

FACT CHECK ON THE 5 PSYCHOLOGISTS WHO FILED AN AMICUS BRIEF SUPPORTING NEW HAVEN

An amicus brief (one offered by a non-party to a case) submitted to the U.S. Supreme Court by 5 individual testing consultants who supported the City of New Haven has been mentioned in the media and by some who are hostile to our case. There are many testing consultants around the country. Rival testing consultants often compete against each other for lucrative business contracts with municipalities to develop civil service exams. Many also offer themselves for hire as paid expert witnesses in litigation in which their role is to criticize the work of another consultant. Here are some common questions that have arisen.

DO THESE INDIVIDUALS REPRESENT OR SPEAK FOR THE TESTING PROFESSION?

No. Unfortunately, these individuals titled their amicus brief and cited to their membership in a professional association (called "SIOP") in a manner that served to mislead some to believe that the profession itself or the organization had filed that brief. (SIOP is the Society of Industrial and Organizational Psychology, which claims 6,000 members.) Recognizing this problem, and the improper impression it created, SIOP issued a statement advising that these individuals neither spoke for nor represented the views of their organization. [A sample of a letter that SIOP sent to those misled by that amicus brief is here.](#) SIOP was kind enough to furnish us with a copy.

WERE THE AUTHORS OF THAT AMICUS BRIEF EXPERTS OR WITNESSES IN THIS CASE?

No. None of them were. They never even saw the exams that are the subject of this case. They are outsiders to the case who showed up weeks before the oral argument in the U.S. Supreme Court with a brief supporting the city, 2½ years after the case was litigated to judgment in the district court. (They did not file an amicus brief with the Second Circuit Court of Appeals). They attempted to opine on an issue that was not even a matter of dispute between the parties in the lower courts. [Our reply brief to the U.S. Supreme Court](#) points out the errors and contradictions in their brief, that the views of these individuals have been criticized by other peers in the profession - and undercut by their own conduct as well in their own testing cases - and why otherwise their brief has no legal import or relevance to the issues properly before the Court.

DO THESE INDIVIDUALS REPRESENT THE VIEWS OF THE TESTING PROFESSION?

No. In fact their views and race-oriented results approach to testing are controversial, their opinion on our case and the statements in their brief caused consternation and controversy within SIOP circles and SIOP has acted responsibly to ensure that others and the media are aware that SIOP did not endorse this amicus brief or the views of its authors, and that SIOP in fact did not weigh in on this case.

WHO ARE THESE PEOPLE?

A principal signatory on that amicus brief is Dr. James Outtz, a testing consultant used by neighboring Bridgeport. Some supporting New Haven in our case have suggested (quite wrongly) that Bridgeport's civil service exams are somehow "better" and do not yield the racial disparities in scoring outcomes that other exams do. In fact, in our case, New Haven cited to hearsay statements by two leaders of minority interest groups who claimed (without any proof) that Bridgeport's practices indicate the exams in our case were somehow unfair or flawed. What New Haven officials failed to add, however, are two important facts 1) they never acted to substantiate that claim, and 2) it is flatly untrue.

What they and other commentators fail to mention is that to the extent they can assert there is little or no disparate impact in Bridgeport civil service exams, it is *precisely* and only because Dr. Outtz engages in a practice of "eliminating" the disparate impact after the fact by altering the exam results, often by changing the weighting of the exam's components after he looks at the race of the top scorers. Thus, the exam results are manipulated after the fact for reasons of race, thus leading to a racially new and improved ranking of candidates on the eligible list.

Eliminating disparate impact after the exam results are in and reviewed for desired racial outcomes, is hardly an honest basis on which to assert that Bridgeport's exams have "no" or "less" disparate impact than New Haven's. It is, to say the least, "creative" reasoning.

Indeed, examinations administered by Dr. Outtz have provoked multiple litigations and contentious civil service proceedings. Most recently, in connection with a firefighter promotional exam, non-minority Bridgeport firefighters sued the city, alleging that their Title VII and constitutional rights were violated when the city altered the scoring results. [This most recent lawsuit is pending in Connecticut federal court and can be seen here.](#) As you can see from the exhibits to this court filing, Bridgeport acknowledged that Dr. Outtz's examination had a disparate impact on African Americans. Amazingly, Dr. Outtz thought it proper to criticize the examinations in our case.

Another Dr. Outtz-administered police promotional exam in Bridgeport led to a state court lawsuit alleging violations of civil service rules and laws and a soon-to-be-filed federal lawsuit by others alleging unlawful race-based alteration of exam results and delays in promotions. Several Bridgeport officers recently refused to sit for a promotional exam because of these practices. Obviously, if Bridgeport's civil service exams did not have disparate impact, the city would not be going on record admitting that it altered the results because of it, and none of these contentious legal proceedings over Bridgeport's response to disparate impact would even exist.

Finally, Dr. Outtz used combined written and oral exams in Bridgeport. So the suggestion that cities or testing consultants have "abandoned" this standard dual format in favor of the so-called "assessment center" (a glorified interview and a method that the

city's own experts acknowledge still has disparate impact) is false and it is equally false to suggest that "assessment centers" are equally valid measures and have no disparate impact.

[Merit Inc., an organization of Bridgeport Firefighters, filed an amicus brief supporting us and in it, they also demonstrated the falsity of any claim that Bridgeport's exams do have the same disparate impact. It is here.](#)

WHAT ABOUT I/O SOLUTIONS, INC., THE COMPANY THAT DEVELOPED THE EXAMS IN RICCI V. DESTEFANO?

I/O Solutions ("IOS") not only stood strongly by its work in our case, and assured the city that the exams were job-related and valid for lawful use under Title VII, but IOS enjoys an excellent reputation in its field, has developed exams for public safety agencies around the nation, and has never had an exam invalidated in any court. Nor has IOS ever been accused of having manipulated its exams or their outcomes in order to favor one race over another.