

RM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS FREEMAN, JR.,	:	CIVIL ACTION
MICHAEL E. JORDAN, RODNEY	:	
LADSON, individually and on	:	
behalf of all others similarly	:	
situated, and THE GUARDIAN	:	
CIVIC LEAGUE, INC.	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
CITY OF PHILADELPHIA	:	
	:	
and	:	
	:	
ORVILLE W. JONES, in his	:	
official capacity as the duly	:	
appointed PERSONNEL DIRECTOR	:	
For the CITY OF PHILADELPHIA	:	
	:	
Defendants.	:	NO. 90-2356

CONSENT ORDER

WHEREAS, this action was instituted on April 5, 1990 by the above-named plaintiffs, who are Afro-American applicants for the City of Philadelphia civil service position of Police Officer Recruit who took the civil service qualifying written entrance examination administered by the defendants on December 16, 1989;

AND WHEREAS, subsequent to the defendants' January 12, 1990 certification of an eligibility list based on the December 16 exam, the individually named plaintiffs duly filed charges alleging race discrimination in hiring by the defendants with the U. S. Equal Employment Opportunity Commission (hereinafter "EEOC") and thereafter filed this action seeking class certification and preliminary and permanent injunctive relief (as well as other remedial relief) pursuant to Title VII of the Civil Rights Act of

1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. §§2000e-1 (hereinafter "Title VII"); the Civil Rights Act of 1866, 42 U.S.C. §1981; and the Civil Rights Act of 1866, 42 U.S.C. §1981; and the Civil Rights Act of 1871, 42 U.S.C. §1983;

AND WHEREAS, the plaintiffs' EEOC charges, and the allegations in this action, claim that the defendants are engaging in unlawful race discrimination in hiring by using a written examination for the position of Police Officer Recruit which is not a genuine and reliable predictor of the quality of on-the-job performance in the position and which consistently results in a passing and eligibility rate for Afro-American applicants which is statistically significantly lower than the corresponding rate for white applicants;

AND WHEREAS, plaintiffs contend that the defendants' continuing practice of rejecting (i.e. failing) candidates, or placing them on the eligibility list in order based solely upon scores achieved on a written examination which has not been proven to predict actual job performance, is illegal under federal civil rights laws and should be enjoined;

AND WHEREAS, the parties agree that the City has utilized an exam originally prepared by Educational Testing Services ("ETS") and modified by the City in 1987 and 1989 which has had an adverse impact on Afro-American applicants;

AND WHEREAS, the City again administered an ETS examination in June 1990 and may use it later in 1990 and beyond 1990 if necessary;

AND WHEREAS, ETS is no longer marketing an examination for police applicants;

AND WHEREAS, the ETS exams used in Philadelphia and other cities to date have never been found by a court to be valid predictors of an applicant's ability as a police officer;

AND WHEREAS, the named representative plaintiffs, the plaintiff classes, and the defendants, desirous of avoiding litigation over the issue of the validity of tests to predict the ability of applicants to perform as officers, and desirous of ensuring the promotion of equal opportunities within the Philadelphia Police Department without delaying through litigation the processing of candidates for the position of Police Officer Recruit, hereby agree and consent to the entry of this Order as a final Order with respect to all of the issues raised in the Complaint;

AND WHEREAS, it is agreed that this Order is entered with their consent in full and complete settlement and satisfaction of all issues which were or could have been raised in this litigation and that upon the entry of this Order, and subject to the provisions of this Order, this litigation is terminated with prejudice. Further, the individual plaintiffs agree to withdraw with prejudice their charges filed before the EEOC (Freeman - charge #170900458; Ladson - charge #170900461; and Jordan charge #170900498);

AND WHEREAS, the Court has determined that this Order is a fair, adequate, and reasonable settlement of this action, and that the obligations imposed upon the defendants by this Decree are proper under law, including 42 U.S.C. §§1981, 1983; Title VII of

the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e, et seq.; and the Constitutions of the United States and the Commonwealth of Pennsylvania, and that the Order will not result in discrimination under those statutes, and that it is within the Court's equitable powers under those laws;

NOW THEREFORE, this _____ day of _____, 1990, after full hearing and consideration of the matters before the Court, this final Order is hereby DECREED, with the consent of the parties:

I. JURISDICTION

1. This Court has jurisdiction to enter preliminary and permanent injunctive relief pursuant to 42 U.S.C. §§1981 and 1983 and 42 U.S.C. §2000e-5(f)(2). By letter from plaintiffs' counsel to the EEOC dated January 25, 1990 plaintiffs requested that the United States seek preliminary injunctive relief pursuant to Title VII, 42 U.S.C. §2000e-5(f)(2). To date the United States has not responded or otherwise acted. Thus this Court also has jurisdiction to enter preliminary and/or final injunctive relief under Title VII.

II. ISSUES LITIGATED

2. Nothing in this Consent Decree shall affect, be interpreted as expanding, modifying, or otherwise altering the obligations of the City of Philadelphia, its officials and employees (hereinafter "City"), insofar and to the extent that any such obligations remain, under the Consent Decrees in Commonwealth of

Pennsylvania, et al. v. O'Neill, et al., C.A. No. 70-3500; Brace v. O'Neill, et al., C.A. No. 74-339; U.S. v. City of Philadelphia, C.A. No. 74-400; Sanford, et al. v. O'Neill, et al., C.A. No. 78-1154; and Alvarez, et al. v. City of Philadelphia, C.A. Nos. 79-375 and 79-1192. Nothing in this decree shall in any manner limit or alter the rights of any persons of any race who passed the December 1989 examination and who have been appointed as Police Officer Recruits.

III. CLASS CERTIFICATION

3. The parties agree to, and pursuant to Rule 23 of the Federal Rules of Civil Procedure the Court hereby certifies, the following plaintiff class:

(a) All Afro-American applicants who were notified that they failed the written examination administered on December 16, 1989 (approximately 470 in number);

(b) All Afro-American applicants who received a passing score on the December 16, 1989 examination but were not selected in the group to be processed for appointment to the first class of Police Officer Recruits because of the use of an eligibility list based on rank order scores on the examination (approximately 1200 in number); and

(c) All Afro-Americans who will take a Police Officer Recruit examination which is scheduled to be given by the defendants in June 1990.

4. With respect to the above class the Court finds, and the parties hereby agree, that (a) the class is so numerous that

joinder of all members is impracticable, (b) there are questions of law or fact common to the class, (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (d) the representative parties will fairly and adequately protect the interests of the class.

5. With respect to the above class the Court further finds, and the parties hereby agree, that the party which would otherwise oppose the class (the City) can be found to have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; and that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

IV. INJUNCTION

6. The City is hereby enjoined from certifying an eligibility list based on any written examination for the civil service position of Police Officer Recruit (or equivalent entry level position) in which Afro-American applicants have a passing rate which is less than the passing rate of applicants in the racial group having the highest passing rate by a statistically significant amount, or in which the percentage of Afro-Americans in the top 1000 on the eligibility list is less than the percentage of Afro-Americans who passed the test by a statistically significant amount, unless: (a) this Court has found after an appropriate

hearing that the test and its method of scoring (pass/fail or rank order) has been validly shown to predict performance of applicants as police officers; or (b) the provisions of paragraph 8 are complied with.

7. Subject to the provisions of paragraph 6, nothing in this Consent Decree, shall limit, or be interpreted as limiting the City's ability to take steps to alter or replace existing written entrance examinations with other examinations which the City deems to be of increased validity. Moreover, nothing in this Consent Decree shall limit, or be interpreted as affecting the City's discretion to alter or replace existing methods of scoring future examinations provided that such steps are intended to assure compliance with paragraph 6.

V. SELECTION OF RECRUITS

8. (a) During the duration of this Consent Order, the appointment of Afro-Americans to the position of Police Officer Recruit (or equivalent entry level position) shall be at least at the same rate as the percentage that Afro-Americans are of test applicants. (Applicants shall hereinafter mean test takers.) That is, for each 100 candidates appointed by the City as Police Officer Recruit, the number of Afro-American appointments shall always equal at least the percentage that Afro-Americans were of all applicants who took the test multiplied by 100.

(b) If the City adopts a process of continuous testing, the appointment rate will be based on the percentage that Afro-American test takers were of all test takers for tests given in the

preceding six month period, as reported pursuant to paragraph 18. If either party concludes after six months under this subparagraph that an adjustment is needed so that the appointment rate adequately reflects applicant flow rates, the parties may jointly revise this provision or, if unable to agree, may apply to the Court.

(c) Nothing herein shall preclude the City from placing candidates on each eligibility list by rank order according to their scores, by random selection, or by any other method which it may lawfully pursue; this order shall not be deemed to require pass-fail grading which may be utilized only if in accordance with state law.

(d) If there are insufficient Afro-Americans remaining on an eligibility list to comply with this paragraph, the City shall discontinue use of that list, unless the City chooses to select Afro-Americans from a newly certified list while continuing to use a prior eligibility list for selecting other candidates for the purpose of meeting the requirements of this paragraph 8.

(e) Nothing herein shall be interpreted as guaranteeing or requiring that any particular Afro-American candidates be hired.

VI. INDIVIDUAL RELIEF

9. Plaintiff Michael Jordan, who passed the written examination administered on December 16, 1989, and whose name appears on the current eligibility list ranked at 3481, shall promptly be notified by the City that he will be selected for further screening and processing. Said notice shall include an approximate date upon

which plaintiff Jordan can expect to be called for the next screening step.

10. Plaintiffs Freeman and Ladson, who were notified that they failed the written examination administered on December 16, 1989, shall be notified by the City of the next examination date. Prior to that date the City shall offer said plaintiffs an opportunity for an individualized training session.

VII. CLASS RELIEF

11. (a) Those class members who passed the December 16, 1989 or June 1990 examinations shall be selected on the basis of paragraph 8. To the extent any selections for processing have been made from the respective eligibility lists prior to entry of this Order on a basis inconsistent with paragraph 8, future appointments from the June examination list (or a subsequent list if necessary) shall be adjusted so that the overall appointment rate for Afro-Americans shall be in compliance with paragraph 8 no later than when the total number of persons appointed after this Order is entered equals the total number appointed prior to entry of this Order. For the purpose of this paragraph only, the applicant flow rates of paragraph 8 shall be adjusted with respect to the December exam to delete persons of all races who passed the exam and were called for processing but did not report or withdrew from consideration.

(b) All class members who did not pass the December 16, 1989 or June 1990 examinations shall be given notice of the next examination for Police Officer Recruit after this order and the

City shall, after appropriate notice, conduct a training session specifically for such class members in a timely fashion prior to that entrance examination.

VIII. DEVELOPMENT OF NEW EXAMINATIONS

12. The City shall publicly solicit proposals for a Police Officer Recruit examination which shall minimize adverse impact on minorities and which shall have been or can be validated. The announcement of such solicitation shall be issued within 45 days of this Order. The Personnel Director shall file a report with the Court within 120 days of receiving the proposals stating his reasons for selecting or rejecting each of the proposals received. All information available to the City in connection with analyzing the proposals shall be shared with counsel to the parties.

IX. RECRUITMENT AND TRAINING

13. The City shall continue its current efforts to promote the interest, application, and hire of qualified Afro-American candidates for the position of Police Officer Recruit.

14. In order to facilitate and increase the effectiveness of the City's recruitment efforts, during active recruiting periods, the Police Department shall assign Police Officers to perform recruitment duties as their primary function.

15. (a) Until and unless the City shifts to the administration of continuous, rather than periodic civil service written entrance examinations for the position of Police Officer Recruit, the City shall conduct or sponsor at least one (1) training session

prior to the date of each examination so that prospective test takers may be assisted in their preparation for such examinations. The City may employ the Guardian Civic League (an association of Afro-American police officers) or an equivalent organization. Plaintiffs shall be notified and consulted about any equivalent organizations to be selected by the City.

(b) If the City utilizes a test for which prior training is inappropriate, the City shall notify plaintiffs and shall not have to conduct or sponsor any training.

16. If the City shifts to the administration of continuous written entrance examinations for the position of Police Officer Recruit, the City shall similarly conduct or sponsor training sessions on a regularly scheduled, year-round basis.

17. The City shall increase its efforts to locate and encourage Afro-American test takers who pass the written entrance examination for the position of Police Officer Recruit, but who do not report for further screening and processing. As part of these efforts, the City shall cooperate with the Guardian Civic League and equivalent organizations in trying to locate such persons.

X. NOTICE AND REPORTING REQUIREMENTS

18. (a) The City shall advise counsel for the parties 30 days before the announcement of any exam of its intention to hold the exam; the type exam; what organization shall provide the questions or score the exam; the basis for scoring the exam; and any other information which counsel may reasonably request. The City shall provide to counsel to the parties as soon as practicable

after the test, but no less than 14 days prior to the date on which names are certified from any eligibility list, the percentage for each race taking the exam, the percentage for each race passing the exam, and the percentage for each race in each 1000 rank order, if applicable. A copy of the final eligibility list shall be provided counsel as soon as it is certified.

(b) Within 30 days of the completion of each calendar quarter ending March 31, June 30, September 30 and December 31 the City shall report the racial composition of all those persons (i) called from the eligibility list for final processing, the racial composition of those persons passed, rejected or held in each stage of the processing, and the race of all appointments to the position of Police Officer Recruit (or equivalent entry level position), the racial composition of each police academy class begun during the period, the racial composition at the time of graduation during the period.

(c) Any additional information which counsel to the parties may reasonably request in order to ascertain compliance with this Consent Order, including any information concerning any studies conducted to validate any exam.

19. All required notices to counsel shall be sent by first class mail or hand delivered to the offices of the Public Interest Law Center of Philadelphia, 125 South 9th Street, Suite 700, Philadelphia, Pennsylvania 19107, 215-627-7100.

XI. DURATION OF ORDER AND CONTINUING JURISDICTION OF THE COURT

20. (a) The rights and obligations under paragraphs 6, 7 and 8 of this Consent Order shall expire after (i) the City has created an eligibility list for Police Officer Recruit based on an examination in which Afro-American applicants have a passing rate which is not less than the passing rate of applicants in the racial group having the highest passing rate and where the percentage of Afro-Americans in the first 1000 persons on the eligibility list is equal to their percentage on the entire list, or based on an examination which this Court has determined to be a valid predictor of performance as a police officer or (ii) 10 years, whichever is earlier.

(b) The rights and obligations under all other paragraphs shall continue through the expiration of the next eligibility list created after the termination of this Order under paragraph (a) above.

(c) The Court shall retain jurisdiction to modify, amend, and enforce this Order and to make a determination upon petition by defendants whether an examination is a valid predictor of performance.

XII. COUNSEL FEES AND COSTS

21. The City shall promptly review and consider requests for statutory attorneys' fees and costs from plaintiffs' counsel upon submission to the City of time/activity entries, hourly rates and other appropriate information. Any disputes may be presented to the Court upon appropriate petition.

XIII. RELEASE

22. For and in consideration of this Consent Order as set forth in the preceding paragraphs, the named plaintiffs and the class they represent, agree and consent to the entry of this Order as a final order with respect to all of the issues in this litigation, and do hereby remise, release, and forever discharge the defendants, their agents, servants, or employees, from any and all liability, actions and causes of actions, claims, and demands whatsoever in law or equity which have heretofore arisen in this action or which could have arisen from this action prior to the date of this Order, including but not limited to challenges as to the legality of the December 16, 1989 entrance examination, to the

January 12, 1990 certification of an eligibility list and to the June 1990 examination.

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June ____, 1990

APPROVED and ENTERED this 16th day of OCTOBER, 1990

[Signature]

10-17-90
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ENTERED: FILED OCT 17 1990

CLERK OF COURT

