

FACT CHECK ON FALSE ASSERTIONS THAT OUR EXAMS HAD ANOMALOUS SCORE RESULTS

New Haven and some of its supporters keep floating the notion that the racially disparate impact and scoring results of the two promotional exams we took in 2003 were more “severe” or “different” than the results of both prior and subsequent promotional exams. That is false. Here are the record facts and answers to these questions:

IS IT ACCURATE TO ASSERT THAT SUBSEQUENT EXAMS FOR THE HAVEN FIRE DEPARTMENT HAVE HAD NO DISPARATE IMPACT?

NO. The city has not administered another promotional exam for lieutenant or captain since our exams in 2003. Moreover, it is inaccurate and misleading to suggest that other fire department exams given since then have had no disparate impact. The city has not administered a large scale promotional exam, or one with a significant number of test-takers, since then. In order to make assessment and assertions about “adverse” or “disparate” impact, you must have a statistically significant number of people taking a test, that is, more than just a few people are required in order to even do such an analysis..

For example, since our 2003 exams, the city tested for several administrative positions (you can arguably call them “promotional”) such as Drillmaster or Assistant Drillmaster. Not many desire or seek these positions. In one such test, only four people competed. Of the three who succeeded, the top scorer was white, the second highest scorer was white and the third highest scorer was black. The top two scorers turned down the job and the lowest-ranked candidate, who achieved the minimum passing score, accepted the job. Notably, the top scorer in that exam was Lt. Matthew Marcarelli, the #1 scorer on the Captain’s exam involved in Ricci v. DeStefano. (Again showing that exams reliably identify the most qualified and knowledgeable)

Another exam was administered for Fire Inspector to fill a mere 3 vacancies. Again, not many people seek this job. Although given on an “open book” basis (a highly suspect method of testing), no African Americans qualified for any of the three openings. In cases with only a handful of test-takers and a few openings for jobs that are not popularly sought, statistical assessment of disparate impact is not even possible.

THE CITY’S CONTROVERSIAL ENTRY-LEVEL FIREFIGHTER EXAM

Entry level selection for hire into the fire academy program, unlike promotional command positions, do not require substantive knowledge. They involve civil service exams that are aptitude tests, that is, tests that screen for candidates’ capability of being successfully trained to become first-line firefighters. The most recent entry-level firefighter exam administered by New Haven led to public controversy.

Notably, the person who devised and administered that exam was none other than Dr. Christopher Hornick, the individual who figured into our own case as one with whom the city briefly consulted about our exam results and whose vague remarks the city cited in support of its position that there “might” be equally valid “alternatives” to our exams.

Dr. Hornick administered a combined written and oral exam process. Later, a storm of controversy erupted when the city produced an eligible hiring list based only on the oral component scores. Contentious civil service hearings ensued with Dr. Hornick having to explain why he disregarded or did not calculate into the final score the candidates’ performance on the written exam. City officials were forced to admit that the situation was a mess. Candidates were misled into thinking that the written exam would matter and spent time preparing for it, only for Dr. Hornick to employ this unusual scoring methodology. The whole affair was an embarrassment for city officials and for Dr. Hornick, given that he had used our case in order to offer his services to the city for future exams.

It is unknown what those written scores might have been, the real reason why the city administered a written test but did not use the results, and many questions remained about it. The bottom line is, it is misleading at best to suggest that this entry level aptitude test, where an important component was essentially discarded, had “no” disparate impact.. Even if that were true in the hyper-technical sense (meaning the disparate impact analysis was based only on the subjective oral component while ignoring the written component you cannot compare an entry-level aptitude test with a promotional exam involving a command position (or any job) for which a high degree of actual accumulated knowledge, experience, skills and abilities is necessary.

CONTROVERSY AGAIN OVER THE CITY’S RECENT POLICE PROMOTIONAL EXAM

Most recently, the city administered a large scale police promotional exam. Right now, controversy is ongoing over the city’s suspicious refusal to release the scoring results. City officials have given ambiguous and conflicting statements, but they strongly suggest that the scoring results revealed racially disparate impact as city officials purport to need to “review” the situation and will not disclose the results. This of course has led many to suspect they are just waiting for the ruling to come down in our case, both to see what they can do and also to avoid any further embarrassment, especially given their inaccurate claim that our exam results were somehow anomalous and their representation that subsequent (yet unidentified) tests had no disparate impact. In fact, we call upon the city right now to answer the question: did the scores from this police promotional exam have adverse impact? If not, why the admitted delay in disclosing the results??

IS IT TRUE THAT THE EXAMS IN OUR CASE HAD ANOMALOUS OR UNEXPECTED RESULTS?

NO. Prior promotional exams, in both the city's fire and police departments, showed similar statistical results and adverse impact ratios for both pass rates, and merit rankings on eligibility lists. In fact, this is one of the reasons why the City of New Haven tried, by voter referendum, to change the civil service laws to do away with merit and rank-based promotions and hiring. The city was sued repeatedly for passing over for promotion high-scoring candidates in favor of the less or least qualified. The city was also sued repeatedly for illegally hiring entry-level firefighters without regard to relative merit. The city evaded the law by hiring firefighters under a fake job title and then dishonestly claiming this was lawful because the fake job title (unlike the accurate job title of "firefighter") was not covered by the city charter's requirement for merit based selection. This argument did not go over well with local state court judges.

Mayor DeStefano's administration was sternly chastised by judges and criticized for "blatant lawlessness" and for using "charades" and "subterfuges" to break the law. Voters rejected city officials' efforts to undo these laws, which were designed to eliminate political patronage, racism, and cronyism from the civil service. With these adverse state court rulings against them (upheld by a unanimous Connecticut Supreme Court), and after losing at the ballot box, city officials resorted to the very conduct at issue before the U.S. Supreme Court in our case.

In the lower courts, city officials conceded they had no basis to impugn the exams and could cite no alleged flaws in them. At oral argument before the Second Circuit Court of Appeals, city counsel evaded answering a direct question put to him regarding whether it is true, as we asserted, that the adverse impact ratios of previous lieutenant and captain exams were the same as our 2003 exams and the city manipulated the statistics to falsely claim that the 2003 results were anomalous.

In the court record is our evidence establishing that the 2003 results were not only consistent with prior exams, and consistent with numerous similar exams in many other cities, but showed consistent performance by New Haven firefighters who took prior lieutenant and captain exams together. That is, the same cohort of test takers have earned similar scores over multiple promotional tests as they tend to compete against each other and move up the ranks together. This showed the reliability of these tests in distinguishing among the relative qualifications of the same individuals. Indeed one candidate, who complained loudly about non-existent flaws in our 2003 exams, has failed every single civil service exam he has ever taken. Another barely passed a previous lieutenant's exam (and only because an upward curve was used that boosted failing candidates into the "pass" category) and then complained when he was unsuccessful in the captains' exam, even though he was competing against individuals with far greater knowledge, credentials and experience who were consistent high scorers in previous exams. Highly qualified black and Hispanic candidates likewise tend to do well across multiple exams.

In our case, one successful black candidate for lieutenant submitted an affidavit to the district court in which he admitted that, in failing the previous lieutenants' exam in 1999, he was solely to blame for that (not the test). He resolved to study harder for the 2003

lieutenant's exam and his efforts paid off – he passed and did well enough to qualify for one of the limited vacancies.

On more than a few occasions, the city previously honored exam results that had disparate impact. We introduced the technical validity reports from the consultants in those cases showing this, and demonstrating that disparate impact in selection rates does not violate the law if the tests are job-related. In fact, a previous New Haven administration (notably led by a black mayor) defended a lawsuit from black police officers alleging disparate impact in a promotional exam and easily defeated the claim and won that case. Therefore, the city's claimed "fear" that the disparate impact in our exams translated to a civil rights violation rings hollow. In fact, even the city's own outside experts stated that the disparate impact in our exams was NOT of the unexpected sort.

Any visitors who wish to get the record and appendix evidence on these facts may contact our webmaster.