

**EXPERT REPORT OF
DR. TONI S. LOCKLEAR**

in

Hispanic National Law Enforcement Association NCR, et al., v. Prince George's County, et al.
(Civil Action No. 8:18-cv-03821)

**United States District Court
District of Maryland**

September 28, 2020

**APTMetrics
150 E. Ponce de Leon Ave. Suite 310
Decatur, GA 30030-2543
(404) 370-0505**

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PLAINTIFF'S EXPERTS REVIEW AND ANALYSIS FAILS TO MEET PROFESSIONAL STANDARDS

Plaintiffs retained two experts, Mr. Marc Simon and Mr. Michael Graham, to opine on the topics of validity and adverse impact central to an evaluation of PGPD's promotion examinations. Critical to an informed evaluation is training and expertise in the design, development, validation, and implementation of employee selection procedures, as well as the evaluation of selection procedure outcomes. Neither Mr. Simon nor Mr. Graham have reported any such expertise in describing their background and experience.

Mr. Simon is a Certified Public Accountant (CPA) who currently works as a forensic consultant in litigation and settlement matters relating to the mortgage and finance industry. He has no known expertise in Industrial-Organizational psychology, Human Resources, or test development and no acknowledged experience in conducting or interpreting adverse impact analyses.

Mr. Graham is a former Assistant Sheriff with the Los Angeles Sheriff Department and currently consults on matters concerning police practices. Despite his extensive service in law enforcement, Mr. Graham has no known expertise in Industrial-Organizational psychology, Human Resources, or test development and no acknowledged experience in conducting or interpreting adverse impact analyses. In fact, Mr. Graham reviews and leverages Mr. Simon's deficient analyses to inform his own opinions.

It is interesting to note that neither Mr. Simon or Mr. Graham uses a standard approach to investigate adverse impact nor do they refer to their findings as adverse impact, which supports Plaintiffs' experts lack of familiarity in this area.

Plaintiffs' Experts Conduct Inappropriate Analyses of the PGPD's Racial Makeup

Both Mr. Simon and Mr. Klein conducted an analysis of the Department's demographic makeup at a set point in time to investigate the PGPD's alleged discrimination in promotion. Mr. Simon's analysis compares the racial composition of officers in higher ranks to the racial composition of officers in the lower ranks at PGPD at two specific points in time,¹⁵ whereas Mr. Graham compares the racial composition of PGPD officers to the racial composition of the citizens of Prince George's County as a whole.

The experts' analyses are similar to the 'stock analyses' commonly used to evaluate discrimination in selection decisions, but both fall short by using an inappropriate comparison group to evaluate the percentage of minorities employed by the department. According to the influential textbook, *Human Resource Selection* (Barrick , Gatewood & Field, 2019), 'stock statistics' are:

"A numerical comparison of a demographic group in comparison to appropriate external comparison groups (e.g., percentage of women executives in company compared to percentage of women executives in industry)." p. 137

The appropriate external comparison group for stock statistics is "qualified" individuals in the geographic region from which applicants are recruited; that is, the *relevant labor market*. Only individuals with the specific qualifications necessary to fill a job can be appropriately considered potential job applicants when computing stock statistics. Mr. Graham incorrectly compares PGPD's racial composition to the composition of Prince George's County *as a whole*, without considering skill level. He fails in his analysis both by assuming the Department recruits and hires

¹⁵ December 2017 and May 2019.

employees exclusively from inside the County and by neglecting to include only potential workers with suitable skills for the jobs in question.

As noted earlier, PGPD officers must meet the following minimum requirements to be considered for promotion to the next level: permanent officer status, a satisfactory or above performance appraisal rating, a valid Drivers' License, sufficient in grade, and certifications required by the both state of Maryland and the Department. Applicants for entry-level roles must also meet minimum requirements to be considered for hire as a PGPD police officer. It is therefore unreasonable to conclude that all citizens of Prince George's County are the relevant labor market for PGPD jobs.

In contrast to Mr. Graham, Mr. Simon compares demographic groups within PGPD across ranks, but also fails by not appropriately specifying the appropriate comparison groups. Mr. Graham compares the demographic makeup of officers in the bottom three ranks (Police Officer, PFOC, Corporal) to officers in three comparison groups: 1) Sergeants; 2) all officers in the top three ranks (Lieutenants, Captains, Majors); and 3) all officers in the top four ranks (Lieutenants, Captains, Majors, Chiefs). In doing so, he focuses solely on race/ethnicity and fails to consider the internal labor market for each rank. The proportion of Black and Hispanic officers at a given rank should only be considered in comparison to Black and Hispanic officers in the relevant internal labor market; that is, the PGPD officers in feeder jobs who meet the minimum requirements and are interested in being promoted. Analyses of racial composition that fail to use the relevant labor market are meaningless.

Since both Mr. Simon and Mr. Graham's analyses are defective, they say little to nothing about PGPD's promotional outcomes. It is unclear why Plaintiffs' experts chose to conduct an

analysis of racial composition rather than analyzing the promotion data directly available to them in this matter. In fact, Mr. Simon conducted a direct (though flawed) analysis of examination outcomes for the ranks of PFOC and Corporal. A similar analysis of promotion outcomes could have been conducted for all ranks at issue in this matter.

Mr. Simon Conducts a Flawed Analysis of PFOC and Corporal Exam Passing Rates

Mr. Simon's analysis of PFOC and Corporal examination outcomes directly compares the passing rates of White, Black, and Hispanic candidates but does so incorrectly by analyzing outcome data compiled across administrations. Mr. Simon conducts his analysis of passing rates for each calendar year and across all years for which he was provided data. Aggregating exam data across administrations in this situation is wrong given the nature of the promotion process at PGPD. The Department used different exam content for each promotion cycle, which means data aggregated for a single calendar year includes two separate administrations where distinct examinations were used to evaluate candidates. As discussed above, aggregating data where the selection practice differs is not a professionally acceptable practice (Center for Corporate Equality, 2010).

Moreover, as a result of his faulty approach, Mr. Simon's results do not accurately reflect the true state of affairs at PGPD; his inappropriate aggregation of data disguises the fact that there were mixed results across administrations and leaves the impression that Blacks and Hispanics were disfavored during each and every promotion cycle. In reality, there were a number of administrations with no adverse impact against Blacks and/or Hispanics, including cases where minorities performed better than Whites.

Even if Mr. Simon had aggregated the exam data correctly, his analysis would be incomplete as he conducts only a statistical analysis of significance and fails to evaluate the practical significance of passing rates. It is important to ensure that any statistically significant results are also practically meaningful.

Mr. Simon and Mr. Graham Fail to Acknowledge the Validation Evidence

Both Mr. Simon and Mr. Graham purport to find disparities in promotion outcomes yet fail to recognize the voluminous case record documenting the validity studies conducted by Fields Consulting. Neither expert evaluates, or even acknowledges, the validity evidence despite the *Uniform Guidelines'* provision that the use of selection procedures with adverse impact can be justified if the procedures are shown to be valid.

CONCLUSION

In light of the content validity evidence described above, it is my opinion that the selection procedures used by PGPD meet the professional and legal standards for establishing their job relatedness. The evidence supports a conclusion that the MCEs and Skills Assessment used in the 2016-2019 timespan are valid.