

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 12-cv-10291-WGY

BRUCE SMITH, et al  
Plaintiffs

vs.

CITY OF BOSTON,  
Defendant

\*\*\*\*\*

For Trial Before:  
Judge William G. Young

Bench Trial

United States District Court  
District of Massachusetts (Boston)  
One Courthouse Way  
Boston, Massachusetts 02210  
Monday, December 22, 2014

\*\*\*\*\*

REPORTER: RICHARD H. ROMANOW, RPR  
Official Court Reporter  
United States District Court  
One Courthouse Way, Room 5510, Boston, MA 02210  
bulldog@richromanow.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

HAROLD L. LICHTEN, ESQ.  
BENJAMIN WEBER, ESQ.  
Lichten & Liss-Riordan, P.C.  
100 Cambridge Street, 20th Floor  
Boston, MA 02114  
Email: Hlichten@llrlaw.com

and

STEPHEN S. CHURCHILL, ESQ.  
Fair Work, P.C.  
192 South Street, Suite 450  
Boston, MA 02111  
Email: Steve@fairworklaw.com  
For plaintiffs

GEOFFREY R. BOK, ESQ.  
KAY H. HODGE, ESQ.  
JOHN M. SIMON, ESQ.  
Stoneman, Chandler & Miller  
99 High Street  
Boston, MA 02110  
Email: Gbok@scmillp.com  
For defendant



1 P R O C E E D I N G S

2 (Begins, 9:15 a.m.)

3 THE COURT: Good morning, counsel. And you may  
4 remind the witness.

5 THE CLERK: I'd like to remind you that you're  
6 still under oath.

7 THE WITNESS: Yes.

8 THE COURT: And, Mr. Lichten, you may continue --  
9 actually you may commence.

10 MR. LICHTEN: Your Honor, as the Clerk may have  
11 told you, there's a small issue still with this  
12 deposition. Do you want to take that up?

13 THE COURT: What is it?

14 MR. LICHTEN: Dr. Hough filed her report at 7:00  
15 this morning. She's arranged to be available by  
16 teleconferencing deposition that we will pay for on the  
17 28th, 29th, and 30th, in the middle of her vacation in  
18 Colorado. Alternatively she's agreed to cut short her  
19 vacation and get here on the 5th, that would be if they  
20 want to do it in person, then she can testify a day or  
21 two later. They interpret your order as not permitting  
22 either of those and the defendants won't agree to either  
23 of those.

24 THE COURT: Well, on reflection it seems to me you  
25 can take her by skype, if you want, that's okay, if she

1 can do it by teleconference, she can do it by skype, but  
2 I'm not going to require her to come to Boston. That's  
3 satisfactory. So that resolves that.

4 You've reminded the witness?

5 THE CLERK: Yes, your Honor.

6 THE COURT: Go ahead, Mr. Lichten.

7

8 CROSS-EXAMINATION BY MR. LICHTEN:

9 Q. Good morning, Dr. Champion. I hope you've had a  
10 good weekend.

11 A. Thank you.

12 Q. Dr. Champion, you have a consultant resume as well  
13 as a professional resume, is that correct?

14 A. Well, I have an academic and a consulting resume.

15 Q. Right. And some of the things you list on your  
16 consultant resume are "employment interviewing" and  
17 "assessment testing," is that correct?

18 A. Oh, yes.

19 Q. "Performance management"?

20 A. Yes.

21 Q. "Litigation support"?

22 A. Yes.

23 Q. "Skill career development"?

24 A. Yes.

25 Q. "Compensation and reward systems"?

1 A. Yes.

2 Q. "Surveys"?

3 A. Yes.

4 Q. "Validation and legal defensibility"?

5 A. Right.

6 Q. "Work team and organizational design"?

7 A. Yes.

8 Q. "Training and management development"?

9 A. Yes.

10 Q. "Turnover management," is that right?

11 A. Yes.

12 Q. And "Recruiting services"?

13 A. That's right.

14 Q. Okay. And then you list -- on the third page you  
15 list some of your consultive clients and you've  
16 consulted for a wide array of private companies in the  
17 United States, very large companies, is that right?

18 A. Yes.

19 Q. Now, you have never before been an expert in a  
20 police promotional case, is that right?

21 A. Yes, that's right.

22 Q. And you have never before constructed a police  
23 promotional process, is that correct?

24 A. Not police specifically, no.

25 Q. Okay. Well, whether it's state police or local

1 police in a city, you've never constructed a police  
2 promotional process for any local or state police, is  
3 that correct?

4 A. Not police specifically, no.

5 Q. Okay. And you've never before been involved in a  
6 police case, is that right?

7 A. Do you mean a case that is in -- a law case?

8 Q. Yes.

9 A. No.

10 Q. No, that is correct or it is not correct?

11 A. I'm sorry. That is correct.

12 Q. Okay. Now, you have had some involvement with --  
13 let's see if I understand this, the Department of State  
14 and the arm of the Department of State that's  
15 responsible for security as well as many other positions  
16 at the Department of State, is that correct?

17 A. Yes.

18 Q. And you've overseen, um, the way they do  
19 promotional -- promotions at the state department with  
20 respect to that arm in the State Department that does  
21 law enforcement for the State Department, is that  
22 correct?

23 A. Yes.

24 Q. Okay. And I think you described in your  
25 deposition, I think you said those are the people with

1 the earplugs or the earphones in their ears and the big  
2 sports coats over them?

3 A. To hide the gun, right.

4 Q. Yes, to hide the gun.

5 And the promotional process that you've overseen for the  
6 State Department involves -- is a highly-structured  
7 process, would you agree with that?

8 A. Oh, yes.

9 Q. Okay. And it -- and the reason it's  
10 highly-structured is to ensure fairness, is that right?

11 A. Yes, consistency as well as transparency.

12 Q. Got you. And during the time you've overseen this  
13 there's probably been hundreds of such promotions, is  
14 that fair?

15 A. Yes, not just diplomatic security, but more  
16 broadly, yes.

17 Q. Well, let's just talk about diplomatic security,  
18 hundreds or less?

19 A. Well, I don't directly oversee their promotion  
20 boards, but I work with the Department in the State  
21 Department that manages the promotion board process.

22 Q. Okay. And there are no written examinations in  
23 the State Department law enforcement arm promotional  
24 process, is that correct?

25 A. Yes, not for promotion, but for hiring.

1 Q. All right. I'm just talking about promotions  
2 right now. But not for promotions, is that correct?

3 A. Not for promotions, no.

4 Q. Okay. And were you involved -- but it does have  
5 structured oral interviews, is that correct?

6 A. No.

7 Q. Okay. Now, you've been involved over your career  
8 in the design of structured oral interviews, is that  
9 correct?

10 A. Yes.

11 Q. And in fact you published on the subject, is that  
12 correct?

13 A. Yes.

14 Q. And it's actually listed as one of your primary --  
15 I don't know if "life's work" is the way to say it, but  
16 one of your primary interests is the structured oral  
17 interview, is that correct?

18 A. I believe so.

19 Q. Okay. And as I understand it, for many years,  
20 maybe 25, 30 years ago, scientists such as yourself were  
21 concerned about using interviews to promote people  
22 because of the possibility of subjectively or cronyism,  
23 is that right?

24 A. I'm sorry. Could you restate that?

25 Q. Sure. Would you agree that before you began

1 publishing in this field about those highly-structured  
2 interviews there was concern that oral interviews might  
3 not be a good way to promote people because of the  
4 possibility of bias and cronyism?

5 A. I don't know that.

6 Q. Okay.

7 A. The interview had been used previously, but I  
8 don't know that there were concerns specifically about  
9 the interview.

10 Q. Okay. Well, how about the rating of the scores  
11 from the interview?

12 A. I think the concern was with cronyism, but it  
13 wasn't specifically that interviews are good or bad.

14 THE COURT: I'm not clear how you're parsing it.  
15 One would think that an interview process, um, however  
16 structured, has certain risks of subjectivity that a  
17 written exam would not have, right?

18 THE WITNESS: Absolutely, yes.

19 THE COURT: All right. And among those, though  
20 you try to get independent people and the like, are  
21 cronyism?

22 THE WITNESS: Oh, for sure. It could be all kinds  
23 of biases.

24 THE COURT: Right. Political partisanship?

25 THE WITNESS: Sure.

1 THE COURT: Covert bias or unrecognized bias to be  
2 attracted to the like and turned off by those who are  
3 different from us, those things?

4 THE WITNESS: Surely hypothetically that's true.

5 THE COURT: All right. Go ahead.

6 MR. LICHTEN: Thank you, your Honor.

7 Q. But then along came yourself and others and you  
8 began, um, stating in literature that you believed that  
9 if interviews were highly-structured and subject to  
10 various conditions they could become -- they could have  
11 validity, is that correct?

12 A. Oh, yes.

13 Q. Okay. In fact you developed, for a number of your  
14 clients, highly-structured interviews that you believe,  
15 because of the precautions taken in the structural  
16 interview, have good validity, is that right?

17 A. Yes.

18 Q. (Pause.) I just wanted to ask you very quickly  
19 about something.

20 On your resume you say that your GRE scores were "fairly  
21 average." You say that. That's not me trying to impugn  
22 you in any way, because I'm not. But you say that, is  
23 that correct?

24 A. No.

25 Q. You don't say that your -- you haven't published

1 something that says your GRE scores were fairly average?

2 A. That's not my resume.

3 Q. What?

4 A. That's not my resume.

5 Q. What is it on?

6 A. Well, when I was president of my professional  
7 association they asked us to write an autobiography to  
8 sort of inspire or historically document something about  
9 our lives, and so that was actually an essay that I  
10 wrote after I was president of my professional  
11 association, I was describing my education and graduate  
12 career and I made that statement in that essay.

13 THE COURT: Is it true?

14 THE WITNESS: Well, it wasn't as high as I wanted  
15 it to be. Let's put it that way.

16 Q. And in fact for graduate school you went to the  
17 University of Acron, is that correct?

18 A. For my master's, yes.

19 Q. Okay. Now, I don't mean anything bad about this  
20 because I understand you're now a top scientist in the  
21 field of industrial organizational psychology, is that  
22 correct?

23 A. I've had a very good career.

24 Q. So you would agree that the GRE was not a great  
25 predictor of how you would do in the field of

1 organizational psychology, is that correct?

2 MR. SIMON: Objection, your Honor.

3 THE COURT: Yeah, sustained. I don't think that's  
4 relevant. Any more relevant than my musings that the  
5 LSATs are very good at predicting law school work and  
6 not at all good at predicting what happens after law  
7 school. Sustained.

8 MR. LICHTEN: Sure, your Honor.

9 Q. Now, at your deposition you mentioned that one of  
10 the recent promotional processes that you designed is  
11 for Walgreens, which I think we all know. Is that  
12 correct?

13 A. Yes.

14 Q. And Walgreens is a huge company that has  
15 pharmacies all over the country, is that right?

16 A. Yes.

17 Q. And you've designed, um -- you've been involved in  
18 the design of the promotional process for store managers  
19 and regional managers and then higher-level officials,  
20 is that correct?

21 A. Yes.

22 Q. And that promotional system involves an appraisal  
23 system, is that correct?

24 A. In part, yes.

25 Q. It involved an interview process, is that right?

1 A. Yes.

2 Q. And it involves past job performance, is that  
3 correct?

4 A. Yes, among other things.

5 Q. And then it involves some test for math skills,  
6 isn't that right?

7 A. Yes.

8 Q. And you designed that process to, Number 1, try to  
9 make it valid or more valid, is that right?

10 A. Yes.

11 Q. And to reduce adverse impact, is that right, that  
12 was your purpose?

13 A. Well, no, mainly it was to ensure its validity.

14 Q. But you have reduced adverse impact with that  
15 process, is that correct?

16 A. I don't know that historically it has reduced  
17 adverse impact, no, I don't know that.

18 Q. Okay. Now, if you think about all the promotional  
19 procedure that you've been involved in designing in the  
20 last 10 years, none of them involved the use solely or  
21 exclusively of a multiple choice job knowledge test, is  
22 that correct?

23 A. No, that's incorrect.

24 Q. Do you remember testifying in a deposition?

25 A. Do I remember testifying?

1 Q. Yes.

2 A. Yes.

3 Q. (Hands deposition to witness.) Okay. Do you  
4 remember me asking you, "In the last 10 years" -- and  
5 I'm quoting now from the deposition, -- "is there any  
6 promotional process that you have designed anywhere that  
7 has only, as its component, a written multiple choice  
8 job knowledge test." Do you see that?

9 A. No. Where am I looking?

10 Q. Page 28 at the bottom. I'm sorry.

11 A. (Looks.) Well, okay, so, I'm sorry, but what --  
12 I'm on 28?

13 Q. At the bottom of Page 28 I asked you, did I not,  
14 and I'll try to quote, "In the last 10 years is there  
15 any promotional process that you have designed anywhere  
16 that has only, as its component, a written multiple  
17 choice job knowledge test." Do you see that?

18 A. I'm sorry I don't. What line number is it?

19 Q. And just so we're clear I'm using the page numbers  
20 at the bottom of the page.

21 A. Oh, I'm sorry, there are page numbers at two  
22 locations. You're at the bottom. Okay. There are  
23 those other ones. So 28 at the bottom. Yes, I do see  
24 that.

25 Q. Well, I'll say it one more time. "In the last 10

1 years is there any promotional process you have designed  
2 anywhere that has only, as its component, a written  
3 multiple choice job knowledge test." Do you see that?

4 A. Yes.

5 Q. And your answer was "Probably not, but you  
6 remember I have done a lot, but I have not done a police  
7 promotion." Was that your answer?

8 A. Yes, but you'll see later in the page that I  
9 clarify that I did develop promotional exams for patent  
10 and trademark examiners that was based solely on a  
11 written exam.

12 Q. Okay. And was that a hiring process or a  
13 promotional process?

14 A. No, that's promotion to what they call "signature  
15 authority" where they can give early patent approval and  
16 it's a promotional exam that they must pass.

17 Q. So your testimony is that the only promotional  
18 examination process that you've been involved in in the  
19 last 10 years that uses exclusively a written multiple  
20 choice test is patent examiners?

21 A. That's the only one I can remember right now, but  
22 remember I've done 900 projects, it's hard to keep them  
23 all straight. I don't believe there are many others,  
24 but that one I think is -- was just a job knowledge test  
25 that we used.

1 Q. Okay. And with respect to that, the patent  
2 examiners, you used an open book test process, is that  
3 correct?

4 A. Well, what I think I testified here is I could not  
5 recall precisely, but that they do -- the nature of the  
6 work is such that if they need to look something up they  
7 can and that that was the key consideration. But I  
8 don't actually remember the exam instructions. But I  
9 seem to recall that they could. But again I'm not 100  
10 percent.

11 Q. So as you sit here today your best belief is that  
12 in this patent examiner process, um, that you were  
13 involved in the design of a, um -- that people taking  
14 the exam were allowed to use an open book, is that  
15 right?

16 A. No, I'm saying I don't remember. But it is  
17 possible because on the job they can look things up and  
18 so that would then reflect how the job is performed.  
19 But I honestly don't remember. If I could add, at the  
20 time --

21 Q. I'm not asking you to add anything right now. I  
22 just want to get that clear.

23 So is it your testimony that if someone, um,  
24 looking for a promotional job, um, could answer  
25 questions by looking them up in some quick fashion, that

1 would suggest to the industrial organizational  
2 psychologist designing the exam that you would use an  
3 open book format, is that correct?

4 A. All I said was that was a consideration. There  
5 are other considerations as well.

6 Q. Well, are you aware -- let me ask you this way, of  
7 other police jurisdictions that utilize an open book  
8 examination process?

9 A. No, I have not studied that. No.

10 Q. So you don't know one way or another, is that  
11 correct?

12 A. No, I do not know.

13 Q. But that is an alternative to have an open book  
14 process, is that correct?

15 A. Yes, but it changes the skill that you're  
16 measuring.

17 Q. So what is the skill that you're measuring if  
18 you're utilizing an open book examination process?

19 A. Well, it changes it from measuring knowledge to  
20 measuring the ability to find information quickly, which  
21 is a different -- it's a different kind of aptitude.

22 Q. But when you're measuring on a multiple choice  
23 test job knowledge that's taken directly out of text and  
24 rules, you're measuring memorization, are you not?

25 A. Well, certainly you're measuring a person's

1 knowledge and you can call it "memorization" if you'd  
2 would like, but it's their possession of facts.

3 Q. Were you aware that on this test -- and I think  
4 you said this already, the answers came right out of the  
5 text or rules that people were asked to study on the  
6 reading list, is that correct?

7 A. Yes. Uh-huh.

8 Q. So those that are good at memorization would have  
9 a better chance of memorizing what came out of that text  
10 when they see the answer of one of the possible multiple  
11 choice answers, is that right?

12 A. It's one of the many aptitudes that would play a  
13 role, yes.

14 Q. (Pause.) Now, as you sit here today or as you sat  
15 there at the deposition a couple of days ago, you're not  
16 aware of any large police jurisdiction in the United  
17 States, city or state, that uses only a multiple choice  
18 job knowledge test to promote its officers to the  
19 position of lieutenant, is that correct?

20 A. I have not studied that, no.

21 Q. So the answer to my question is you're not aware  
22 of any such jurisdictions, is that correct?

23 A. I don't know one way or the other.

24 Q. Okay.

25 (Pause.)

1 MR. LICHTEN: May I approach, your Honor?

2 THE COURT: You may.

3 (Hands to witness.)

4 Q. Very quickly, Doctor, you provided a report  
5 regarding a case involving the Dallas Morning News, is  
6 that correct?

7 A. Yes.

8 Q. Okay. And I'm showing you that report, it's  
9 Plaintiffs' Exhibit A, "Declaration of Dr. Michael  
10 Campion, PhD," and attachments. Do you see that?

11 A. Yes.

12 Q. It looks like that was filed in court on August  
13 30th, 2010, is that right?

14 A. I don't remember the date.

15 Q. Now, if you turn to Page 30.

16 A. (Turns.) Which 30?

17 Q. Page 30 at the top right-hand corner.

18 A. All right.

19 Q. And Paragraph 48. Do you see that?

20 THE COURT: Not on Page 30, it would be on 29.

21 MR. LICHTEN: I'm sorry, your Honor, I have bad  
22 eyesight. It's Paragraph 49.

23 A. (Turns.)

24 Q. Do you have that?

25 A. Yes.

1 Q. And you talk about the results of job performance  
2 "goes from a marginally significant or just short of  
3 marginally significant to a nonsignificant predictor of  
4 termination decisions," is that correct?

5 MR. BOK: Objection, your Honor, um, just a note  
6 on the record that they're now moving to one area which  
7 was not covered by this expert. So previously you did  
8 not allow the objection but that you warned counsel that  
9 they were opening doors.

10 THE COURT: Noted and thank you. He may have the  
11 question.

12 Do you see that, Dr. Champion?

13 THE WITNESS: Oh, yes, your Honor.

14 THE COURT: Go ahead, Mr. Lichten.

15 Q. The marginally significant number you were  
16 referring to is the T equals .055, is that correct?

17 A. No. Oh, yes.

18 Q. What was the marginally significant number you  
19 were referring to?

20 A. No, I'm sorry, I've not read this in four years.  
21 I need a moment to study it.

22 Q. Dr. Champion, I asked you about this in your  
23 deposition a couple of days ago, did I not?

24 THE COURT: Well, he's on the stand now and if he  
25 needs a moment before he answers, I'm going to allow

1 that. What he said in his deposition he said.

2 MR. LICHTEN: Sure.

3 A. (Reads.) Okay, sir.

4 THE COURT: Go ahead, Mr. Lichten.

5 Q. This marginally significant finding that you were  
6 referring to is the .055 finding, is that correct?

7 A. Yes. Uh-huh.

8 (Pause.)

9 MR. LICHTEN: May I approach, your Honor?

10 THE COURT: You may.

11 (Hands to witness.)

12 Q. You also provided an expert report in a case  
13 called Carlo vs. Pittsburgh Glass Works, is that  
14 correct?

15 A. Yes.

16 Q. And that was filed with the court in August of  
17 2013, is that right?

18 A. Yes.

19 Q. Okay. And if you go to Page 10. On the top right  
20 it says "Page 10," do you see that?

21 A. Do I see a Page 10?

22 Q. Yes.

23 A. Yes. Uh-huh.

24 Q. And if you go to the second paragraph you say --  
25 this is the last sentence of the second paragraph, "The

1 ratio is .66." And, by the way, when you say the ratio  
2 is .66, you're talking about the adverse impact ratio,  
3 is that correct?

4 A. Yes.

5 Q. And so that ratio would have been -- that would  
6 have been in violation of a four-fifths rule, is that  
7 correct?

8 A. Yes.

9 Q. Okay. And then you say, "But the standard  
10 deviation at the 40 level falls just short of 2.0 at  
11 1.72, which is significant at the 9 percent level  
12 two-tailed test," is that correct?

13 A. Yes.

14 Q. And if you go up to the last sentence of the  
15 paragraph before that, you say, "The ratio is .68," and  
16 that's the adverse impact ratio, is that correct?

17 A. Yes.

18 Q. -- "but the standard deviation at the 40 level  
19 falls just short of 2.0 at 1.54, which is significant at  
20 the 13 percent level for a two tailed test," is that  
21 correct?

22 A. Yes.

23 MR. LICHTEN: Your Honor, do you want me to try to  
24 put these reports in or just leave them as standing in  
25 the record?

1 THE COURT: It's your case to try. I can't --

2 MR. LICHTEN: Just for completeness, I would move  
3 to put them in.

4 THE COURT: Right. Any objection?

5 MR. BOK: Yes, your Honor. These should only be  
6 marked for identification, they're otherwise hearsay.

7 THE COURT: Yeah, if he's going to object, they  
8 seem to be hearsay, and unless I can see an exception,  
9 we'll leave them marked for identification. But we will  
10 mark them for identification.

11 And the next letters are what?

12 THE CLERK: H.

13 THE COURT: H. And we will mark Appendix A in  
14 this case 06cv1 -- 06cv01960-BF as in Exhibit H, and the  
15 document from 10cv01283-TFM as Exhibit I for  
16 identification. Go ahead, Mr. Lichten.

17 MR. LICHTEN: May I approach, your Honor?

18 THE COURT: You may.

19 MR. LICHTEN: Madam Clerk.

20 (Hands up.)

21 (Exhibits H and I, marked.)

22 Q. You also provided expert testimony or an expert  
23 report in the case of Brand vs. Comcast, is that  
24 correct?

25 A. Yes.

1 Q. And you were the expert for the plaintiffs in that  
2 case, is that correct?

3 A. Yes.

4 Q. Actually in this case, Brand, and in two cases  
5 I've just provided to you, you were the expert for the  
6 plaintiffs in those cases, is that correct?

7 A. Yes.

8 Q. Okay. So the plaintiffs would have an interest in  
9 finding statistical significance of hiring differences  
10 or promotional differences, is that correct? The  
11 plaintiffs want to win their cases.

12 A. Um, I don't know. I never met any of the  
13 plaintiffs.

14 Q. Okay.

15 THE COURT: No, but you understood that in each of  
16 these engagements a finding of disparate impact would be  
17 in the plaintiff's interest?

18 THE WITNESS: Oh, sure.

19 THE COURT: Yeah.

20 We'll mark this J for identification, this next  
21 one.

22 Go ahead, Mr. Lichten.

23 MR. LICHTEN: Okay.

24 (Exhibit J, marked.)

25 Q. If you can go to Page 22 and Paragraph C at the

1 bottom.

2 A. (Turns.) Yes.

3 Q. And you say here that for -- now, in this case  
4 you're looking at an issue of hiring or promotions  
5 regarding blacks and whites, which is it?

6 A. I believe these were promotions.

7 Q. Promotions.

8 THE COURT: Forgive me, but I need the page again.

9 MR. LICHTEN: It's Page 22, your Honor.

10 THE COURT: Thank you.

11 Q. So this is a case involving promotions, is that  
12 correct?

13 A. Yes.

14 Q. Between blacks and whites?

15 A. Yes.

16 Q. And what you said in Paragraph C is, the second  
17 sentence, "The ratio is less than .80," so again you're  
18 addressing the fact that there's a violation of the  
19 four-fifths rule because the rate is below .80, is that  
20 correct?

21 A. Yes, that's one of the statistics we will report.

22 Q. Got you. And you said the standard deviation  
23 exceed 2 for the promotions, from C-3 to C-4, and then  
24 you say the ratio is less than .80 and the standard  
25 deviation is marginally significant at 1.63 P equals

1 .103 for the promotions from C-4 to 5, is that correct?

2 A. Yes.

3 Q. Now, in your deposition do you recall me asking  
4 you and you told me that marginally significant can  
5 occur between P .05 and P .10?

6 A. Generally, although sometimes around.

7 Q. Okay. And in this case you rounded the .03 to 1,  
8 is that correct, the 1.03 to 1?

9 A. Yes, as we discussed in my deposition.

10 Q. Okay. And then if you go to the next page, Page  
11 23.

12 A. (Turns.)

13 Q. Again at the bottom of Paragraph B, you say, at  
14 the last sentence, "Also the promotion rates for blacks,  
15 from C-4 to 5, is 35 percent of the promotion rates for  
16 whites, so that would be in violation of the four-fifths  
17 rule," is that correct?

18 A. Yes.

19 Q. This is marginally significant at the 1.95,  
20 parens, P equals .051, is that correct?

21 A. Yes.

22 Q. Okay. Now, you also provided an expert report in  
23 the case of Ernst vs. The City of Chicago, is that  
24 correct?

25 A. Yes.

1 Q. And again you were hired by the plaintiffs in that  
2 case, is that right?

3 A. Yes.

4 Q. And, as I understand it, Ernst vs the City of  
5 Chicago was a hiring case involving females who claimed  
6 that the physical agility test that the City of Chicago  
7 was making them pass had an adverse impact on them and  
8 was not valid, does that capture what the case was  
9 about?

10 A. Yes.

11 Q. And you opined both on the adverse impact issue  
12 and you also opined on the validity issue and you also  
13 opined on the less discriminatory alternative issue, is  
14 that correct?

15 A. Yes.

16 Q. And you believed that the test was not valid and  
17 that there were other less discriminatory alternatives,  
18 is that correct?

19 A. Yes.

20 Q. Okay. Now, in that case the physical agility test  
21 had actually been designed for the City of Chicago by a  
22 woman named Dr. Debra Gephart, is that right?

23 A. Yes.

24 Q. And Dr. Gephart was fairly well-known in the field  
25 of designing physical agility tests for public safety

1 positions, is that right?

2 A. Um, I suppose.

3 Q. And, um, she purported to justify the test not  
4 based on content validity but a type of criterion  
5 validity, is that right?

6 A. No.

7 Q. How did she purport to justify the tests?

8 A. Well, she correlated her tests with other tests.

9 Q. That she had done?

10 A. That she had done.

11 Q. Okay.

12 A. So it's correlating tests with tests, which does  
13 not constitute criterion validity or content validity.

14 Q. Okay. Now, what you opined in that case is that  
15 you didn't believe the test was valid because she only  
16 tested for certain physical attributes of the job that  
17 would disproportionately impact women such as large  
18 muscle group activities, is that right?

19 A. No.

20 Q. That's not right?

21 A. No.

22 Q. Okay. So can I -- well, I'll give you the report.

23 MR. LICHTEN: May I approach, your Honor?

24 THE COURT: You may.

25 (Gives report.)

1 THE COURT: We'll mark this K for identification.

2 (Exhibit K, marked.)

3 Q. If I could draw your attention to Page 8, please.

4 A. (Turns.) Yes.

5 Q. Okay. First, it, um -- if you'd go to the second  
6 sentence on Page 8, you say, quote, "It appears that the  
7 job analysis of the CFD paramedic job by Dr. Gephart was  
8 conducted in a traditional manner," is that correct?

9 A. Yes.

10 Q. So she did perform a job analysis, is that  
11 correct?

12 A. Yes.

13 Q. You then say: "However, Dr. Gephart made a number  
14 of decisions that may have influenced the findings and  
15 likely overestimated the physical ability requirements  
16 for the job which led to the development of a selection  
17 procedure, i.e. the physical agility test, that  
18 increased adverse impact against women."

19 Is that correct?

20 A. Right.

21 Q. And then you list some of the issues you have and  
22 you say, Number 1, "The physical tests are  
23 overemphasized in the job analysis," is that correct?

24 A. Right.

25 Q. Okay. And if we were to take an analogy to that

1 to the present case, in this case only job knowledges  
2 were tested for from the Boston Police Department in  
3 2008, is that right?

4 A. I don't see the analogy.

5 Q. But other aspects of the job that weren't tested  
6 for just, in the Chicago Fire Department EMT case, were  
7 those abilities and skills that might not have had such  
8 an adverse impact on minorities, isn't that correct?

9 A. No.

10 Q. But in this fire department case didn't you opine  
11 that they should have tried to test for those attributes  
12 that might have had less discriminatory impact on women  
13 such as small muscle activities such as motor skills and  
14 things like that, that had a lesser adverse impact,  
15 didn't you say that?

16 A. I'm sorry, I thought we were talking validity and  
17 then you had changed it to job analysis and now you're  
18 talking alternatives. I'm sorry but I'm confused as to  
19 what the question is that I'm trying to answer.

20 Q. I'm just reading from your report, Dr. Champion.  
21 You said on Page 8: "The physical requirements were set  
22 based on the most physically demanding tasks and only a  
23 small portion of all the tasks of the job," didn't you  
24 say that in Paragraph 2?

25 A. Yes, but I don't understand how it relates to the

1 current question.

2 Q. Well, in the Boston Police Department case you  
3 understand that there was no attempt to test for skills  
4 and abilities that were important to being a police  
5 lieutenant but that might have had a less discriminatory  
6 impact upon minority candidates, isn't that right, you  
7 understood that, didn't you?

8 A. Yes, but I don't think see the link between the  
9 two. I'm sorry.

10 Q. Okay?

11 A. It would be like if the job knowledge exam was  
12 based on the most complex knowledge you would ever have  
13 to know on the job, then that would be an analogy to  
14 what happened here in Chicago.

15 Q. Well, that's not really true, is it? The test  
16 involved certain physical tests that the candidate had  
17 to perform which had been studied as being part of the  
18 job of an EMT, isn't that right?

19 A. No, I'm saying you'd be wrong, you don't  
20 understand what they did in the job analysis.

21 Q. So you deny that Dr. Gephart studied the job and  
22 then tried to simulate portions of the job that were  
23 necessary to perform the job?

24 A. But she focused on the most -- the most difficult  
25 physical aspects that were a very small part of the job.

1 She didn't focus on all of it, she only focused on the  
2 most difficult. And that's why it would be, in the  
3 context of Boston, focusing on just the most complex job  
4 knowledge you'd ever have to know in developing the exam  
5 around that, which is not what I understand occurred.

6 Q. And Boston did not focus on all of the job, right?

7 A. Well, as I say it's a separate question.

8 Q. Well, you just said that in Chicago they did not  
9 focus on all of the job, they focused on the hardest  
10 physical tasks?

11 A. Within a domain of aptitude they focused on the  
12 most physical demanding of the physical attributes, they  
13 didn't look at any other attributes, is that what you're  
14 asking?

15 Q. Well, let's move on. Let me see if I can --

16 THE COURT: Let me just see if I can understand  
17 the testimony.

18 Your complaint about Chicago is, and I'll use this  
19 hypothetical because it's simple, um, but rarely, but as  
20 part of the job, you're going to have to transport an  
21 extremely obese individual off the upper floor of a  
22 tenement down to the lower floor to get him to the  
23 hospital. Now, an EMT is going to have to do that and  
24 that's going to be very difficult for a woman. Take  
25 that hypothetical. And you're -- and you say that the

1 problem with the analysis is it focused on that aspect  
2 of the job rather than the 80 percent or more, the  
3 percentage I'm making up, which are more routinely where  
4 a woman can do it fine.

5 Have I got it?

6 THE WITNESS: In part. The other part is they  
7 always send a fire department -- 80 percent of the time  
8 they have a fire department company at the scene and if  
9 there's not one there they can call one immediately.  
10 And it never was a problem forever that women couldn't  
11 do the job.

12 THE COURT: So you give my hypothetical but then  
13 you say real world that hypothetical is so rare to occur  
14 as not to be particularly significant?

15 THE WITNESS: Not significant enough to select out  
16 half of all women.

17 THE COURT: And that was your judgment?

18 THE WITNESS: Yes.

19 THE COURT: Then he's pushing you for an analogy  
20 here and you're saying that for your Chicago analysis to  
21 be germane here the focus would have to be on those  
22 equally rare bits of knowledge that a lieutenant would  
23 have to know?

24 THE WITNESS: That's exactly what I'm saying.

25 THE COURT: All right. Go ahead.

1 Q. Do you know how often a Boston police lieutenant  
2 has to know Maslow's theory?

3 A. No, I don't, for a fact.

4 Q. Moving on in your report.

5 On Paragraph 5 on Page 8, you say: "The job  
6 analysis did not consider other abilities that are  
7 important to the paramedic job where there would not be  
8 gender differences," is that correct?

9 A. Yes.

10 Q. And what were you referring to in that paragraph?

11 A. Other than what's stated there, you mean like a  
12 specific example?

13 Q. Yeah, a specific example of other abilities that  
14 would not have had such a disparate impact on women.

15 A. Yes, I was referring or as an example to what we  
16 call "psychomotor abilities" which are, like for  
17 example, hand -- manual dexterity, finger dexterity,  
18 because unlike mental abilities big muscle group  
19 physical abilities does not correlate well with small  
20 muscle group physical ability. So giving up -- which is  
21 unlike knowledge, the knowledge correlates with anything  
22 that's mental ability, which is most everything. So  
23 it's a particular problem with physical abilities  
24 because they don't generalize across other physical  
25 abilities.

1 Q. Are you saying -- I just want to be clear on this.  
2 Are you saying that the physical abilities that  
3 Dr. Gephart was testing for were not physical abilities  
4 necessary for the job?

5 A. The physical abilities that she was testing for  
6 were -- I'm sorry, I'm -- notwithstanding the caveat  
7 that she focused on, the most difficult of those  
8 physical abilities, the physical abilities she focused  
9 on are part of the job, I believe, in some way.

10 Q. Well, let me move on. If you would go to Page 9  
11 of your report.

12 A. (Turns.)

13 Q. The first paragraph, Paragraph Number 1. You say  
14 "The components of the EMT were apparently chosen with  
15 little consideration of their adverse impact on women  
16 applicants in mind," is that correct?

17 A. Yes, that's right.

18 Q. And again if we try to analogize it to this case,  
19 you were aware, were you not, that the Boston Police  
20 Department was aware by 2008 that if they concentrated  
21 only on a job knowledge test it would have a significant  
22 adverse impact on minority candidates, is that correct?

23 A. So -- yes, in Boston I think they tried to  
24 understand the adverse impact.

25 Q. Okay. And moving on to Page 12. I think this may

1 be what you were trying to say. On Page 12 under  
2 "Alternatives to the Physical Ability Test." Do you see  
3 this?

4 A. Yes.

5 Q. It says -- you're stating here, "The Uniform  
6 Guidelines requires a search be conducted of alternative  
7 selection procedures that meet the business needs of the  
8 organization but have lesser adverse impact," and you go  
9 on to say "No such search was documented in the Gephart  
10 report."

11 THE COURT: Where are you reading from just then?

12 MR. LICHTEN: Sorry, your Honor, it's Page 12  
13 under "Alternatives to Physical Ability."

14 THE COURT: Yes, thank you.

15 Q. Do you see that?

16 A. Yes.

17 Q. And you agree with that statement, is that  
18 correct?

19 A. Oh, yes, I wrote that.

20 Q. Okay. In 2008 -- oh, strike that.

21 There is no validity report for 2008, is there?

22 A. Oh, sure there is.

23 Q. Where is it?

24 A. Well, the 1991 report describes for me the process  
25 that was used for --

1 Q. No, no, no, Dr. Champion --

2 Dr. Champion, I'm asking you about the validity  
3 report for 2008, was there a validity report for 2008?

4 A. I'm sorry, I thought I answered that.

5 Q. Well, I guess I'm not clear.

6 You know there was a validity report for 2002, don't  
7 you?

8 A. They had a different firm develop a different  
9 procedure.

10 Q. That's not my question, Dr. Champion. Wasn't, at  
11 the end of the testing, didn't they produce a validity  
12 report for 2002?

13 A. Um, I don't know, I didn't read a report, but --

14 Q. You've never seen the validity report for 2002?

15 A. Not for 2002.

16 (Pause.)

17 MR. LICHTEN: May I approach, your Honor?

18 THE COURT: You may.

19 (Hands over report.)

20 THE COURT: Are these in evidence already?

21 MR. LICHTEN: No, your Honor.

22 THE COURT: You're offering them?

23 MR. LICHTEN: Yes, your Honor.

24 THE COURT: Any objection?

25 MR. SIMON: Objection, your Honor.

1 THE COURT: Grounds?

2 MR. SIMON: Relevance.

3 THE COURT: Relevance to -- from a November of  
4 2002 validity report? I -- it would seem to me to be  
5 relevant. There's nothing more germane with respect to  
6 2008, is there?

7 MR. SIMON: Well, the point, your Honor, is this  
8 is a different test, this was the Morris and McDaniel  
9 test with the job assessment center attached to it.

10 THE COURT: I follow that.

11 MR. SIMON: So relevance.

12 THE COURT: No, I can think of various reasons why  
13 the validity report in 2002 would be relevant.

14 I'm not clear why you're also proffering the  
15 draft, Mr. Lichten, I don't see why that's relevant?

16 MR. LICHTEN: Your Honor, we have searched in  
17 vain, we have not been able to locate anything but that  
18 draft, and that was produced by the City in the **Lopez**  
19 litigation.

20 THE COURT: But that draft with respect to -- he  
21 says "I object on the grounds of relevance," well, no, I  
22 think it's relevant. One, it's pretty good evidence of  
23 what was known in 2008, if it was known back in 2002.  
24 So for that ground alone I'll admit the, um, the  
25 validity report.

1 MR. LICHTEN: Oh, your Honor, I know what it is.

2 THE COURT: Oh, I see this other is for the  
3 written examination validity report.

4 MR. LICHTEN: Right.

5 THE COURT: And your answer is you can only find  
6 the draft, you can't find the final?

7 MR. LICHTEN: They have the --

8 THE COURT: I follow.

9 So what's the objection to the written, Mr. Simon,  
10 there's no objection to that?

11 MR. SIMON: Well, again, your Honor, it would be  
12 the same objection, in the context of a different test.

13 THE COURT: I understand. They're both overruled.

14 And so I'm going to take the draft written report  
15 and give it the next number, which is --

16 MR. SIMON: And if I may, your Honor, just one  
17 more point on that? You know HRD is the one creating  
18 the test. It's a different entity creating the test.

19 THE COURT: I'm not insensitive to that.

20 MR. SIMON: Okay. Thank you.

21 THE COURT: But what's the next number?

22 THE CLERK: 80.

23 THE COURT: 80. The draft written examination  
24 validity report is 80 and the assessment center validity  
25 report is 81 in evidence.

1           Go ahead.

2           (Exhibits 80 and 81, marked.)

3           Q.       So, Dr. Champion, I'm showing you what's been  
4           marked as Exhibit 80 and 81 which purport to be validity  
5           reports, one in draft form for the written and the oral  
6           assessment center -- or the assessment center for the  
7           2002 Boston police lieutenant examination.

8           Is it your testimony that you've never seen these before  
9           today?

10          A.       No, they were, um -- for the reasons that counsel  
11          explained, it's a different company developing a  
12          different assessment.

13          Q.       I'm sorry. You weren't shown it because --

14                 THE COURT: But his question was -- have you seen  
15          them?

16                 THE WITNESS: No.

17                 THE COURT: You've never seen them. All right.

18          Q.       I'm sorry, Dr. Champion, were you about to say that  
19          you know why counsel for the City of Boston didn't show  
20          it to you because it was a different company?

21          A.       Well, I understood that, um, what I was studying  
22          was the HRD exam, not the occasional other exam put  
23          together by different contractors.

24          Q.       Well, weren't you asked to look at less  
25          discriminatory alternatives and you opined on that, did

1 you not?

2 A. Well, that doesn't require me to read this report.

3 Q. Well, how would you know less discriminatory  
4 alternatives had been tried and how they fared and how  
5 relevant they were and how well they tested for skills  
6 and abilities if you were never shown the report?

7 A. Because there's a whole huge science out there  
8 with thousands of studies that I know a lot about. I  
9 don't have to read this one to be aware of a new  
10 alternative.

11 Q. Doctor, you don't know of any studies of police  
12 promotional exams and how individuals had fared on  
13 police promotional exams by race, um, whether it's oral  
14 assessment centers or written exams, do you, you don't  
15 know one study?

16 A. I know a whole lot of studies, I've read many many  
17 published studies of --

18 Q. Tell me one study --

19 THE COURT: Wait. Wait. Let him finish his  
20 answer, "I've read many published studies" --

21 A. I've read many published studies on a wide range  
22 of occupations including police and fire and all other  
23 types.

24 Q. Just tell me one police promotional exam study  
25 that you relied on in coming to your conclusions today,

1 published or unpublished?

2 A. I'm sorry I just can't think of a single specific  
3 reference, but it's part of a broad literature that I  
4 try to keep up with and have reviewed many times for a  
5 wide range of purposes, whether it be interviewing or  
6 testing or --

7 Q. Could you give me any cite to a police promotional  
8 study that was done, either published or nonpublished,  
9 that tested various alternative mechanisms and looked at  
10 the adverse impact that they had?

11 A. I did not do that review on the eve of this trial,  
12 so I don't remember specifics.

13 Q. You never did that review. It's not just the eve  
14 of this trial, you've never done that review, have you?

15 A. Oh, no, you'd be wrong. We routinely in, for  
16 example, graduate classes we review the literature on  
17 different professions and I have many times had projects  
18 with students where they reviewed the literature on  
19 police and fire many times and that's just a "for  
20 instance."

21 Q. Can you give me one?

22 A. Well, I can't remember the name of the student.

23 Q. Give me the name of the study or the paper.

24 A. Well, as I say these are course projects where we  
25 routinely review those literature bases.

1 Q. All right.

2 A. Plus I was a journal editor for seven years and  
3 I've read thousands of papers. I'm sorry that I can't  
4 bring back a single reference, but I didn't just review  
5 that literature for this case and document the  
6 references. But I could.

7 Q. Let me see if I understand it. You think this  
8 report is not relevant because it's produced by another  
9 professional firm and only deals with the Boston Police  
10 Department?

11 A. I wanted to make sure I could fully understand the  
12 HRD testing process and the materials there were my  
13 primary focus.

14 Q. Okay. Let me ask you this, are you aware of any  
15 papers that Dr. Jacobs' firm has published on their  
16 experience with multitesting devices for police  
17 promotional exams in other cities and what the increased  
18 validity and lesser adverse impact, if any, is in  
19 combining such techniques?

20 A. Um, as complicated as that question was, I guess  
21 the answer would be, no, I'm familiar that Jacobs and  
22 Company are -- do work in this domain and I'm familiar  
23 in a general sense but not with respect to the specific  
24 validity data or adverse impact data.

25 Q. When you were hired in this case back in late

1 November, did you make any attempt to survey any  
2 studies, published or not, or call any other large  
3 jurisdiction police departments to find out what the  
4 most updated police promotional processes were around  
5 the country?

6 A. I did not review other city's processes, no.

7 Q. Let me move on.

8 All right. Would you turn to, um, Page 81, that's the  
9 police lieutenant assessment center validity report for  
10 the City of Boston in 2002. Would you turn to that  
11 report and turn to Page 4.

12 A. (Turns.) Okay.

13 THE COURT: 4?

14 MR. LICHTEN: Yes, at the bottom, your Honor.

15 Q. Okay. Now, they're talking in here about the  
16 assessment center method and I understand you haven't  
17 read this before, um, but let me ask you.

18 It says in the Paragraph 1 that: "A job analysis of  
19 relevant behaviors must be conducted to determine the  
20 dimensions, attributes, characteristics, qualities,  
21 skills, abilities, motivations, knowledge or tests that  
22 are necessary for effective job performance and to  
23 identify what should be evaluated by the assessment  
24 center."

25 Do you see that?

1 A. Yes.

2 Q. And you would agree with that, is that correct?

3 A. Yeah, as I've stated previously a job analysis is  
4 usually where we start because we want to ensure  
5 job-related procedure.

6 Q. And Morris and McDaniel did that, did they not, or  
7 do you know?

8 A. I don't know. I'm only reading this sentence here  
9 with you.

10 Q. So as you sit here today do you know that they  
11 concluded that --

12 A. I'm sorry. I'm sorry. I misspoke. I did read  
13 their 2000 job analysis study and to the extent that  
14 that's what they're describing here, yes, I did read  
15 that. I'm sorry.

16 Q. And that based upon that job-analysis study, they  
17 had to design a testing program to test those  
18 knowledges, skills, and abilities that they found were  
19 essential, is that right?

20 A. I don't know. As I said, I have not read this  
21 report.

22 Q. Do you know that when Morris and McDaniel studied  
23 the job knowledges, skills, and abilities of the Boston  
24 Police Department lieutenant's position, they concluded  
25 that more than 50 percent of the test should be devoted

1 to certain skills and abilities that could be only  
2 tested through the assessment center and not through a  
3 written multiple choice job-knowledge test?

4 A. I don't know.

5 Q. You're unaware of what was done?

6 A. Yes.

7 THE COURT: That's a little different, at least as  
8 I'm following. No, it is a little different. But he  
9 says he does not know what was done.

10 MR. LICHTEN: Okay.

11 Q. Now, if you turn to the next page, Page 5 of this  
12 report.

13 A. (Turns.)

14 Q. Now, they identify a number of skills and  
15 abilities that they think can be tested by the  
16 assessment center. It's titled on Page 5,  
17 "Identification of Assessment Center Dimensions." Do  
18 you see that there?

19 A. Yes.

20 Q. And they list oral communications as one of those  
21 skills and abilities, is that right?

22 A. Yes, that's what it says.

23 Q. And you would agree, would you not, that having  
24 good oral communications skills is very important for a  
25 Boston police lieutenant, wouldn't you?

1 A. Um, I suppose. It's not a public speaking role.  
2 It's not a role that requires a level of the oral  
3 communication of an attorney, for example.

4 Q. Well, that's interesting.

5 A. But I'm sure it requires some, yes.

6 Q. Well, let me ask you this. It sounds like you  
7 haven't really studied what the essential knowledges,  
8 skills, and abilities are of a Boston police lieutenant,  
9 is that accurate?

10 A. No, but when I'm testifying I want to be very  
11 careful about what I claim to know and so --

12 Q. But what do you --

13 A. -- so you've asked me to read this here and I've  
14 read it and I believe it seems reasonable even though  
15 they don't need a high level of oral communication, but  
16 --

17 Q. Did you even read the job description for a Boston  
18 police lieutenant?

19 A. Sure.

20 Q. You did. Did you talk to anyone at the Boston  
21 Police Department about what the essential duties are  
22 for a Boston police lieutenant?

23 A. Well, there was the detailed job analysis reports  
24 which are usually the scientific document you use to  
25 understand the job as opposed to a casual conversation

1 with someone.

2 Q. And that would be the so-called "145 critical  
3 knowledges, skills, and abilities necessary for the  
4 job," as contained in the 2000 job analysis from Morris  
5 and McDaniel, is that right?

6 A. Well, I would consider the job tasks more relevant  
7 to the idea of a job description whereas the knowledge,  
8 skills and abilities, we usually call that the "job  
9 specifications."

10 Q. The knowledge, skills, and abilities, there were  
11 149 of them identified as "critical" in the Morris and  
12 McDaniel 2000 job analysis, is that right?

13 A. No, you just said 145. They started with 149, but  
14 after they were reviewed by subject matter experts, a  
15 subset of those were found to be the most important.

16 Q. All right. And only about a third of those were  
17 knowledges, the rest were skills and abilities, is that  
18 correct?

19 A. I don't remember the exact numbers.

20 Q. And over 100 of those critical skills and  
21 abilities were never tested for in the 2008 exam, were  
22 they, Doctor?

23 A. No, I don't think that's the best way to describe  
24 it.

25 Q. You didn't see the section that said these are the

1 things that are not being tested for and they included  
2 100 skills and abilities?

3 A. Well, they tested for 13 very broad knowledges and  
4 they showed that those --

5 Q. 13 broad knowledges --

6 A. -- and they showed that those 13 were related to  
7 all the knowledge, skills and abilities and they also  
8 showed that those 13 were related to all the important  
9 job tasks. So the 13 were very broad and they related  
10 to the entire job.

11 Q. Doctor, there was no attempt to test for certain  
12 critical skills and abilities such as oral  
13 communications on the 2008 test, was there?

14 A. I'm sorry, you'd have to restate that.

15 Q. There was no attempt to test for oral  
16 communications skills in the 2008 exam, was there?

17 A. No, no, the knowledge exam didn't test for oral  
18 communications skills.

19 Q. And there was no attempt to test for interpersonal  
20 skills, is that correct?

21 A. Um, when I read the test questions I don't recall  
22 if any of them dealt with knowledge around interpersonal  
23 behaviors, but it may have. I just don't recall. It's  
24 not uncommon that we will ask questions, knowledge  
25 questions about how they interrelate to people or work

1 on a team, for example. So you can have knowledge  
2 questions related to interpersonal, but I don't recall  
3 if they had those here because I can't remember all 100  
4 questions.

5 Q. Let's just see if I understand this. Do you  
6 remember in your deposition I asked you about Maslow and  
7 Maslow was a well-known psychologist of some repute from  
8 sometime ago?

9 A. Yes.

10 Q. Are you aware of -- well, let me ask you this.  
11 If a question asks about Maslow's theory of something,  
12 that's not the same as knowing that the person has the  
13 skills and ability to practice that technique, is it?

14 A. No, but you bring up a very good point.  
15 Understanding that --

16 Q. I think you said "No," is that correct?

17 MR. SIMON: Objection, your Honor.

18 THE COURT: Oh, no, overruled. It was -- it could  
19 be framed that way. This is cross-examination. You'll  
20 have a chance to inquire of him further.

21 Go ahead.

22 Q. Now, were you aware that when the assessment  
23 center was conducted testing for certain skills and  
24 abilities which Morris and McDaniel deemed critical for  
25 the job of lieutenant the result was no statistically

1 significant differences which existed between the mean  
2 overall assessment scores of African American,  
3 Hispanics, and Caucasians?

4 THE COURT: Could you ask the question again? And  
5 that's my fault.

6 MR. LICHTEN: I'll put it a better way, your  
7 Honor.

8 THE COURT: All right.

9 Q. If you would turn to Page 18.

10 A. (Turns.)

11 Q. Do you see under Section 5?

12 A. Do I see Section 5? Yes.

13 Q. And they say, do they not: "No statistically  
14 significant differences exist between the mean overall  
15 assessment scores of Caucasians and African Americans."  
16 Do you see that?

17 A. Yes.

18 Q. So following up on what you said in Ernst, if the  
19 Uniform Guidelines require a search for less  
20 discriminatory alternatives and in 2008 the Boston  
21 Police Department gave an assessment center that tested  
22 for critical knowledges, skills, and abilities that was  
23 valid, that is it was properly constructed by a  
24 professional firm and it had a significant reduction on  
25 adverse impact, that would have been something that

1 should have been looked at in 2008, is that right?

2 A. No.

3 Q. No?

4 A. I don't know that it was valid and as a  
5 statistician I can see that there were race differences  
6 and a 1.86 would likely be marginally significant and I  
7 see they only had 30 people in the sample. So if they  
8 added a small number of additional people it would be  
9 significant. And I see that the differences is about 40  
10 percent of the standard deviation, maybe a little more,  
11 in Table 3.

12 Q. Okay.

13 A. And so I wouldn't draw the conclusion you just  
14 did.

15 THE COURT: Well, let me -- I have a basic  
16 misunderstanding here and I think you can help me out a  
17 little, Doctor.

18 Even though you haven't seen Exhibit 81 before,  
19 apparently am I correct in thinking this is a validation  
20 report, um, for the City of Boston on an assessment  
21 center process that had taken place, is that right?

22 THE WITNESS: Apparently.

23 THE COURT: Yeah, okay, that's how I read it. I  
24 thought going in, and just so counsel can follow, that  
25 this was the report about the wisdom of using such an

1 assessment center, but this appears to be a report on  
2 how this particular use of such an assessment center  
3 worked. And that's how you read it anyway?

4 THE WITNESS: Yes.

5 THE COURT: I'm seeing it as quickly as you.

6 All right. Go ahead, Mr. Lichten.

7 (Pause.)

8 THE COURT: And you're just cautioning us, to get  
9 your normative testimony, not to read too much into this  
10 because of the sample size?

11 THE WITNESS: That's right, yes, because small  
12 samples are --

13 THE COURT: Well, he's examining. Go ahead.

14 Q. Now let's pursue that for a second, because you  
15 just said it was marginally significant at 1.86, is that  
16 correct?

17 A. Yes, I believe that would be accurate.

18 Q. That's a P value of .056?

19 A. Um, I don't know that.

20 Q. Okay.

21 A. I can say it's over .05, but it's not too too far  
22 over.

23 Q. But, Dr. Campion, do you understand that what's  
24 being looked at here are not promotion rates but mean  
25 score differences?

1 A. Yes.

2 Q. And do you understand that the mean score  
3 differences for the 2005 and 2008 Boston Police  
4 Department written job knowledge tests were way, many  
5 times higher than .056?

6 A. Um --

7 Q. They were .000-something, weren't they?

8 MR. SIMON: Objection, your Honor.

9 THE COURT: Well, he can put the question. It's  
10 not evidence of anything. We'll see if he knows.

11 MR. SIMON: Okay. Thank you, your Honor.

12 A. Um, a job knowledge test, if it's more valid, will  
13 show a larger race difference.

14 Q. Well, I'm just asking you now if you've looked at  
15 the difference, the mean score differences in this case,  
16 for 2005 and 2008, would you agree that the statistical  
17 significance was huge, it was .000-something?

18 A. I was actually not asked to testify about  
19 statistics for this case.

20 Q. (Pause.) Now, you've also mentioned the --  
21 several times you've mentioned the 1991 job analysis, is  
22 that correct?

23 A. I haven't --

24 Q. Oh, the validation report. Excuse me, the  
25 validation report.

1 A. Frankly it was a job analysis and a validation  
2 report in one document, yes.

3 Q. And I just want to ask you, when you looked at the  
4 1991 validation report, did you look at all the  
5 appendices?

6 A. Um, yes, I've skimmed them all, I didn't study  
7 them all in great detail.

8 Q. So "A" down to "UU," or wherever it ended?

9 A. It went through and then we had double letters, so  
10 there must have been 30 something. But I didn't look at  
11 all of them.

12 Q. Okay. So I'm -- I'm out to kill a couple more  
13 trees.

14 (Hands to witness.)

15 MR. LICHTEN: This is Exhibit 41 from **Lopez**, your  
16 Honor.

17 (Hands up.)

18 THE COURT: And again I take it there's no dispute  
19 about this, but these appendices that have just been  
20 handed up, Exhibit 41 from **Lopez**, which is in evidence  
21 in this case, are the appendices to the validation  
22 report that I have admitted in evidence as Exhibits 80  
23 and 81, is that what the representation is?

24 MR. LICHTEN: Almost. 71, your Honor.

25 THE COURT: 71?

1 MR. LICHTEN: This is the 1991, not the 2002.

2 THE COURT: Thank you. All right. So these are  
3 the appendices to the validation report admitted in this  
4 case as Exhibit 71? (Silence.) Everyone seems content  
5 with that. All right. Fine.

6 MR. SIMON: That's correct, your Honor.

7 THE COURT: Fine. Thank you.

8 Q. And you've seen this before, is that correct?

9 A. Well, an electronic version of these, yes.

10 Q. And you've reviewed it, is that correct?

11 A. Well, as I say I reviewed those that seem relevant  
12 to the validity or job analysis of those specific topics  
13 that I was interested in.

14 Q. Okay. Well, let me ask you to turn to, um, Page  
15 82.

16 A. (Turns.)

17 Q. Oh, I'm sorry, Page 82 of Exhibit 71, which is the  
18 validity report, sorry, not the appendix, and you have,  
19 um -- Exhibit 71 should be in one of those notebooks.

20 A. (Looks.) What page was that again, sir?

21 THE COURT: Page 82 of Exhibit 71.

22 A. (Turns.) Yes, sir. I'm there.

23 THE COURT: Well, you're faster than me.

24 MR. LICHTEN: Excuse me, your Honor?

25 THE COURT: He's faster than I am. Now I'm there

1 too. Go ahead.

2 Q. Okay. So looking at Page 82 at the bottom,  
3 there's a little chart. Do you see that?

4 A. Yes.

5 Q. And do you know what that chart is?

6 A. Um, it appears to be an adverse impact analysis of  
7 cutting scores for sergeant and lieutenant in previous  
8 examination years.

9 Q. Okay. These are pass/fail cut-off scores, is that  
10 correct?

11 A. That was my interpretation, yes.

12 Q. Now, there's been some testimony, and we'll get to  
13 it in a minute, that in 1985 and 1987 there may have  
14 been a different type of test, but do you see the result  
15 for 1991?

16 A. Yes, it looks like they looked at two different  
17 passing points.

18 Q. Right. And what this says is if they used the  
19 passing point of 70, which I represent to you is the  
20 traditional passing point for these civil service  
21 promotional exams, the adverse impact ratio on  
22 lieutenants would have been .21 and for sergeants it was  
23 .16, is that correct?

24 A. That's what I'm reading along with you here.

25 Q. So that's severe adverse impact and that's just

1 the pass/fail complaints, right?

2 A. Well, according to that statistic, I -- again I'm  
3 not studying the statistics. I don't know how many  
4 minorities were in this analysis. If the numbers were  
5 very small, you can often get average results that seem  
6 extreme in either direction. So --

7 THE COURT: Well, putting aside the explanation  
8 and at a level of simply looking at this report at face  
9 value, on this chart that appears at the bottom of Page  
10 82, higher is better at that level, is that right?

11 THE WITNESS: Yes.

12 THE COURT: All right.

13 Put your questions, Mr. Lichten.

14 MR. LICHTEN: I'm not sure I understood what the  
15 Court just said, but --

16 THE COURT: Well, well, that a .16 is more adverse  
17 impact than a .30 and for lieutenants a .21 is higher  
18 adverse impact than a .68.

19 MR. LICHTEN: Yes.

20 THE COURT: I recognize it's simplistic, but I'm  
21 trying to keep up. He agrees and that's my  
22 understanding and now put your questions.

23 MR. LICHTEN: All right.

24 Q. And again just to reiterate, and that's only the  
25 AI impact on the pass/fail rate, this doesn't have the

1 report as to what the, um -- as to what the adverse  
2 impact, if any, would have been with respect to  
3 selection rates, is that right?

4 A. Yes, that would be my interpretation.

5 Q. And it doesn't have what the adverse impact is of  
6 any mean score differences, is that correct?

7 A. Well, that question is not correct. I can't  
8 answer it.

9 Q. It doesn't address whether there's statistically  
10 significant mean score difference in the scores, is that  
11 right?

12 A. Yes, that's right because adverse impact and mean  
13 differences are very different.

14 Q. Thank you. I'm going to take statistics when I'm  
15 done with this trial but I'm not able to quite yet.

16 (Laughter.)

17 Q. Okay. And then if you go to, um -- if you go to,  
18 um, Page 133 of this report --

19 A. (Turns.)

20 Q. Do you have that?

21 A. Yes. Uh-huh.

22 Q. This gives you some information on the mean score  
23 differences of the 1991 written exam that was given for  
24 the Boston Police Department, is that right?

25 A. Yes, it appears to.

1 THE COURT: And just so -- look at the first chart  
2 there on Page 133. This chart seems to confirm the  
3 testimony I've heard that while a written exam will --  
4 there's going to be a disparate impact between blacks  
5 and whites, that disparate impact is lessened as the  
6 passing score is lessened?

7 THE WITNESS: Yes.

8 THE COURT: But of course the validity of the exam  
9 as a promotional tool is correspondingly lessened, is  
10 that right?

11 THE WITNESS: Yes, although we usually refer to  
12 the latter as the "utility" because if you remember  
13 "validity" is kind of the inference you can make from  
14 test scores. So you can have a valid test that has no  
15 use to you because you have a cutting score so low it's  
16 irrelevant.

17 THE COURT: I'll stand corrected, so the  
18 "utility."

19 Why he suggested, and the evidence seems to  
20 confirm this, that over the years 70 has been the usual  
21 cut-off. Why is that the optimal utility, if you know?

22 THE WITNESS: I do have opinions of that, your  
23 Honor.

24 THE COURT: Well, I'm asking a "why" question, so  
25 tell me why.

1           THE WITNESS: Well, in the, um -- tests are used  
2 for a range of purposes. The big distinctions are what  
3 we call "norm-referenced tests" and, oddly, "criterion-  
4 referenced," and what it means -- "norm-referenced"  
5 tests, the scores only have meaningfulness in the sense  
6 of comparing to norms, so "This candidate is better than  
7 this candidate," but you don't know what the scores, do  
8 they absolutely mean the person is competent, for  
9 example? "Criterion-referenced" testing, which is like  
10 the bar exam, tests in college, licensure, you're -- the  
11 exam scores are supposed to represent that you have  
12 possession of a body of knowledge, and, you know, how  
13 much depends but over the years 70 percent of the  
14 knowledge is often thought of as demonstrating that you  
15 possess, you know, enough of the domain of knowledge.  
16 So that 70 has really come around through historic  
17 reasons like that.

18           THE COURT: Thank you. Go ahead, Mr. Lichten.

19           MR. LICHTEN: Yes.

20           Q. Well, just to pursue that, here the pass/fail rate  
21 is actually not as important as it might be in some  
22 situations because you understand that selections are  
23 being done on a rank-order basis, is that correct?

24           A. I'm sorry, I -- the question took a twist at the  
25 end. Can you repeat that maybe?

1 Q. You understand that the selections for the Boston  
2 Police Department are not done by just simply being in a  
3 pool by having a passing score sort of like in the  
4 Chicago Fire Department EMT test that you did, but here  
5 they're selected by rank order, is that correct?

6 A. That's my understanding, yes.

7 Q. Right. So in fact you're not aware if the Boston  
8 Police Department has ever gotten down to 70 or 75 or  
9 even 78 making promotional decisions, but people have to  
10 score high on the test in order to really have a chance  
11 of getting promoted, is that right?

12 A. I understand it's a competitive process, yes.

13 Q. And do you have any idea, as you sit here today,  
14 what have been the scores at which people actually have  
15 gotten promoted over the years?

16 A. No, as a fact I don't. No.

17 Q. Now, if we go to, um, this chart on the bottom of  
18 Page 133, it shows, does it not, that the mean -- I  
19 think it's the mean score for lieutenant, on this  
20 particular exam, was 72.66. Do you see that?

21 A. Yes.

22 Q. Okay. And then if we go to the last, it's 61.53,  
23 is that correct?

24 A. 62.53?

25 Q. Yes.

1 THE COURT: You misspoke. You said 61. But  
2 62.53.

3 MR. LICHTEN: I'm sorry. I'm trying to make my  
4 case better.

5 (Laughter.)

6 Q. It's a 9-point difference, is that right?

7 A. Yes, a little more than 10 points.

8 Q. That's a huge difference, isn't it?

9 A. Um, I don't know. We only have 20 blacks here,  
10 it's -- I don't know if that's significant even. But  
11 it's 10 points.

12 Q. A 10-point spread indicates to you that if you  
13 keep giving this test, a multiple choice job knowledge  
14 test, you're going to have discriminatory impact on  
15 minority candidates, am I correct, with a 10-point mean  
16 score difference?

17 A. Actually I don't know. I don't know that.

18 Q. And for Hispanics it's even lower, their average  
19 score was 57 -- the mean score was 57.59, is that  
20 correct?

21 A. There's only two Hispanics. I'm sorry, these  
22 numbers are so small that from a statistical point of  
23 view you have to be very very cautious.

24 Q. If 20 minorities taking the exam is not small  
25 enough to -- you can still have statistical significance

1 with a group of 20 if there are significant differences,  
2 is that correct, with a group of 20 verse however many  
3 whites there were that took the exam, you can get  
4 statistical significance out of that, can't you?

5 A. Um, if the difference is large enough it could  
6 reach the level at which it's big enough to be unlikely  
7 to be by chance, which is what significance is --

8 Q. But if you were an industrial organizational  
9 psychologist being hired by the City of Boston in 1991  
10 or subsequently, in subsequent years, and you were  
11 looking at this data, the adverse impact ratio of the  
12 pass/fail score, the historical knowledge you have of  
13 differences on these type of tests between minorities  
14 and nonminorities and then looking at this mean score  
15 difference on the 1991 test, it wouldn't take even a  
16 scholar such as yourself to come to the conclusion that  
17 if you keep giving just this test you're going to have  
18 significant adverse impact against minority candidates  
19 for lieutenant, isn't that right?

20 A. No, no, see that's the fallacy, don't ever assume  
21 small samples behave like big samples, that is  
22 incorrect. Small samples are not a good predictor of  
23 what's going to happen in the future or with larger  
24 samples. That's the whole notion of statistics. So --

25 THE COURT: Well, let me try this. You're -- as

1 I'm listening to you, your quarrel with his question is  
2 that he uses the word "significant." If he said, "If  
3 you keep giving this test you're going to observe a  
4 disparate impact between blacks and whites," you'd agree  
5 with that?

6 THE WITNESS: No, no, see that's the problem, with  
7 only 20 there is a very large band of error around the  
8 estimate of their mean score.

9 THE COURT: And when we come to the numbers. But  
10 I had thought you, and apparently other witnesses in  
11 this case, do take the position that a written test, for  
12 reasons we don't understand, is whites are going to  
13 outperform blacks to some degree?

14 THE WITNESS: That I would agree with, but this  
15 sample, because of its small size, is not a good  
16 estimator for the future.

17 THE COURT: I get it. That's your point. Go  
18 ahead, Mr. Lichten.

19 MR. LICHTEN: Sure.

20 Q. Now, if you can go to the appendix for a moment.

21 THE COURT: Now, this is the document -- the bulky  
22 document you just handed up?

23 MR. LICHTEN: Yes.

24 THE COURT: All right.

25 Q. Okay. I want to ask you a couple of questions

1 about this appendix.

2 I believe your testimony was that you reviewed the  
3 appendix but maybe not in the fashion that you normally  
4 would as a social scientist, do I have that right?

5 A. No, I don't think I said that.

6 Q. Okay, I didn't mean to put words in your mouth.  
7 How would you characterize your review of the appendix  
8 for thoroughness?

9 A. Well, I looked at those appendices that were  
10 related to issues as I read the report. So if there was  
11 something that was relevant to my understanding, I would  
12 go to the appendices. And then at the end of my reading  
13 of the materials, I did do kind of a skim through the  
14 appendices, um, just to make sure I laid eyes on each  
15 one of them.

16 Q. Well, one of the things you testified about, when  
17 you were under direct testimony, is certain constraints  
18 that the Boston Police Department might have been under  
19 that would have prevented them from doing other  
20 components to the test, I think you talked about civil  
21 service requirements as one of those, is that right?

22 A. Um, yes.

23 Q. I think you told the Court that actually in  
24 response to a question.

25 A. That I understood that there were civil service

1 requirements that were applicable in this case?

2 Q. Yeah, right.

3 A. Yeah, that was my understanding. Yes.

4 Q. Okay. Well, did you happen to look at Appendix C  
5 to this document?

6 THE COURT: While he's looking for it, let me ask  
7 you if you have much more for this witness?

8 MR. LICHTEN: Oh, yes, your Honor.

9 THE COURT: All right, then that implies that a  
10 break will be in order.

11 MR. LICHTEN: Sure.

12 THE COURT: We'll take the morning recess at this  
13 time for one half hour. We'll recess.

14 (Recess, 10:45 a.m.)

15 (Resumed, 11:20 a.m.)

16 THE COURT: Proceed, Mr. Lichten.

17 Q. So in Exhibit --

18 THE COURT: We had looked at a page of these  
19 appendices and you had directed him to C.

20 MR. LICHTEN: Yes, I've got it, your Honor.  
21 Thanks. And for the record this was Exhibit 41 in  
22 **Lopez**.

23 And, um, so it's not necessary to offer it, is  
24 that right, your Honor?

25 THE COURT: No, it is of record in this case,

1       **Lopez** and all of its exhibits.

2               MR. LICHTEN: Okay.

3       Q.       So my question, um, just to recap, is whether you  
4       --

5               You said you may have skimmed the appendices, you  
6       may not have read them, is that correct?

7       A.       Yes, that's correct.

8       Q.       Okay. Well, did you skim or read this decision by  
9       the Civil Service Commission in a case called **Carr vs.**  
10       **the Department of Personnel Administration?**

11       A.       No, I did not, and this would have been why I just  
12       opened it and observed that it was something not  
13       relevant, so I don't think as to the validity. So I did  
14       not read it.

15       Q.       You didn't think it went to validity?

16       A.       Um, and still don't understand how it does. I'm  
17       sorry.

18       Q.       Well -- we'll pursue that.

19               Did anyone at the Boston Police Department or  
20       anyone prior to today inform you of this decision in  
21       **Carr vs. The Department of Personnel Administration?**

22       A.       No, they were very hands-off.

23       Q.       Okay. And you have no idea that this was affirmed  
24       by the appeals court either, you wouldn't know that,  
25       right?

1 A. No, no, I would not know that.

2 Q. Okay. Now, are you aware that the civil -- that  
3 our Massachusetts statute has its own requirement for  
4 promotional exams?

5 A. Well, I only saw reference to something to that  
6 effect in the **Lopez** decision and that's all the  
7 knowledge I have of it.

8 Q. Okay. And so if I could turn your attention to,  
9 um -- I don't see a number. I'm sorry about that.  
10 It's, um, about nine pages from the back.

11 THE COURT: Of Exhibit C?

12 MR. LICHTEN: Yes, of C.

13 A. (Turns.)

14 THE COURT: They have like Bates numbers on the  
15 bottom, my copy. 3000 and specific numbers. For  
16 instance, my last page is 3606 and so if we go back 9,  
17 that would be 35 --

18 MR. LICHTEN: I have a different version, your  
19 Honor. I'm sorry.

20 THE COURT: -- 97. So if it is 9 pages, it's on a  
21 page, the first full paragraph begins "After reviewing  
22 the second set of statistics, Dr. Wiesen."

23 Is that where you want me to be?

24 MR. LICHTEN: No, it's Roman Numeral III -- and  
25 let me see if I can get to that in this document. I'm

1       sorry about that.

2               (Pause.)

3       Q.       Okay.  If you could go to -- it's Bates page  
4       Number 3594.

5       Do you have that?

6       A.       Yes, I do.

7       Q.       And you see at the bottom they're just quoting  
8       this Massachusetts statute which says "Examinations  
9       shall fairly test the knowledge" --

10              THE COURT:  Right, you don't need to read it.  I  
11       see it there.

12              MR. LICHTEN:  Okay.

13       Q.       And you're not aware that in this case the Civil  
14       Service Commission found that the test that was  
15       administered in this case, which threw out the  
16       assessment center and the video exercises, was found to  
17       violate this statutory provision because it was not a  
18       fair test of the knowledge, skills, and abilities  
19       required for the job, you're not aware of that?

20              MR. SIMON:  Objection.

21              THE COURT:  Yeah, the fact is the fact, whether  
22       he's aware of it or not, why is that relevant?

23              MR. LICHTEN:  Sure, your Honor, because in his  
24       testimony he claimed that there were civil service  
25       requirements that might have precluded the City from

1 selecting alternative techniques because of restrictions  
2 in municipalities and public sector civil service and  
3 this shows just the opposite, your Honor.

4 THE COURT: Well, it shows what it shows. I think  
5 the point is made by reference to the facts within  
6 Massachusetts.

7 Anything else for this witness?

8 MR. LICHTEN: Yes, your Honor.

9 Q. Now, I want to see if I understand this question  
10 of the search for alternatives.

11 Is it your testimony or understanding in this case that  
12 the City, in 2007 or 2008, made a search for alternative  
13 selection procedures as we discussed the Uniform  
14 Guidelines provide for?

15 A. It was my understanding that in the 1991 report,  
16 when they began the process that describes the 2008 and  
17 2005 exams, that they did a search at that time, and  
18 then as I mentioned I understood that there were  
19 alternatives examined over the years, and then my  
20 reading of the **Lopez** case was that there was information  
21 that the City had considered other alternatives and that  
22 those were the three pieces of information that caused  
23 me to conclude that they had considered alternatives.

24 Q. Okay. Putting aside 91, we'll get to that in a  
25 second, what were the alternatives that you believed

1 were considered after 1991, and with respect to the 2008  
2 examination, what did they consider, what did they do to  
3 consider these alternatives?

4 A. I don't know what was in their minds. As I said,  
5 I --

6 Q. Well, do you know what they did, do you know what  
7 they actually did?

8 A. Well, it appears as though they did this 2002  
9 study with the Morris and McDaniel firm which  
10 experimented with an alternative and I thought there was  
11 another instance as well.

12 Q. As you sit here today can you tell me anything,  
13 between let's say 2004 and 2008, that the Boston Police  
14 Department or HRD or anyone else did to explore  
15 alternative selection procedures in preparation for the  
16 2005 and 2008 Boston police lieutenant's examination, if  
17 you know?

18 A. I don't believe I know of any single document in  
19 that time frame on this topic.

20 Q. The truth is you don't know what they did? As you  
21 sit here today you can't tell me what they did between  
22 2004 and 2008, can you?

23 MR. SIMON: Objection, your Honor.

24 THE COURT: No, he may have the question in that  
25 form.

1 A. Well, I told you what I know.

2 Q. Okay. But you believe they did make such a search  
3 in 1991, is that correct?

4 A. Yes.

5 Q. Okay. Now, the field of your science has evolved  
6 to a huge extent between 1991 and 2007, a period of 16  
7 years, is that correct?

8 A. Well, certainly a lot of progress has been made.

9 Q. You would expect that it would be appropriate,  
10 under the Uniform Guidelines, for a community such as  
11 Boston to make a search for alternative selection  
12 procedures in 1991 and then use that as a defense for  
13 not doing so 16 years later, would you?

14 A. I'm not saying anything about a defense. I'm  
15 sorry. That's not my role to say how they need to  
16 defend themselves.

17 Q. Well, it is your role -- like you testified in  
18 your expert report in the Ernst case, to see if the  
19 Uniform Guidelines were complied with, that's one of the  
20 things you've done in this case, isn't that right?

21 A. Well, sure.

22 Q. And one of the things the Uniform Guidelines  
23 provide for is that there should be -- when you know  
24 you're using a selection procedure that may likely have  
25 adverse impact, you're supposed to make a search for

1 alternative selection procedures, that's right in the  
2 guidelines, right?

3 A. That's right.

4 Q. Okay. Assuming that to be the case, you would  
5 agree that relying on a search for alternatives 16 years  
6 before, given the evolution of social science in this  
7 field, would not meet that guideline, isn't that right?

8 A. Well, I -- a lot has happened in those years, but  
9 not so fundamentally as the 20 years preceding that.  
10 Um, like, for example, we discovered meta analysis in  
11 the '70s. Since the '90s there have been a number of  
12 refinements towards selection procedures, but we still  
13 have not, you know, "cracked the nut," so to speak,  
14 there has still not been invented a selection procedure  
15 that is highly valid that shows no race differences.  
16 That has evaded us.

17 THE COURT: Actually I'm interested in that. But  
18 we have -- if I understand your testimony, we have  
19 evolved. Well, let me put it to you this way.

20 What I'm hearing is that in terms of test validity  
21 you -- and we'll make it simple because I think I've  
22 heard this from you, more is better, it tends to capture  
23 a greater array of the skill set of the job, especially  
24 a supervisory job like a police lieutenant.

25 You have so testified, right?

1 THE WITNESS: Sure, more is always better,  
2 usually.

3 THE COURT: Usually.

4 THE WITNESS: Except for adverse inference.

5 THE COURT: Right, and then we got into a colloquy  
6 where you forcefully explained that more does not at all  
7 suggest that disparate impact will be reduced.

8 That was your testimony and we'll stop there,  
9 right?

10 THE WITNESS: Absolutely right.

11 THE COURT: Okay. So have we, over this time --  
12 you answered him that we haven't "cracked the nut," we  
13 haven't got testing procedures that will eliminate a  
14 disparate impact and indeed I understood you to say that  
15 when your testimony started, but have we developed  
16 procedures which reliably will reduce disparate racial  
17 impact?

18 THE WITNESS: Um, with less -- with the same  
19 validity but less adverse impact?

20 THE COURT: Correct.

21 THE WITNESS: It all depends. It would not be at  
22 the same cost, it would be more costly.

23 THE COURT: More costly, and as I get from your  
24 earlier testimony, you'd have to have a good  
25 correlation?

1 THE WITNESS: Uh-huh. Uh-huh.

2 THE COURT: "Yes" is better.

3 THE WITNESS: Yes. I'm sorry. The answer is  
4 "Yes."

5 THE COURT: Okay. All right. Thank you.

6 Go ahead, Mr. Lichten.

7 Q. Okay. Now, I've read all the attachments and the  
8 1991, um, validity report that you allude to and I have  
9 to confess that I don't see anywhere in there any data  
10 on what alternatives were looked at by the Boston Police  
11 Department in 1991. Can you help me out on that? You  
12 said they made this search, but where is this search?

13 A. Um, in the -- can I look at the report?

14 Q. Absolutely, you can look at the report or you can  
15 look at the attachments, whichever one you want.

16 A. (Looks.) All right. Are you ready, sir?

17 Q. Yes. Sure.

18 A. One place that they referred to it is in the  
19 information-gathering stage of the job analysis where  
20 they did a literature review and a survey of other  
21 jurisdictions on Page 5, and in the second paragraph  
22 under "Information Gathering," about the middle maybe --  
23 well, 10 lines down it measures -- it says "Selection  
24 Procedures." So the whole sentence reads --

25 Q. What page are you on?

1 A. I'm on Page 5, the paragraph centered in the  
2 middle of the page.

3 Q. Right.

4 A. Maybe starting on Line 8 it said, "In the  
5 questionnaire DPA sought information about job analysis  
6 methodologies, reading scales, selection procedures,  
7 reading lists, and validity evidence pending ongoing  
8 litigation and a ranking of candidates." So that  
9 suggested to me that they gathered information about  
10 selection procedures and about the validity data and  
11 about alternative uses such as ranking.

12 Q. But did you ever see what they got back, whether  
13 they got back one other selection procedure?

14 A. Well, no, they didn't have a section of the report  
15 where they said, "Here's everything we got back."

16 Q. Well, they have Attachment E, "Survey of Other  
17 Jurisdictions, List of Jurisdictions Surveyed," and in  
18 the appendix, "Summary of Survey of Other  
19 Jurisdictions," that's Attachment F, um, G -- I'm sorry,  
20 under E, F, and G. If you look at E, F, and G, I don't  
21 see anything that shows that any jurisdiction sent back  
22 one piece of information on what selection procedures  
23 they were using, do you?

24 A. No, but it doesn't make me feel like they didn't.  
25 You can't document everything. The report is already

1 100-and-some pages single-spaced plus several hundred  
2 pages of appendices.

3 Q. Doctor --

4 A. I'm sorry, I don't think necessarily that they  
5 have to provide an analysis of it to believe that they  
6 conducted it.

7 Q. But you don't know that they got back any  
8 information because it's nowhere to be found and you're  
9 a scientist and certainly you believe that you should  
10 only believe something if there's documentation that it  
11 occurred, right?

12 A. I can see where they describe their search. And  
13 the second place I see is on Page 15 where the second  
14 full paragraph of 15 they explain, um, why they selected  
15 this selection procedure, that would be the sort of  
16 conclusions that would come out of the search for  
17 alternatives and they list six of those there. We can  
18 read them, if you'd like, into the record, but --

19 Q. Dr. Champion, there are a thousand pages or more in  
20 this 1991 survey with the appendices, I mean you've  
21 testified to that in your direct examination, and I  
22 don't see, and I'm asking you if you see one piece of  
23 evidence, a document that shows "We contacted Los  
24 Angeles, this is what Los Angeles told us," "We  
25 contacted Chicago, this is what Chicago does"? I see

1 they got KSAs from those towns and cities, I see that  
2 they asked them questions about what skills and  
3 abilities they were looking for, but I see not one  
4 document, not one word that says, "This city told us  
5 that they do the following," and I'm asking you if  
6 you've seen such a document?

7 A. No, but it doesn't again lead me to conclude that  
8 they lied in these two sections of the report.

9 THE COURT: No one's suggesting they lied or at  
10 least I don't hear that.

11 You haven't seen it?

12 THE WITNESS: I haven't seen it.

13 THE COURT: All right.

14 Q. If you were retained by the plaintiffs in a case  
15 such as this you wouldn't rely on such supposition that  
16 something might have happened, you would have brought or  
17 put that in your report, that this is a deficiency,  
18 right?

19 A. Well, no, and actually I've written something like  
20 300 technical reports and I understand that you need to  
21 be -- you know, you're selective in what you put in,  
22 every single bit of data that you collect or thought  
23 that you have or scrap bit of paper doesn't go into the  
24 report, necessarily so. And then who would know, 20  
25 years later, that there would be some need for that

1 thing that you could have documented better. It's so  
2 easy after the fact to say, "Well, they didn't document  
3 it, so it didn't happen."

4 Q. But, Dr. Campion, the only reason that I raised it  
5 is because you testified yesterday, or Friday in your  
6 direct testimony, that they've made a search for  
7 alternatives, they complied with the guideline, yet you  
8 can't point out to me where that -- where's a piece of  
9 evidence that showed that they got back information from  
10 other jurisdictions about what was being done in 1991,  
11 that's right, isn't it, you can't show me anything?

12 A. Um, maybe that's more important to you than it is  
13 to me. I've told you the data that I relied upon and we  
14 have at least two sections of the report here and we  
15 also have other sections of the report that discuss  
16 alternative uses and particularly they looked at, if you  
17 remember earlier today, the cutting scores, so they  
18 considered alternative cutting scores, and they also  
19 discussed ranking. And so they considered both  
20 alternative procedures and alternative uses in this '91  
21 report, and then I've mentioned the other bit of data  
22 that I have relied upon already.

23 Q. Have you completed your answer?

24 A. Yes.

25 Q. Okay. Let me move on to the final thing about

1 1991.

2 When you looked at the 1991 report, do you remember, um,  
3 something about looking at "critical incident  
4 techniques"?

5 A. Yes.

6 Q. Now, can you tell us what "critical incident  
7 techniques" are, please?

8 A. Well, it's a type of data gathering, um, perhaps  
9 considered a type of job analysis technique where  
10 information is gathered on extreme examples of either  
11 especially-effective job performance or especially-  
12 ineffective job performance, and that information is  
13 often used then to understand the consequences of job  
14 performance or differences in job performance in terms  
15 of important organizational outcomes and it's not  
16 uncommon to use that information to even write the test  
17 questions.

18 Q. Okay. And is that a -- that's a technique that  
19 you, um, support, is that right?

20 A. Oh, sure, I mean it can be used, but it's not very  
21 efficient. Per amount of hour you don't get as big a  
22 pay-out from it, so we don't use it a lot unless we're  
23 developing test questions. But as a form of job  
24 analysis it's not -- it's not very time intensive and  
25 it's not very thorough because you're just getting the

1 ends of the distribution of performance, not everything  
2 in the middle. So it's usually a supplementary thing  
3 that is done in the service of writing tests or other  
4 assessment questions.

5 Q. But if you do it it can be helpful in  
6 differentiating the essential duties of a lieutenant  
7 from those of a sergeant, is that right?

8 A. Perhaps. There's lots of ways of getting that  
9 kind of information, but that's one of them you might  
10 use.

11 Q. All right. You mentioned in your report, your  
12 expert report, that they had done these critical  
13 incident techniques, is that correct?

14 A. Yes, it's described in the -- in the '91 job  
15 analysis report.

16 Q. Doctor, as you sit here today do you know whether  
17 or not there were any critical incident techniques done  
18 for lieutenants as opposed to sergeants?

19 A. I don't recall reading the incidents but I do  
20 recall that they had a panel of twelve subject matter  
21 experts.

22 Q. That's not my question. I'm asking you a very  
23 simple question. Do you know if they did any critical  
24 incidents from the position of lieutenant as opposed to  
25 sergeant?

1 A. I, um -- we'd have to look at what the report says  
2 because that's what I --

3 Q. Did you look at the critical incidents when you  
4 wrote your expert report to see if they in fact -- if we  
5 had a group of critical incidents for lieutenants in the  
6 appendices?

7 A. Which appendix?

8 Q. Well, let's go to, um -- I can help you on that.  
9 Um, V.

10 A. I'm sorry, did you say "Z" or "V"?

11 Q. "V."

12 A. (Turns.)

13 Q. Dr. Campion, I've gone through this and I have  
14 found one critical incident and one alone that says  
15 "lieutenant," the rest -- the other few that are in here  
16 all say "sergeant." Do you see otherwise? You're free  
17 to look at them.

18 A. (Looks.) Um, are you saying that since the  
19 observation was of a lieutenant, that the critical  
20 incident does not apply -- excuse me, to a sergeant,  
21 that the critical incident does not apply to a  
22 lieutenant's job?

23 THE COURT: No, I don't understand. If you're  
24 asking him to clarify his question, I -- he claims to  
25 have looked this over thoroughly, he claims to have

1 found one critical incident where it pertained  
2 specifically to a lieutenant and a handful that pertain  
3 to sergeants. Now, that's the asserted premise for his  
4 question.

5 MR. LICHTEN: That's right, your Honor.

6 THE COURT: And the question is what, again,  
7 Mr. Lichten, what's the question?

8 Q. Is that accurate?

9 THE COURT: All right.

10 Q. Or do you know?

11 A. Well, I guess -- I, um -- let me make sure that I  
12 agree with your observation. (Looks.)

13 Q. If you look at the top right of each critical  
14 incident, some say "sergeant," and I see several that  
15 say "sergeant," and then it has -- and I see one of  
16 those, and only one, that says "lieutenant."

17 A. (Looks.) I'm sorry. This is just taking a  
18 moment. I just want to make sure -- (Turns pages.)

19 Q. Sure.

20 A. Okay. So the one that you say applies to  
21 lieutenants starts on Page 4029?

22 Q. Well, let me get to that. (Turns pages.)  
23 Exactly. (Turns pages.) Hold on. (Looks.) Oh, no,  
24 4038, it says "lieutenant" at the top right.

25 A. Um -- and this is very confusing because on 4029

1 it says "the title of the actor," that's the person  
2 being described, it says "patrol supervisor-LT," but the  
3 incident was apparently provided -- the title of this  
4 SME was a sergeant. So apparently this is a sergeant  
5 giving not one but two critical incidents on a  
6 lieutenant.

7 Q. Well, aren't you aware that in the Boston Police  
8 Department patrol supervisors are sergeants not  
9 lieutenants?

10 A. It says "-LT".

11 Q. Are you aware that in Boston patrol supervisors  
12 are sergeants? You're not aware of that, are you?

13 A. Okay. So it says "the patrol supervisor-LT" --

14 THE COURT: Well, let's go question by question  
15 because I have to follow it.

16 MR. LICHTEN: Yes.

17 Q. Are you aware that --

18 THE COURT: Go ahead.

19 Q. Are you aware that in the Boston Police Department  
20 a patrol supervisor is a sergeant position, it's not a  
21 lieutenant position?

22 A. I haven't a clue.

23 Q. All right.

24 A. But I know what I read here.

25 Q. Okay. Now, a final question on this and I'll be

1 done with this part.

2 Is it your testimony that somehow these critical  
3 incident technique reports made their way in the  
4 analysis and construction of the 2008 Boston police  
5 lieutenant's examination?

6 A. I don't know.

7 Q. You mentioned in your expert report that there  
8 were these critical incident techniques that the Boston  
9 Police Department did, but you don't actually have any  
10 evidence before you that these ever found their way into  
11 the 2008 Boston police lieutenant's examination, is that  
12 right?

13 A. Well, that's not exactly -- what I think I  
14 described is the process by which these exams are  
15 normally conducted or developed and how a job analysis  
16 is used to drive the knowledges, skill requirements --

17 Q. Dr. Campion, I'm just asking you whether you have  
18 any evidence before you that these critical incidents  
19 that we just went over in 1991 somehow made their way  
20 into questions that were used in 2008, do you know or  
21 don't you know?

22 A. Well, no, I guess I don't know, but I wouldn't  
23 expect that.

24 Q. Okay. In fact you would agree that the 145 or 149  
25 KSAs, knowledge skills and abilities, that were found to

1 be important that were eventually selected for some of  
2 them to be used as questions for the Boston police  
3 lieutenant's 2008 examination, those KSAs came from the  
4 2002 Morris and McDaniel job analysis, that's right,  
5 isn't it?

6 A. I believe so.

7 Q. Okay. Now, you also said that you reviewed the  
8 sergeant exam because you were interested in that  
9 because you saw that there seemed to be a lot of  
10 similarity between the sergeant's position and the  
11 lieutenant's position, is that right?

12 A. Yes, as part of the comparison between the two  
13 jobs I reviewed both of the exams for, I believe, both  
14 years.

15 Q. And you looked at the 2002 job analysis report --  
16 job analysis report for sergeant to confirm your view  
17 that that -- did that 2000 job analysis report confirm  
18 your view that that testing was done properly, is that  
19 right?

20 A. Well, no, the report didn't describe testing, it  
21 only described the job analysis --

22 Q. The job analysis.

23 A. -- and so I did look at the job analyses for the  
24 two jobs in 2000, yes.

25 Q. Okay.

1 MR. LICHTEN: May I approach, your Honor?

2 THE COURT: You may.

3 MR. LICHTEN: Your Honor, this is 42 from **Lopez**.

4 (Hands up.)

5 MR. LICHTEN: Mr. Weber is happy every time I get  
6 these documents out, it's a little less he has to carry  
7 back.

8 Q. Okay. I'm going to show you what's been marked as  
9 Exhibit 42, it's in evidence from the **Lopez** case, and  
10 ask you if you've seen this before?

11 A. Yes, it appears to be the report from which I drew  
12 a table to compare the two jobs.

13 Q. Now, Doctor, did you notice anything unusual or  
14 suspicious about this report, anything at all, when you  
15 looked at it?

16 A. No.

17 Q. Well, you were aware that part of it contained  
18 SMEs ranking certain tasks for certain scales such as  
19 how important they are and what dimensions they require,  
20 is that correct?

21 A. Yes, I believe they used a panel of subject matter  
22 experts. I read the lieutenant's report most carefully.

23 Q. All right. And they were supposed to -- each  
24 subject matter expert was supposed to answer each  
25 question as to taking a particular KSA and how important

1 it was and how frequently they did it, is that right?

2 A. Um, yes, I believe I'd have to study it in more  
3 detail but that was -- yes, it does show here, "How  
4 often do you perform this task?" "How important?" "Is  
5 it necessary for" --

6 Q. And these individuals were taking from a variety  
7 of different job duties, is that right, some were in  
8 administration, some were in specialty units, some were  
9 in districts, are you aware of that?

10 A. No, I see their names on Table 13 but I believe  
11 that they are described -- again if the report models a  
12 lieutenant report, then that's what they did.

13 Q. What is the likelihood by chance that every one of  
14 those 11 SMEs answered every question exactly the same,  
15 what is the statistical probability of that?

16 A. Um, I don't know, but one of the problems we have  
17 with job analysis --

18 Q. No, I'm just asking if you know what the  
19 statistical probability is of that? You don't know, is  
20 that your answer?

21 A. No, I'm trying to explain it to you. May I  
22 explain?

23 Q. Sure.

24 A. Okay. The job analysis surveys that get to, um,  
25 subject matter experts are usually only the tasks that

1 are found to be relevant to the job already, so you  
2 often find that they're all or nearly all rated as  
3 "important" because otherwise they wouldn't even be in a  
4 survey. So it could be a high probability that they  
5 would all respond positively.

6 Q. Dr. Champion, that makes no sense. What's the  
7 purpose of doing these ratings if everybody's going to  
8 rate everyone as being "important," doesn't that destroy  
9 the whole purpose of the job analysis?

10 A. No -- no, it's a confirmatory step.

11 Q. Okay.

12 A. And so if you've done a good job in developing  
13 your tasks and your KSAs, then when you're given the  
14 subject matter experts, they confirm that they are  
15 important.

16 Q. So when you give a bunch of KSAs, 149, to subject  
17 matter experts, you ask them each to rate them and they  
18 all come out with the exact same score, then you say,  
19 "Well, that's not surprising," and it doesn't affect, in  
20 your opinion, the integrity of the process at all?

21 A. I'm sorry, I've just explained that to you. I can  
22 do it again if you'd like?

23 Q. Well, let's first go to page -- let's start on  
24 Page 24. You can start on whatever page.

25 You see in here that there's absolute agreement on every

1 knowledge, skill, and ability in this document, isn't  
2 there?

3 A. (Looks.) Um, I'd have to spend some time studying  
4 it.

5 Q. Doesn't that concern you, as a very reputable and  
6 highly-regarded industrial organizational psychologist,  
7 that you would rely on a KSA job analysis by subject  
8 matter experts that has 100 percent agreement on every  
9 part?

10 A. Um, did they do it as a group?

11 Q. Well, you tell me?

12 A. Well, I'd have to look.

13 Q. Do you understand that the instructions were they  
14 were each to rate it individually?

15 A. It was a task-rating session, which implies that  
16 they may have met as a group. The session implies that.

17 Q. Dr. Wiesen testified that the amount of time  
18 allotted for that session could not possibly, just from  
19 a mathematical calculation, have given them enough time  
20 to do all of those together in a joint session through  
21 some sort of an agreement process, do you agree with  
22 that or do you know?

23 A. Um, I haven't a clue of what Dr. Wiesen talked  
24 about.

25 Q. But it doesn't raise your hackles at all that

1 there's complete agreement on every KSA for every  
2 dimension that's looked at, that doesn't concern you as  
3 a social scientist?

4 A. What are you implying, that somebody filled it out  
5 for them and they didn't actually participate?

6 Q. That's exactly what I'm -- I'm implying that this  
7 was not a valid construction of a job analysis, that's  
8 exactly what I'm implying, because how could it be  
9 proper if everyone agreed on every facet, how could that  
10 possibly be?

11 A. Well, I'm just trying to explain it to you, it's  
12 in part because we only present them with tasks and KSAs  
13 that we know to be important or they wouldn't be on the  
14 survey, and second of all it appears that they  
15 participated in a rating session. I certainly would  
16 think it's more reasonable that that would explain it  
17 than a fraud.

18 Q. Do you know?

19 A. Well, again, Jesus, you might be --

20 THE COURT: Wait a minute. Just -- just answer  
21 the question.

22 A. I -- I know what I read here and it doesn't look  
23 so odd that I want to question its validity.

24 Q. Is there anything that you've seen that shows that  
25 the instructions given to the SMEs were to meet and then

1 go over each one in a group fashion and come to a  
2 consensus, is there anything that shows this was done by  
3 consensus?

4 MR. SIMON: Objection.

5 THE COURT: Grounds?

6 MR. SIMON: Asked and answered, your Honor.

7 THE COURT: All right. He may answer it.

8 A. All I can see is that they participated in a task-  
9 rating session on page -- Bates 1561.

10 Q. Okay. So I guess the answer to my question is  
11 you're not surprised or concerned, as a reputable social  
12 scientist, about the fact that there was complete  
13 unanimity, is that your testimony, it doesn't concern  
14 you at all?

15 A. Not so much so that I would throw it out. I mean  
16 it does seem high, I may ask some questions, but I  
17 wouldn't think it was so extreme.

18 Q. Well, did you ask questions?

19 A. No, I don't think it's that extreme that I believe  
20 it requires that.

21 Now, do you have the lieutenant's exam, I looked at that  
22 one a little more closely.

23 Q. In fact there was variation for the lieutenant's?

24 A. Well, see, there you go.

25 Q. Yeah, that's right, there you go, one seems to

1 have variation and one has no variation at all.

2 A. So your point is?

3 Q. I'll move on to something else.

4 I'd like to ask you about the training and experience  
5 rating in this case. So as I understand it you made no  
6 attempt to figure out what the actual nominal value was  
7 of the T and E rating, is that correct, that is whether  
8 it actually accounts for 20 percent or whether it  
9 effectively could only count for 4 or 5 percent, you  
10 don't know, is that right?

11 A. Um, I can't answer that question because it's  
12 illogical.

13 Q. Well, you never studied the documents that showed  
14 how the T and E is constructed in the City of Boston or  
15 in the Commonwealth of Massachusetts, is that correct?

16 A. No, I thought I looked at the point system and how  
17 it works.

18 Q. You did look at it?

19 A. I thought so.

20 Q. Do you know how it works?

21 A. You get a certain number of points for work  
22 experience and education and the nominal weight is 20  
23 percent.

24 Q. The nominal weight is 20 percent. But do you know  
25 that you get 14 points just for showing up?

1 A. No, you'd have to show me what you're talking  
2 about.

3 Q. Well, I'm asking you. You were the one who  
4 studied this case and came out with an opinion that the  
5 test is valid and I'm asking you whether you actually  
6 studied the effective weight of the training and  
7 experience on the entire examination?

8 A. I didn't do a statistical analysis, no.

9 Q. So whether it counts for 2 or 3 points effectively  
10 or 18 or 19 points or 4 or 5 points, you don't know, you  
11 haven't done the analysis, is that correct?

12 A. I have not done an analysis of that.

13 Q. And you weren't here at trial when Dr. Wiesen  
14 testified that you get 14 points just for showing up for  
15 the examination of the 20, so that reduces its actual  
16 effective percent weight in the overall examination  
17 process, you weren't here for that, is that right?

18 A. I was not here for his testimony, no.

19 Q. Did you read it in his report?

20 A. No.

21 Q. All right. Now, you're aware of some literature  
22 on training and experience ratings, aren't you?

23 A. Sure.

24 Q. (Silence.)

25 A. "Sure," I said. I'm sorry.

1 Q. I'm sorry, I didn't hear your answer. I'm sorry.

2 A. I said "Sure."

3 Q. Okay. And, um, you would agree that training and  
4 experience ratings, using a point system like this, have  
5 one of the lowest correlations of any type of testing or  
6 promotional mechanism, is that correct?

7 A. No, that would not be correct.

8 Q. That would be incorrect?

9 A. That would be incorrect.

10 Q. (Hands document to clerk and witness.) Are you  
11 familiar with this article?

12 A. Yes.

13 Q. Okay. In fact you're not just familiar with this  
14 article, but you cited this article in one of your  
15 footnotes to your expert report, is that correct?

16 A. That's right.

17 Q. And you know Frank Schmidt, is that right?

18 A. Yes.

19 Q. And he's quite renown in the field, is that right?

20 A. Oh, yes.

21 Q. All right. And you respect his work, is that  
22 correct, in fact you cited this study in your expert  
23 report?

24 A. Um, yes, and it has limitations, but it makes some  
25 contributions to the literature.

1 Q. Okay. Well, if you go to Page 265, Table 1.

2 A. (Turns.)

3 Q. Now, just so we're clear, this is a, um -- this is  
4 an article published by the American psychological  
5 Association, is that right?

6 A. Yes.

7 Q. And it was published in 1998, is that right?

8 A. That's what it says, right.

9 Q. Okay. And if you go to Page 265, it has a table,  
10 does it not?

11 A. Yes, there is a table.

12 Q. And in the first column in the table under  
13 "Validity," it has -- based on published papers and  
14 studies, it has validity quotients for various types of  
15 performance or measures of what one would look for  
16 either in hiring or promotion, is that right?

17 A. Yes.

18 Q. Okay. And validity is the higher the number the  
19 more validity there is, is that correct?

20 A. Yes.

21 Q. Okay. And just so we're clear, these studies are  
22 based upon criterion-related studies not content-  
23 validity studies, is that correct?

24 A. Oh, yes, that's right.

25 Q. Right. So when we look at this published

1 literature, generally the published literature of this  
2 criterion validity, that is they've actually studied  
3 this issue of how well people do with certain tests with  
4 respect to their job performance using actual subject  
5 matter people that they look at, is that right?

6 A. Um, actually I think you really messed that up.

7 Q. I think I did mess that up.

8 Criterion validity is actually a study of how -- what  
9 people -- how people actually perform and how they did  
10 on these tests, is that right?

11 A. Yes, criterion-related validity is a statistical  
12 correlation between performance on the test and  
13 performance on some criterion of interest and that may  
14 be job performance or it may be something else.

15 Q. Got you. Okay. I got the second one better.  
16 Okay. And if you look at that, this said that the  
17 highest of what GMA -- I'm guessing that's "General  
18 Mental Ability" as in Point 51, is that correct?

19 A. Yes, that's right.

20 Q. But then below that they say "Work sample tests  
21 are a Point 54," that's a high validity, is that right?

22 A. Well, you're looking now at "work sample tests"?

23 Q. "Work sample tests."

24 A. That's a bigger number, you're right.

25 Q. So "work sample tests" could be like an in-basket

1 where you sit down and they say, "Okay, this problem  
2 just occurred, do something," and they judge how you've  
3 done on it, and that could be a work sample test, is  
4 that right?

5 A. Um, no, more often a work sample is an actual  
6 piece of the work. I mean an in-basket is more of a  
7 simulation. But as I explained in my deposition the  
8 other day, these are only -- only the very best studies  
9 can get published and also we don't know how many  
10 studies underlies each of these. That's what I was  
11 saying. There's real limitations to these --

12 Q. I haven't asked you that question, Dr. Champion,  
13 and I'm sure your counsel will ask it, but just to  
14 follow up, you're saying that these are based on good  
15 studies, is that correct?

16 A. I'm saying that usually we get published studies  
17 which are generally stronger studies with better  
18 results. And so it creates an upward bias in the  
19 estimates in the literature.

20 Q. But wouldn't that be an argument for if you're  
21 doing a promotional test, if you do the best possible  
22 job, you're likely to get stronger correlations than if  
23 you really go out and try to test for certain  
24 knowledges, skills, and abilities, and you do it right,  
25 then you're likely to get a higher correlation or

1 validity quotient than if you do a poor job, isn't that  
2 right?

3 A. It's easy to do a good job with job knowledge.  
4 It's hard to do a good job with --

5 Q. I didn't ask you that. (Pause.) Let me move on.  
6 If you continue to look at this, "job knowledge tests"  
7 are listed and they have high validity of .48, is that  
8 correct? "Job knowledge tests" .48 validity?

9 A. That's what it says here.

10 Q. Right, just below "work sample tests," right, .54?

11 A. I'm sorry, I thought you were saying "job  
12 knowledge tests" and that has a 48.

13 Q. .48 validity, that's good, right, it's what you've  
14 been saying in this case?

15 A. Yes, there's a lot of evidence in job knowledge  
16 tests, there's not really much in job samples.

17 Q. But, Dr. Campion, that .48, that's just based on  
18 the best studies, that's not a fair number, you just  
19 said that with respect to work sample tests, right? So  
20 you don't think that .48 really holds up under your  
21 analysis that these are only the best cherry-picked  
22 studies?

23 A. No, I didn't say that.

24 Q. Oh, so the .48 is accurate but the .54 is not?

25 A. There's probably multiple times more studies for

1 the job knowledge tests in general mental ability and  
2 employment interviews than there is for these other  
3 selection procedures and that's why -- I warned you of  
4 that during my deposition that this study is based on  
5 the accumulation of other meta analyses and so it  
6 doesn't even show the number of primary studies. So you  
7 have to be very very careful here in terms of how to  
8 interpret these results.

9 Q. Well, in their report Morris and McDaniel, in  
10 2002, say that they believe the validity for an  
11 assessment center such as they ran has been shown, and  
12 this is in 2002, to be at the .38 level, and I won't go  
13 back to that, but it's in there. Do you think that's  
14 accurate that a good assessment center could have .38  
15 validity?

16 A. That was based on the study by Daubler, et al in  
17 '87.

18 Q. And do you think they're right or wrong?

19 A. Well, I'm saying that it's a very old meta  
20 analysis and so --

21 Q. I'm just asking you what your opinion is, do you  
22 think that a good job assessment center could have  
23 validity about .38?

24 A. Could?

25 Q. Yes.

1 A. Well, sure it could.

2 Q. Okay. Now -- just a long way of getting down to  
3 the T and E. They have -- towards the bottom, the "T  
4 and E point method." Do you see that?

5 A. Yes.

6 Q. And that's what we're talking about in this case,  
7 we're talking about a "Training and Experience point  
8 method," is that correct?

9 A. Um, can you help me find a copy of the T and E  
10 rating system, so I can review it, because I can't  
11 answer this question without that.

12 Q. You know it's a -- what is unclear about the  
13 question? You know it's a point system, don't you?

14 A. Well, no, um, there's several different kinds of  
15 point systems and if you looked there's also something  
16 on this chart that's called a "T and E behavioral  
17 consistency method."

18 Q. And that's a behavioral consistency method and  
19 that's not what was used in the Commonwealth of  
20 Massachusetts, is it?

21 A. Can you show me there?

22 Q. I'm asking you if you know. You're the expert.  
23 Do you know, as you sit here today, which method was  
24 used for the training and experience?

25 A. I'd like to look at the methods.

1 Q. So you don't -- as you sit here today, you don't  
2 know?

3 A. Well, I've read a lot of documents or I don't have  
4 them all memorized. If you can show me that, perhaps we  
5 can clarify this.

6 Q. In any event you would agree that the training and  
7 experience method of setting a training and experience  
8 score has a very low validity, .11, which is in the very  
9 low field of validity, is that right?

10 A. No, I wouldn't agree with that at all.

11 Q. So you disagree with that analysis in a report  
12 that you cited in your --

13 A. Right, I would disagree with that. We don't know  
14 how many primary studies went into this and we don't  
15 know whether this is an exact match with what we have  
16 here in Boston. So --

17 Q. Can you cite it? Can you cite me a study, as you  
18 sit here now, that you relied on that has a description  
19 of what validity they assigned, if any, to a T and E  
20 point system in a promotional process, is there any  
21 study that you have in mind that shows that there's  
22 higher validity?

23 A. Well, I'd have to go back and look but I think  
24 there was an article by McDaniel and others and then  
25 there was another article by Neil Schmidt.

1 Q. Well, what do you think the validity is of the T  
2 and E point system?

3 A. Well, I don't know here, we don't have  
4 criterion-related validity data. I mean this is not the  
5 sort of thing you could just guess about.

6 Q. Okay. Now, if you continue on with this article  
7 again that you've cited in your report, they have a  
8 section about the increase in validity that one can get  
9 by adding together certain tests. This is what I think  
10 the judge has been asking about, that if you add certain  
11 tests together you increase the validity because you're  
12 testing for more of the job domain, do you agree with  
13 that?

14 A. Um, hold on. The question was is that possible  
15 hypothetically?

16 Q. No, no, no -- um, yes, let's start there.

17 A. Well, sure, it's possible hypothetically that  
18 adding additional selection procedures may give you what  
19 we call incremental validity.

20 Q. Right. And this article, this table again from a  
21 report, an article that you cite in your expert report,  
22 this tries to quantify the increased validity that you  
23 can get, isn't that right?

24 A. Yes, using meta analytic techniques, yes.

25 Q. Yeah, using meta analytic techniques would be

1 looking at big good studies that have been done in the  
2 field?

3 A. No, that's the problem and I tried to explain this  
4 also in my deposition. These are different studies so  
5 the studies that -- for one selection procedure are not  
6 the same studies for another selection procedure. So  
7 the incremental validity cannot be calculated with  
8 certainty. It is estimated based on the validities  
9 here. And that's what makes it such a "crap shoot."  
10 And I don't mean to use technical terms.

11 THE COURT: No, but I -- no, I need to understand  
12 it. But this Schmidt paper, I think fairly read,  
13 purports to say, for example, that if you added work  
14 sample tests you'd have a 24 percent increase in  
15 validity. It says that, doesn't it?

16 THE WITNESS: That's what it says and I'm saying  
17 that --

18 THE COURT: Well, wait a minute, that's what it  
19 says and the -- I have not read the report, but that's  
20 not some sort of straw man, the report purports to  
21 validate that, isn't that right? I'm not asking whether  
22 you agree with it, that's what this report purports to  
23 say?

24 THE WITNESS: It is an estimate, it is not proof.

25 THE COURT: Right.

1 THE WITNESS: And it's based on --

2 THE COURT: Right, it's an estimate. But this  
3 report purports to make those estimates?

4 THE WITNESS: Well, it is, yeah. It does.

5 THE COURT: Yeah, they would make those estimates?

6 THE WITNESS: Uh-huh.

7 THE COURT: All right.

8 Go ahead, Mr. Lichten.

9 MR. LICHTEN: Your Honor, I would ask to move that  
10 report in not for the truth of the matters asserted  
11 therein, but for some indication of what literature was  
12 out in the field by, um, you know, 2006 and 2007 with  
13 respect to if searches had been made.

14 MR. BOK: Well, your Honor, he is trying to get at  
15 it for the truth of the matter, he's --

16 THE COURT: Well, I'm not -- I'm able to sort it  
17 out. He wants it for the limited purpose that it was  
18 said on or about the date of publication. That's all.  
19 I can handle that as a factfinder. I question how  
20 relevant it is and he sought to answer that. He says  
21 it's relevant to know that at least reputable scientists  
22 were saying these things back at about that date. Not  
23 that it's in as a learned treatise, he can't, with this  
24 witness, establish that basis. And isn't it at least  
25 relevant that the statements were being made back in

1 1998?

2 MR. BOK: All right, your Honor, if -- as to  
3 whether it's relevant, your Honor, let me explain why.

4 THE COURT: Yeah.

5 MR. BOK: First of all, I believe that it's  
6 hearsay, but putting that aside --

7 THE COURT: He doesn't offer it for a hearsay  
8 reason. It is hearsay. There's no doubt about it.  
9 It's hearsay. I cannot make any findings based on  
10 accepting the truth of this document as the record now  
11 stands. But as we frequently have in cases, it may be  
12 relevant that competent scientists were saying this back  
13 then. This is not some new concern. And I'll go  
14 further. It appears from this witness's testimony and  
15 that of others that this problem of the effect of  
16 aggregating different methods of testing has been a  
17 persistent problem and a very naughty one, it appears.

18 MR. BOK: Well, then I would argue, your Honor,  
19 that even if you do find it to be relevant and not  
20 excludable under the hearsay rule, that its probative  
21 value is really limited because of the fact that you're  
22 taking it in as one article in a sea of literally  
23 thousands of articles --

24 THE COURT: It may be. It may be. That's right.  
25 But I am going to admit it, Exhibit 82, but it's limited

1 not for the truth, but for the fact that it was said on  
2 or about the date it was said. Now, it may be they'll  
3 provide some other evidence, but for now it's limited.

4 Go ahead, Mr. Lichten.

5 MR. LICHTEN: Thank you, your Honor.

6 (Exhibit 82, marked.)

7 Q. Okay. Going back to your Ernst report for a  
8 second, Ernst vs. the City of Chicago, do you recall --  
9 and I'm just trying to speed things up.

10 Do you recall making the assertion I asked you about in  
11 your deposition that because these EMTs had already  
12 become EMTs and therefore had to pass a physical and a  
13 practical test to actually get the certificate to begin  
14 with, that it was less likely that they needed to be  
15 tested for these physical attributes when they were  
16 going on the Chicago Fire Department, or trying to,  
17 because they had already shown competence in the area?

18 A. Yes.

19 Q. Okay. Now let's try to apply that here.

20 In this case you've testified, under oath, that you  
21 found great similarity of -- it sounds like close to the  
22 same job, according to you, between the sergeant's  
23 position and the lieutenant's position, is that right?

24 A. Well, if you recall, looking at the knowledge  
25 areas, that the knowledge areas were 80 percent in

1 common, but based on the job analyses that were  
2 conducted.

3 Q. All right. And in this case you have, as the pool  
4 of candidates, a group of sergeants who have already  
5 taken and not only passed the sergeant's exam, which is  
6 very similar to the lieutenant's exam, but have actually  
7 scored high enough to get themselves in the ranks where  
8 they could be reached for promotion, isn't that correct?

9 A. Yes.

10 Q. So in this case you don't have a pool of  
11 applicants or a pool that haven't shown themselves  
12 competent to know the technical knowledge which a  
13 sergeant needs to know, the pool of candidates is  
14 someone who's sort of self-selected, people who have  
15 already shown themselves to have the technical knowledge  
16 and competence necessary to go on and be a lieutenant,  
17 isn't that right?

18 A. Um, I don't know that. I've lost when you were  
19 saying that people have shown they have the technical  
20 knowledge and competence to be a lieutenant, that's  
21 where I didn't --

22 Q. They've already passed a test, 80-which questions  
23 which were the same as the questions on the lieutenant's  
24 exam, and they've not only passed such a test in the  
25 past but they've done sufficiently high to be promoted

1 to the rank of sergeant, isn't that right?

2 A. Oh, yes, they're sergeants.

3 Q. Right. So that would justify -- and the Court  
4 asked you about this, I think, on Friday, that you could  
5 make an argument, could you not, that having shown the  
6 ability to know the technical knowledge needed for the  
7 job, you could say these candidates have shown that they  
8 have the ability and therefore they should go on, in a  
9 multiple hurdle kind of situation, to take other tests  
10 that might differentiate themselves with respect to  
11 skills and abilities that are critical for a police  
12 lieutenant to know such as oral communication,  
13 situational judgment, reasoning, things of that nature?

14 THE COURT: That's a long question, Mr. Lichten.

15 MR. LICHTEN: Sure.

16 THE COURT: Allow me to rephrase it and then if  
17 you want to go back, fine.

18 MR. LICHTEN: It's the last time I'll ask.

19 THE COURT: I think this is what he's asking you.  
20 These are already sergeants so at sometime they've  
21 passed a sergeant's exam plus I think there's some time  
22 in grade so they've been working as sergeants and I have  
23 some evidence that some of them have been working as  
24 acting lieutenants.

25 So against that background, doesn't it make sense

1 either to weight the written portion of the lieutenant's  
2 exam less or to add more experiential -- um, valid  
3 experiential exam points for lieutenant?

4 THE WITNESS: I suppose you could.

5 THE COURT: Well, it makes sense, but does it  
6 commend itself to you?

7 THE WITNESS: Well, whether it would be more valid  
8 than a competitive knowledge exam is not at all clear.  
9 The fact that they have established that they were  
10 competitive for a sergeant means they have some, but,  
11 you know, over time people accumulate more knowledge,  
12 some people --

13 THE COURT: -- burn out.

14 THE WITNESS: They burn out. So when it's time  
15 for the competition for lieutenants, normally in most  
16 organizations it's a new what we call "tournament," it's  
17 a tournament model of promotion where in order to be in  
18 the competition for lieutenant they have to have gotten  
19 to sergeant already, so your knowledge has already been  
20 considered up to that point, and then it's a competitive  
21 and limited opening competition for the next level. So  
22 that's what we have here.

23 THE COURT: All right. I tried my question. You  
24 go ahead with yours, Mr. Lichten.

25 MR. LICHTEN: Okay.

1 Q. Well, that competition that you've described, that  
2 could actually be a competition to test for those  
3 abilities and skills that were never tested for in the  
4 sergeant's exam namely the kinds of judgment and  
5 abilities and reasoning that you can get at with these  
6 alternative selection procedures such as an in-basket,  
7 video scenarios and the like, isn't that right?

8 A. I suppose. I don't know that it would be more  
9 valid, but, you know, it's a possible idea.

10 Q. But it might be equally valid because assuming two  
11 things -- assume two things in this hypothetical.  
12 Assuming that you had to pass and get a high score on  
13 the sergeant's exam in order to be promoted to sergeant  
14 and then you take and at least get a passing score at  
15 some cut-off level that shows you're competent on the  
16 lieutenant's exam to get on the list, wouldn't that --  
17 and then you add to that process these assessment center  
18 exercises, that could actually be equally or more valid  
19 than a lieutenant's exam that only tests for job  
20 knowledges in a multiple choice fashion given that these  
21 sergeants have already taken such a test and passed it,  
22 isn't that right?

23 A. (Laughs.) Wow, I'm not sure I can follow all of  
24 that, but the piece that I did hear that I would not  
25 support would be to use their sergeant's score years

1 later for lieutenant promotions.

2 Q. That's not what I said. No, I'm saying that --  
3 maybe my hypothetical wasn't clear enough, sorry I was  
4 so longwinded.

5 What if you just required sergeants to take and  
6 pass, with a reasonable cut-off score, the lieutenant's  
7 multiple choice written knowledge test and then you  
8 added to that these other tests, the assessment centers  
9 that test for these other skills and abilities not  
10 tested on the multiple choice job knowledge test, you  
11 would likely have a more valid exam, isn't that correct?

12 A. You know I don't know, I don't know because these  
13 other things you may add in might water it down. So  
14 using a very good selection procedure, averaging it in  
15 with a selection procedure that's not so good, could  
16 very well dilute the validity and it all depends on a  
17 lot of factors including how you've weighted them and  
18 whether there were cut-offs and whether high scores for  
19 one could compensate for low scores on another, so it's  
20 trickier than it sounds. And I honestly don't know,  
21 without much more detail, how to -- well, I can estimate  
22 it mathematically but I will need more details to do so.

23 Q. But you would agree -- you've written about  
24 something called "range restriction," is that correct?

25 A. I'm familiar with "range restriction" research

1 issues and I've authored an article recently on that.

2 Q. All right. I'm just trying to cut to the chase  
3 here. Some studies are not as valid -- and I'm using  
4 this in a different way, as they might be "because of  
5 range restrictions on the people who are being studied,"  
6 is that correct?

7 A. That's right, that's one of the big ones, that and  
8 unreliability tend to reduce our ability to detect  
9 criterion validities.

10 THE COURT: What's -- "range restrictions within  
11 the group of people being tested," what did you mean by  
12 that?

13 MR. LICHTEN: Your Honor, I think I'm going to get  
14 at that, if you'll indulge me.

15 THE COURT: I will. I'll withdraw. Go ahead.

16 Q. So, for example, and this is just one back-up  
17 question to that.

18 You talked about this meta analysis, the judge  
19 asked you some questions and you said, "Well, look, your  
20 Honor, job knowledge tests are known to have a high  
21 validity based upon all this meta analysis that's out  
22 there," is that correct?

23 A. Well, um, based on the article you showed me, yes,  
24 and job knowledge tests have a long history with lots  
25 and lots of studies.

1 Q. Based upon meta analysis, is that right?

2 A. Yes, these data here that you've showed me are  
3 based on meta analytical results which average across  
4 studies.

5 Q. Right. But where you have range restriction,  
6 which I'll get to in a second, that could impair the  
7 integrity of the study that you're looking at, is that  
8 right?

9 A. Yes, that's one of the critical issues.

10 Q. Okay. So in this case if you have -- if you're  
11 looking at -- if you actually study the Boston Police  
12 Department promotional exam, here you have sergeants who  
13 have already taken and passed and have received a  
14 high-enough score on the job knowledge test to be  
15 considered -- um, to be promoted, you would have "range  
16 restriction," that is you would have a group that's not  
17 a group just out in the stratosphere who are all types  
18 of persuasions and all types of abilities, you would  
19 have a group that has already sort of self-identified  
20 themselves as being proper candidates for the position,  
21 and that's "range restriction," isn't that right?

22 A. Um, no, "range restriction" would be if you, um,  
23 only promoted a small number of lieutenant candidates  
24 and then correlated their scores with job performance  
25 because they don't now any longer represent the full

1 range of all the sergeants who took the exam. That's  
2 "range restriction."

3 Q. But here you wouldn't be testing all the people  
4 who are police officers, you'd only be testing --

5 THE COURT: Wait, I need to get --

6 MR. LICHTEN: Sure.

7 THE COURT: We have to deal with his testimony.  
8 Now he gave a definition of "range restriction" and let  
9 me give it back to you so I understand it.

10 You say "range restriction" is, in conducting  
11 validation studies, it would be to look only at the  
12 people who were selected, for example, and say if the  
13 test is valid on whatever basis -- and as I get the  
14 sense of your testimony, "range restriction" in that  
15 sense would be a mistake because it doesn't look at the  
16 body of people who took the exam, both those who pass  
17 and those who don't pass and also those who were  
18 selected and those who were not selected, have I got  
19 your testimony right?

20 THE WITNESS: Yes.

21 THE COURT: So "range restriction," as you're  
22 using it, is not a valid way of corroborating the  
23 validity of a test?

24 THE WITNESS: That's right, it makes the validity  
25 smaller.

1 THE COURT: Yes. All right.

2 Now, Mr. Lichten --

3 MR. LICHTEN: Well, that's the point I'm making.

4 THE COURT: Well, go ahead. It may well be.

5 Q. The point is that with respect to the Boston  
6 police lieutenant exam the meta data that you testified  
7 to that shows the high correlation of job knowledge  
8 tests may not be as applicable if you actually tested  
9 that hypothesis in the Boston Police Department because  
10 the sergeants taking the lieutenant's job knowledge test  
11 have already shown themselves to be superior individuals  
12 with respect to having some job knowledge, isn't that  
13 right, that's what "range restriction" is?

14 A. No, I'm sorry, in the context of validation we  
15 don't use it for the fact that the candidate population  
16 may not be at a random draw of the general population,  
17 that is always the case, and that's not when we use the  
18 term "range restriction" in a validity context, it is  
19 not referring to the fact that the candidates, as a  
20 total group, may be somewhat restricted because they've  
21 gotten promoted up to that level. I mean that may be  
22 important to you to think about that, but usually when  
23 we refer to "range restriction" it's looking at the  
24 correlation between test scores and job performance and  
25 the restriction is that those who are selected don't

1 have as wide a range of test scores as that whole  
2 candidate population.

3 Q. Okay. And I'll leave this in a moment, but  
4 wouldn't you expect this population not to have as big a  
5 range in test scores as the general population, just as  
6 you just said, on a lieutenant's exam because they've  
7 already passed the technical knowledge and done well on  
8 the technical knowledge of the sergeant's exam which has  
9 many of the same or similar questions?

10 A. Yeah, but that's a given in the situation. I mean  
11 we're not testing people off the street for the  
12 lieutenant's exam, they would probably show much lower  
13 job knowledge. So the context is one where the  
14 candidates themselves are, you know, not a random draw,  
15 but that's the way most validation studies are, unless  
16 they look at entry-level hiring.

17 Q. Well, let me ask it this way.  
18 You told the judge that you believe that technical  
19 knowledge, a job knowledge test, have generally, based  
20 on this meta data, high validity, is that correct?

21 A. It's got a very strong history as being a good  
22 selection procedure, perhaps one of the most commonly  
23 used historically across, you know, considering  
24 employment, education, licensure. I mean it's --

25 Q. Do you know one police promotional exam study,

1 whether it's published, whether it's not studied, any  
2 data that you can cite to me that shows that there's a  
3 high correlation between how you do on a multiple choice  
4 job knowledge test and how you perform, using a  
5 criterion-validity study, in the job of a police  
6 supervisor, can you cite me one study of any type?

7 A. I have not reviewed the literature on that, but I  
8 would be real surprised if we couldn't find literature  
9 on that.

10 Q. Okay. Now, you were hired to be an expert witness  
11 in this case, is that correct?

12 A. Yes.

13 Q. And you didn't try to find whether this  
14 hypothesis, that a job knowledge multiple choice test  
15 would have high validity with respect to a police  
16 promotional exam, you made no attempt to look for such  
17 literature?

18 A. Um, there's so much evidence on certain types of  
19 selection procedures --

20 Q. Doctor, did you make an attempt?

21 A. No, I didn't think it was necessary.

22 Q. Okay. So you don't know of any study?

23 A. No, I didn't think it was necessary. That's a  
24 different answer.

25 Q. Well, let me move on.

1 Now, with respect to the issue of feasibility, you did  
2 not do anything in this case to systematically look at  
3 the question of whether adding an assessment center or a  
4 structured oral interview or some of these other  
5 assessments that look at these other characteristics  
6 other than job knowledge would or would not be feasible  
7 in this case, is that correct?

8 A. I did not do an analysis of the cost, but it's  
9 obvious.

10 Q. Well, you say it's obvious. You didn't do a  
11 feasibility study, is that correct?

12 A. Well, I know a lot about the costs of assessment  
13 centers. I've developed many.

14 Q. You didn't do a feasibility study, is that  
15 correct?

16 A. What do you mean by "feasibility"?

17 Q. Do you remember me asking you at your deposition  
18 about this and you said, quote, "I haven't done anything  
19 systematically on this on the issue of feasibility for  
20 this case," do you remember saying that?

21 A. I think so.

22 Q. And was that true?

23 A. Well, I guess it depends on what we're talking  
24 about, but I haven't put pencil and paper and actually  
25 outlined the project proposal and what it would cost.

1 But I know it would be a very meaningful cost.

2 Q. Well, you didn't call Landry Jacobs -- you didn't  
3 call EB Jacobs or Morris and McDaniel, you didn't call  
4 Dr. Wiesen or anyone like that, and try to find out what  
5 these things would cost, is that right?

6 A. Well, I did understand the 2002 cost 2.2 million.

7 Q. Well, that's not my question, my question is did  
8 you make any calls?

9 A. I wouldn't need to, sir, I do this for a living  
10 and I know what these things cost.

11 Q. Well, you've never done these promotional exams,  
12 you've never done one in your life?

13 A. But I could estimate the cost without ever having  
14 done one.

15 Q. (Pause.) Now, it's also true that you don't know  
16 whether it would have been feasible to do a structured  
17 oral interview in this case, is that correct?

18 A. In the sense of would it have been possible to do  
19 it?

20 Q. Yes, exactly.

21 A. Again it would have cost, but perhaps it could  
22 have been done. There are administrative aspects, but  
23 they're not insurmountable I wouldn't think.

24 Q. (Pause.) I'd like you to turn to Exhibit 55.

25 A. (Turns.)

1 Q. Okay, before we get to that, we've established,  
2 have we not, that there was a validity report done in  
3 1991 for the sergeant examination, is that correct, a  
4 validity report done by HRD?

5 A. Yes, a content validity study in 1991. Yes.

6 Q. Well, it's actually called a "validity report,"  
7 isn't that right?

8 A. Yes.

9 Q. Okay. And that is typical in your trade that  
10 after you construct an examination of this type you do  
11 something at the end called a "validity report" to  
12 report on what happened, is that right?

13 A. Sometimes, yes.

14 Q. All right. And in 2002 we now know, because we've  
15 looked at it earlier today, that there was a validity  
16 report, is that correct?

17 A. Yes, that's what you showed me today.

18 Q. But you haven't seen any validity report for 2005  
19 and 2008, is that correct?

20 A. I have not.

21 Q. If you can turn to -- and the validity report --  
22 and I just want to be clear on this if it's not already  
23 clear, that you do a validity report after you've given  
24 the examination, not before, is that correct, because  
25 one of the things you're doing is reporting on the

1 administration, isn't that right?

2 A. Um, not exactly. Really there is no specific  
3 right or wrong. You sometimes have validity reports,  
4 you sometimes do not, it depends on the budget, it  
5 depends on whether there's likely to be litigation, it  
6 depends on how big a project it is, and how you write it  
7 again is stylistic. Again I write reports as the  
8 project is conducted so I don't get to the end and have  
9 to remember everything. So I, you know, kind of clean  
10 as I go.

11 Q. In 1991 the validity report was written after the  
12 fact, is that correct?

13 A. Oh, I don't know that.

14 Q. But you do know that because their scores were in  
15 there, so it was written after the fact, wasn't it?

16 A. Well, how do you know it wasn't written in part  
17 while they were doing it and they just happened to  
18 complete it after the facts and put the date of  
19 completion on there.

20 Q. Well, do you know?

21 A. Well, that's a -- again I've written hundreds of  
22 these things and I've read thousands.

23 Q. And 2002 was written after the test was given,  
24 isn't that right?

25 A. As I say, I don't know for the reasons I've

1 explained.

2 Q. Okay. Now, you testified that you have reviewed  
3 all these materials and you mentioned -- one of the  
4 exhibits you mentioned was Exhibit 55 and you believe  
5 that, um, HRD did a sufficiently good job with respect  
6 to constructing this examination, that you found that it  
7 was valid, is that correct?

8 A. Well, I need to do it. What am I looking at here?

9 Q. Yes, you mentioned that these documents that you  
10 had looked at, it showed that HRD had constructed a  
11 multiple choice exam in 2005 and 2008 that you thought  
12 was valid?

13 A. Well, what I think I testified to is that in '91  
14 there was a large validation study and a process  
15 established for developing these exams and that every  
16 three years or so, with a couple of exceptions when the  
17 City was trying alternative selection procedures, it  
18 basically did the same process that was laid out in '91,  
19 and they also did one kind of major update to the job  
20 analysis which was the 2000 job analysis study. And  
21 then right before the exams they did just a quick check  
22 to make sure the job didn't change by having a small  
23 sample of subject matter experts look at the tasks and  
24 the KSAs, which is what we have in front of us. But  
25 that was a confirmatory step, though, the primary

1 validation data was all the earlier material.

2 Q. Well, isn't it your testimony in this case that  
3 you believe that HRD, in 2005 and 2008, constructed a  
4 multiple choice job knowledge lieutenant's promotional  
5 exam for the Boston Police Department that you believe  
6 was valid under various guidelines?

7 A. Yes, I reviewed it compared to the Uniform  
8 Guidelines and the SIOP principles.

9 Q. Okay. So can you tell me, if you can, what  
10 Exhibit 55 is?

11 A. Well, I believe Exhibit 55 is a review of the  
12 tasks of the job, um, to ensure that they are still  
13 applicable at the time that the 2008 exam was developed.  
14 And these are the task ratings. I also believe there  
15 are -- yes, the next tab has the KSA ratings.

16 Q. So what do we make of where it says "RT SME 2.53  
17 RT SME PRY 1," a bunch of "1s," after that "GK" a bunch  
18 of "3s," what is this telling us?

19 A. Well, what I believe that it was was the ratings  
20 by subject matter experts as to the extent to which  
21 these tasks are still applicable to the job.

22 Q. And do you know who these people are?

23 A. No, I was thinking that those letters reflected  
24 perhaps initials of the people, but I actually -- I do  
25 not know who they are.

1 Q. And do you know why one SME, on the second column,  
2 "RT SME PRY," has nearly all "1s" and why if you go to  
3 the column "GK," that's nearly all "2s," do you know?

4 A. No, I -- when that happens it's very often that  
5 they have different jobs and so they see the tasks and  
6 requirements differently.

7 Q. (Pause.) Now, you were the editor of "Personnel  
8 Psychology," is that correct?

9 A. Yes.

10 Q. Okay. So that's a rigorous journal, can we agree  
11 on that, because you're the editor of it?

12 A. It's considered to be one of the A-class journals  
13 in my field.

14 Q. Absolutely. And you're also familiar with two  
15 gentlemen, Bopko and Ruaf, is that correct?

16 A. Oh, sure.

17 Q. They're heavyweights in the field?

18 A. Well, I was going to say Ruaf will want to hear  
19 that. I can't wait to tell him.

20 Q. Well, do you think he's a heavyweight? It doesn't  
21 matter what I think.

22 A. I think they're both real solid people. I do.

23 Q. All right.

24 MR. LICHTEN: May I approach, your Honor?

25 THE COURT: You may.

1 MR. SIMON: Your Honor, if I may bring up a  
2 problem that I think we're running into here?

3 THE COURT: Okay.

4 MR. SIMON: The parties had agreed that  
5 Dr. Champion would be concluded today, um, and he's not  
6 available the week of the 5th or the first week in  
7 January that we'd be coming back. Um, I'm not sure  
8 where we're at in Attorney Lichten's --

9 THE COURT: Well, if he's agreed he'll be  
10 concluded, then he'll be done by 1:00. Are you  
11 satisfied with that?

12 MR. SIMON: Well, I would like a chance for  
13 redirect.

14 THE COURT: Well, I know you would, but apparently  
15 you haven't worked that out. I don't know what you want  
16 to do, do you want me to come back this afternoon? I  
17 can.

18 MR. SIMON: If necessary. That would be  
19 acceptable, your Honor.

20 THE COURT: Are you okay with that?

21 MR. LICHTEN: Um, I have a flight to visit my  
22 family, um, and it's 5:00.

23 THE COURT: I mean I thought you people had worked  
24 this out.

25 MR. LICHTEN: Well, your Honor, I will accommodate

1       them in any way, I will agree to a videotape of it, I  
2       will agree to teleconferencing. I don't want to  
3       prejudice them. I have taken a long time, but I think  
4       I've been relevant and I don't think I've wasted time.  
5       But nevertheless I will accommodate them in any way. I  
6       don't want to prejudice Mr. Simon.

7               THE COURT: We'll assume that it can be worked out  
8       and we'll run to 1:00. He'll be done by 1:00, in view  
9       of his agreement, and it seems to me when I say "work it  
10      out," I've got to, in some fashion, receive your now  
11      redirect, so it will have to be within the scope of the  
12      cross. But I do want to hear your redirect. And I'll  
13      accept that.

14             Go ahead, Mr. Lichten.

15             MR. SIMON: Thank you, your Honor.

16             MR. LICHTEN: Thank you, your Honor.

17      Q.       Okay. So this is an article from 1999 from "The  
18      Journal of Personnel Psychology." Were you the editor  
19      at the time?

20      A.       No, my editorial period was '90 to '97.

21      Q.       Okay.

22             THE COURT: But just to cut to the chase here, I  
23      take it you think this is authoritative?

24             THE WITNESS: Oh, sure, it's a -- it's a meta  
25      analysis so it has those same limitations we were

1 talking about before.

2 THE COURT: Right, I'm not speaking to what it  
3 says, it's just that you would consider it authoritative  
4 in your field?

5 THE WITNESS: Yes, it's a very good study.

6 THE COURT: All right. Go ahead, Mr. Lichten.

7 MR. LICHTEN: Okay.

8 Q. Now, if you could go to Table 1. I'll try to pick  
9 this up.

10 A. (Looks.)

11 Q. You see where -- this is a table and do you see  
12 where, um, the authors say that based upon the meta data  
13 out there, cognitive ability tests have a one standard  
14 deviation -- I'm sorry a 1.00 D, which I think we've  
15 already discussed, is that correct?

16 A. Yes. Yes. I'd have to read it here. But the  
17 fact that it's exactly 1.00, they may have specified it  
18 to be that in the creation of this matrix.

19 Q. But this doesn't surprise you, this is what you  
20 testified to on direct in answer to the judge, you'd  
21 expect, on a cognitive ability test, you're going to see  
22 about a 1.00 D between scores for minorities and scores  
23 for Caucasians, right?

24 A. Well, um, these data are kind of old. I'd, you  
25 know -- I think as I told you in my deposition, I would

1 estimate, you know, a .4 to maybe a 1.2. I don't know  
2 that the overall average these days is a 1.0, because  
3 people are trying to develop cognitive ability tests  
4 that are less difficult and so it has made the  
5 difference smaller. In fact we often focus on a  
6 literacy level to avoid problems. So I don't know that  
7 this estimates, you know, the grand average going  
8 forward even though it might estimate the older data in  
9 our field.

10 Q. Okay. This also has the D on other types of  
11 tests, alternative types of tests, and it says the  
12 structured interview has only a .3 D. Do you agree with  
13 that?

14 A. Um, it looks like it says 23.23.

15 Q. .23. I'm sorry, that's what I said.

16 A. Oh, okay, I thought you said .3.

17 Q. .23.

18 I'm just asking if you agree with that?

19 A. Oh, I'm sorry, yes, I'm reading along with you.  
20 Uh-huh.

21 Q. And you do agree with that?

22 A. Well, I'm reading along with you, yes.

23 Q. No, I'm asking you a different question. I'm  
24 asking you whether you agree that that is a fair  
25 analysis, based upon the meta data, of the smaller D

1 that occurs with structured interviews?

2 A. Well, again, it all depends. It's like saying,  
3 you know, you've got 1.7 kids, you know, what's a .7  
4 kid? You know, an average doesn't necessarily mean it's  
5 a good estimate. So the .23 has an interval around it  
6 of variation due to differences between studies, and it  
7 doesn't show it here in this table but it would be plus  
8 or minus that size. I guess the D -- I think the value  
9 in parentheses may be an estimate of the interval, but  
10 I'd have to read the article again more carefully. I  
11 have not read it in a few years.

12 Q. Dr. Champion, I don't get something. Every time I  
13 show you this data in articles you quarrel with the  
14 data, the D or the meta analysis that's done for other  
15 types of assessment tools, but yet your whole testimony  
16 Friday to the Court was that the job knowledge test had  
17 this high validity ratio based upon this meta data and  
18 that data is okay.

19 So is it your belief that all the data is okay  
20 except the one related to job knowledge tests?

21 A. Well, I know this research very deeply. I was a  
22 formal journal editor and one of the most published in  
23 my field and I see these data in a lot deeper way. And  
24 so I know that these meta analyses cannot be interpreted  
25 at face value, that some are based on very large samples

1 and some are not, and that that needs to be considered.  
2 And I'm only trying to bring forth every bit of  
3 knowledge I have about the topic, but I try not to be --

4 Q. Well, I appreciate that, but doesn't that same  
5 analysis hold true for job knowledge in the Boston  
6 Police Department and how much of a predictor it is,  
7 it's speculating just like this other data, isn't it?

8 A. Well, there's a lot more data on job knowledge  
9 than there is on virtually all other selection  
10 procedures except for maybe cognitive ability and often  
11 what's called "cognitive ability" may be a job knowledge  
12 test. So there's much much more data there.

13 Q. But not on police departments that you know about,  
14 right?

15 A. I will be certain to do a review of the literature  
16 when I get out of here today.

17 Q. Well, I don't know about that, that will be up to  
18 the Court.

19 A. It will be too late to do it anyway.

20 Q. Okay. Now, if you go to Number 5 -- and this was  
21 actually my purpose in putting this up, is you have job  
22 performance and that's a .5, okay, do you see that?

23 .45. Excuse me, .45.

24 A. Yes.

25 Q. Okay. Now, I assume there's a lot of data on this

1 because this is measuring actually how you do on the  
2 job, right?

3 A. Yeah, I don't know the sample size used for job  
4 performance.

5 Q. Dr. Champion, you're not serious? Certainly  
6 there's as much data on how certain groups do on the job  
7 as there is as to how they do on a cognitive ability  
8 test, right, I mean job performance measures have been  
9 around for a long time?

10 A. Yes, but they're not published. Just because  
11 somebody gathers data on differences in job performance  
12 doesn't mean it gets into the literature. But what I  
13 meant is I don't know where these data come from. I  
14 don't know what the job performance data here derives  
15 from because it's normally not used as a selection  
16 procedure like these others are. So I don't know --

17 Q. Well, that's what I'm trying to establish. Let me  
18 ask it more directly.

19 This would suggest that minorities do better on the job  
20 by two-fold than they do on the cognitive ability tests  
21 that they maintained, that there's half the difference  
22 --

23 A. Uh-huh.

24 Q. -- on a performance, that is between whites and  
25 blacks it's half as much as they do on cognitive ability

1 tests, you would agree with that, wouldn't you?

2 A. Yes, and I would say that that is always the case  
3 in every prediction situation anywhere.

4 Q. Well, let's just see what that means. That means  
5 that you can't -- if you were to be testing people based  
6 upon a cognitive ability test, you're going to see a  
7 much bigger difference on the performance on the  
8 cognitive ability test than you're going to see if you  
9 actually judged blacks and whites on how they performed  
10 the job, is that correct?

11 A. Yes, and it's because there's always prediction  
12 loss unless the validity is 1.0, and that's true of  
13 every science and every phenomenon.

14 Q. So to apply that in this case, if you only use a  
15 multiple choice job knowledge test, you are going to see  
16 bigger differences in scores than you would expect to  
17 see if you actually looked at how such minorities were  
18 doing on the job at the Boston Police Department as  
19 lieutenants, is that right?

20 A. That's what I said, it is a characteristic of  
21 every prediction situation ever anywhere.

22 MR. LICHTEN: Your Honor, I still have some more,  
23 but do you want me to continue or --

24 THE COURT: Well, look, by the way this is played  
25 out with your agreements, already we're beyond the end

1 of next week -- um, not next week, but January 5th, and  
2 as I sit here I accept this, but I had thought we were  
3 striving to get these matters resolved. Now it's very  
4 clear I can't resolve it, cannot, until I have at least  
5 got in the record the redirect of this witness.

6 MR. LICHTEN: Right.

7 THE COURT: So while I'm going to count the time  
8 against the total 10 days, it's clear I'm going to take  
9 the thing under advisement whenever I finish up on the  
10 5th of January.

11 Well, so be it. I do find the testimony adduced  
12 both by the plaintiffs and the defense important, and  
13 with some wasted motion, um, germane, and I've come to  
14 consider this a profoundly important case, really one  
15 that evokes the finest of our nation's aspirations in  
16 giving everyone equal opportunity and a fair shot. And  
17 so I don't care whether you continue or not, it's 5 more  
18 minutes, I'm counting the time.

19 Mr. Simon?

20 MR. SIMON: Yes, your Honor, I'm sorry. I had  
21 thought that you said that we were going to be done on  
22 the 5th, but we have until the 8th is our understanding.

23 THE COURT: What's that? I didn't say you were  
24 done. You do.

25 MR. SIMON: Yes.

1 THE COURT: If I misspoke, you have 10 days, and  
2 I'm counting out the time.

3 MR. SIMON: Yes.

4 THE COURT: But now, whenever you're done, if he's  
5 not available the week of the 5th, I'm not going to see  
6 your redirect -- or read it, at least, your directed of  
7 this witness. You've agreed to that and I have to say I  
8 think I've been very accommodating in terms of time.

9 So now I'm sort of at sea about how we're going to  
10 finish with this witness. We'll go on to another  
11 witness on the 5th. I didn't say we're going to be done  
12 on the 5th, we're going to be done the week of the 5th,  
13 when 10 days have elapsed, and I will count whatever  
14 time you've taken in redirect against you. So as we get  
15 closer -- you seem to have plenty of time, but as we get  
16 closer, um, I'll be asking you for an estimate of time,  
17 et cetera, and I can take it from the deposition or  
18 however you work it out in order to be fair.

19 I am -- unless you people resolve this, I am now  
20 eager to get going in resolving it myself. Though I  
21 express no opinion. This is an extraordinarily  
22 difficult case and we're not done with the evidence.

23 I keep saying that it would be wise to settle it,  
24 and I continue to think that, and I will say that after  
25 we've had closing arguments. I've told you how I was

1 going to do this, if after the closing arguments you  
2 want me to stay my hand, well, I'll stay it. Now I've  
3 got to stay it until I see your redirect.

4 MR. SIMON: Well, your Honor, can we actually have  
5 a minute to talk about whether or not we can resolve  
6 this right now?

7 THE COURT: Well, why don't you.

8 MR. LICHTEN: Well, your Honor, I'm still  
9 confident that we're going to get done by the time you  
10 allotted. We're really -- we have like, I think, two  
11 short witnesses after this that are going to take like a  
12 half hour apiece and we've got Dr. Hough who is going to  
13 be much shorter.

14 THE COURT: And who are your short witnesses?

15 MR. LICHTEN: Um, Commissioner Davis, who we've  
16 accommodated the defendants on, and a Thomas Nolan.

17 THE COURT: Right.

18 MR. LICHTEN: He's a retired Boston police  
19 officer.

20 THE COURT: That's right. So you're done but he's  
21 not here the week of the 5th.

22 MR. LICHTEN: So that I think -- we've been  
23 discussing this, I will accommodate them in any way, and  
24 we may be able to do it by teleconference testimony or  
25 something. And I will accommodate them in any way.

1 THE COURT: We've done that. We've done it.

2 MR. SIMON: Okay.

3 MR. LICHTEN: So I'm confident we can get done by  
4 the 8th.

5 MR. SIMON: Well, we obviously need to talk about  
6 those kinds of options, but we will do our best to try  
7 to work it out.

8 THE COURT: All right. I think we're at 1:00.  
9 We'll stop now.

10 As we now stand, the plaintiff has used up 3 days,  
11 2 hours, 5 minutes, the defense has used up 2 days, 1  
12 hour, 25 minutes. And I most genuinely wish you all a  
13 very fine holiday. And we'll resume at 9:00 a.m. on  
14 Monday the 5th of January unless of course you have  
15 resolved it, in which case a telephone call to  
16 Ms. Gaudet is all that's necessary. Have a good  
17 holiday. We'll recess.

18 (Adjourned, 1:00 p.m.)  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
do hereby certify that the foregoing record is a true  
and accurate transcription of my stenographic notes  
before Judge William G. Young, on Friday, December 19,  
2014, to the best of my skill and ability.

/s/ Richard H. Romanow 02-19-15

\_\_\_\_\_  
RICHARD H. ROMANOW Date