

Posted 7/23/21

RACIAL QUARRELS *WITHIN* POLICING (PART II)

In San Francisco, White cops allege that color and gender do count



For Police Issues by Julius (Jay) Wachtel. In [Part I](#) we discussed a Federal lawsuit filed by Black and Hispanic police officers who serve in a Maryland county nestled against the nation’s capital. As it happens, their action, which accuses officials of “fostering a climate of discrimination against non-White officers and retaliating against those who dare object,” has a counterpart on the opposite shores.

Its plaintiffs, though, are sixteen White, Asian and Assyrian cops. Filed in April 2020, [the newest \(third\) version of their complaint](#) (the first, in June 2019, had thirteen accusers) alleges that their superiors have for years engaged in “a pattern of promoting lower-scoring candidates” in Sergeant, Lieutenant and Captain exams. In contrast with Prince George’s County, the “primary beneficiaries” of the City of San Francisco’s bias are Blacks and females.



An interesting aspect of the complaint is that its introductory section leans on two prior studies: one by the city, another by the Feds, examining allegations of racism and homophobia at SFPD. Those inquiries were prompted by the discovery that White officers (yes, *White*) [had exchanged text messages](#) berating Black persons, including fellow cops, as well as members of the city’s vibrant LGBT community. In 2016, San Francisco’s “[Blue Ribbon Panel](#),” formed by then-D.A. George Gascon, issued its report.

While its tone was decidedly reform-minded, it did note that White officers’ chances of advancement had been on a years-long downtrend (p. 58). Concern was also expressed

POLICEISSUES.ORG

about the potential for favoritism; test results notwithstanding, moving up in rank seemed essentially at the Chief's pleasure:

“The absence of rules governing the selection of promotional candidates and the discretion held by the Chief, along with the lack of programs offering support to those seeking promotions, raises the likelihood of bias or favoritism in promotion decisions.” (p. 57)

Two correctives were suggested:

- “The SFPD should institute a high-level hiring committee to sign off on the Chief of Police's final hiring decisions, including deviations from the standard hiring and training process.” (p. 60)
- “The Police Commission should create and implement transparent hiring and promotions processes and criteria, including a requirement that every candidate's disciplinary history and secondary criteria be considered.” (p. 60)

San Francisco also asked the [COPS technical assistance center](#) to come in. Aside from examining allegations of racial bias, it also looked into the use of deadly force. On first glance [its conclusions](#) don't seem particularly favorable for the plaintiffs. COPS pointed out that White officers constituted 49 percent of the force in 2015. Yet they represented 59 percent of Sergeants, 51 percent of Lieutenants and 67 percent of Captains (p. 187). Still, it noted that during 2013-2015 the proportion of Whites being promoted receded, while the share of minorities moving up increased (p. 194). At the same time, a lack of “transparency” in the promotional process, which had also been noted by the Blue Ribbon panel, “created a level of distrust” (p. 202). So COPS recommended that SFPD “clearly outline the qualifications required to advance.”



Of course, if the city presses for the advancement of women and minorities, while the promotional process remains opaque, White prospects could indeed become victims of discrimination. That possibility, which lies at the core of the White officers' lawsuit, wasn't addressed by neither the Blue Ribbon panel nor by COPS.

POLICEISSUES.ORG

This isn't the first time that San Francisco's cops have sued. [In 1973 Black officers filed a Federal lawsuit](#) alleging that race and gender discrimination hindered their hiring and promotion. Six years later, after considerable litigation, the city entered into [an elaborate consent decree](#) that set goals for hiring women and minorities and directed that efforts be made to promote them "in proportion to their representation in the qualified applicant pool."

Unfortunately, Blacks didn't succeed in adequate numbers. Accordingly, in 1984 SFPD adjusted the relative weights of its promotional exams (there are several, written and oral) so that minorities and women would qualify for a greater share of vacancies. Notably, that happened *after* the scores came in. White officers sued. While a Federal district judge discounted their objections, in 1989 [the Ninth Circuit held](#) that the post-facto rebalancing was unlawful. San Francisco agreed that tweaking things after-the-fact was wrong and promised to stop.

But when SFPD resumed administering exams, minorities again wound up under-represented. So with approval from the Feds [the city adopted a "banding" process](#). Exam scores were grouped into ranges, and within each promotions were awarded using secondary criteria such as commendations and awards. A modest number of slots were also set aside for women and minorities. Again, White officers sued. This time, though, the city prevailed. In November 1992 the Ninth Circuit called banding a "unique and innovative" way of "addressing past harms to minorities while minimizing future harmful effects on nonminority candidates" and gave it its blessing.

According to the current plaintiffs, that "flexibility" became a smokescreen for a complex and opaque promotional system whose overriding objective is the advancement of women and minorities. In their view, things promptly went downhill. In 2003 and 2004 twelve White sergeants [filed three Federal lawsuits](#) alleging illegal discrimination in the 1997 lieutenant's exam. Their actions [were ultimately settled in 2008 for \\$1.6 million](#).

In 2007 disaster supposedly struck White prospects again [when the city administered](#) a "multi-part" Captain's exam comprised of "a series of written and oral exercises." But instead of simply promoting applicants according to their scores, SFPD adopted a "Rule of Five" approach:

"...the eligible list would consist of the officers with the five highest exam scores ["Rule of Five"] plus an additional officer -- that is, the next highest scorer -- for each additional vacancy that the City sought to fill...Thus, if the City were seeking to fill three vacancies during a given round of promotions, the seven highest-scoring officers would be placed on the eligible list."

POLICEISSUES.ORG

That gave decision-makers considerable flexibility. And that wasn't all. Once an officer made the list, the promotional criteria changed:

“Any vacancies that arose at the captain position during the next thirty-six months would be filled by candidates selected from that list by the Chief of SFPD (or his or her designee) based on a variety of ‘secondary criteria’...These criteria would include the candidate’s past ‘assignments, training, special qualifications, commendations/awards, bilingual certification, and discipline history’...”

Neither was the “Rule of Five” a sure bet. From the start, the city cautioned that “if there is adverse impact under Title VII of the Civil Rights Act of 1964 resulting from the Rule of Five Scores, then a broader certification rule shall be used...” And once exam results were in, things did change:

“In January 2008, the City...announced that it no longer planned to use the Rule of Five Scores to fill all of the captain vacancies that arose over the next thirty-six months...Rather, it would use the Rule of Five Scores to fill the first eleven vacancies and, for all subsequent vacancies, would use a different process known as ‘banding’...Banding places less emphasis...on an applicant's score ranking by treating all exam scores that fall within a ‘statistically derived confidence range’ [the band] as functionally equivalent...”

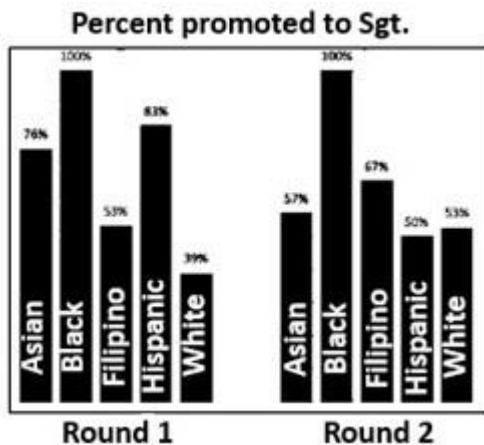
That “band” was of substantial width:

“For the 2007 captain's exam, the City elected to use a ‘band of 45 points . . . starting with Rank 16’ to fill any vacancies that arose after the first eleven vacancies...This band included the fourteen officers who achieved the sixteenth through twenty-eighth highest scores on the exam...In addition to these officers, the City would also continue to consider the applications of the four higher-ranked officers who were not selected for one of the first eleven promotions under the Rule of Five...”

Two White candidates, Lieutenants Heinz Hofmann and Thomas Buckley, earned “the sixteenth and twentieth highest scores” on the exam. So “neither was eligible under the Rule of Five Scores for any of the first eleven vacancies.” Problem is, once they became eligible, both got passed over under “banding.” In 2011 the list expired, and they sued. In 2015, a Federal judge denied both sides summary judgment. [San Francisco eventually settled](#) for \$200,000.

POLICEISSUES.ORG

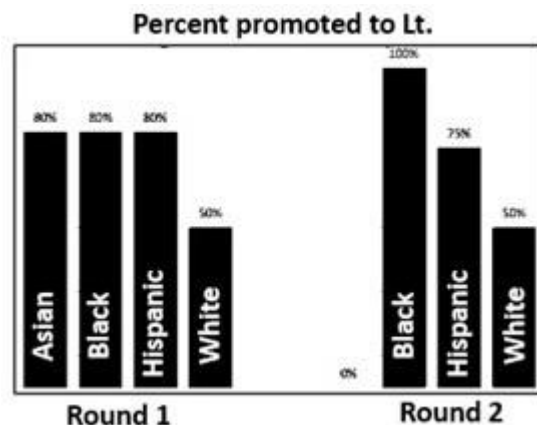
Back to the present. What's alleged in the current lawsuit?



- Seven patrol officers claim they are being denied promotion to Sergeant because they are White males; an eight because he is an Assyrian male; and a ninth because he is an Asian male. [According to the complaint](#), the 2017 list invoked a “Rule of 10,” allowing decision-makers to skip ten scores below that of the last successful candidate. So far, every Female officer and every Black officer

on the list have been promoted. But only 46 percent of White officers have succeeded, and that's held true despite the fact that they comprise 63.5 percent of the candidate pool (the graph on the left appears on the complaint.)

- A Rule of 10 is also being used to fill vacancies from the still-current 2017 Lieutenant's list. While only one Black applicant scored among the top thirty, and the top-ranked female was 52nd, every Black candidate and every female has succeeded. However, only half of the White officers on the list have gained promotion. Four sergeants claim that they have been denied advancement because they are White males, and a fifth “because she is a White lesbian” (the graph on the right appears on the complaint.)



- That Rule of 10 is also being applied to the (still active) 2015 Captain's list. Two Lieutenants claim they are being denied promotion to Captain because they are White males. One, whose score placed him twelfth, claims that he was passed over in favor of Black, Asian, Hispanic and female candidates whose scores were as many as twenty-six places lower.

Full stop. There can be valid race and gender-blind reasons for passing over applicants no matter their test scores. For example, one of the current plaintiffs,

POLICEISSUES.ORG

Lieutenant Ric Schiff, [was once disciplined](#) for insubordination and neglect of duty. That, according to then-police Chief George Gascón, explains why he skipped over Schiff for Lieutenant over a decade ago. Schiff and others nonetheless sued. And as mentioned above, the city settled. ([Schiff reportedly got a tidy \\$200,000](#) after lawyer's fees.)

San Francisco is undeniably a very “woke” place. Politics and ideology likely affected the work of the Blue Ribbon Panel. They’ve certainly characterized the career of its convener, George Gascón. A former San Francisco police chief, later its chief prosecutor, his criticism of “[vast racial disparities in arrests and prosecutions](#)” likely helped him win the D.A.’s race last year in another progressive burg, the “City of Angels.” A staunch opponent of long prison terms, [Gascón quickly prohibited deputies](#) from using sentence enhancements. That set off an unprecedented revolt by assistant D.A.’s who recoiled at the thought of going easy on violent offenders. It also sparked a recall campaign. And while Gascón [has drawn support from LAPD chief Michel Moore](#), in these violence-impacted times his future is far from assured.

So is manipulating the promotional process the only way to help minorities succeed? We think not. [Thomas Boone](#), the Black Lieutenant who leads the charge in the Prince George’s County lawsuit, once observed that White officers are more likely to occupy specialized assignments where they gain the “skills, training and experience” that helps them score well on promotional tests. Race aside, how can street cops land a specialized slot? In our law enforcement experience, that often comes from doing quality work, and particularly by cranking out great reports that catch the eye of superiors, who often only know employees from what they read. To be sure, improving one’s written expression can take time and effort, but the payoff is invaluable.

Still, in these ideologically fraught times, when many cops feel compelled to line up by race and gender, solutions that emphasize quality work may seem a touch blasé. So by all means, keep fighting against bias. But don’t forget about the [craft of policing](#). In the end, that’s what *really* counts.