

Discrimination

Table of contents

1. Race Discrimination.....	1
1.1. Chicago Police Promotion Litigation.....	1
1.2. Grand Victoria Casino Hiring Litigation.....	3
2. Sex Discrimination: Evanston Police Officers.....	3
3. Disability Discrimination.....	3
4. Age Discrimination.....	3

1. Race Discrimination

1.1. Chicago Police Promotion Litigation

1.1.1. The 1977 Police Lieutenant's Examination

In 1976, the City of Chicago was found to have discriminated against black, Hispanic, and female police officers in hiring and in promotions to the position of sergeant in its police department, *United States v. City of Chicago*, 411 F.Supp. 218 (N.D.Ill. 1976), *aff'd* 549 F.2d 415 (7th Cir. 1977). The City prevailed, however, on the challenge to the rank of lieutenant.

The City administered a new lieutenant's test in 1977. This case was challenged in a lawsuit known as *Bigby v. City of Chicago*. The plaintiffs in that action, African-American police sergeants, were represented by Kenneth N. Flaxman and Stephen G. Seliger.

In July of 1984, the district court ruled in favor of the minority plaintiffs, concluding that the test "fails to measure relevant job functions," and that and ordered that future promotions to lieutenant be made "in accordance with the ratios of the applicant pool: 78.63% white, 17.7% black, and 3.58% hispanic."

Many of the minority sergeants who were promoted as a result of the decree the *Bigby* litigation went on to great success in the Chicago police department: fourteen of those who would not have been promoted but for the judicial victory went on to serve in high management (known as "exempt positions") in the Chicago police

1.1.2. The 1994 Police Sergeant's Examination

In 1994, the City of Chicago administered a test for promotion to sergeant . The test, which was devised for the City by Gerald V. Barrett of Barrett and Associates, had a gross disparate impact on African-American and Hispanic police officers. After a lengthy hearing (available in seven chunks [one, two, three, four, five, six, and seven](#), the district court [refused](#) to grant a preliminary injunction and the Seventh Circuit [affirmed](#).

The case is now pending before the district court on the City's motion for summary judgment. Plaintiffs' brief in opposition is available [here](#).

1.1.3. The 1994 Police Lieutenant's Examination

In 1994, the City of Chicago administered a test for promotion to lieutenant . The test, which like the 1994 sergeant's test, had been devised for the City by Gerald V. Barrett, had a gross disparate impact on African-American and Hispanic police sergeants. After a brief hearing, (available [here](#) and [here](#)), the district court [denied](#) a preliminary injunction. An appeal was not taken.

Trial began in late November, 1997. After seven trial days, ([part 1, part 2, part 3, part 4, part 5, part 6, and part 7](#)), the district court [concluded](#) that the written test was lawful, but that the City had discriminated against minority police sergeants by not supplementing test score promotions with merit promotions. The district court [ordered](#) 13 merit promotions and refused to grant any additional relief.

The Seventh Circuit [affirmed](#). Plaintiffs' opening [brief, reply brief, petition for rehearing](#), and unsuccessful [petition for writ of certiorari](#) are available.

1.1.4. 1997-78 Sergeant and Lieutenant promotions

The City administered new police promotional tests in 1997 and 1998. These tests, which were developed by a different consultant (Dr. Morton McPhail of Jeanneret and Associates), also had a gross disparate impact on minorities.

The City attempted to lessen the discriminatory impact of the written test by making thirty percent of all promotions through a merit selection process. Merit promotions have been made in a race neutral, non-discriminatory effect.

The primary claim at issue in the challenges to the 1997-98 promotional process is that the City should not have imposed a 30% ceiling on merit promotions. This argument was rejected by the district court in the sergeants' litigation and is currently before the Court of Appeals, oral argument having been held on September 25, 2003. Proceedings in the

Discrimination

lieutenants' litigation have been stayed pending disposition of the appeal.

Plaintiffs' appellate briefs in the sergeants' appeal are available here: [opening brief](#), [reply brief](#).

1.2. Grand Victoria Casino Hiring Litigation

The Grand Victoria is a gambling casino in Elgin, Illinois. On March 27, 2000, a district judge ordered that the case could proceed as a class for: "All African-Americans who were qualified for employment as dealers who applied for positions as "dealers" at the Grand Victoria cashion, but who were not hired from December 25, 1997 to the present."

After about 60 class members were identified, a settlement was negotiated by a magistrate judge and the parties consented to permit the magistrate to conduct all further proceedings to implement the settlement. Disagreements arose about the terms of the settlement, however, and the magistrate refused to enforce the settlement.

After the parties had completed all discovery save expert discovery, the magistrate reversed the earlier class certification order. The Court of Appeals declined to hear an interlocutory appeal. (Plaintiff's petition for permission to appeal is available [here](#).)

The case is now proceeding on behalf of the four named plaintiffs. Persons who fall into the class are encouraged to file individual charges of discrimination with the EEOC. (A sample form is available [here](#).)

2. Sex Discrimination: Evanston Police Officers

The City of Evanston required police officer applicants to pass a physical agility test . Women, however, could not pass the test. The case proceeded as a class action, and the plaintiffs demonstrated that the physical agility test was not job related. The district court ordered the hiring of two of the unsuccessful applicants. (One subsequently resigned to become a physician.) The lawsuit, known as *Thomas v. Evanston* opened the doors of the Evanston police to women.

3. Disability Discrimination

Federal and state law make it unlawful for an employer to discriminate against a person because of "disability." The statutes, however, are not broadly construed. In *Barbara Moore v. Couny of Cook*, the employer was able to argue to a jury that an amputated leg did not necessarily mean that the employee was disabled. The jury found in favor of the employer and the Seventh Circuit affirmed. Plaintiff's [opening brief](#) and [reply brief](#) are available.

4. Age Discrimination

Federal and state law make it unlawful for an employer to discriminate against a person because of age (as long as the person is over the age of 40).

Collier v. Budd Company is an example of a case where the Court rejected the employer's claim that it had discharged an employee for reasons unrelated to his age. *Quinones v. City of Evanston* is an example of a case where the federal courts rejected a municipalities attempt to deprive an over-40 year old employee of full benefits. The appellate brief in *Quinones* is available [here](#).