interrogatory No. 1, supra, state precisely the subject matter and the specific act, practice or policy of the Nassau County defendants regarding which each such person is expected to testify, and with respect to each such act, practice or policy state:

(a) The substance of each and every fact and/or opinion to which each such expert identified in answer to Interrogatory No. 1 is expected to testify in the trial of this action;

(b) For each opinion set forth in answer to Interrogatory 11(a) above, state precisely the grounds on which each such opinion is based; and, for each opinion by each expert, identify any text, treatises or written statements which each expert identified in Interrogatory No. 1, supra, has used or is expected to use or on which each expert relies or is expected to rely for such opinion(s);

(c) Identify all documents (including, without limitation, all reports, statistical data and all underlying data supporting same) which plaintiffs propose to use at trial as proof of the lack of validity or unlawfulness of the 1983 Police Officer Examination.

(d) Identify all documents (including, without limitations, all statistical materials, charts, and all underlying data supporting same) upon which each expert intends to rely or to use in giving testimony at trial of this action.

(e) As to each expert, state all the facts that will be included in any hypothetical question to be asked of any expected to be called at the trial of this action.

ANSWER TO INTERROGATORY NO. 22

Please refer to Plaintiff United States' Answer to Interrogatory No. 1 and 19, supra.

(c) Further, the United States has not yet determined which documents it will introduce at trial with respect to each



of its expert witness. However, the United States' is considering the use all the depositions taken in this matter and all exhibits attached thereto; all materials provided to the United States by Nassau County in accordance with Paragraph 77 of the April 21, 1982, Consent Decree; Computer Printout Nos. 1 through 25 identified, supra. United States' Supplemental Answer to Interrogatory No. 19, supra; an April 19, 1985, letter from the American Psychological Association to Clarence Thomas, Chairman of the Equal Employment Opportunity Commission, (Attachment A hereto); an article by Barry R. Morstain, PhD., entitled "Minority-White Differences on a Police Aptitude Exam : EEO Implications for Police Selection"(Attachment B hereto); and portions of or complete texts, treatises, articles and other written matter authored in whole or in part by any individual produced by the Nassau County as an expert witness.

(e) This information has not yet been determined.

#### INTERROGATORY NO. 23

To the extent not answered elsewhere in answers to these Interrogatories, state with particularity the statistical bases or support for any claim advanced by plaintiff that the 1983 Police Officer Examination is invalid or unlawful.

(a) The precise claim to which any statistics or statistical summaries, studies or statistical analyses relate;

(b) Precise statistics or statistical summaries, studies or analysis which plaintiff or its experts will use or may use at the trial of this action;

(c) The source of the data on which such statistics or statistical summaries, studies or analyses identified in answer to Interrogatory number 23(b) are based, including where such data was obtained (e.g. treatise, computer program, etc.), from whom such data was obtained (e.g. defendants, the federal government, etc.), and who compiled such data;

(d) For each set of statistics or statistical summaries, studies or analyses identified in answer to Interrogatory number 23(b) above, identify the person(s) who compiled, devised, analyzed and/or otherwise produced such statistics or statistical summaries, studies or analyses.

ANSWER TO INTERROGATORY NO. 23

Please refer to plaintiff United States' Answer to Interrogatory No. 1 (Request for Admission No. 2) of the Answers of Plaintiff United States to the Nassau County Defendants' First Request for Admission, as well as to plaintiff United States Answers to Interrogatories Nos. 1, 19 and 22 supra.

Respectfully Submitted,



DAVID L. ROSE

JOHN M. GADZICHOWSKI

MELISSA MARSHALL

ROGER COLAIZZI

Attorneys

U.S. Department of Justice  
Washington, DC 20530

Counsel for Plaintiff for  
United States of America

CERTIFICATE OF SERVICE

I, MELISSA P. MARSHALL, hereby certify that on the 23rd day of May, 1985, I served copies of the foregoing Supplemental Answers of Plaintiff United States to the Nassau County Defendants' First Set of Interrogatories, by DHL Express, upon each of the following counsel:

EDWARD G. MCCABE  
COUNTY ATTORNEY, Nassau County  
1 West Street  
Mineola, New York 11530

JAMES M. CATTERSON, JR., ESQUIRE  
314 Main Street  
Port Jefferson, New York 11777

WILLIAM H. PAULEY, III, ESQUIRE  
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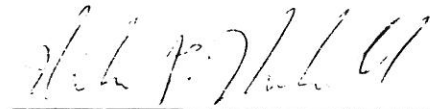
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City of Washington )  
 ) ss  
District of Columbia)

I, MELISSA P. MARSHALL, being first duly sworn, hereby  
depose and state that:

2. As a Trial Attorney in the Employment Litigation Section, I am assigned to represent the United States in United States v. Nassau County, et al., Civil Action No. 77-C-1881, an action brought by the Attorney General under Title VII of the Civil Rights Act of 1964, as amended, against the Nassau County defendants alleging employment practices that unlawfully discriminate against blacks, Hispanics and females with respect to job opportunities in the Nassau County Police Department.

3. Each and every answer in the Supplemental Answers of \_  
Plaintiff United States to Defendants' First Set of  
Interrogatories and Request for Production of Documents, served  
on October 3, 1984, is true and accurate to the best of my  
knowledge.



MELISSA P. MARSHALL

Sworn and subscribed to before  
me this undersigned authority on  
this 23rd day of May, 1985,  
to certify which witness my  
hand and seal of office.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires March 14, 1990