

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

NASSAU COUNTY, et al.,

Defendants.

Civil Action No.
77 Civ. 1881 (FXA)

ANSWERS OF PLAINTIFF UNITED STATES TO THE
NASSAU COUNTY DEFENDANTS' SET OF INTERROGATORIES
ACCOMPANYING FIRST REQUEST FOR ADMISSION

Plaintiff United States hereby answers the Nassau County
Defendants' Set of Interrogatories accompanying First Request
for Admission as follows:

INTERROGATORY NO. 1

With respect to each request for admission which plaintiff
denies, either wholly or in part, state separately the
following:

(a) each fact and/or opinion upon which plaintiff relies
for such whole or partial denial;

(b) the identify of each person believed by plaintiff to
have personal knowledge of each such fact or to hold each such
opinion;

(c) the identify of the documents upon which plaintiff
relies to support or establish each such fact and/or opinion;
and

(d) the part of the request for admission which is admitted if not set forth in response to it.

ANSWER TO INTERROGATORY NO. 1

For each Request for Admission denied, plaintiff United States answers this Interrogatory as follows:

REQUEST FOR ADMISSION NO. 1

Please refer to the answer to this Interrogatory with respect to Request for Admission No. 2, infra.

REQUEST FOR ADMISSION NO. 2

Title VII prohibits an employer from utilizing a test which has a discriminatory impact against blacks or hispanics and is not valid. Griggs v. Duke Power Co., 401 U.S. 424; Albemarle Paper Co. v. Moody, 422 U.S. 405. Under the April 21, 1982 Consent Decree, Nassau County must demonstrate the validity of any test which has an adverse impact under the standards of the Uniform Guidelines on Employee Selection Procedures (the "Uniform Guidelines"). It is the position of the United States that the use of the NCPOST violates the Consent Decree, because it has a severe adverse impact upon blacks and hispanics and has not been demonstrated to have been validated under the standards of the Uniform Guidelines.

A. Adverse Impact of the NCPOST upon Blacks and Hispanics

Appendices A and B attached hereto, based upon computer data provided to the United States by Nassau County, reflect that, if used, the NCPOST will have an extremely severe adverse

impact upon blacks and hispanics, regardless of whether it is used upon a pass/fail basis or, as the County intends, upon a rank-ordering of scores basis. 1/ Indeed, as Appendices A and B reflect, although blacks accounted for 20.2% and hispanics accounted for 13.7% of all persons who took the NCPOST, only three (3) blacks (or 1.5%) and only five (5) hispanics (or 2.5%) were among the 198 highest-scoring persons who took this examination, and who will be chosen if the County hires 205 police officers based upon the results of the NCPOST, as it intends to do this year. Ironically, the adverse impact of the NCPOST (i.e., pass rates: whites = 63.2%; blacks = 25.4%; and hispanics = 37.4%) is substantially greater than that of the County's 1977 written examination for police officer (Exam No. 66-681) (i.e., pass rates: whites = 82.4%; blacks = 52.2%; and hispanics = 62.5%), 2/ the last written examination used by the County prior to the entry of the April 21, 1982 Consent Decree.

The level of difficulty of the NCPOST obviously far exceeds that which can be handled by Nassau County's own incumbent police officers. As discussed, infra, Nassau County

1/ Sources: Computer tapes provided to the United States by Nassau County, and Computer Printouts Nos. 1-12, 16 and 17 attached hereto.

2/ Source: Computer tape furnished by Nassau County to the United States on March 26, 1979; see also, "Analysis of the Adverse Impact upon Blacks of the Six Written Examinations for Police Patrolman and Police Officer," a report authored by Bernard R. Siskin, Ph.D. March 1982, and which previously was provided to Nassau County.

administered the NCPOST in 1983 to a sample of 155 incumbent patrol officers in the Nassau County Police Department (the "NCPD") (151 whites, three blacks and one hispanic) 3/ as part of its attempt to demonstrate the criterion-related validity of the examination. The County's records reflect, however, that: only one (or 0.7%) of those 155 patrol officers obtained a high-enough score to be hired today if the County were to hire the 150 highest-scoring applicants; and only five (or 3.2%) of those 155 patrol officers obtained high enough scores to be hired if the County were to hire the 500 top-scoring applicants, as it intends to do over the next four (4) years. 4/ As discussed, infra, Nassau County also administered the NCPOST in 1983 to a sample of 133 police academy recruits and recent graduates as part of its attempt to demonstrate the criterion-related validity of the examination. The County's own records reflect, however, that: only two (or 1.5%) of the 133 recruits in the academy sample (all of whom successfully completed academy training) obtained high enough scores to be hired today if the County were to hire the 150 top-scoring applicants, and only five (or 3.6%) would be hired if the County were to hire the 500 top-scoring applicants. Indeed, only 25 (or 18.8%) of these 133 successful academy graduates obtained high enough

3/ Source: Computer tapes furnished by Nassau County to the United States, and Computer Printout No. 22 attached hereto.

4/ Source: Computer tapes provided to the United States by Nassau County, and Computer Printout No. 23 attached hereto.

scores to be hired even if the County were to hire the 2,000 top-scoring applicants, or over four (4) times the number of applicants it intends to hire based upon the results of the NCPOST. 5/

B. Analysis of the Validity of the POST

According to ETS' Final Report dated November 13, 1984 (Govt. Ex. 62 attached to Rosenfeld Dep. 11/19/84), the NCPOST has been demonstrated to have both content validity and criterion-related validity, and is suitable for use by the County on a rank-ordering of scores basis.

1. Content Validity

Plaintiff United States submits that ETS' claim of content validity is without merit for several reasons:

a. Nowhere in its Final Report does ETS demonstrate - or even attempt to demonstrate - that the content of the NCPOST either samples or is representative of the tasks performed or the skills used on the job, as it must in order to establish the content validity of the NCPOST. Uniform Guidelines, Sec. 14C; the American Psychological Association's Standards for Educational and Psychological Tests (1974) (the "APA Standards"), pp. 28-29. Instead, as reflected in ETS' Final Report (pp. 4, 20-27), and confirmed through the depositions of ETS representatives who authored the Report (see, e.g., Rosenfeld Dep. 11/30/84, p. 37), the NCPOST - a 165 item

5/ Source: Computer tapes provided to the United States by Nassau County, and Computer Printout No. 25 attached hereto.

multiple-choice examination - purportedly measures eleven (11) cognitive abilities or aptitudes (i.e., constructs) which were pre-selected by ETS. These eleven (11) aptitudes, each of which is supposed to be measured by its own sub-test of fifteen (15) items, are as follows:

<u>Aptitude</u>	<u>Sub-Test</u>	<u>Test Items</u>
Integrative Processes (I/P)	1	1-15
Paired Associate Memory (PAM)	2	16-30
Serial Recall (S/R)	3	31-45
Visual Memory (V/M)	4	46-60
Verbal Comprehension (V/C)	5	61-75
Flexibility of Closure (F/C)	6	76-90
Visualization (VIZ)	7	91-105
Logical Reasoning (L/R)	8	106-120
Number Facility (N/F)	9	121-135
Spacial Scanning (S/S)	10	136-150
Spacial Orientation (S/O)	11	151-165

This approach to content validity is expressly proscribed by Section 14C(1) of the Uniform Guidelines:

A selection procedure based upon inferences about mental processes cannot be supported solely or primarily on the basis of content validity. Thus, a content strategy is not appropriate for demonstrating the validity of selection procedures which purport to measure traits or constructs, such as intelligence, aptitude, personality, commonsense, judgment, leadership, and spacial ability.

At his deposition, Michael Rosenfeld, PhD., an ETS representative and one of three co-authors of the Final Report, testified (Rosenfeld Dep. 11/20/84, p. 40) that he does not consider the NCPOST to be an aptitude test. However, the ETS Final Report states (at p. 27) that NCPOST test items were "modeled" upon the "marker tests" set forth in ETS' Ekstrom Study, and the Ekstrom Study specifically recognizes that the

marker tests are intended to measure aptitudes (Govt. Ex. 293, p. 1, attached to McCabe Dep. 10/19/84). Further, the testimony of Dr. Rosenfeld at his deposition in this action does not square with his testimony in a deposition taken in previous litigation involving the Multi-jurisdictional Police Officer Examination (the "MPOE") (Louisville Black Police Officers v. City, 20 FEP Cases 1195 (W.D. Ky. 1979), that the MPOE was "in broad terms, an aptitude test" (Govt. Ex. 70, p. 102, attached to Rosenfeld Dep. 11/20/84), and his concession that the MPOE and the NCPOST share the same design and methodology (Rosenfeld Dep. 11/5/84, pp. 108-109). Indeed, all but three of the sub-tests contained in the NCPOST (Visual Memory, Logical Reasoning and Number Facility) were contained in the MPOE (compare the ETS Final Report with Govt. Ex. 74 attached to Rosenfeld Dep. 11/20/84).

b. ETS' content validity approach is proscribed by Section 14C(1) of the Uniform Guidelines because it attempts to validate constructs through a content validity strategy. Thus, on the one hand, ETS contends that the NCPOST measures eleven (11) pre-selected cognitive abilities or, as ETS itself concedes, constructs (Final Report, p. 20); and that this measurement is accomplished through the use of test items "modeled" upon the "marker tests" set forth in the Ekstrom Study (Report, p. 27). On the other hand, and in an effort to provide the necessary "link" - under the Guidelines and the standards of

the profession - between the NCPOST and the content of the job of patrol officer in the NCPD, ETS states (Report, p. 27) that the test items were "modified to reflect police activities and police content." ETS has presented no evidence - as is its burden - that the NCPOST in fact measures the cognitive abilities or constructs ETS claims it does. Indeed, Dr. Rosenfeld conceded during his deposition (Rosenfeld Dep. 11/30/84, pp. 35-38) that ETS has no empirical evidence that the NCPOST in fact measures the cognitive abilities ETS claims it does. On the contrary, Richard Thornton, PhD., the second of three co-authors of the Final Report, has, as discussed in more detail, infra, expressed his view in an internal ETS memorandum dated January 20, 1984 (Govt. Ex. 22 attached to Stevens Dep. 10/15/84) that a number of test items in the NCPOST do not appear to measure the cognitive abilities they were designed to measure. Assuming arguendo that the NCPOST was modeled precisely upon the Ekstrom Study "marker tests," ETS expressly cautions in that Study (Govt. Ex. 294, p. 6, attached to McCabe Dep. 10/19/84) that these marker tests are for research purposes only, and:

...are not offered for use in any program of selection or assignment of people for educational or work purposes, or any type of individual prediction.

Indeed, ETS expressly states (Id., p. 6) that such uses would be "inappropriate," and therefore requires that persons wishing to obtain copies of the Ekstrom marker tests from ETS sign an agreement acknowledging that the tests "are research instruments not intended for use in selection or counseling." (Govt. Ex. 293, p. 3, attached to McCabe Dep. 10/19/84).

Further, ETS' effort to link the NCPOST with the content of the job by constructing test items that appear "to reflect police activities and police content" (Report, p. 27) at best results in "face validity" (i.e., the mere appearance of validity), which is not an acceptable demonstration of validity. As the APA's Standards instruct (at p. 29):

It should be quite clear that content validity is quite different from face validity. Content validity is determined by a set of operations, and one evaluates content validity by the thoroughness and care with which these operations have been conducted. In contrast, face validity is a judgment that the requirements of a test merely appear to be relevant. The writing of items in terms used in a particular job ... may give an appearance of relevance while contributing nothing to content validity or indeed to any other useful validity information (although such items may serve a useful public relations function). (Emphasis in original)

Nor can it be overlooked that it is ETS' position that the NCPOST measures cognitive abilities or constructs, and not the individual differences required to perform tasks which constitute or represent the job. And while ETS states in its Final

Report (at p. 27) that the members of the Police Advisory Committee (the "PAC") assisted in the linkage of these cognitive abilities to the dimensions of the job "based upon their common understanding of the requirements of the job and their familiarity with the definitions of the [cognitive] abilities," there is no demonstration that the members of the PAC in fact understood these cognitive abilities, much less that they had the ability to relate them to the job. On the contrary, the record reflects that the members of the PAC had little if any understanding of these cognitive abilities. Indeed, Sergeant James Garside, an instructor in the NCPD's training academy and a member of the PAC designated by Nassau County to testify pursuant to the United States' Rule 30(b) (6) notice of deposition of the County, testified (Garside Dep. 10/22/84, pp. 16-19) that:

... we were really never bothered by the names [of the cognitive abilities], because it wasn't required of us to really know the rather sophisticated names that were given to these - some of these abilities.

* * *

For example, there was an - I can think of a term that was used, flexibility of closure. Now, whether we understood the term so that we could define it to someone else was not particularly of concern to the members on the Committee.

* * *

We may have hit upon flexibility of closure without knowing that we were describing that very

item ... [T]o use the term flexibility of closure, a group such as police officers, they wouldn't have understood the term.

c. The internal ETS memorandum of Dr. Thornton previously referred to (Govt. Ex. 22 attached to Stevens Dep. 10/15/84) reflects that he had seriously questioned the inclusion of 37 (or 22%) of the 165 test items in the NCPOST, and had recommended that 30 of those 37 test items be completely eliminated (20 items) or multiple-scored (10 items). Further, while Dr. Thornton recommended that seven (7) of the 37 items he reviewed should be retained, he suggested that four (4) of those seven (7) items be changed before they were used again (Id.). Not only does this reflect that the NCPOST is a poorly-prepared examination but, more importantly, the recommendation for the elimination or multiple-scoring of such a large number of items casts serious doubt as to the representativeness of the NCPOST in terms of whatever it was intended to measure, as well as whether it in fact measures whatever it was intended to measure. Indeed, Dr. Thornton in his internal ETS memorandum recommended the elimination or multiple-scoring of four (4) of the 15 items on the NCPOST which purportedly measure Paired Associate Memory (PAM) (Sub-test 2, items 16-30), six (6) of the 15 items which purportedly measure Flexibility of Closure (F/C) (Sub-test 6, items 76-90), five (5) of the fifteen items which purportedly measure Visualization (VIZ) (Sub-test 7, items 91-105), and seven (7) of the 15 items which purportedly

measure Logical Reasoning (L/R) (Sub-test 8, items 106-120). Dr. Thornton's recommendations to the contrary, ETS did not delete or multiple-score six (6) of the 30 test items that Dr. Thornton recommended be deleted or multiple-scored (compare Govt. Exs. 19 and 22, attached to the Stevens Dep. 10/15/84).

d. Under the Uniform Guidelines (Section 14C), a selection device should be designed to measure critical and/or important work behaviors constituting most of the job as identified by a job analysis. Here, however, the eleven (11) cognitive abilities which ETS contends are measured by the NCPOST were pre-selected by ETS staff and not on the basis of the job analysis. Indeed, the only bases stated by ETS for the selection of these eleven (11) cognitive abilities or constructs were (Report, p. 20) that:

a. The construct definition and interpretation indicated that, in the opinion of project staff, the ability represented was likely to be used in police functions.

b. The method of assessment recommended permitted presentation of materials and scoring of responses in multiple-choice [test] format.

c. The types of stimulus materials contained in questions used in the recommended assessment methods were such that police related materials could be substituted for them, thereby providing a more job-related assessment.

As such, the job analysis conducted by ETS not only was not used for the purpose for which job analyses are required under Section 14C of the Uniform Guidelines, but in fact served no purpose other than "window dressing."

Further, ETS followed a methodologically-weak procedure in the development of the job analysis inventory (Report, p. 6, et seq.), since ETS pre-selected the 167 "tasks" and then had the members of the Police Advisory Committee (the "PAC") review its selection. ETS should have had the PAC develop, or assist in the development of, the content of the job domain de novo. In any event, the "Inventory of Tasks" (Report, Appendix B, pp. 1-16, and Appendix C, pp. 1-17) is not an inventory of tasks alone. Instead, it is an aggregation of task statements, performance standards, alternative task results and ambiguous statements and, thus, is unacceptable. Moreover, the "Time Spent" scale set forth in the instructions for the supervisors (Report, Appendix C, p. 4) - and presumably read by the supervisors - states "(0) Does perform this task" instead of "(0) Does not perform this task" as it should have stated (see Report, Appendix B, p. 4). Officers also were asked to rate the "Importance" of a "task," even if they did not perform that "task."

The "Knowledge Areas" portion of the inventory (Report, Appendix B, pp. 17-22, and Appendix C, pp. 17-22) is useless. It does not set forth knowledge areas, but rather only the titles of courses (e.g., "History and Philosophy of Law Enforcement") which purportedly were taught at the NCPD's training academy at the time of the Study (1983). Further, ETS makes no showing that all of the 713 patrol officers surveyed (most of whom according to ETS had been on the force for well over ten (10) years) had knowledge of the content of the courses taught at the academy in 1983. Again, as in the case of the "Time Spent" scale for the "Inventory of Tasks," the "Time Spent" scale for the "Knowledge Areas" set forth in the instructions for the police officers (Report, Appendix B, p. 17) is completely different from the scale the officers were expected to use (see Report, Appendix B, p. 18, et seq.).

The purpose for which the Knowledge Areas portion of the inventory was to serve is unclear. On the one hand, the instructions state (Report, Appendix B, p. 17) that the results of it "will be used by ETS research staff in part of the evaluation process of the new test [presumably the NCPOST] to

be developed for the selection of entry-level Police Officer." On the other hand, the Report states (at p. 9) that the information collected by the Knowledge Areas portion of the inventory was "for possible use by the Police Academy Training Program." In either event, however, it appears from the Report that the data obtained from the "Knowledge Areas" portion of the inventory was never used.

e. There is no basis for ETS' conclusion (Report, p. 18) that the mean ratings of police officers and superiors on the "Relationship" scale provides:

... some basis to conclude that a test developed to be related to these job factors could be used to identify those applicants who would most likely become the more effective job performers.

ETS has presented no evidence support the underlying premise to this conclusion, which is that police officers and superiors are able to make the judgments required by the Relationship scale other than the fact that they do not perform the task. This is too complex a judgment for officers to make. Further, the Relationship scale is a truncated-positive scale. Thus, by definition, the better performing officers must do as well as or better than the marginally-performing officers on every task, a requirement contrary to the underlying facts. Lastly, and notwithstanding the truncated-positive nature of

the Relationship scale, the mean scores for nine (9) of the eleven (11) dimensions (Report, p. 18) were less than 2.0, which on the scale represented the statement that "Generally the more effective police officers perform this task better than the marginal performers."

f. ETS presents no evidence that the pre-examination study booklet (Govt. Ex. 17 attached to Stevens Dep. 10/15/84) accomplishes what it purportedly was designed to do, namely, "to reduce the impact of educational and reading level differences in the applicant population by providing an equal opportunity for all candidates to prepare for the examination" (Report, p. 30). Further, if the NCPOST measures eleven (11) cognitive abilities or aptitudes as ETS states it does, it is illogical to suggest, as ETS does (Report, p. 30), that the pre-examination study booklet contains information with respect to five (5) of the eleven abilities that "must be studied by applicants prior to taking the test." The pre-examination study booklet is an uncontrolled, unstandardized component of the NCPOST with totally unknown effects upon NCPOST scores at the individual and at the group level. Had the NCPOST been properly

constructed, there would have been no need for the pre-examination study booklet. The use of the pre-examination study booklet negates the notion that the NCPOST is a standardized test.

2. Criterion-Related Validity

A fundamental shortcoming which permeates the criterion-related validity portion of the ETS Report is that the only correlations presented are those obtained for the NCPOST's total, or composite, score; and there is no presentation of any correlations obtained for the scores on any of the eleven (11) NCPOST sub-tests, each of which purportedly measures a discrete cognitive ability or construct. Not only is the presentation of evidence of validity based upon a total, or composite, score professionally unacceptable in circumstances such as this, but also such a presentation is at odds with what the authors of this Report recognized in their previous validation studies (IACP Study, 1974 Philadelphia Study; see discussion, infra.), where they reported evidence of validity based upon composite as well as sub-test scores. Indeed, the recently-enacted APA Standards for Educational and Psychological Testing (February 1985) specifically addresses this issue:

Standard 1.3

Whenever interpretation of subscores, score differences, or profiles is suggested, the evidence justifying such interpretation should be made expli-

cit. Where composite scores are developed, the basis and rationale for weighing the subscores should be given. (emphasis added)

Comment:

The presented evidence should support the validity of the subscore, and the difference, profile, or other combination score actually used. Evidence based on the total score is insufficient. (emphasis added)

a. The Incumbent Officer Study

ETS' attempt to demonstrate the criterion-related validity of the NCPOST through correlations with supervisory ratings does not demonstrate the validity of the examination. As a matter of fact, ETS' own data - appropriately analyzed - demonstrates that: the correlations between performance on the NCPOST and the supervisory ratings are not statistically significant; and even if the NCPOST had been significantly correlated with the supervisory ratings, it would have had virtually no predictive value and, thus, under the Guidelines could not have been used on either a pass/fail or a rank-ordering of scores basis.

While ETS presents data reflecting statistically significant correlations between the scores achieved by the sample of incumbent officers on the NCPOST and their supervisory ratings (Report, p. 37), such correlations are obtained only when the impact of the seniority of the incumbent officers upon the correlation is disregarded. Some of the 155 incumbent officers in this sample had over twenty (20) years of senior-

ity; and 100 of the 155 officers in this sample had over ten (10) years of seniority. 6/ One of the cardinal rules in conducting a criterion-related validity study is to ensure that the criterion sample, to the extent possible, is representative of the applicant sample. See, e.g., the Uniform Guidelines, Section 14B(4), and the APA Standards, Section E6, et seq. The principal reason for this concern is that extraneous factors (in this case, seniority) unique to the criterion sample may and often times do influence the correlation between the written examination and the criterion (in this case, the supervisory ratings), thus providing a "false" or "inflated" correlation. In order to determine the influence, if any that an extraneous factor such as seniority has upon the correlation, one should routinely control for (or keep constant) the extraneous factor when one correlates the examination with the criterion. When the seniority of the incumbent sample is controlled for, there is no statistically significant correlation between the NCPOST and the supervisory ratings overall, and there are no statistically significant correlations between the NCPOST and the supervisory ratings for six (6) of the seven (7) job dimensions studied by ETS:

6/ Source: Computer tapes provided to the United States by Nassau County, and Govt. Ex. 3E (ETS - Validity Testing Roll Calls) attached to Rubin Dep. 10/15/84.

Correlations of NCPOST Scores
with Ratings by Two Supervisors
Controlling for Seniority 7/

Job Dimensions							
<u>II</u>	<u>III</u>	<u>IV</u>	<u>V</u>	<u>VIII</u>	<u>IX</u>	<u>X</u>	<u>Overall</u>
.08	.12	.15	.08	.11	.06	.18 <u>*/</u>	.12

Not only is there no statistically-significant correlation between the NCPOST and either the supervisory ratings overall or the supervisory ratings for six (6) of the seven (7) job dimensions studied by ETS when seniority is controlled for, but ETS' Report reflects (p. 28) that ETS had identified eleven (11) job dimensions. Thus, the sole statistically-significant correlation between the NCPOST and the supervisory ratings for Job Dimension X pertains to only one-eleventh (1/11) of the job.

Further, what ETS's computer data reflect, but what ETS chose not to report, is that only eight (8) of the 109 officers in its sample 8/ having the most seniority account for the statistically significant correlations between the NCPOST and

7/ Source: computer tapes provided to the United States by Nassau County, and Computer Printout No. 18 attached hereto.

*/ Statistically significant at the .05 level of confidence.

8/ Although this sample initially consisted of 155 incumbent officers, ETS reported overall results with respect to only 110 officers on whom it had complete data. The United States discovered that one of those 110 officers did not have any seniority date coded, thus reducing the sample to 109.

supervisory ratings, while there are no statistically significant correlations between the NCPOST and supervisory ratings for the remaining 101 less-senior officers in the sample. 9/ ETS' failure to report this data contravenes professionally-acceptable standards and the Uniform Guidelines (Section 14B(4), 15B(6)). There appears to be no justifiable reason for ETS' failure to report these correlations when controlling for seniority, since ETS itself captured this data for use in this study, and ETS controlled for the effects of seniority in its IACP and 1974 Philadelphia validity studies, which also were authored by Drs. Rosenfeld and Thornton. (See Govt. Exs. 27 and 74 attached to Rosenfeld Deps. 11/5/84 and 11/30/84).

Further, while ETS states that each of the eleven (11) cognitive abilities the NCPOST purportedly measures is necessary to learn to perform and to perform the job of police officer in the NCPD (Report, p. 4), only two (2) of the eleven (11) cognitive abilities (Integrative Processes and Paired Associate Memory), comprising only 30 of the 165 items on the NCPOST, significantly correlate positively with supervisory ratings of the incumbent sample when seniority is controlled for:

9/ Source: Computer tapes provided to the United States by Nassau County, and Computer Printout Nos. 18, 19, 20 and 21 attached hereto.

Correlations of the NCPOST Sub-
Scores with Ratings by Two Super-
visors Controlling for Seniority 10/

<u>Cognitive Ability</u>	<u>Sub-Test</u>	<u>Correlation Coefficient</u>
Integrative Processes (I/P)	1	.17 */
Paired Associate Memory (PAM)	2	.19 */
Serial Recall (S/R)	3	.02
Visual Recall (S/R)	4	-.12
Verbal Comprehension (V/C)	5	.10
Flexibility of Closure (F/C)	6	.14
Visualization (VIZ)	7	.05
Logical Reasoning (L/R)	8	-.07
Number Facility (N/F)	9	.04
Spacial Scanning (S/S)	10	.12
Spacial Orientation (S/O)	11	.11

The lack of significant correlations between the cognitive abilities the NCPOST purportedly measures and supervisory ratings becomes even more stark when, controlling for seniority, the results are analyzed separately for each of the two supervisor ratings (Supervisor 1 and Supervisor 2) used by ETS:

10/ Source: Computer tapes provided to the United States by Nassau County, and Computer Printout No. 18 attached hereto.

*/ Statistically significant at the .05 level of confidence.

Correlations of the NCPOST Sub-Scores
with Ratings by Supervisor 1 and by
Supervisor 2 Controlling for Seniority 11/

<u>Cognitive Ability</u>	<u>Sub-Test</u>	<u>Supervisor 1 Correlation Coefficient</u>	<u>Supervisor 2 Correlation Coefficient</u>
Integrative Processes (I/P)	1	.19 */	.10
Paired Associate Memory (PAM)	2	.29 **/	.05
Serial Recall (S/R)	3	.13	-.08
Visual Memory (V/M)	4	.05	-.25 **/
Verbal Comprehension (V/C)	5	.06	.11
Flexibility of Closure (F/C)	6	.16	.09
Visualization (VIZ)	7	.05	.04
Logical Reasoning (L/R)	8	-.03	-.08
Number Facility (N/F)	9	.14	-.05
Spacial Scanning (S/S)	10	.15	.05
Spacial Orientation (S/O)	11	.13	.06

In addition to its failure to control for the effect of seniority upon its correlations between the NCPOST and supervisory ratings, ETS has destroyed the base data from which the United States could have verified the accuracy of the data presented by ETS in this portion of its Report. ETS' data reflects not only that Supervisor 1 rated substantially differently than Supervisor 2, but also that the correlations between the NCPOST and supervisory ratings are substantially different by supervisor. The United States attempted through discovery to learn the cause(s) of these differences, as well as to obtain the base data from which it could have verified the accuracy of

11/ Source: Computer tapes provided to the United States by Nassau County, and Computer Printout No. 18 attached hereto.

*/ Statistically significant at the .05 level of confidence.

**/ Statistically significant at the .01 level of confidence.

the data presented by ETS in this part of its Report. Notwithstanding its obligation under the April 21, 1982 Consent Decree, the APA Standards and the Uniform Guidelines to maintain such data, Nassau County and its agent ETS have not done so.

Dr. Rosenfeld, ETS' principal investigator, at deposition plead ignorance of or inability to remember such fundamental things as how the Supervisor 1, Supervisor 2 designations were determined, as well as the bases for those determinations (Rosenfeld Dep. 11/30/84, pp. 69-72). The United States also took the depositions of thirty-six (36) of the thirty-nine (39) supervisory officers who participated in the ratings. Not one of those officers could recall the identity of each of the subordinate officers he rated or even how many officers he rated, much less how he rated such officers. 12/ Indeed, twenty-five (25) of these thirty-six (36) supervisory officers

12/ Source: Depositions of : Tully - 1/4/85; Tully, P. Ennis, Squicciarini - 1/9/85; Waring, Doran, Meyer - 1/10/85; Ruff, Cucchiara, Schneider - 1/11/85; Trimmer, Firestone, Crawford - 1/29/85; Hinchman, McKoff, Reno, Wiecks - 1/30/85; Schein, Harvey, Halfpenny, Lysaght - 2/15/85; Essex, Hobbs, Madill, Aluck, Fink, Sisson - 2/15/85; O'Connor, Beneville, Carparelli, Tretola - 3/4/85; Hoell, J. Ennis, Wildermuth, DeStephano, Baumann, Cuerbo - 3/5/85.

could not recall the identity of any of the officers he rated, 13/ and one could not even recall that he participated in the ratings. 14/ The United States cannot even verify the NCPOST scores or supervisory ratings of these officers, because ETS has destroyed all documentation linking an officer to his NCPOST score or to his supervisory rating.

Moreover, assuming arguendo that the NCPOST had been significantly correlated with the supervisory ratings, it would have had virtually no predictive value and, thus, under the Guidelines could not have been used on either a pass/fail or a rank-ordering of scores basis. The supervisory rating form constructed by ETS and used in this study has a three-level six-point performance scale: below average = 1 and 2; average = 3 and 4; and above average = 5 and 6. The United States' regression analysis, based upon ETS' data, reflects that - even if there were a statistically significant correlation between the NCPOST and supervisory ratings - a change in score of one (one test item out of 165) on the NCPOST yields a change in score of only 0.014 point (out of six points) on the supervisory rating form. 15/ In practical terms this means, for

13/ Source: Essex, Sisson, Hichman, Fink, McKoff, Halfpenny, Squicciarini, Lysaght, Meyer, DeStephano, Firestone, Cucchiara, J. Ennis, Hobbs, Ruff, Waring, Harvey, Hoell, Crawford, Baumann, Beneville, Schein, Wieks, Schneider and Doran.

14/ Source: Cucchiara.

15/ Source: Computer tapes provided to the United States by Nassau County, and Computer Printout No. 15 attached hereto.

example, that the predicted difference in supervisory ratings between a person who obtained a perfect score on the NCPOST (165/165) and an person who failed the NCPOST (115/165) would be only 0.7 point. Not only is this difference of no practical significance (since each of three levels of performance has two points), but also there is no statistically significant difference between the supervisory ratings of those officers who passed and those who failed the NCPOST. Under the Guidelines, if an examination is to be used on a rank ordering of scores basis, it must be distinguish between relative levels of performance; and if an examination is to be used on a pass/fail basis, it must distinguish between those who can perform the job and those who cannot. Since the NCPOST could have done neither, it could not have been used on either basis. Indeed, as demonstrated, supra, only five (or 3.2%) of the 155 incumbent patrol officers and only five (or 3.6%) of the 133 successful academy recruits and graduates who took the NCPOST as part of ETS' criterion-related validity study obtained scores high enough to be hired if the County were to hire the 500 top-scoring persons who took the NCPOST, as it intends to do over the next four (4) years. There is no evidence that these officers are not performing well. As a matter of fact, the only evidence as to their performance reflects that as a group they are performing at an above-average level. 16/

16/ Source: Computer tapes provided to the United States by Nassau County, and Computer Printout No. 24 attached hereto.

Lastly, even if the NCPOST had been significantly correlated with supervisory ratings, the results of this portion of ETS's criterion-related study are inconsistent with its content-validity study and, indeed, are not supported by ETS' own documentation as to the relationship between the NCPOST and the job. The following chart sets forth: each of the eleven (11) cognitive abilities which was linked ("Linkage" row) to each of the seven (7) job dimensions studied by ETS in the context of its content-validity study (Report, p. 28); each of the eleven (11) cognitive abilities (or sub-tests) which according to ETS is related to tasks within each of the seven (7) job dimensions, ("Tested" row) (Report, Appendices E and I); and each of the eleven (11) cognitive abilities (or sub-tests) which, according to ETS' data and not controlling for seniority, is significantly correlated with one or more of the seven (7) job dimensions as measured by the supervisory ratings ("CRVS" row):

Comparison of Linked, Tested and
Statistically Significant Relationships
(when seniority is not controlled for)
between Test Dimensions and Job Dimensions

Cognitive Abilities or Sub-Tests

Job Dimensions	Integrative Processes (I/P)	Paired Associate Memory (PAM)	Serial Recall (S/R)	Visual Memory (V/M)	Verbal Comprehension (V/C)	Flexibility of Closure (F/C)	Visualization (VIZ)	Logical Reasoning (L/R)	Number Facility (N/F)	Spacial Scanning (S/S)	Spacial Orientation (S/O)
Dimension II											
Linkage	x	x	x	x	x	x	x	x	x	x	x
Tested	x	x	x	x	x	x	x	x	x	x	x
CRVS	x	x				x			x		x
Dimension III											
Linkage	x				x	x	x			x	
Tested	x					x	x			x	x
CRVS	x	x	x		x	x	x		x		x
Dimension IV											
Linkage	x				x				x		
Tested	x				x				x		
CRVS	x	x	x			x	x		x	x	x
Dimension V											
Linkage		x		x		x	x			x	x
Tested		x		x		x	x			x	x
CRVS	x	x				x	x		x	x	x

(chart continued
on following page)

(Continued from
previous page)

Cognitive Abilities or Sub-Tests

Integrative Processes (I/P)

Paired Associate Memory (PAM)

Serial Recall (S/R)

Visual Memory (V/M)

Verbal Comprehension (V/C)

Flexibility of Closure (F/C)

Visualization (VIZ)

Logical Reasoning (L/R)

Number Facility (N/F)

Spacial Scanning (S/S)

Spacial Orientation (S/O)

Job Dimensions										
Dimension VIII <u>Linkage</u> Tested CRVS	x	x	x							
	x									
Dimension IX <u>Linkage</u> Tested CRVS	x									
Dimension X <u>Linkage</u> Tested CRVS	x									

Among other things, the above-chart demonstrates repeated instances where ETS' data reflects a significant correlation between a cognitive ability or sub-test of the NCPOST and a job dimension based upon its supervisory rating criterion-related study, even though that cognitive ability was not linked to that job dimension in ETS' content validity study and/or ETS itself does not claim that there is any relationship between the NCPOST sub-test purportedly designed to measure that cognitive ability and any of the tasks within that job dimension. For example, although ETS' data reflects significant correlations between those sub-tests of the NCPOST purportedly designed to measure Serial Recall, Paired Associate Memory, Spatial Scanning, Spatial Orientation, Flexibility of Closure and Visualization and Job Dimension IV, none of those cognitive abilities was linked to Job Dimension IV in ETS' content validity study and ETS does not claim that there is any relationship between any of the NCPOST sub-tests purportedly designed to measure those cognitive abilities and any of the tasks within that job dimension.

The above-chart also demonstrates repeated instances where ETS' data reflects no significant correlation between a cognitive ability or NCPOST sub-test and a job dimension based upon the supervisory ratings criterion-related study, although that cognitive ability was linked to that job dimension in ETS'

content validity study and ETS claims that there is a relationship between the NCPOST sub-test purportedly designed to measure that cognitive ability and some of the tasks within that dimension (see, e.g., Job Dimension II - Serial Recall, Visual Memory, Verbal Comprehension, Visualization, Logical Reasoning, and Spatial Scanning; Job Dimension IX - Serial Recall, Visual Memory, Flexibility of Closure and Logical Reasoning).

The second criterion measure used by ETS in its incumbent officer criterion-related validity study was a written work knowledge test (the "WKT"), which was prepared by ETS and administered to the members of the incumbent officer sample.

ETS' use of the WKT as a criterion measure is unacceptable. ETS does not demonstrate that the WKT is itself a content valid and appropriate measure of job performance, as is required. Uniform Guidelines, Section 14B(3); APA Standards, p. 27. By definition, the WKT does not measure job performance, and ETS itself concedes in its Report (at p. 40) that the WKT "is somewhat removed from actual situations encountered on the job..." Indeed, the WKT was constructed by ETS staff members based upon their inferences about the knowledges, skills and abilities required for effective performance on the task-based factors, in the absence of any job analysis information about the required knowledges, skills and abilities. Further, there

is no basis for ETS having used the WKT as a criterion measure, since it already had a measure of actual job performance in its supervisory ratings, and ETS has nowhere suggested that those supervisory ratings were contaminated in any way. Thus, the WKT is irrelevant.

b. The Academy Study

The second criterion-related study undertaken by ETS involved the use of a sample of recruits and recent graduates from the NCPD's training academy. In its Draft Final Report, ETS stated that this academy sample consisted of 63 recruits from five (5) academy classes (Govt. Ex. 24, p. 43, attached to Stevens Dep. 10/15/84). However, after discovery by the United States revealed that ETS had in fact collected data with respect to more than double that number of recruits and the United States advised Nassau County of that fact, ETS modified its Draft Final Report to reflect that the sample studied consisted of 133 recruits from nine (9) academy classes, and ETS incorporated that modification into its Final Report. (p. 43). Nassau County records reflect that there was a total of 163 NCPD recruits in these classes, 141 of whom were administered the NCPOST. 17/

17/ Source: Govt. Ex. 3E, attached to Rubin Dep., 10/15/84; Govt. Exs. 25 and 44, attached to Garside Dep., 10/15/84; Govt. Ex. 53, attached to Garside Dep., 10/16/84; Govt. Exs. 201 through 217, 222 and 252 attached to Garside Dep., 10/18/84.

Newly-hired recruits in the NCPD are required to successfully complete a 26 week long (902 hour) course of training.^{18/} The first 20 weeks is spent at the NCPD's training academy and consists of classroom instruction and training in such areas as firearms, physical fitness, arrest procedures, the use of force and community relations. ^{19/} The last six (6) weeks consists of supervised field training, during which the recruits receive on-the-job training and performance evaluations from specially selected supervisory field training officers to whom they are assigned. ^{20/} In order to graduate from the NCPD's training academy, recruits must successfully complete ten (10) performance areas: ^{21/}

Academics: written final exam and quizzes;
Emergency Medical Training ("EMS"): written exams;
Notebooks: completion of;
Arrest and Control Techniques: practical exam;
Physical Training ("PT"): practical exam;
Firearms Training ("FA"): practical exam;
Emergency Vehicle Operation: practical exam;
Supervised Field Training: on-the-job performance;
Attendance: daily; and
Academy Rules for Recruits: compliance with.

^{18/} Source: Govt. Ex. 41, attached to Garside Dep., 10/15/84.

^{19/} Source: Garside Dep., 10/15/84, p. 35; see also, Govt. Ex. 41, attached to Garside Dep., 10/15/84.

^{20/} Source: Garside Dep., 10/15/84, pp. 35-41.

^{21/} Source: Govt. Ex. 40, p. 2, attached to Garside Dep., 10/15/84.

According to ETS (Report, pp. 43-44), the members in the academy sample were administered the NCPOST and then their scores on the NCPOST were correlated with the following six (6) measures of training academy performance:

Emergency Medical Training ("EMS") Grade - which is based upon a final exam, three unit exams and ten topic exams;

Firearms Training ("FA") Grade - which is based upon the demonstration of firearms proficiency during a qualification course at the range;

Physical Training ("PT") Grade - which is based upon a physical performance test composed of a run, sit-ups, push-ups and squat-thrusts.

Final Exam Grade - which is based upon a written final exam.

Final Academy Grade - 30% of which is based upon the final exam grade, and 70% of which is based upon written quizzes administered throughout the classroom portion of academy training.

Class Standing - 60% of which is based upon the final academy grade, 15% of which is based upon the EMS grade, 15% of which is based upon the FT grade and 15% of which is based upon the PT grade.

a. In its Final Report (p. 44), ETS states that the NCPOST has a statistically significant correlation with the EMS Grade, Final Exam Grade, Final Academy Grade and Class Standing in the academy. 22/ ETS concludes that these correlations evidence the validity of the NCPOST against academy performance. The correlations ETS obtained between the NCPOST and the measures of academy performance it studied are as follows:

<u>Criterion Measure</u>	<u>Sample Size (N)</u>	<u>Correlation Coefficient</u>
EMS	106	.29 <u>**/</u>
Firearms ("FA")	133	.01
Physical Training ("PT")	106	.13
Final Exam	133	.31 <u>**/</u>
Final Grade	133	.35 <u>**/</u>
Class Standing	106	.41 <u>**/</u>

Whatever criterion measure is used in a criterion-related validity study "should represent important or critical work behavior(s) or work outcomes" (Uniform Guidelines, Sec. 14B(3)); or in other words, the criterion measure used must

22/ Although ETS had stated in its Draft Final Report that the NCPOST also had a statistically significant correlation with the PT grade (Govt. Ex. 24, p. 44, attached to Stevens Dep. 10/15/84), that correlation dropped out when, at the United States' prompting, ETS analyzed the data on a sample of recruits from all of the classes for which it had collected data, rather than the sample of only 63 recruits from only some of the classes for which it reported results in its Draft Final Report.

**/ Statistically significant at the .01 level of confidence.

itself have validity if the study is to be valid (APA Standards, pp. 27 and 34 (E4)). As the APA Standards caution (at p. 27):

... the logic of criterion-related validity assumes that the criterion possesses validity. All too often, tests are validated against any available criterion with no corresponding investigation of the criterion itself. The merit of a criterion-related validity study depends on the appropriateness and quality of the criterion measure chosen ... Criterion-related validity studies based upon the 'criterion at hand,' chosen more for availability than for a place in a carefully reasoned hypothesis, are to be deplored.

Further, the Uniform Guidelines specifically require (Sec. 14B(3)) that:

Where performance in training is used as a criterion, success in training should be properly measured and the relevance of the training should be shown either through a comparison of the content of the training program with the critical or important work behavior(s) of the job(s), or through a demonstration of the relationship between measures of performance in training and measures of job performance.

The ETS Report contains no evidence that success in academy training is properly measured; and, more importantly, the ETS Report contains no evidence that the academy training is relevant. Nothing in the ETS Report compares the content of the training academy with the critical or important work behaviors of the job; and nothing in the ETS Report demonstrates a relationship between measures of performance in the training academy and measures of job performance. Although ETS

made an effort with the job analysis to determine whether the knowledges taught during academy training were relevant to job performance, that information was not used in the development of the NCPOST and was not relied upon in its Report.

The four (4) measures of academy performance for which ETS obtains statistically significant correlations with NCPOST scores are based solely (in the case of EMS Grade, Final Exam and Final Academy Grade) or primarily (in the case of Class Standing) upon written examinations which purportedly measure knowledges obtained during the academic portion of the NCPD training academy. Even then, however, these four (4) criterion measures are non-exclusive, since two of them (Final Exam and EMS Grade) account for seventy-five percent (75%) of the third (Class Standing), and the fourth (Final Academy Grade) is based upon the Final Exam and written quizzes. As such, ETS' presentation of the correlations between the NCPOST and each of these criterion measures creates a false illusion of multiple demonstrations of validity.

The only attempt by ETS to determine whether the NCPOST correlates significantly with any measures of practical - as opposed to academic - performance in the academy involved its use of Firearms and Physical Training scores; and ETS' own analysis reflects that the NCPOST is not correlated significantly with either of those two measures of practical performance.

According to the County's own records (Govt. Ex. 41, attached to Garside Dep. 10/15/84), the academic portion of the NCPD training academy comprises only approximately 399 hours (or 44.2%) of the total 902-hour course, while the practical portion of the academy comprises approximately 448 hours (or 49.7%) of the course. 23/ Included within the practical portion of the training academy is the six-week long (228-hour) supervised field training which is described, supra. Sergeant Garside, an instructor at the NCPD training academy who was designated by Nassau County to testify pursuant to the United States' Rule 30(b)(6) notice of deposition of the County, testified (Garside Dep. 10/15/84, pp. 33-37, 41) that the supervised field training portion of the training academy was one of the most important phases of the academy, principally because it shows how a recruit will perform in an actual on-the-job setting. As Sergeant Garside candidly observed (Id., p. 59): "The formal classroom training is not the street." In addition to the supervised field training and the firearms and physical training previously discussed, the practical portion

23/ The remaining hours of the academy course are used for administrative functions such as registration, orientation, opening ceremony, the distribution of materials, the administration of tests and graduation ceremony. (Id.).

of the training academy course includes: emergency vehicle operation; defensive tactics; search and handcuffing technique; and role playing in such practical areas as patrol functions, family disputes, car stops and a simulate trial.

The four (4) inter-related academic criterion measures for which ETS obtained significant correlations with the NCPOST do not measure success in field training or subsequent job performance. Nor do they measure practical skills or knowledges used on the job. Indeed, the only practical use that is made by the NCPD of success on those academic criterion measures used by ETS is to determine the recruit who has the highest Class Standing, so that an excellence award may be presented (Garside Dep. 10/15/84, pp. 18-19; Garside Dep. 10/25/84, pp. 13-14, 16-17). Thus, ETS makes no showing - as required by Section 14B(3) of the Uniform Guidelines - that the four (4) academic criterion measures it selected for use properly measure success in the training academy and that those four (4) measures are representative of critical or important work behaviors of the job.

b. ETS states in its Report (p. 43) that its academy sample "consisted of members of [C]lasses 82-2 through 83-3" at the NCPD's training academy. However, it is clear from Nassau County's own records that the academy sample for which ETS reported correlations between NCPOST scores and criterion

measures did not contain many of the members of classes 82-2 through 83-3, and nowhere in its Report does ETS explain what happened to those members of classes 82-2 through 83-3 it did not include in its sample. Thus, while there were 163 members of classes 82-2 through 83-3, ETS reported correlations between NCPOST and EMS Grade for only 106 members, between the NCPOST and the Final Exam for only 133 members, between the NCPOST and Final Grade for only 133 members, and between the NCPOST and Class Standing for only 106 members.

Further, while ETS sets forth a statistically significant correlation between NCPOST scores and Class Standing for 106 members in classes 82-4 through 83-3, it fails to report that there was no statistically significant correlation between NCPOST scores and Class Standing for the 27 members of classes 82-2 and 82-3 which it also studied. 24/

Lastly, ETS does not report the correlations, by class, between the NCPOST and the academy criterion measures it selected. Those correlations show significant differences by class. 25/

24/ Source: Computer tapes provided to the United States by Nassau County, and Computer Printout Nos. 13 and 14.

25/ See, Computer Printout No. 13 attached hereto.

C. ETS' Attempt to Support the Validity of the NCPOST
by Reliance upon Three Prior Police Exam Studies

ETS states in its Report (at p. 27) that the criterion-related validity of nine (9) of the eleven (11) cognitive abilities it selected for inclusion in the NCPOST had been verified in prior police exam studies, and states that Appendix F of the Report "cites the evidence of the criterion related validity of these [cognitive] abilities" from three prior police exam studies. The three studies are: the validity study conducted by Drs. Rosenfeld and Thornton of their 1974 Philadelphia police officer exam (the "Philadelphia Study"); the validity study conducted by Drs. Rosenfeld and Thornton of their 1976 MPOE police officer exam (the "IACP Study"); and the validity study conducted by Barry Morstain, PhD., of the MPOE exam as used by selected police agencies in Delaware (the "Delaware Study").

During the United States' deposition of Dr. Rosenfeld, ETS' designated agent pursuant to Rule 30(b)(6), F.R.Civ.P., the United States sought to inquire into the presentation by ETS in Appendix F of the Report of the "evidence of the criterion related validity" of these cognitive abilities from these three studies (Rosenfeld Dep. 11/20/84, pp. 142-145). Dr. Rosenfeld testified (Id., pp. 142-145) that it was Dr. Thornton, and not he, who prepared that portion of the Report and that he (Rosenfeld) thus could not respond to the United

States' inquiry. Based upon Dr. Rosenfeld's testimony, counsel for ETS designated Dr. Thornton as ETS' Rule 30(b)(6) agent to respond to this area of inquiry (Id., pp. 145). However, when the United States ten (10) days later deposed Dr. Thornton (who, by the way, had been present during Dr. Rosenfeld's deposition, see Rosenfeld Dep. 11/20/84, p. 3), he testified that he did not prepare that portion of the Report and did not know who had (Thornton Dep. 11/30/84, p. 63).

To the extent that ETS relies upon these three (3) studies as supportive of its claim of the validity of the NCPOST, such reliance is misplaced. Nowhere in its Report does ETS demonstrate - as is required by Section 7 of the Uniform Guidelines - that the requirements for the transportability of the purported "evidence" from any of these three (3) studies of the validity of any of the cognitive abilities used in the NCPOST have been met. Further, ETS' presentation (Final Report, p. 27 and Appendix F) of the "evidence of the criterion related validity of these [cognitive] abilities" from these three studies is grossly incomplete, inaccurate and misleading.

1. The IACP Study, conducted by Drs. Rosenfeld and Thornton, involved an analysis of the criterion-related validity of the MPOE exam for four (4) law enforcement agencies: the Maryland State Police; the St. Louis Police Department; the El Paso Police Department; and the Los Angeles Police Department

(Govt. Ex. 70, p. 128, and Govt. Ex. 74, attached to Rosenfeld Dep. 11/20/84). Drs. Rosenfeld and Thornton assessed the validity of the MPOE exam, as here, through a comparison of the scores achieved on the MPOE exam by a sample of incumbent officers at each of the four (4) agencies with their on-the-job performance as measured by supervisory ratings. What Drs. Rosenfeld and Thornton concluded in the IACP Study - but what they now choose to ignore in their presentation in the Nassau County Report of the "evidence" of validity from the IACP Study - is that there was no evidence of criterion-related validity of that exam for either the St. Louis Police Department or the Los Angeles Police Department (Govt. Ex. 74, p. 47, attached to Rosenfeld Dep. 11/20/84). Indeed, Drs. Rosenfeld and Thornton concluded in the IACP Study that there was a negative correlation between the MPOE exam and job performance at the Los Angeles Police Department. (Id., p. 47).

Notwithstanding their conclusion in their IACP Study that there was no evidence of the validity of the exam for the St. Louis Police Department, Drs. Rosenfeld and Thornton nevertheless present in the Nassau County Report whatever statistically significant positive correlations between cognitive abilities and various dimensions of the job were obtained for the St. Louis Police Department (Report, Appendix F). Further, they present in the Nassau County Report none of the statistically

significant correlations between cognitive abilities and various dimensions of the job that were obtained for the Los Angeles Police Department, all of which were negative (Govt. Ex. 74, p. 47, attached to Rosenfeld Dep. 11/20/84). Indeed, while Drs. Rosenfeld and Thornton cite to their IACP Study as evidence of the criterion-related validity of nine (9) of the eleven (11) cognitive abilities that are purportedly measured by the NCPOST, the IACP Study itself reflects that one of these (Logical Reasoning) was never tested for (Id., Appendix E) and, as the following chart illustrates, the evidence of the validity of each of the eight (8) remaining cognitive abilities (as measured by correlations with overall job performance) for even the Maryland State Police and El Paso Police Department is virtually nil (Id., pp. 41, 43):

Statistically Significant Correlations
(at the .05 level of confidence) between
Cognitive Abilities and Overall Job
Performance at:

<u>Cognitive Ability</u>	<u>Maryland State Police</u>	<u>El Paso Police Department</u>
Verbal Comprehension	No	Yes
Serial Recall	Yes	No
Paired Associate Memory	No	No
Spacial Scanning	Yes	No
Spacial Orientation	No	No
Visualization	Yes	No
Flexibility of Closure	No	No
Integrative Processes	No	No

Besides failing to support the criterion-related validity of the MPOE exam, the IACP Study conducted by Drs. Rosenfeld and Thornton is plagued by numerous shortcomings. For example, only one of the four agencies studied by Drs. Rosenfeld and Thornton (Maryland State Police) had participated in the job analysis portion of the Study (Govt. Ex. 70, p. 128, and Govt. Ex. 74, pp. 8, 16 and 31, attached to Rosenfeld Dep. 11/20/84). In instances where statistically-significant correlations allegedly were obtained between cognitive abilities and job dimensions, the IACP Study itself reflects that those abilities had never been linked to those dimensions and/or that Drs. Rosenfeld and Thornton had never contended that those sub-tests purportedly measuring those abilities had any relationship to any of the tasks within those dimensions. Indeed, the results of the IACP Study with respect to the El Paso Police Department are particularly suspect, since Drs. Rosenfeld and Thornton claim statistically significant positive correlations between three cognitive abilities (Verbal Comprehension, Spatial Orientation and Problem Sensitivity) and a job dimension (Booking Prisoners), which the Study itself reflects is not even performed by patrol officers in that department (Govt. Ex. 70, p. 128, and Govt. Ex. 74, pp. 33, 34 and 43, attached to Rosenfeld Dep. 11/20/84). Notwithstanding these infirmities -

as well as others too numerous to list here - and notwithstanding their own data reflecting the statistically significant adverse impact of the MPOE upon blacks at all sites except El Paso (where there were no blacks in the sample), Drs. Rosenfeld and Thornton recommend the use of the MPOE exam on a rank-ordering of scores basis and state that it does not have adverse impact upon blacks (Govt. Ex. 74, pp. 38 and 52, attached to Rosenfeld De. 11/20/84)..

2. ETS's reliance upon the Philadelphia Study is just as misplaced, and its presentation of the "evidence" of validity from that study is just as incomplete and misleading, as it was with respect to the IACP Study. The Philadelphia Study, conducted by Drs. Rosenfeld and Thornton, involved an analysis of the criterion-related validity of a written examination constructed by them and designed to measure twelve (12) cognitive abilities (Govt. Ex. 68, attached to Rosenfeld Dep. 11/19/84). They assessed the validity of that examination through a comparison of the scores achieved on the examination by a sample of incumbent patrol officers with their on-the-job performance as measured by supervisory ratings: for the total sample (Group A); those officers in the sample having five (5) or more years of seniority (Group B); those officers in the

sample having less than five (5) years of seniority (Group C); and those officers in the sample having less than three (3) years of seniority (Group D) (Id., pp. 37-39).

Initially, while Drs. Rosenfeld and Thornton cite in their Nassau County Report to their Philadelphia Study as evidencing the criterion-related validity of nine (9) of the eleven (11) cognitive abilities purportedly tested for in the NCPOST, reference to the Philadelphia Study discloses that one of those abilities (Logical Reasoning) was never considered for use on that exam (Id., p. 20). Three (3) others (Serial Recall, Spacial Scanning and Visualization) were included in a preliminary exam administered to the sample of incumbent officers but, based upon the results of that administration, were deemed inappropriate for use and deleted from the examination actually administered to applicants (Id., pp. 41-42).

Equally important is the failure of Drs. Rosenfeld and Thornton to accept their own findings in the Philadelphia Study that there was no statistically significant correlation between that examination and overall job performance for Group A (the total sample), Group B (all officers having five years or more of seniority) or Group C (all officers having less than five years of seniority), and that the only significant correlation they obtained between the Philadelphia examination and overall

job performance was for Group D (all officers having less than three years of seniority), which consisted of only 31 (or 14.2%) of the 218 officers in the total sample (Id., pp. 44, 51). Even then, however, their own findings reflect a significant correlation between that examination and overall job performance for the blacks (N=14) but not for the whites (N=17) in Group D. (Id.).

Also not mentioned by Drs. Rosenfeld and Thornton in their Nassau County Report, but what is revealed in the Philadelphia Study (Id., p. 44), is that scores on that examination significantly correlated with only one (Surveillance and Checking) of the eight (8) dimensions of the job studied for Group A, only one (Clerical and Reporting) of those eight (8) job dimensions for Group B, only two (Surveillance and Checking, and Work Preparation) of those eight (8) job dimensions for Group C, and only three (Surveillance and Checking, Work Preparation, and Court Preparation) of those eight (8) job dimensions for Group D. Indeed, for none of the four Groups did scores on that examination significantly correlate with four (Public Safety and Emergency, Traffic Control and Accident, Routine Potentially Dangerous Activities, and Preventative Activities) of the eight dimensions of the job studied (Id.). Nor do Drs. Rosenfeld and Thornton accept their own findings in that Study that although that examination had a statistically significant

adverse impact upon blacks for the total sample, there was no difference in overall job performance between white and black officers Id., pp. 49 and 50).

Lastly, the Philadelphia Study contains many of the same fatal methodological infirmities evidenced in the IACP Study.

3. ETS also refers to the Delaware Study (in which Dr. Rosenfeld participated as a technical consultant) as supportive of its claim of validity here. However, one of the principal conclusions of that Study was that while a modified MPOE exam could be used on a pass/fail basis with a cut-off score of 120/150 (or 80%), 26/ there was "little justification" for using the MPOE exam on a rank-ordering of scores basis (Govt. Ex. 75, p. 36, attached to Rosenfeld Dep. 11/20/84, as ETS has suggested the NCPOST be used.

26 / ETS' original MPOE exam was composed of 180 tests items designed to measure twelve (12) cognitive abilities or aptitudes. The participants in the Delaware Study were administered a modified MPOE exam composed of 150 test items designed to measure ten (10) cognitive abilities. What ETS does not mention in its Nassau County Report, but what is reflected in the Delaware Study, is that two sub-tests of the original MPOE exam (Flexibility of Closure and Serial Recall) were dropped upon the recommendation of the International Personnel Management Association (the "IPMA"), since it had been the IPMA's experience that these two sub-tests "[do] not assist in differentiating officer ability due to extreme skewness of subtest scores." (Id., p. 15) As noted, supra, both of these sub-tests were included in the NCPOST.

Further, in his 1984 article in Psychological Reports, Dr. Morstain observes (at p. 519) that there is "rather limited information on the validity of the MPOE" and, on the basis of his study, questions (p. 524) "whether the use of the total [MPOE] test score is warranted, be it of a rank order or passing score." Dr. Morstain concludes by stressing (p. 524) the need:

... to investigate fully the questions of possible adverse effects, the appropriateness of using all sub-tests, the strength of evidence for criterion-related validity, and so on.

REQUEST FOR ADMISSION NO. 3

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 4

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 5

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 7

This Interrogatory has been answered in the context of plaintiff United States' Response to Request for Admission No. 7.

REQUEST FOR ADMISSION NO. 10

a., b., and c. It is plaintiff United States' understanding, based upon the ETS Final Report as well as the depositions of Drs. Rosenfeld, Thornton and Thompson, that it was they who developed the NCPOST. For the reasons set forth in the United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra., it is the position of the United States that the NCPOST was not developed in a manner consistent with the standards of the profession and that it has not been validated. As to the professional qualifications of the authors of the Final Report and/or ETS generally, the United States responds by referring to Section 9 of the Uniform Guidelines, which provides, in relevant part, that:

Under no circumstances will the general reputation of a test or other selection procedures, its author or its publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: ... testimonial statements and credentials of sellers, users, or consultants...

REQUEST FOR ADMISSION NO. 14

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 15

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 16

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 24

The only criterion measure used by ETS in its Final Report which is relevant to the job of patrol officer in the NCPD is the supervisory ratings form, in the sense that it is the only measure which purports to measure job performance. Please also refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra, for a detailed critique of the other criterion measures used by ETS.

REQUEST FOR ADMISSION NO. 26

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 29 and 30

Nassau County has presented no evidence - as is its burden under Section 14B(3) of the Uniform Guidelines - demonstrating that the content of the training given to recruits at the NCPD's training academy either is relevant to the performance of the job of police officer in the NCPD or is a prerequisite to successful performance of the job of police officer in the NCPD.

REQUEST FOR ADMISSION NO. 31

Nassau County has not demonstrated - as is its burden under Section 14B(3) of the Uniform Guidelines - that the criterion measures selected for use in the criterion-related validity study involving the academy sample properly measure performance in the training academy. Please also refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 32

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission Nos. 2 and 31, supra. In addition, Section 14B(3) of the Uniform Guidelines provides that:

Criterion measures consisting of paper and pencil tests will be closely reviewed for job relevance.

REQUEST FOR ADMISSION NO. 33

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission Nos. 2, 31 and 32, supra. Indeed, the County's own records reflect that many of NCPD's training academy performance measures are not pencil and paper tests (e.g., arrest and control techniques; physical training; firearms training; emergency vehicle operation; and supervised field training).

REQUEST FOR ADMISSION NO. 34

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admissions Nos. 2, 31, 32 and 33, supra.

REQUEST FOR ADMISSION NO. 35

Nowhere in ETS' Report is it contended that the WKT was either designed or used as a job performance criterion measure, nor does ETS set forth any evidence that the WKT measures job performance. Indeed, ETS itself concedes (Report, p. 40) that the WKT "is somewhat removed from actual situations encountered on the job..." Please also refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 36

Tests do not possess job knowledges.

REQUEST FOR ADMISSION NO. 38

Nassau County has not demonstrated - as is its burden under Section 14B(4) of the Uniform Guidelines - that, to the extent feasible, the samples used in the NCPOST validity study were representative of the candidates normally available in the relevant labor market for the job of police officer in the NCPD. The samples used differed markedly from the candidates normally available in the relevant labor market in terms of racial, sexual and ethnic composition, and no attention was given to other relevant factors likely to affect validity, such

as length of time on the job. Lastly, to the extent that a fairness study could not be performed under Section 14B(8) of the Uniform Guidelines because of technical infeasibility, such technical infeasibility resulted from Nassau County's continued use, from March 23, 1972 (the effective date of Title VII's coverage upon the County) to the present, of unlawful selection tests which have had a severe adverse impact upon blacks and hispanics and have not been demonstrated to be valid. (See Section 14B(8)(f) of the Uniform Guidelines).

REQUEST FOR ADMISSION NO. 39

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 38, supra.

REQUEST FOR ADMISSION NO. 42

Validity coefficients obtained in a concurrent criterion-related validity study may overstate or understate the true, operational validity of a valid selection procedure, depending upon the characteristics of the concurrent validity study, as well as the criterion and selection procedure used. General statements are, thus, inappropriate in such situations.

REQUEST FOR ADMISSION NO. 43

Validity coefficients obtained in either a concurrent criterion-related validity study or a predictive criterion-related validity study may overstate or understate the true,

operational validity of a selection procedure, depending upon the characteristics of the studies, as well as the criteria and selection procedures used. General statements are thus, inappropriate in such situations.

REQUEST FOR ADMISSION NO. 45

ETS failed to control for the effect of seniority upon the correlations obtained between the NCPOST scores and criterion measures for the incumbent sample (please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra). Further, ETS selected and used academy criterion measures which are not independent, resulting in a presentation of predictor-criterion correlations that is deceptive and capitalizes upon chance.

REQUEST FOR ADMISSION NOS. 46 THROUGH 51 AND NO. 53

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 55

The relationship between the work knowledge test scores obtained by the police officers comprising the incumbent sample and their overall supervisory ratings when seniority is controlled for is statistically significant at the .01 level of

confidence for two supervisors, is statistically significant at the .01 level of confidence for supervisor 2, but is not statistically significant (i.e., not even at the .05 level of confidence) for supervisor 1.

REQUEST FOR ADMISSION NO. 56

The relationship between NCPOST scores obtained by 106 of the 163 NCPD police recruits in the NCPD training academy's classes 82-2 through 83-3 and the scores those 106 recruits obtained in Emergency Medical Training is statistically significant at the .01 level of significance.

REQUEST FOR ADMISSION NO. 57

The relationship between NCPOST scores obtained by 133 of the 163 NCPD police recruits in the NCPD training academy's classes 82-2 through 83-3 and the scores those 133 recruits obtained on the NCPD's final exam is statistically significant at the .01 level of significance.

REQUEST FOR ADMISSION NO. 58

The relationship between NCPOST scores obtained by 133 of the 163 NCPD police recruits in the NCPD's training academy classes 82-2 through 83-3 and those 133 recruits' final academy grades is statistically significant at the .01 level of confidence.

REQUEST FOR ADMISSION NO. 59

The relationship between NCPOST scores obtained by 106 of the 163 NCPD police recruits in the NCPD's training academy classes 82-2 through 83-3 and those 106 recruits' final academy standing is statistically significant at the .01 level of confidence.

REQUEST FOR ADMISSION NO. 61

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 62

Please refer to plaintiff United States answer to this Interrogatory with respect to Request for Admission No. 2, supra. The only criterion measure set forth by ETS in the Final Report which purportedly measures job performance is the supervisory rating form. Nevertheless, ETS' own data reflect that, when seniority is controlled for, there is no statistically significant correlation between the scores obtained by the incumbent officer sample and their overall job performance as measured by supervisory ratings, and that their scores on the NCPOST significantly correlate with their job performance

for only one of the eleven (11) dimensions of the job as identified by ETS.

REQUEST FOR ADMISSION NO. 63

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission Nos. 2 and 62, supra.

REQUEST FOR ADMISSION NO. 64

ETS has employed techniques which tend to overstate validity findings, among which are the use of non-exclusive academy criterion measures which creates the illusion of multiple demonstrations of validity, as well as the use of criterion measures which are based solely or primarily upon paper and pencil tests to validate its own paper and pencil test, the NCPOST. Please also refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 67

Nassau County has not demonstrated - under Section 14B(8) of the Uniform Guidelines - that it was not technically feasible to conduct a study of the fairness of the NCPOST for blacks, hispanics and/or women.

REQUEST FOR ADMISSION NO. 68

Please refer to plaintiff United States' Response to this Request for Admission, as well as its answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NOS. 75 AND 76

It was not professionally appropriate for ETS to use a content validity strategy here, because the NCPOST purportedly measures eleven (11) pre-selected cognitive abilities or constructs, which were not selected based upon the results of a job analysis; and Section 14C(1) of the Uniform Guidelines specifically provides that the use of a content validity strategy is not appropriate for demonstrating the validity of this type of selection procedure.

REQUEST FOR ADMISSION NO. 78

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admissions Nos. 75 and 76, supra.

REQUESTS FOR ADMISSION NOS. 79 and 80

Defendant Nassau County has not demonstrated that the NCPOST measures any of the eleven (11) cognitive abilities or constructs set forth in this Request. On the contrary, the format of each of the NCPOST sub-tests is different from the format of the corresponding Ekstrom Study "marker tests" and ETS in its Report (p. 27) concedes that the NCPOST test items, although purportedly "modeled" upon Ekstrom Study "marker tests", were "modified to reflect police activities and police content." Indeed, Dr. Rosenfeld conceded during his deposition

by the United States (Rosenfeld Dep. 11/30/84, p. 38) that ETS has no empirical evidence that the NCPOST in fact measures any of the cognitive abilities ETS claims it does.

REQUEST FOR ADMISSION NO. 84

The "Inventory of Tasks" (Report, Appendix B, pp. 1-16 and Appendix C, pp. 1-17) is not an inventory of tasks alone. It is an aggregation of task statements, performance standards, alternative task results and ambiguous statements and, thus, is unacceptable.

REQUEST FOR ADMISSION NO. 85

ETS' Report itself reflects that the eleven (11) cognitive abilities which are purportedly measured by the NCPOST were pre-selected by ETS and not on the basis of the results of the job analysis. Please also refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 88

The use of a content validity strategy for demonstrating the validity of the NCPOST is specifically prohibited under Section 14C(1) of the Uniform Guidelines. Further, the eleven (11) cognitive abilities which the NCPOST purportedly measures were pre-selected by ETS and not on the basis of the job analysis. Moreover, the NCPOST, a paper and pencil test, bears no resemblance to the behaviors of the job of NCPD police

officer. Indeed, when discussing the WKT which - like the NCPOST - is a paper and pencil test, ETS concedes (Report, p. 40) that "[t]he written test format is somewhat removed from actual situations encountered on the job..." Lastly, there is no statistically significant correlation between NCPOST scores and overall job performance, as measured by the supervisory ratings of the incumbent sample when seniority is controlled for. Please also refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 89

Please refer to plaintiff United States answer to this Interrogatory with respect to Request for Admission Nos. 2 and 88, supra.

REQUEST FOR ADMISSION NO. 90

Nassau County has not demonstrated that the NCPOST in fact measures the eleven (11) cognitive abilities it purportedly measures, and Section 14C(1) of the Uniform Guidelines specifically proscribes the use of a content validity strategy to demonstrate the validity of the NCPOST. In any event, however, similarity of verbal descriptions does not constitute evidence of equivalence and is not sufficient under Section 14C(4) of the Uniform Guidelines as an operational definition of an individual difference.

REQUEST FOR ADMISSION NOS. 91 THROUGH 112

Plaintiff United States incorporates by reference its objection as set forth in its Response to this Request for Admission.

Defendant Nassau County has not demonstrated that these eleven (11) cognitive abilities are prerequisites to either learning to perform or to performing the job of police officer in the NCPD. Indeed, ETS' Report reflects that these eleven (11) cognitive abilities or constructs were pre-selected by ETS and not on the basis of the job analysis. Further, the data from ETS' own criterion-related validity study reflects that NCPOST scores have no statistically significant correlation with overall job performance when seniority is controlled for. Please also refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 113

ETS' Report reflects that the NCPOST purportedly measures eleven (11) pre-selected cognitive abilities or constructs, and not observable work behaviors. Further, item responses have no demonstrable relationship to important work behaviors. As reflected in the job analysis, NCPD police officers do not spend their time responding to multiple-choice test items.

REQUEST FOR ADMISSION NO. 114

The pre-examination study booklet is an uncontrolled, unstandardized component of the NCPOST with totally unknown effects upon NCPOST scores.

REQUEST FOR ADMISSION NO. 115

Coefficient alpha will not reveal the differential impact on individuals of the uncontrolled, unstandardized pre-examination study booklet which is a component of the NCPOST.

REQUEST FOR ADMISSION NO. 116

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission Nos. 114 and 115, supra.

REQUEST FOR ADMISSION NO. 117

According to the ETS Report (p. 30), "[a]pproximately 45% of the material in the [NCPOST] test is based on information that must be learned from the [pre-examination study] booklet" (emphasis in original).

REQUEST FOR ADMISSION NO. 118

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 117, supra.

REQUEST FOR ADMISSION NO. 119

To the extent that measures of success in the NCPD's training academy themselves constitute "selection procedures" as that term is defined in Section 16Q of the Uniform Guidelines, the content of the training program must be justified and the use of such measures must be justified based upon the relationship between the content of the training program and the content of the job under Section 14C(7) of the Uniform Guidelines.

REQUEST FOR ADMISSION NO. 120

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 119, supra.

REQUEST FOR ADMISSION NO. 121

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 122

Criterion measures themselves are relevant only "to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of the job" (Section 14B(2) of the Uniform Guidelines). Even then, however, the term "better performance" as used in this Request incorrectly implies the existence of demonstrable or useful

differences in criterion measure scores associated with differences in scores on a selection procedure.

REQUEST FOR ADMISSION NO. 123

The only criterion measure used by ETS which purports to measure job performance is the supervisory rating form, and there is no statistically significant correlation between NCPOST scores and overall job performance, as measured by the supervisory ratings when seniority is controlled for. Moreover, assuming arguendo that the NCPOST scores had been significantly correlated with the supervisory ratings, it would have had virtually no predictive value and, thus, could not have been used on either a pass/fail or a rank-ordering of scores basis. Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 124

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

REQUEST FOR ADMISSION NO. 128

Defendant Nassau County has presented no evidence that those predictor-criterion relationships which in fact are statistically significant are linear.

REQUEST FOR ADMISSION NO. 129

Please refer to plaintiff United States' answer to this Interrogatory with respect to Request for Admission No. 2, supra.

INTERROGATORY NO. 2

Supply such information as is necessary to make complete and current plaintiff's answers to the Nassau County defendants' prior interrogatories.

ANSWER TO INTERROGATORY NO. 2

Please refer to the Supplemental Answers of Plaintiff United States to Defendants' First Set of Interrogatories and to the Supplemental Answers of Plaintiff United States to Defendants' Request for Production of Documents.

INTERROGATORY NO. 3

a. Identify each of Defendant Nassau County's jobs for which plaintiff challenges the selection procedure as unlawful or otherwise impermissible.

b. For each job identified in answer to Interrogatory No. 3(a), supra, set forth fully and specifically each knowledge, skill and ability or other characteristic which:

- (i) is necessary to perform the job successfully;
- (ii) enables one to perform the job successfully when possessed in greater measure than other job holders;
- (iii) is desirable to perform the job successfully; and
- (iv) is a negative attribute for probable successful job performance.

c. For each job identified in answer to Interrogatory No. 3(a), supra, set forth fully and specifically each knowledge, skill and ability or other characteristic which:

- (i) is necessary to learn to perform the job successfully; and

- (ii) enables one to better learn to perform the job successfully when possessed in greater measure than other job holders.

d. As to each job identified in answer to Interrogatory No. 3(a), supra, identify and describe fully each selection procedure which is believed by plaintiff to be job-related, and for each such selection procedure set forth:

- (i) its known or anticipated degree of adverse impact upon black, hispanic and female candidates respectively;
- (ii) the data and data sources upon which each of plaintiff's statements of known or anticipated degree of adverse impact is based;
- (iii) the job-related qualifications measured by each such selection procedure;
- (iv) the job performance criteria predicted by each such selection procedure;
- (v) the employers known to plaintiff to be using such selection procedure;
- (vi) the estimated cost per candidate of administering such selection procedure;
- (vii) the identity of all job-relatedness evidence for each such selection procedure; and
- (viii) the identify of the present custodians of such job-relatedness evidence.

e. As to each job identified in answer to Interrogatory No. 3(a), supra, identify and describe fully its duties, indicating for each duty, plaintiff's estimate of its level of importance to overall job performance and the frequency with which it is performed under normal circumstances with the Nassau County defendant.

f. As to each job identified in answer to Interrogatory No. 3(a), supra, describe fully and specifically the steps you

contend defendants should take or have taken to search for less adverse selection procedures.

g. As to each job identified in answer to Interrogatory No. 3(a), supra, provide its federal standard occupational classification number, state what plaintiff (whether directly or through any expert) contends is the relevant geographic labor market, the relevant labor force, the percentage minority availability with the requisite knowledge, skills, abilities and interest in each, the identity of all data sources relied upon for such contentions, and the identity of all persons upon whose opinion plaintiff relies in support of such contentions.

ANSWER TO INTERROGATORY NO. 3

a. The United States objects to this Interrogatory insofar as it requests information about Nassau County jobs other than police officer in the NCPD (the only job for which the County intends to use the NCPOST as a selection device), on the grounds that it seeks information which is irrelevant, and the production of such information would be unduly burdensome. The issue before this Court is simply whether the NCPOST is a valid and lawful examination for police officer in the NCPD. Thus, the information requested by this Interrogatory for jobs for which the NCPOST is not used as a selection device is irrelevant and not calculated to lead to admissible evidence. Moreover, the information requested by this Interrogatory which does not bear on the issue of the validity of the NCPOST is unduly burdensome since it would require that the United States investigate, analyze and report out on each and every job

classification in which Nassau County has employees. This is particularly burdensome in light of the County's request that the United States respond to these Interrogatories in an expedited fashion.

It is the position of the United States that Nassau County's use of the NCPOST for the entry-level job of police officer in the NCPD would be violative of the provisions of the Uniform Guidelines and the April 21, 1982 Consent Decree.

b. Insofar as this Interrogatory requests information concerning the job of police officer in the NCPD - that job for which the County contemplates using the NCPOST - the United States objects to this Interrogatory on the ground that it is Nassau County's obligation under the Uniform Guidelines to determine what knowledges, skills and abilities are necessary to perform the job of police officer in the NCPD. As an initial step in an attempt to validate a selection device, the Uniform Guidelines places upon the employer the burden of identifying and demonstrating that those knowledges, skills and abilities that are necessary to perform the job.

Finally, the United States has neither conducted, nor been in a position to conduct, a job analysis for the position of police officer in the NCPD.

c. The United States objects to this Interrogatory on the same grounds as those set forth in answer to subpart 3b, supra.

d. The United States is unable to answer this Interrogatory, because the United States has neither conducted, nor been in the position to conduct a job analysis for the position of police officer in the NCPD.

e. The United States objects to this Interrogatory on the same grounds as those set forth in answer to subpart 3b, supra.

f. Plaintiff United States directs defendant Nassau County to the Uniform Guidelines, and to "Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures," Q and A 48 and 49, 44 F.R. 11996, 12003; Q and A 91, 45 F.R. 29530, 29531.

g. The United States and defendants Nassau County already have stipulated as to the relevant labor market for blacks, hispanics and women for the job of police officer in the NCPD. (see the April 21, 1982 Consent Decree, Para. 24).

INTERROGATORY NO. 4

If plaintiff contends that any selection procedure identified in answer to Interrogatory No. 3(d), supra, would have less adverse impact if used instead of the 1983 Nassau County Police Officer Section Test (hereinafter "NCPOST"), for each such selection procedure:

a. Set forth each and every fact and opinion upon which that contention is based;

b. For each fact upon which that contention is based, identify each person having knowledge of such fact;

c. For each opinion upon which that contention is based, identify each person having knowledge of such opinion;

d. Identify all documents upon which plaintiff relies in support of that contention; and

e. Identify all documents of which plaintiff is aware which are inconsistent with that contention;

ANSWER TO INTERROGATORY NO. 4

Please refer to plaintiff United States' answer to Interrogatory No. 3d, supra. Moreover, the United States is not aware of any police officer selection device being used that has as great as or greater adverse impact than the NCPOST.

The United States knows or has reason to believe that the police officer entrance examinations administered in Suffolk County and the City of Philadelphia do not have as great an adverse impact as the NCPOST. A reading of the Title VII cases reported in the Federal Reporter Second and the Federal Supplement reports will disclose many other tests which have had less impact than the NCPOST.

INTERROGATORY NO. 5

If plaintiff contends that any selection procedure identified in answer to Interrogatory No. 3(c), supra, would have validity substantially equal to or better than the 1983 NCPOST if used in place of the 1983 NCPOST, for each such selection procedure:

a. Identify each and every fact and opinion upon which that contention is based;

b. Identify each person having knowledge of each fact upon which plaintiff bases that contention;

c. Identify each person holding each opinion upon which plaintiff bases that contention;

d. Identify each and every document upon which plaintiff relies in support of the contention; and

e. Identify each and every document of which plaintiff is aware which are inconsistent with that contention;

ANSWER TO INTERROGATORY NO. 5

Since Nassau County has failed to demonstrate the validity of the NCPOST, any selection procedure validated in accordance with the Uniform Guidelines would be substantially superior to the NCPOST. Please also refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

INTERROGATORY NO. 6

Does plaintiff contend that there are any valid methodologies of comparing the effectiveness of various police departments?

a. If so, describe each such methodology fully and specifically and identify any empirical or other documented support for it.

ANSWER TO INTERROGATORY 6

The United States objects this Interrogatory. The information requested by this Interrogatory is neither relevant nor is it reasonably calculated to lead to the discovery of admissible evidence, since it does not seek any information bearing upon either the NCPOST or the NCPD. Moreover, this

Interrogatory is so vague and open to varying interpretations, that it is impossible to answer. Specifically, Nassau County's use of the terms "valid methodologies" and the "effectiveness of various police departments" are not defined. The United States does not know and is not required to speculate as to what measuring standard Nassau County seeks to use in "comparing the effectiveness" of "various" unidentified police departments.

INTERROGATORY NO. 7

a. Does plaintiff contend that the 1983 NCPOST has not been validated in accordance with the Uniform Guidelines on Employee Selection Procedures (1978) (hereinafter "Uniform Guidelines")? If so:

b. Identify each provision, by reference to section, sub-section and sentence of the Uniform Guidelines which plaintiff contends has not been satisfied by the validity studies entitled "Nassau County, Final Report, 11/13/84" and marked as Government Exhibit 62 to the deposition of Educational Testing Service (hereinafter "Nassau County Validity Study");

c. For each provision identified in answer to Interrogatory No. 7(b), supra:

- (i) set forth each and every fact and opinion upon which plaintiff bases such contention;
- (ii) identify each person having knowledge of each such fact;
- (iii) identify each person holding each such opinion;
- (iv) identify each and every document upon which plaintiff relies in support of that contention; and

(v) identify each and every document of which plaintiff is aware which are inconsistent with that contention;

d. For each provision identified in answer to Interrogatory No. 7(b), supra, describe fully and specifically all analyses, data and/or actions are necessary to substantially satisfy each such provision.

ANSWER TO INTERROGATORY NO. 7

a. Yes. Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

b. The United States identifies the following Sections: 3A, 3B, 5B, 5D, 5E, 5G, 5H, 5J, 7A, 7B, 7D, 9A, 14A, 14B(2), 14B(3), 14B(4), 14B(6), 14B(7), 14C(1), 14C(2), 14C(3), 14C(4), 14C(7), 14C(8), 14C(9), 15A(3), 15B(3), 15B(5), 15B(6), 15B(10), 15B(11), 15B(13), 15C(3), 15C(4), 15C(5), 15C(6), 15C(7), 15C(9) and 15E.

c(i). In addition to facts and opinions set forth in plaintiff United States' answer to Interrogatory No. 1 supra, the United States sets forth the following with respect to each of those Sections of the Uniform Guidelines identified:

Section 3A

Based upon computer data provided the United States by Nassau County, it is apparent that, if used, the NCPOST will have an extremely severe adverse impact upon blacks and hispanics, regardless of whether it is used on a pass/fail or

rank-ordering of scores basis. Due to the adverse impact of the NCPOST, Nassau County is required by Section 3A of the Guidelines, as well as by the Consent Decree to demonstrate the validity of the NCPOST. Since Nassau County has failed to do so, the use of the NCPOST would violate the Guidelines, as well as the Consent Decree.

Section 3B

Pursuant to this Section, Nassau County, as part of its validity study, should have conducted an investigation of suitable alternative selection procedures to the NCPOST and suitable alternative methods of using the NCPOST which have as little adverse impact as possible, and to have determined the appropriateness of using or validating them in accordance with the Uniform Guidelines.

The County has produced no evidence of any effort to identify, investigate or evaluate suitable alternative selection procedures to the NCPOST or suitable alternative methods of using the NCPOST.

Section 5B

For the reasons set forth by plaintiff United States in its answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2, Nassau County has not demonstrated that the NCPOST either is content valid or has criterion-related validity. Further, there is no contention by ETS in

its Report that the NCPOST has been validated under a construct validity strategy.

Section 5D

Nassau County and ETS have not maintained complete and adequate records required by Section 15 of the Uniform Guidelines, and associated portions of Sections 5B and 14B, 14C and 14D, of validation research to allow for later evaluation.

Section 5E

The pre-examination study booklet is an uncontrolled, unstandardized component of the NCPOST with totally unknown effects upon NCPOST scores at the individual and at the group level.

Sections 5G, 5H and 5J

For the reasons set forth by plaintiff United States in its answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2, Nassau County has not demonstrated - as is its burden under Sections 5G and 5H - either the validity or the utility of the NCPOST on either a pass/fail or a rank-ordering of scores basis. Further, Nassau County may not lawfully use the NCPOST on an interim basis under Section 5J, because it does not have any evidence that the NCPOST is valid and it does not have in progress a study designed to produce evidence of validity within a reasonable period of time.

Section 7A

For the reasons set forth in plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2, the three (3) validity studies, cited to by ETS in its Report (p. 27 and Appendix F) as evidencing the validity of the cognitive abilities purportedly measured by the NCPOST, provide no such "evidence."

Section 7B

Please refer to plaintiff United States' answer to this Interrogatory with respect to Section 7A, supra. Further, reliance upon these three prior studies is misplaced, because: none of these studies demonstrated the validity of the NCPOST or even of the written examinations under investigation there; and there has been no demonstration by ETS of job similarity or fairness.

Section 7D

The three prior studies cited to by ETS in its Report (p. 27 and Appendix F) contain variables which are likely to affect validity significantly.

Section 9A

ETS' presentation (Report, p. 27 and Appendix F) of the evidence from three prior police studies of the validity of nine(9) of the eleven (11) cognitive abilities the NCPOST purportedly measures - aside from being grossly inaccurate,

incomplete and deceptive - is an unacceptable substitute for evidence of the validity of the NCPOST.

Section 14A

The eleven (11) cognitive abilities which the NCPOST purportedly measures were pre-selected by ETS and not on the basis of the job analysis.

Section 14B(2)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 14B(3)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 14B(4)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission Nos. 2, 38 and 45.

Section 14B(6)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 14B(7)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission Nos. 2 and 64.

Section 14C(1)

Nowhere in its Final Report does ETS demonstrate or even attempt to demonstrate that the content of the NCPOST either samples or is representative of the tasks performed or skills used on the job. Indeed, Section 14C(1) specifically proscribes the use of a content validity strategy to validate a selection procedure of the type that the NCPOST is. In this regard, please also refer to plaintiff United States' answer to Interrogatory No. 1 supra, with respect to Request for Admission No. 2.

Section 14C(2)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 14C(3)

The Uniform Guidelines require that a selection device be designed to measure critical work behaviors or important work behaviors constituting most of the job as identified by a job analysis. The eleven (11) cognitive abilities which purportedly are measured by the NCPOST were pre-selected by ETS

and not on the basis of the job analysis. There was no attempt to measure the important knowledges, skills and abilities of the job. The only bases stated by ETS for the selection of the eleven (11) cognitive abilities or constructs it pre-selected were that (Report, p. 20):

- (a) The construct definition and interpretation indicated that, in the opinion of project staff, the [cognitive] ability represented was likely to be used in police functions.
- (b) The method of assessment recommended permitted presentation of materials and scoring of responses in multiple-choice [test] format.
- (c) The types of stimulus materials contained in questions used in the recommended assessment methods were such that police-related materials could be substituted for them, thereby providing a more job-related assessment.

Section 14C(4)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 14C(7)

Historically, less than two percent (2%) of the recruits in the NCPD's training academy have failed to graduate from the academy and, thus, the measures of success in the training academy have not been used as selection procedures. However, to the extent that measures of success in the NCPD's training

academy themselves constitute "selection procedures" under Section 16Q of the Uniform Guidelines, Nassau County has not justified the content of the training program, and has not justified the use of such measures based upon the relationship between the content of the training program and the content of the job.

Section 14C(8)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 14C(9)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 15A(3)

Nassau County has set forth no documentation evidencing either the criterion-related validity or the content validity of the NCPOST. Further, ETS' presentation (Report, p. 27 and Appendix F) of the "evidence" from three prior police studies of the cognitive abilities the NCPOST purportedly measures is incomplete, inaccurate and misleading, and does not show or support the validity of the NCPOST.

Section 15B(3)

Nowhere in its Report does ETS set forth either the basis or justification for its selection of the training academy measures it used as criteria.

Section 15B(5)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2, as well as to this Interrogatory with respect to Section 15B(2), supra. Further, the Report does not set forth that any efforts to demonstrate the content validity or the job-relatedness of the academy content were undertaken.

Section 15B(6)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2. Further, ETS fails to explain or discuss in its Report the attrition of its criterion sample members. Moreover, ETS made no attempt to describe how the samples compare with the relevant labor market or work force, nor did ETS set forth the likely effects on validity of differences between the sample and the relevant labor market or work force.

Section 15B(10)

In its Report, ETS fails to describe the rationale for recommending the use of the NCPOST on a rank-order of scores

basis, and did not set forth evidence demonstrating evidence of either the validity or the utility of using the NCPOST either on a pass/fail or a rank-order of scores basis.

Sections 15B(11) and (13)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 15C(3)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Section 15C(4)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2. In addition, ETS presents no evidence that the NCPOST in fact measures the eleven (11) cognitive abilities ETS claims it measures.

Section 15C(5)

Please refer to plaintiff United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

Sections 15C(7) and (9)

The ETS Report sets forth none of the documentation required by these Sections.

Section 15E

Please refer to the United States' answer to Interrogatory No. 1, supra, with respect to Request for Admission No. 2.

INTERROGATORY NO. 8

a. To the extent not set forth in the foregoing answer to interrogatories, set forth fully and specifically each deficiency claimed to exist in the Nassau County Validity Study; and, for each deficiency that plaintiff contends exists, set forth each and every fact and opinion upon which plaintiff relies in support of said contention;

b. Identify each person having knowledge of each fact upon which plaintiff bases that contention;

c. Identify each person holding each opinion upon which plaintiff relies in support of said contention;

d. Identify each and every document upon which plaintiff relies in support of said contention;

e. Identify each and every document of which plaintiff is aware which are inconsistent with the contention; and

f. Describe all analyses, data and/or acts which plaintiff contends are necessary to cure each claimed deficiency.

ANSWER TO INTERROGATORY NO. 8

Please refer to plaintiff United States' answer to the preceding Interrogatories.

INTERROGATORY NO. 9

a. State plaintiff's best estimate of the number of selection procedures it has reviewed for police officer (trainee) jobs in the past fifteen calendar years.

b. Identify each occasion upon which plaintiff has determined that a selection procedure for a police officer (trainee) job has been demonstrated to be job-related, and identify all persons participating in such determination.

c. Identify any and all documents pertaining, reflecting or referring to each such determination by plaintiff;

d. For each selection procedure identified in response to Interrogatory No. 9(a), supra, set forth the amount, degree and/or extent of adverse impact upon blacks, hispanics, whites and women, respectively.

ANSWER TO INTERROGATORY NO. 9

The United States objects this Interrogatory. The information requested by this Interrogatory is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. The number of selection procedures or job analyses reviewed by the United States with respect to the job of entry level police officer, and determinations made therefrom, have no relation to the issue of the validity of the NCPOST - the issue before the Court.

Further, having to answer - or even to begin to answer - this Interrogatory would be unduly burdensome and time consuming - particularly in light of the July 15, 1985 trial date. The United States does not maintain the types of records which would enable it to respond to this Interrogatory, and, thus, responding to it would require a substantial investment of time and resources. Lastly, many of the documents pertaining, reflecting or referring to any determination by the United States on matters such as this are privileged.

INTERROGATORY NO. 10

a. To the extent not set forth in response to the foregoing interrogatories, set forth fully and specifically each deficiency which plaintiff contends exists in the job analysis reported in the Nassau County Validity Study.

b. For each deficiency which plaintiff contends exists, set forth each and every fact upon which plaintiff relies in support of that contention;

c. Identify each and every person having knowledge of each fact upon which plaintiff relies in support of that contention;

d. Identify each and every person holding each opinion upon which plaintiff relies in support of that contention;

e. Identify each and every document upon which plaintiff relies in support of that contention;

f. Identify each and every document of which plaintiff is aware which is inconsistent with that contention; and

g. Describe all data, analyses and/or acts which plaintiff contends are necessary to cure each claimed deficiency.

ANSWER TO INTERROGATORY NO. 10

Please refer to plaintiff United States' answer to Interrogatory No. 8, supra.

INTERROGATORY NO. 11

a. State plaintiff's best estimate of how many job analyses it has reviewed for police office (trainee) jobs in the past fifteen calendar years.

b. Identify each occasion upon which plaintiff has determined that a job analysis has been competently conducted and/or was in compliance with relevant federal guideline and/or professional standards, and identify all person participating in such determination(s); and

c. Identify any and all documents pertaining, reflecting or referring to each such determination by plaintiff;

ANSWER TO INTERROGATORY NO. 11

The United States objects to this Interrogatory for the reasons set forth in its answer to Interrogatory No. 9, supra.

INTERROGATORY NO. 12

a. Identify all entry level enforcement jobs of which plaintiff is aware in the federal government, indicating the department or agency involved.

b. Describe fully and specifically the job duties of each such job;

c. Identify all job analyses, position descriptions and statements of requisite knowledges, skills and/or abilities for each job; and

d. Describe fully and specifically the selection procedures and each component of the selection procedure for each job identified in answer to Interrogatory No. 12(a), supra:

(i) for each selection procedure and each component therefore identified in answer to Interrogatory No. 12(c), supra, state whether it has an adverse impact upon blacks, hispanics, whites and/or women; and if so, the degree of adverse impact for each group;

(ii) identify all data and data sources upon which the answer to Interrogatory No. 12(d) (i), supra, is based;

ANSWER TO INTERROGATORY NO. 12

The United States objects to this Interrogatory on the ground that Nassau County has not defined, and hence the United States does not know, what an "entry level enforcement job" is. Further, the information requested by this Interrogatory is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. Even if information concerning "all entry level enforcement jobs" refers to all entry level law enforcement jobs in the entire federal

government, it has no bearing on this case. The issue before the Court is the validity of the NCPOST.

INTERROGATORY NO. 13

Identify each agency, department, service, bureau, board, commission or other entity (hereinafter "agency") of the plaintiff, UNITED STATES OF AMERICA, which has used or accepted principles of validity generalization to infer validity for selection procedures used by such agency or for selection procedures used by an employer reviewed by such agency.

ANSWER TO INTERROGATORY NO. 13

The United States objects to this Interrogatory. The information requested by this Interrogatory is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence. It appears that defendant Nassau County seeks to put the employment practices of the United States into issue. Thus, not only is the information sought by this Interrogatory irrelevant, but the Interrogatory itself is improper. The April 21, 1982 Consent Decree, agreed to by the County and approved and entered by the Court, requires that the County use a selection device that "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" (April 21, 1982 Consent Decree). These are the same standards adopted by the federal government. Section 7 of the Uniform Guidelines addresses principles of validity generalization.

INTERROGATORY NO. 14

For each agency identified in answer to Interrogatory No. 13, supra:

a. Identify each selection procedure and job(s) for which validity generalization principles have been used to support the validity of the selection procedure; and

b. For each such selection procedure and job(s):

- (i) identify the validity generalization strategy and formula used;
- (ii) set forth the reason(s) why validity generalization has been used to support the validity of the selection procedures;
- (iii) state whether validity generalization has been used in lieu of a situationally specific validity study; and, if so, why validity generalization has been used in lieu of a situationally specific validity study;
- (iv) identify all other data supporting validity including, but not limited to situationally specific studies, transportability studies, job analyses and cooperative studies;
- (v) describe in detail the manner in which the selection procedure is used and the use made of scores on the selection procedure;
- (vi) identify each person who has knowledge sufficient to testify at deposition pursuant to Federal Rule of Civil Procedure 30(b)(6) about the validity of the selection procedure and the use to which it has been or will be put;
- (vii) state the adverse impact upon blacks, hispanics, whites and women respectively; and
- (viii) identify each and every document which pertains, relates, or refers to:

- (A) the validity (or lack thereof) of the selection procedure;
- (B) the use of validity generalization to support the validity of the selection procedure;
- (C) the manner in which the selection procedure is used;
- (D) the use made of scores made on the selection procedure; and
- (E) the adverse impact of the selection procedure upon whites, blacks, hispanics or women.

ANSWER TO INTERROGATORY NO. 14

The United States objects to this Interrogatory for the reasons set forth in its answer to Interrogatory No. 13, supra.

INTERROGATORY NO. 15

a. Does plaintiff contend that the 1983 NCPOST is less valid for blacks and/or hispanic applicants than it is for whites? If so:

b. Identify each racial and ethnic group for which the test is less valid than it is for whites;

c. State whether the difference in validity is statistically significant at the .05 level of significance;

d. For each group identified in answer to Interrogatory No. 15(b), supra identify all facts and opinions upon which plaintiff bases its contention that the 1983 NCPOST is less valid than it is for whites;

e. Identify each and every person having knowledge of the facts upon which plaintiff bases that contention;

f. Identify each and every person holding each opinion upon which plaintiff bases that contention;

g. Identify each and every document upon which plaintiff relies in support of that contention; and

h. Identify each and every document of which plaintiff is aware which is inconsistent with that contention;

ANSWER TO INTERROGATORY NO. 15

Plaintiff United States contends that the NCPOST has not been demonstrated to be valid for use as a selection device by Nassau County. Accordingly, it has not been shown to be valid for any group and is no more or no less valid for one group than for another.

INTERROGATORY NO. 16

a. Does plaintiff contend that it would be unfair (as the term is defined in §16V of the Uniform Guidelines) to blacks, hispanics and/or women to select persons for the job of Nassau County police officer in descending order of test score obtained on the 1983 NCPOST? If so:

b. Identify each racial and ethnic group for which such test use would be unfair;

c. For each group identified in answer to Interrogatory No. 16(b), identify all facts and opinions upon which plaintiff bases its contention that the 1983 NCPOST is unfair;

d. Identify each person with knowledge of each fact upon which plaintiff relies in support of that contention;

e. Identify each person holding each opinion upon which plaintiff relies in support of that contention;

f. Identify each and every document upon which plaintiff relies in support of that contention;

g. Identify each and every document of which plaintiff is aware which is inconsistent with that contention; and

h. State that steps Nassau County should take in order to use the NCPOST in a manner which would be fair to the groups identified in answer to Interrogatory No. 16(b), supra.

ANSWER TO INTERROGATORY 16

The NCPOST disproportionately excludes blacks and hispanics from the opportunity to be hired without predicting successful job performance and thus is unfair in the usual sense of the word. However since no evidence of validity of the NCPOST has been demonstrated, there is no evidence of prediction or differential validity; and the question of test fairness or test unfairness as contemplated by Sec. 14B(8) of the Uniform Guidelines is not presented.

INTERROGATORY NO. 17

Identify each policy, directive, guideline, standard, custom or practice utilized or relied upon by plaintiff in reviewing validation studies since 1970.

ANSWER TO INTERROGATORY NO. 17

The issue before this Court is the validity of the NCPOST. The April 21, 1982 Consent Decree, agreed to by Nassau County and approved and entered by the Court, requires that the County use selection devices that either do not have an adverse impact upon blacks, hispanics and females, or have been validated in accordance with the Uniform Guidelines or successor guidelines. As prescribed by the Consent Decree, the determination of adverse impact and the determination of validity of the NCPOST are to be measured by the standards of the Uniform Guidelines and the standards of Title VII. Subsequent to their adoption by the Department of Justice and other federal governmental

agencies in August 1978, the Uniform Guidelines have been the primary standard utilized by the Department of Justice in reviewing validity studies, together with the case law developed under Title VII. The Uniform Guidelines are intended to be consistent with generally accepted professional standards for evaluating tests, such as those described in the APA Standards (Sec. 5C of the Uniform Guidelines, 28 C.F.R. 50.14). Accordingly, the APA Standards is another major source of reference. In addition, the Department considers, where appropriate, standard textbooks, journals and manuals in the field of industrial psychology, including the first and second editions of the Principles for the Validation and Use of Selection Procedures of the Division of Industrial-Organizational Psychology of the APA (the "Division 14 Principles").

Prior to the adoption of the Uniform Guidelines in August 1978, this Department relied upon the Federal Executive Agency Guidelines on Employee Selection Procedures (41 Fed. Reg. 51734 et seq.), which had been adopted in 1976 and, prior to that, upon the EEOC Guidelines on Employee Selection Procedures (35 Fed. Reg. 12333-12336), and other predecessor guidelines.

INTERROGATORY NO. 18

State whether there are any persons within plaintiff's Department of Justice who are charged with responsibility or whose duties include the formulation, review and/or revision, or recommending the formulation, review and/or revision of

policies, directives, standards and guidelines used in plaintiff's review of validation or other job-relatedness studies. If so, identify each person, set forth each such person's educational and professional backgrounds and identify all previous employment related to any claimed expertise.

ANSWER TO INTERROGATORY NO. 18

The April 21, 1982 Consent Decree, agreed to by Nassau County and approved and entered by the Court, requires that the County use selection devices that either do not have an adverse impact upon blacks, hispanics and females, or have been validated in accordance with the Uniform Guidelines or successor guidelines. The issue at trial will be the validity of the NCPOST under the standards set forth in the Consent Decree. Therefore, the United States is reviewing any validity evidence of the NCPOST against the Uniform Guidelines, applicable Title VII case law, the APA Standards, Division 14 Principles and the standards of that profession. The United States' answer to this Interrogatory therefore is limited to the above standards and guidelines. Any other information requested by this Interrogatory is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence.

In September of 1982, the Equal Employment Opportunity Commission ("EEOC") Commissioners voted to review the recordkeeping provisions of the Uniform Guidelines, pursuant to Section 3 of Executive Order 12291, the provision designated by

the President's task force on regulatory relief. Advance notice of the proposed rulemaking was subsequently issued at which point six to seven general questions were posed and comments received from interested persons. In July 1984, various options were considered and a notice of proposed rulemaking was drafted. Subsequently, a regulatory impact statement was prepared. The EEOC currently is in the process of reviewing the regulatory impact statement as well as the notice of proposed rulemaking. Prior to submission of the notice of proposed rulemaking to the Office of Management and Budget, the cosignees to the Uniform Guidelines will have an opportunity to review the notice of proposed rulemaking.

In July 1984, the EEOC Commissioners voted to review the substantive provisions of the Uniform Guidelines. The EEOC is now in the process of compiling an analytical paper to identify the major issues in terms of the substantive provisions. The Civil Rights Division does not have any employees who are industrial psychologists. The expert opinions of such psychologists are sought on a case by case basis.

INTERROGATORY NO. 19

State whether there are any persons within plaintiff's Department of Labor (including but not limited to the Office of Federal Contract Compliance Programs) who are charged with responsibility or whose duties include the formulation, review and/or revisions, or recommending the formulation, review and/or revision of policies, directives, standards and guidelines used in plaintiffs' review of validation or other job-relatedness studies. If so, identify each person, set

forth each such person's educational and professional background and identify all previous employment related to any claimed expertise.

ANSWER TO INTERROGATORY NO. 19

Except insofar as this Interrogatory is answered by plaintiff United States' answer to Interrogatory No. 18. supra, the United States objects to this Interrogatory because: the information requested is irrelevant and is not reasonably calculated to lead to the discovery of admissible evidence; the gathering of the information sought by this Interrogatory would be overly burdensome if not impossible; and at least some of the information sought is confidential and privileged.

INTERROGATORY NO. 20

State whether there are any persons within plaintiff's Equal Employment Opportunity Commission who are charged with responsibility or whose duties include the formulation, review and/or revision, or recommending the formulation, review and/or revision of policies, directives, standards and guidelines used in plaintiffs' review of validation or other job-relatedness studies. If so, identify each person, set forth each such person's educational and professional backgrounds and identify all previous employment related to any claimed expertise.

ANSWER TO INTERROGATORY NO. 20

Please refer to plaintiff United States' answer to Interrogatory No. 19, supra.

INTERROGATORY NO. 21

State whether there are any persons within plaintiff's Office of Personnel Management who are charged with responsibility or whose duties include the formulation, review and/or revision, or recommending the formulation, review and/or revision of policies, directives, standards and guidelines used in plaintiffs' review of validation or other job-relatedness

studies. If so, identify each person, set forth each such person's educational and professional backgrounds and identify all previous employment related to any claimed expertise.

ANSWER TO INTERROGATORY NO. 21

Please refer to plaintiff United States' answer to Interrogatory No. 19, supra.

INTERROGATORY NO. 22

State whether there are any persons within plaintiff's Office of Management and Budget who are charged with responsibility or whose duties include the formulation, review and/or revision, or recommending the formulation, review and/or revision of policies, directives, standards and guidelines used in plaintiffs' review of validation or other job-relatedness studies. If so, identify each person, set forth each such person's educational and professional backgrounds and identify all previous employment related to any claimed expertise.

ANSWER TO INTERROGATORY NO. 22

Please refer to plaintiff United States' answer to Interrogatory No. 19, supra.

INTERROGATORY NO. 23

State whether there are any persons within plaintiff's Department of Treasury who are charged with responsibility or whose duties include the formulation, review and/or revision, or recommending the formulation, review and/or revision of policies, directives, standards and guidelines used in plaintiffs' review of validation or other job-relatedness studies. If so, identify each person, set forth each such person's educational and professional backgrounds and identify all previous employment related to any claimed expertise.

ANSWER TO INTERROGATORY NO. 23

Please refer to plaintiff United States' answer to Interrogatory No. 19, supra.

INTERROGATORY NO. 24

a. Has plaintiff, UNITED STATES OF AMERICA through any of its departments, offices, agencies or commissions, considered revising, or taken any steps to revise, the Uniform Guidelines? If so:

b. Identify each person in each department, agency, office or commission who has participated in the consideration of revising the Uniform Guidelines?

c. Identify each person who has participated in the revision or proposed revision of the Uniform Guidelines?

d. Identify each document within the possession or custody of the plaintiff's Department of Justice which reflects, pertains, relates or refers to revision of the Uniform Guidelines or consideration thereof;

e. Identify each document within the possession or custody of the plaintiff's Equal Employment Opportunity Commission which reflects, pertains, relates or refers to revision of the Uniform Guidelines or consideration thereof;

f. Identify each document within the possession or custody of the plaintiff's Office of Personnel Management which reflects, pertains, relates or refers to revision of the Uniform Guidelines or consideration thereof;

g. Identify each document within the possession or custody of the plaintiff's Department of Labor which reflects, pertains, relates or refers to revision of the Uniform Guidelines or consideration thereof;

h. Identify each document within the possession or custody of the plaintiff's Office of Management and Budget which reflects, pertains, relates or refers to revision of the Uniform Guidelines or consideration thereof;

i. Identify each document within the possession or custody of the plaintiff's Department of Treasury which reflects, pertains, relates or refers to revision of the Uniform Guidelines or consideration thereof;

ANSWER TO INTERROGATORY NO. 24

Please refer to plaintiff United States' answer to Interrogatory No. 19, supra.

INTERROGATORY NO. 25

a. Describe fully and specifically any steps which plaintiff contends that the Nassau County defendants should have taken to validate or to otherwise demonstrate the job-relatedness of the 1983 NCPOST.

b. Identify each person who has recommended to plaintiff that such procedures would have been followed;

c. Provided plaintiff's best estimate of the cost of implementing such procedure;

d. Describe how and identify by whom the cost estimate was calculated; and

e. Identify all documents which relate, refer, reflect or pertain to such recommendation.

ANSWER TO INTERROGATORY NO. 25

The NCPOST has not been validated in accordance with the Uniform Guidelines. Based on the information submitted in the ETS Final Report and the underlying data, the NCPOST is not a valid predictor of successful performance. The United States is of the view that a new selection procedure should be developed and validated.

INTERROGATORY NO. 26

a. State the minimum sample size which plaintiff contends is required to perform an acceptable criterion-related validation study, generally and in the specific circumstances involving Nassau County.

b. Set forth each and every fact and opinion upon which plaintiff relies in support of that contention;

c. Identify each person having knowledge of each fact upon which plaintiff relies in support of that contention;

d. Identify each person who holds each opinion upon which plaintiff relies in support of that contention;

e. Identify each document upon which plaintiff relies in support of that contention; and

f. Identify each document of which plaintiff is aware is inconsistent with that contention;

ANSWER TO INTERROGATORY NO. 26

Plaintiff United States makes no contention with respect to minimum sample size required to perform an acceptable criterion-related validation study.

INTERROGATORY NO. 27

a. State the minimum racial, ethnic or sex group size which plaintiff contends is required to perform an analysis of the fairness of using the 1983 NCPOST.

b. Set forth each and every fact and opinion upon which plaintiff relies in support of that contention;

c. Identify each person having knowledge of each fact upon which plaintiff relies in support of that contention;

d. Identify each person who holds each opinion upon which plaintiff relies in support of that contention;

e. Identify each document upon which plaintiff relies in support of that contention; and

f. Identify each document of which plaintiff is aware which is inconsistent with that contention;

ANSWER TO INTERROGATORY NO. 27

Plaintiff United States makes no contention with respect to the minimum racial, ethnic or sex group size required to perform an acceptable criterion-related validation study.

INTERROGATORY NO. 28

a. Does plaintiff contend that there is a minimum value for a statistically significant correlation coefficient between selection procedure and performance criterion, below which the selection procedure cannot be appropriately used as a ranking device? If so:

b. State that value;

c. Describe the method and/or formula used to calculate that value;

d. Set forth each and every fact and opinion upon which plaintiff relies in support of that contention;

e. Identify each person having knowledge of each fact upon which plaintiff relies in support of that contention;

f. Identify each person holding each opinion upon which plaintiff relies in support of that contention;

g. Identify each document upon which plaintiff relies in support of that contention; and

h. Identify each document of which plaintiff is aware which is inconsistent with that contention;

ANSWER TO INTERROGATORY NO. 28

Since the NCPOST is not a valid examination, the value for a statistically significant correlation coefficient between selection procedure and performance criterion is not at issue.

INTERROGATORY NO. 29

a. State the minimum correlation coefficient between 1983 NCPOST and each performance criterion measure which plaintiff contends would be sufficient to permit operational use of the 1983 NCPOST as a ranking device.

b. For each performance criterion measure, set forth each and every fact and opinion upon which plaintiff relies in support of that contention;

c. Identify each person having knowledge of each fact upon which you rely in support of that contention;

d. Identify each and every person who holds each opinion upon which plaintiff relies in support of that contention;

e. Identify each and every document upon which plaintiff relies in support of that contention; and

f. Identify each and every document of which plaintiff is aware which is inconsistent with that contention;

ANSWER TO INTERROGATORY NO. 29

Please refer to plaintiff United States' answer to Interrogatory No. 28, supra.

INTERROGATORY NO. 30

Identify each person who supplied any information or who participated in any way in the preparation of, the plaintiff's answer to any of the interrogatories set forth above; and, for each person identified, designate the interrogator(ies) by reference to interrogatory number and subpart in which he or she participated in preparing the answer, indicating the nature of the participation.

ANSWER TO INTERROGATORY NO. 30

Each of the below-identified persons either supplied information or participated in the preparation of plaintiff United States' answer to these Interrogatories:

Erich Prien, PhD., Industrial Organizational
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Department of Justice
Washington, D.C. 20530

Dr. Prien, an industrial psychologist, was consulted with respect to each of the foregoing Interrogatories which bear 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 ETS' development, attempt to validate and preservation of the evidence of the validity of the NCPOST in particular. It is the opinion of Dr. Prien 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.

Dr. Goldstein, also an industrial psychologist, was

consulted with respect to plaintiff United States' answer to Interrogatory No. 1, supra, concerning Request for Admission No. 2. It is the opinion of Dr. Goldstein 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.

Dr. Siskin, a forensic economic statistician, was consulted with respect to each of the foregoing Interrogatories which bear upon the design and application of statistical analysis, methodology and procedures. In addition, the presentation of the adverse impact of the NCPOST (see Interrogatory 1, supra, with respect to Request for Admission No. 2, and Appendices A and B attached hereto) was based upon an analysis conducted by Dr. Siskin of the computer tapes furnished the United States by Nassau County.

If Nassau County requires more specificity as to the nature of participation of Drs. Prien, Goldstein and Siskin with respect to the answers to these Interrogatories, plaintiff United States reiterates its long-standing offer to make its experts available for deposition by the County.



DAVID L. ROSE

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MELISSA P. MARSHALL

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Attorneys

Employment Litigation Section

Civil Rights Division

Department of Justice

Washington, D.C. 20530

Appendix A

OVERALL RESULTS OF THE 1983
NASSAU COUNTY POLICE OFFICER EXAMINATION */

	<u>TOTAL</u>	<u>WHITE</u>	<u>BLACK</u>	<u>HISPANIC</u>
EXAM TAKERS	19,585	12,964	3,946	2,675
PERCENT OF ALL EXAM TAKERS		66.2%	20.2%	13.7%
EXAM PASSERS	10,197	8,196	1,002	999
PERCENT OF ALL EXAM PASSERS		80.4%	9.8%	9.8%
PASS RATES		63.2%	25.4%	37.4%
DIFFERENCES BETWEEN PASS RATES OF WHITES AND OF BLACKS AND HISPANICS MEASURED IN STANDARD DEVIATIONS			41	25
MEAN SCORES	69.8%	72.8%	62.4%	66.0%
DIFFERENCES BETWEEN MEAN SCORES OF WHITES AND OF BLACKS AND HISPANICS MEASURED IN STANDARD DEVIATIONS			51	28

*/ Source: Computer printout No. 1, attached hereto, and analysis undertaken by Bernard Siskin, PhD.

Appendix B

CUMULATIVE DISTRIBUTION OF SCORES ACHIEVED
ON THE 1983 NASSAU COUNTY POLICE OFFICER
EXAMINATION BY THE TOP-SCORING 1,014 PERSONS */

	<u>TOTAL</u>	<u>WHITE</u>	<u>BLACK</u>	<u>HISPANIC</u>
SCORE = 92.9	113	110	2	1
PERCENT OF PERSONS WITH SCORES = 92.9		97.4%	1.8%	0.9%
SCORE = 92.3	153	147	3	3
PERCENT OF PERSONS WITH SCORES = 92.3		96.1%	2.0%	2.0%
SCORE = 92.1	198	190	3	5
PERCENT OF PERSONS WITH SCORES = 92.1		96.0%	1.5%	2.5%
SCORE = 90.5%	332	319	4	9
PERCENT OF PERSONS WITH SCORES = 90.5%		96.1%	1.2%	2.7%
SCORE = 89.4%	549	517	8	24
PERCENT OF PERSONS WITH SCORES = 89.4%		94.2%	1.5%	4.4%
SCORE = 88.5%	856	800	18	38
PERCENT OF PERSONS WITH SCORES = 88.5%		93.5%	2.1%	4.4%
SCORE = 87.9%	1,014	941	22	51
PERCENT OF PERSONS WITH SCORES = 87.9%		92.8%	2.2%	5.0%

*/ Source: Computer printout No. 4 attached hereto.

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

NASSAU COUNTY, et al.,
Defendants.

Civil Action No.
77 Civ. 1881 (FXA)

City of Washington)
District of Columbia) ss.

AFFIDAVIT OF JOHN M. GADZICHOWSKI

I, JOHN M. GADZICHOWSKI, being first duly sworn, hereby depose and state that:

1. I am employed by the United States Department of Justice, Washington, D.C., as a Senior Trial Attorney in the Department's Civil Rights Division, Employment Litigation Section.

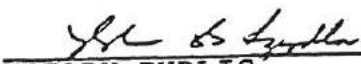
2. As a Senior Trial Attorney in the Employment Litigation Section, I have lead responsibility for representing the United States in United States v. Nassau County, et al., Civil Action No. 77-CV-1881, an action brought by the Attorney General under Title VII of the Civil Rights Act of 1964, as amended, 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. The foregoing Answers of Plaintiff United States to the Nassau County Defendants' Set of Interrogatories Accompanying First Request for Admission by Plaintiff, served May 3, 1985, is true and accurate to the best of my knowledge.


JOHN M. GADZIECHOWSKI
Senior Trial Attorney
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Sworn and subscribed to before me this undersigned authority on this 22^d day of May, 1985, to certify which witness my hand and seal of office


NOTARY PUBLIC

My Commission Expires March 14, 1990

CERTIFICATE OF SERVICE

I, JOHN M. GADZICHOWSKI, hereby certify that on the 22nd day of May, 1985, I served copies of the foregoing Answers of Plaintiff United States to the Nassau County Defendants' Set of Interrogatories Accompanying First Request for Admission by Federal Express, upon each of the following counsel:

EDWARD G. MCCABE
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JOHN M. GADZICHOWSKI
Senior Trial Attorney
Civil Rights Division
U.S. Department of Justice
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Exhibit B



LAWYERS' COMMITTEE
FOR CIVIL RIGHTS UNDER LAW

SUITE 400 • 1400 EYE STREET, NORTHWEST • WASHINGTON, D.C. 20005 • PHONE (202) 371-1212

CABLE ADDRESS: LAW CIV, WASHINGTON, D.C.

May 23, 1985

BY HAND

John M. Gadzichowski, Esq.
Federal Enforcement Section
Civil Rights Division
U.S. Department of Justice
10th & Pennsylvania, N.W., Room 5515
Washington, D.C. 20530

Re: United States v. Nassau County

Dear John:

Nelson Hermilla, the Civil Rights Division's acting Freedom of Information Act official, informed me by telephone late yesterday that the Department of Justice has finally granted our April 1, 1985 request---which at the Department's insistence had to be formalized on April 9 as a request under the Freedom of Information Act---for the pleadings and public papers in the above-captioned case. He informed me that I should get in touch with you to make arrangements for the copying. I would like to do this as soon as possible.

David Rose also informed me this morning that the Justice Department has objected to the hiring examination given by Nassau County in 1983. We're pleased to hear of this decision.

As you know, I represent the Nassau Guardians and some unhired black applicants as to the hiring examination. On May 1, 1985, the Guardians, John Davis and I met with Mr. Reynolds, the Assistant Attorney General for the Civil Rights Division, Mr. Rose, you, and other Civil Rights Division officials concerning the hiring examination, and the Justice Department's agreement to let Nassau County proceed with the hiring of 105 applicants on the rank-ordered list arising from this examination. The persons to be hired include 104 whites and only 1 black. We understand that there is to be a second wave of 95 hires in September 1985, by which date the Department hopes to have a decision on the legality of the examination.

At the May 1 meeting, I pointed out to Mr. Reynolds that the 1982 Consent Decree allowed Nassau County to continue hiring from an unlawful test, as long as it hired in a manner which eliminated the adverse impact of the test. Thus, if blacks and Hispanics were 40%

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

John M. Gadzichowski, Esq.

May 23, 1985

Page 2

of the applicants, they would have to be 40% of the hires. See the Decree, ¶ 11 at pp. 7-8. This is an option expressly permitted to employers in the Uniform Guidelines on Employee Selection Procedures, sec. 6A, adopted in the Justice Department's own regulations at 28 C.F.R. § 50.14(6A) at p. 437 (1984). See also Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures, also adopted by the U.S. Department of Justice, 44 Fed.Reg. 11996, 12001, 12002 (March 2, 1979) (questions and answers 31 and 72).

Having pointed this out, I asked Mr. Reynolds whether the Justice Department would commit itself to seeking similar relief as to the 1983 hiring examination, cancelling out the adverse impact of the rank-ordered test by requiring the County to hire blacks and Hispanics in September 1985 so that, when the 200 hires in May and September are added together, blacks and Hispanics will comprise a third of the hires just as they comprised a third of the test-takers. I also asked whether the Justice Department's broad reading of the decision in Memphis Firefighters v. Stotts, 81 L.Ed.2d 483, 104 S.Ct. 2576 (1984), would in the Department's view bar its seeking such relief. Mr. Reynolds pointed out that no final decision had yet been made on challenging the test, and declined to answer the questions on the ground that the questions were premature.

Now that the Justice Department has decided to challenge the test, and now that we have learned that Nassau County intends to swear in the 105 applicants on May 31, the questions must be answered. I believe that full relief for the unlawful 1983 hiring examination would be provided by requiring the County to hire at least 40 blacks and 27 Hispanics among the 95 September 1985 hires, with back pay and retroactive seniority to May 31, 1985, so that these hires will be on the same footing as those sworn in on May 31.

If the Justice Department will now commit itself to seeking this relief in the event the Court rules the test invalid, and commits itself to obtaining this relief in any settlement, I will advise my clients that there is no need for them to intervene in this case as additional plaintiffs. If the Justice Department intends to seek full relief in some other form, which will have the same effect, I would be happy to discuss it with you so that we can decide whether a commitment to seek the other form of relief will be sufficient. Otherwise, my clients will have no choice but to intervene to protect their interests in obtaining full relief.

Because the Justice Department has just now reached its decision and has notified us of the decision today, and because Nassau County intends to swear in a virtually all-white group of applicants a week from today, we request an immediate answer.

Very truly yours,


Richard T. Seymour