

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,
Plaintiff**

* **CIVIL ACTION NO. 23-772**

*

* **SECTION “T”**

*

VERSUS

* **JUDGE GREG G. GUIDRY**

*

**STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
STATE POLICE**

* **MAGISTRATE JUDGE**

* **JANIS VAN MEERVELD**

*

Defendant

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* * * * *

**DEFENDANT’S MOTION *IN LIMINE* TO EXCLUDE AND/OR LIMIT
EXPERT TESTIMONY OF JOHN R. STELLY, II AND ANDREW BROADWAY**

Defendant, The State of Louisiana through Department of Public Safety and Corrections, Office of State Police (“Defendant” or “State Police”), respectfully moves the Court to exclude Plaintiff, John R. Stelly, II (“Plaintiff” or “Stelly”) and Plaintiff’s retained expert, Andrew Tyler Broadway (“Broadway”) from offering certain testimony and opinions at the trial of this matter. Plaintiff seeks to testify as an expert statistician in his own case in order to render an opinion on the promotional data for State Police promotions to captain and mathematical analysis of the probabilities that the State Police used race as a factor in its captain promotions. Plaintiff is not qualified to testify as an expert and should not be permitted to testify as an expert. If Plaintiff is not excluded from testifying as an expert, his testimony should be limited or excluded, as should the testimony of Plaintiff’s other expert, Andrew Broadway.

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,
Plaintiff**

VERSUS

**STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
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NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that the Motion in Limine to Exclude and/or Limit Expert Testimony of John R. Stelly, II and Andrew Broadway filed by Defendant, The State of Louisiana through Department of Public Safety and Corrections, Office of State Police, is hereby set for submission before the Honorable Greg G. Guidry, United States District court for the Eastern District of Louisiana, on Wednesday, July 3, 2024, at 10:00 a.m.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN R. STELLY, II,
Plaintiff

VERSUS

STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
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Defendant

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* CIVIL ACTION NO. 23-772
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**DEFENDANT’S MEMORANDUM IN SUPPORT OF
MOTION *IN LIMINE* TO EXCLUDE AND/OR LIMIT EXPERT TESTIMONY OF
JOHN R. STELLY, II AND ANDREW BROADWAY**

Defendant, The State of Louisiana through Department of Public Safety and Corrections, Office of State Police (“Defendant” or “State Police”), respectfully submits this memorandum in support of its Motion *in Limine* to exclude and/or limit certain expert testimony and opinions of Plaintiff, John R. Stelly, II (“Plaintiff” or “Stelly”) and expert, Andrew Broadway (“Broadway”). Plaintiff seeks to testify as an expert statistician in his own case to render an opinion using statistics that the State Police used race as a factor in its captain promotions. As detailed herein, Plaintiff is not qualified to provide expert testimony and further, he and his other expert, Broadway, intend to offer opinions as to statistics that are not relevant and intend to impermissibly testify as to purported facts and are not based upon reliable methods. Under *Daubert* and the Federal Rules of Evidence, Plaintiff and Broadway cannot offer these opinions as an expert. Moreover, the proposed expert testimony will be impermissibly cumulative as Stelly and Broadway are providing the same or substantially overlapping opinions about the statistics of hiring practices within the State Police.

This Court should grant Defendant's motion and exclude Plaintiff from testifying as an expert, or alternatively, limit Plaintiff's and Broadway's testimony at trial.

I. PRELIMINARY STATEMENT

Plaintiff, John R. Stelly, II, is a former Louisiana State Police Lieutenant who alleges that he was not promoted to captain during the thirteen years for which he was eligible for and applied for the promotion because he is white. This Court has dismissed the majority of Plaintiff's claims. Plaintiff's only remaining claim is the Title VII claim alleging two non-promotions in July 2021 were because he is white.

In support of his claims, Plaintiff has submitted two reports wherein he purports to be an expert statistician and offers opinions using statistics that, in his view, the State Police's promotional decisions were racially motivated.¹ He has also submitted a report from Andrew Broadway, an epidemiologist who claims to have personal and professional experience in statistical concepts.² In their reports, Plaintiff and Broadway each provide summaries and analyses of promotional data for State Police promotions to captain from September 26, 2017 to October 4, 2021.³ Plaintiff asserts that his analyses of 32 promotional panels conducted during this time indicate that black and non-white candidates were promoted at a higher rate than what would have been expected based on the number of eligible black and non-white candidates.⁴ Broadway similarly opines that in panels with black and non-white candidates, black and non-white

¹ See Report of John Ray Stelly II, attached hereto as Exhibit A; Amended Report of John Stelly, attached hereto as Exhibit B.

² Expert Report of Andrew Broadway, attached hereto as Exhibit C.

³ Ex. A, at p. 1; Ex. B, at p. 1; Ex. C, at pp. 1-2.

⁴ Ex. A, at pp. 7-8.

candidates were promoted at higher rates than white candidates.⁵ Both Stelly and Broadway also impermissibly venture into offering fact testimony by stating that the promotional panels did not consider all relevant promotional criteria and that higher ranked candidates were less likely to be promoted.⁶ Although it is anticipated Plaintiff will argue that this indicates that the State Police used race as a factor in its promotional practices, his report does not make any connection between race and the alleged promotion of less qualified candidates.

This Court should exclude or limit the expert testimony to be provided by Stelly because his opinions fail to satisfy the requirements of *Daubert* and Rule 702 of the Federal Rules of Evidence. First and foremost, Plaintiff lacks the requisite qualifications to opine as to calculations based on the State Police's promotional data and the mathematical probabilities that the State Police used race as a factor in its promotions. As such, this Court should exclude Plaintiff's expert testimony and report, including all calculations contained therein.

Alternatively, Plaintiff should be limited from offering expert opinions that do not meet the minimum standards of reliability and relevance set forth by Rule 702 of the Federal Rules of Evidence and relevant Supreme Court decisions. Specifically, Plaintiff should be prevented from offering testimony on multiple topics. First, Plaintiff should not be permitted to offer statistical evidence from promotional panels prior to July 2021 or testimony regarding same as this data is irrelevant to Plaintiff's claims against the State Police, which by ruling of this Court, relate only to two promotional decisions on July 9, 2021. Second, Plaintiff and Broadway should be limited from opining as to what information was and was not considered by the promotional panels as these are questions of fact and, therefore, improper as the subject of expert testimony. Third,

⁵ Ex. C, at p. 5.

⁶ Ex. A, at pp. 8-9; Ex. C, at pp. 5-6.

Plaintiff and Broadway should not be permitted to offer testimony as to their opinions that candidates with higher test scores were less likely to be promoted as this is irrelevant to the issue of whether or not State Police used race as a factor in its promotional decisions. Fourth, in all events, Broadway and Stelly should not be allowed to offer the same or overlapping opinions because such testimony would be cumulative.

II. LAW & ARGUMENT

A. *Legal Standard for the Admissibility of Expert Testimony*

“The party proffering expert testimony has the burden of establishing by a preponderance of the evidence that the challenged expert testimony is admissible.”⁷ Federal Rule of Evidence 702 provides the standard for admissibility of expert testimony at trial:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.

The threshold inquiry in determining whether an individual may offer expert testimony under Rule 702 is whether the expert possesses the requisite qualifications to render an opinion on particular subject matter.⁸ If the expert’s qualifications are found to be sufficient, the court then must examine whether the expert’s opinions are reliable and relevant.⁹

⁷ *Gamboa v. Centrifugal Casting Mach. Co.*, No. 14-1273, 2015 WL 9948807, at *2 (S.D. Tex. May 15, 2015).

⁸ *Wagoner v. Exxon Mobil Corp.*, 813 F. Supp. 2d 771, 798 (E.D. La. 2011).

⁹ *Wells v. SmithKline Beecham Corp.*, 601 F.3d 375, 378 (5th Cir. 2010).

In *Daubert*, the U.S. Supreme Court established the analytical framework for determining whether expert testimony is admissible under Rule 702 of the Federal Rules of Evidence.¹⁰ Under *Daubert*, courts, as “gatekeepers,” are tasked with making a preliminary assessment of whether the expert’s testimony is reliable and relevant under Fed R. Evid. 702.¹¹ The reliability of expert testimony is determined by assessing whether the reasoning or methodology underlying the testimony is scientifically or technically valid and whether the reasoning or methodology can be properly applied to the facts at issue.¹² The expert’s opinions must be based on more than subjective belief or unsupported speculation.¹³ “Proposed testimony must be supported by appropriate validation—i.e., ‘good grounds,’ based on what is known. In short, the requirement that an expert’s testimony pertain to ‘scientific knowledge’ establishes a standard of evidentiary reliability.”¹⁴

A number of nonexclusive factors may be relevant to the reliability inquiry, including: (1) whether the technique has been tested; (2) whether the technique has been subjected to peer review and publication; (3) the potential error rate; (4) the existence and maintenance of standards controlling the technique’s operation; and (5) whether the technique is generally accepted in the relevant scientific community.¹⁵ Additionally, a court has discretion to consider other factors it deems relevant.¹⁶

¹⁰ 509 U.S. 579, 596-98 (1993).

¹¹ *Id.* at 592-93.

¹² *Wells*, 601 F.3d at 378.

¹³ *Daubert*, 509 U.S. at 590.

¹⁴ *Id.*

¹⁵ *Lambert v. State Farm Fire & Cas. Co.*, 568 F. Supp. 2d 698, 711 (E.D. La. 2008).

¹⁶ *Id.*

With respect to relevancy, the inquiry is whether the proposed testimony will assist the trier of fact to understand or determine a fact in issue.¹⁷ Indeed, this examination is described in *Daubert* as whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.¹⁸ When the admissibility of expert testimony is challenged under *Daubert*, the proponent of the evidence bears the burden of proving that the testimony is both relevant and reliable.¹⁹ Here, Plaintiff bears the burden of proving that he is qualified as an expert as well as establishing that his testimony is both relevant and reliable.

B. Plaintiff lacks the requisite qualifications to testify as an expert.

As noted above, the threshold inquiry in determining whether an individual may offer expert testimony under Rule 702 is whether the expert possesses the requisite qualifications to render an opinion on a particular subject matter.²⁰ As Stelly's relevant experience is limited to mathematics degrees earned more than 30 years ago, taking two statistics classes while in graduate school, and because he has spent his career in law enforcement rather than statistics, he lacks the requisite qualifications to testify as to any statistical analysis of the State Police promotional data and whether such analysis can be interpreted as indicating that the State Police's promotional decisions were racially motivated.

When faced with similar facts, the Middle District of Louisiana granted a motion to exclude the testimony of a retained expert statistical witness, finding that he did "not have sufficient academic credentials to qualify him to express expert opinions on statistical analysis" in an

¹⁷ *Daubert*, 509 U.S. at 591.

¹⁸ *Id.*

¹⁹ *Moore v. Ashland Chem., Inc.*, 151 F.3d 269, 276 (5th Cir. 1998).

²⁰ *Wagoner v. Exxon Mobil Corp.*, 813 F. Supp. 2d 771, 798 (E.D. La. 2011).

employment discrimination case.²¹ There, the proffered statistical expert had bachelor's degrees in Mathematics and Economics, a master's degree in Physical Education, a Ph.D. in Sociology, and a minor in Statistics, had been an associate professor in Temple University's Department of Resource Administration for over a decade, and had testified as an expert in 11 federal suits.²² While he had multiple publications pertaining to labor market evaluations, all of these publications were in different fields using different methodology from that required in the case at issue.²³ The court noted that while it was possible the proffered expert had sufficient "on-the-job" training, he had not produced sufficient information about that work to demonstrate his knowledge of statistical science.²⁴

Given Stelly has never been qualified by a court to testify as an expert witness on any topic and his only publication in the last ten years is in the field of traffic reconstruction,²⁵ he is even less qualified to offer expert opinions on statistical analysis than the proffered expert in *Reid*. Although Stelly graduated with a Bachelor of Science and a Master of Science in Mathematics in 1990 and 1993, respectively, he never worked as a mathematician or statistician.²⁶ He only has taken two statistics classes, is not a member of any professional statistics organizations, and has never even read the Ethical Guidelines for Statistical Practice promulgated by the preeminent statistical society in the United States, the American Statistical Association ("ASA"), much less considered himself to be bound by them.²⁷ Stelly was a police officer with the State Police for the

²¹ *Reid v. Albermarle Corp.*, 207 F.Supp.2d 499, 501, 505 (M.D. La. 2001).

²² *Id.* at 501.

²³ *Id.*

²⁴ *Id.*

²⁵ *See* Ex. A, at pp. 15-17.

²⁶ *Id.* at pp. 16-17.

²⁷ Exhibit D, June 13, 2024 Deposition of John Stelly, at pp. 7-8, 37-38, 134-135.

majority of his career and provides no indication that his time at the State Police provided him with any specialized knowledge, training, or expertise in the areas in which he now claims to be an expert. Per his CV, Stelly's experience is vaguely stated as including "application of various areas of general mathematics, programming in various computer languages, and consulting."²⁸ There is no indication that Plaintiff's mathematics degrees or experience applying "general mathematics" include statistical analysis, either generally or in the context of evaluating whether those statistics may be indicative of discriminatory hiring and promotional practices. Moreover, there is no evidence Plaintiff has any specialized knowledge, training, or expertise in conducting demographic analyses, binomial analyses, or Monte Carlo analyses, which are the methods used to form the opinions contained in his report.²⁹ Thus, just like the proffered expert in *Reid*, Plaintiff's academic credentials do not qualify him to express expert opinions on a statistical analysis of whether discrimination was a factor in employment decisions and he has failed to demonstrate that he gained enough experience in practical work to be so qualified.³⁰

The Plaintiff's lack of statistical expertise has demonstrated itself in this case. While the ASA has mandated that the methodology and data used by "valid, relevant, and appropriate, *without favoritism or prejudice*," ASA Standards at 2 (emphasis added), Stelly has clearly picked the beginning and endpoints of his data set to set up his arguments of purported discrimination in the best possible manner, rather than considering data before and after his chosen dates, which would have yielded a different answer to the statistical question posed – whether race was a factor in promotion. Moreover, Stelly influenced Broadway's selection of the beginning and endpoints

²⁸ Ex. A, at p. 16.

²⁹ *See id.*

³⁰ *See Reid*, 207 F.Supp.2d at 505.

of the data sets.³¹ As was done in *Reid*, this Court should likewise find that Plaintiff is not qualified by knowledge, skill, experience, training, or education to express expert opinions on a statistical analysis of whether discrimination played a role in this case.

Because Stelly lacks the necessary qualifications to opine as to promotional data for State Police promotions to captain and mathematical analysis of the probabilities that the State Police used race as a factor in its captain promotions, this Court should exclude Stelly's expert testimony and report, including all calculations referenced therein.

C. If Plaintiff is permitted to testify as an expert, his testimony should be limited, as should the testimony of Broadway.

Even assuming that Plaintiff could produce sufficient evidence of his education and experience to show that he meets the minimum qualifications to offer expert opinions on statistical analysis of the probabilities that the State Police used race as a factor in its captain promotions, this Court should limit his testimony that is neither relevant nor reliable. This Court should also limit the expert testimony of Broadway for the same reasons.

1. This Court should exclude Plaintiff from offering testimony or evidence of statistical evidence that is not relevant to his claim.

With respect to determining the relevancy of an "expert's" testimony pursuant to Rule 702 and *Daubert*, the proposed testimony must be relevant "not simply in the way all testimony must be relevant [pursuant to Rule 702], but also in the sense that the expert's proposed opinion would assist the trier of fact to understand or to determine a fact in issue."³² The jury's role in this case

³¹ Ex. D, at pp. 111-112 (Stelly confirmed that he and Broadway used the same beginning and end dates and stated that Broadway "was given the same data set that I have. He ended his date on October 4th, '21, despite having the same data set that I had, which is January of '22."); Exhibit E, Deposition of Andrew Broadway, at p. 19 (Broadway confirmed that Stelly gave him the beginning point of the data set, September 26, 2017, and that he did not request any additional data from before that data).

³² *Bocanegra v. Vicmar Serv., Inc.*, 320 F.3d 581 584 (5th Cir. 2003).

is simple: determine whether on July 9, 2021, the decision not to promote Stelly was based impermissibly on race or rather, as the evidence will show, was based entirely on merit. If this Court were to allow Plaintiff to offer statistical evidence from promotional panels prior to July 2021 and opinions as to whether analysis of those statistics indicate the State Police promotional decisions were racially motivated, such opinions would not aid the jury in determining facts at issue. In other words, allowing Plaintiff to opine as to alleged disparities in promotional rates in 18 promotional panels dating back to 2017 will not assist the jury in determining whether the reason Plaintiff was not promoted to captain on July 9, 2021 was because he was white. As such, opinions regarding statistical evidence prior to July 2021 are not relevant and should be excluded.

This Court has found that when an expert statistician's opinions as to the probability of discrimination is based on statistical analysis of data relating to a large number of employees, these opinions are irrelevant to an individual plaintiff's discrimination claim and therefore inadmissible under Rule 702.³³ In *Sullivan v. Worley v. Catastrophe Services, LLC*, the plaintiff's expert opined that a disparity between the median age of employees who were laid off and employees who were retained indicated a probability that the layoffs not random, but were motivated by age discrimination.³⁴ However, given the plaintiff alleged only that his former employer intentionally discriminated against him, he had to show that his age was the "but for" cause of the decision to terminate *him* particularly.³⁵ Thus, opinions regarding the company's overall employment statistics were irrelevant as they would not assist the trier of fact in determining whether the employer intentionally discriminated against the individual plaintiff on the basis of his age.³⁶

³³ *Sullivan v. Worley Catastrophe Services, LLC*, 2013 WL 5530277, at *9, 12 (E.D.La. 2013).

³⁴ *Id.* at *9.

³⁵ *Id.* at *12.

³⁶ *Id.*

Here, Plaintiff has alleged the State Police did not promote him to captain on July 9, 2021 because he is white. As such, he must show that the State Police discriminated against him with regard to the two promotions on that day and that his race was the reason or part of the reason he was not promoted. Like in *Sullivan*, overall employment statistics, even if they suggest a pattern of discrimination, will not establish that race discrimination was the reason for these particular decisions. This is particularly true here given Broadway admitted that data from one timeframe does not necessarily mean that the State Police acted the same way in another timeframe³⁷ – i.e., even if statistics suggest race played a factor in other promotions, this does not mean the State Police discriminated against Plaintiff on July 9, 2021. Thus, opinions from Plaintiff and Broadway regarding statistical analysis of all promotional panels dating back to 2017 are irrelevant to Plaintiff's Title VII claim and therefore inadmissible under Rule 702 because they will not assist the jury in determining whether the State Police discriminated against Plaintiff on July 9, 2021.

Given this Court has determined Plaintiff only has causes of action with respect to the two promotions on July 9, 2021, any opinions regarding statistics from other promotional panels are irrelevant and inadmissible as they will not assist the trier of fact in determining whether Plaintiff was discriminated against with regard to these two promotions. As such, this Court should limit Plaintiff from testifying as to statistical evidence prior to July 2021.

Furthermore, any opinion testimony Plaintiff and Broadway may offer about these statistics will be unreliable given Plaintiff cherry picked the beginning and endpoints of the data set, thereby ignoring data from any panels before September 2017 or after October 2021. Stelly claims he only looked at data from September 26, 2017 to October 4, 2021 because this is the time period relevant

³⁷ Ex. E, at pp. 15-16, 97-98.

to his personal experience.³⁸ Specifically, he started with data from Chavez Cammon's promotion in 2017 because that is when he first started suspecting discrimination, and ended with the date in 2021 when he requested retirement and thereby stopped trying to get promoted.³⁹ Plaintiff is not taking a holistic look at all available data and he is not considering "all of the surrounding facts and circumstances." Rather, he selected data to try and find discrimination by using a limited data set corresponding with his perception of when discrimination against him occurred. As consideration of data from 2008 to 2017 and after October 4, 2021 would significantly impact Plaintiff's analysis and his conclusion that black candidates were promoted disproportionately, he should not be permitted to ignore said data in order to bolster his position. As such, this Court should limit Plaintiff and Broadway from testifying as to opinions based on this unreliable data set.

2. This Court should exclude Plaintiff and Broadway from offering opinion testimony as to purported facts.

It is well-settled that an expert cannot make "legal conclusions reserved for the court," credit or discredit witness testimony, or "otherwise make factual determinations reserved for the trier of fact."⁴⁰ Expert testimony that relies on completely unsubstantiated factual assertions is inadmissible.⁴¹ This Court has granted motions to exclude an expert's testimony where their report is largely a restatement of allegations of fact that does not offer any scientific, technical, or specialized knowledge that will assist the trier of fact.⁴²

³⁸ Ex. B, Amended Report of John Stelly, at p. 13.

³⁹ Exhibit F, Deposition of John Stelly, at p. 82, 111-112, 239; Ex. B, Amended Report of John Stelly, at p. 13.

⁴⁰ *Highland Cap. Mgmt., L.P. v. Bank of Am., N.A.*, 574 F. App'x 486, 491 (5th Cir. 2014).

⁴¹ *Moore v. Int'l Paint, L.L.C.*, 547 F. App'x 513, 515 (5th Cir. 2013).

⁴² *See e.g. Riha v. Offshore Service Vessels, LLC*, 547 F.Supp.3d 550, 556 (E.D. La. 2021).

Here, Plaintiff and Broadway offer opinions as to what information was and was not considered by the promotional panels.⁴³ These opinions are improper and should not be permitted at trial for several reasons. First, in stating what the panels did and did not consider, Plaintiff is attempting to make factual assertions rather than issue an opinion based on the facts. As noted above, experts may testify in the form of opinions, but cannot make factual determinations.⁴⁴ Plaintiff and Broadway's attempt to state what the panels did and did not consider violate this rule. Second, these factual allegations are unsubstantiated given the contention that education, experience, annual evaluations, awards, and disciplinary history were not taken into account for promotions is contradicted by testimony from the Louisiana State Police that these factors, among many others were considered. Third, these unsupported allegations as to what the promotional panels did and did not consider are not the product of any scientific, technical, or specialized knowledge possessed by Plaintiff and will not assist the jury in determining whether State Police discriminated against Plaintiff with regard to the two promotions on July 9, 2021. Finally, Plaintiff and Broadway do not have an adequate factual foundation for these "opinions" given they were not on any of the promotional panels and have no personal knowledge of the factors they did and did not consider in determining promotions.

Given Plaintiff and Broadway do not have the factual foundation to testify as to what was and was not considered by the promotional panels and their "opinions" on these considerations amount to no more than unsubstantiated factual assertions that will not assist the trier of fact, they are inadmissible. As such, this Court should limit Plaintiff and Broadway from offering testimony as to the factors considered by the promotional panels.

⁴³ Ex. A, at p. 9.

⁴⁴ See e.g., *Highland Cap. Mgmt., L.P. v. Bank of Am., N.A.*, 574 F. App'x 486, 491 (5th Cir. 2014).

3. *Plaintiff and Broadway should not be permitted to offer testimony or evidence regarding statistical analysis of test scores as it is not relevant to his claims.*

An important consideration under Rule 702 -- and another aspect of relevancy-- is whether expert testimony proffered in the case is sufficiently tied to the facts of the case such that it will aid the court in resolving a factual dispute.⁴⁵ In other words, the expert's opinion, to be admissible, must have a basis in the facts that will be proved at trial.

Plaintiff and Broadway dedicate a considerable portion of their expert reports to conclusions that have no bearing on the factual dispute to be resolved at trial. For example, Plaintiff opines that candidates with higher scores on promotional tests are less likely to be promoted.⁴⁶ Even if true, this conclusion will not assist a trier of fact in resolving the factual dispute as to whether State Police discriminated against Plaintiff on the basis of race. Likewise, Plaintiff's opinion that candidates with more experience were less likely to be promoted⁴⁷ will not assist the trier of fact in determining whether race played a factor in State Police promotional decisions. Neither of these opinions have anything to do with race or support an inference of race-based discrimination. Even if Plaintiff were to take the position that he was discriminated against on the basis of his test scores or level of experience, this would have no bearing on his Title VII claim against the State Police as individuals with high test scores and/or lieutenant experience are not protected classes.

To the extent that Plaintiff argues statistical analysis of test scores is not direct evidence of discrimination but is relevant for some other reason, such as establishing that those promoted were not sufficiently qualified, this argument must also fail. Testimony from the Louisiana State Police

⁴⁵ *Daubert*, 113 S.Ct. at 2795.

⁴⁶ Ex. A, at p. 8.

⁴⁷ Ex. A, at p. 9.

provides that these tests do not measure qualification⁴⁸ and that a higher score on the promotional test does not mean that one is more qualified for a captain position.⁴⁹ Accordingly, scores alone are not relevant with regard to whether a candidate is qualified for a captain position.

As Plaintiff's opinions regarding the impact of test scores and experience on the likelihood that a candidate will be promoted will not assist the trier of fact in determining whether the State Police discriminated against him because he is white, which is the only factual dispute to be resolved here, they are irrelevant and thus, inadmissible.

III. CONCLUSION

Plaintiff, John Stelly, lacks the specialized knowledge, training, and expertise in statistical analysis to opine as to the probabilities that the State Police used race as a factor in its captain promotions. Further, much of his anticipated testimony and that of Broadway are unreliable and irrelevant as it will not assist the jury in understanding or determining the facts at issue. Accordingly, this Court should grant the State Police's Motion *in Limine* and exclude Plaintiff as an expert witness or alternatively, limit Plaintiff from offering expert opinions as to statistical evidence prior to July 2021, information that was and was not considered by the promotional panels, and statistical analysis of test scores.

Respectfully submitted,

⁴⁸ Exhibit G, Deposition of Lamar Davis, at pp. 31-32 (“And, again, the exam did not measure qualification. The exam tested us on information pertaining to the information that was provided in the exam. So in that essence, it did not determine qualification . . . when you look at the Technology and Business Support, if you're looking at qualifications, there are other factors also that are considered. That's why I said this does not -- while this exam is a criteria in which is used to determine whether or not we move on to the next level to be promoted, it does not determine qualification . . . The requirement states that, one, you must pass the exam. The other requirement states that you must be within the top seven grade groups in order to move on to the next level. As far as competitiveness, it doesn't state whether or not it needs to be competitive.”).

⁴⁹ Exhibit G, at p. 30 (“As I understand it, [Stelly] had – he possessed a higher score, but didn't make him more qualified for this position.”)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN R. STELLY, II,
Plaintiff

VERSUS

STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
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Defendant

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**EXHIBIT "A" TO MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION IN LIMINE TO EXCLUDE AND/OR LIMIT EXPERT TESTIMONY
OF JOHN R. STELLY, II AND ANDREW BROADWAY**

FILED UNDER SEAL

Respectfully submitted,

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*Counsel for Defendant, The State of
Louisiana, through Department of Public
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John Ray Stelly II vs. State of Louisiana

CIVIL ACTION NO. 2:23-cv-00772

Eastern District of Louisiana

United States District Court

Amended Report of Statistical Analysis of the Use of Race in the Promotions to Captain by LSP

**John Stelly II, B.S. in Mathematics, B.S. in Computer Science, M.S. in
Mathematics**

May 31, 2024

The task of this report is to determine by statistical analysis if race was a factor that Louisiana State Police (LSP) used in selecting lieutenants for promotion to captain. Since my submitting my last expert report in this matter on 01-19-24, LSP submitted more documents in response to both my then still pending and my additional requests for production of documents in support of my claim that the LSP discriminated against me because of my race by promoting black and non-white candidates over me to captain despite their being much less qualified than me. This report serves to both supplement my original report and further analyze the totality of all data that LSP has submitted thus far.

This Amended Report concludes that large racial disparities exhibited in LSP's promotions to captain from 09-26-17 through 10-04-21 would occur by chance less than 5% of the time. These disparities were adverse to me because I applied for captain 18 times from 09-26-17 through 10-04-21, and the LSP Commission qualified me as eligible all 18 times. As a white lieutenant on those 18 panels, I competed against non-white candidates 17 times (94.4%) and against black candidates 13 times (72.2%).

Materials reviewed

1. LSP's position statement on Stelly's EEOC complaint.
2. Stelly's response to LSP's position statement.

3. Stelly's second amended complaint (USDC, Eastern District of Louisiana, Civil Action 23-722).
4. Documents Stelly received via subpoena from the LSP Commission.
5. Documents Stelly received from LSP via requests for production of documents.
6. Documents Stelly received from public records requests.
7. Reports of Melissa Kovacs, LSP's statistical expert.
8. Reports of Tyler Broadway, Stelly's statistical expert.
9. Deposition of LSP COL Lamar Davis.
10. Deposition of John Stelly.
11. 30(b)(6) deposition of LSP.

Assumptions and observations

1. Selection criteria for determining which panels conducted from 09-26-17 through 10-04-21 should be analyzed.

This first issue to resolve is choosing the sets of candidates that best allow the fairest calculations of indicators that show the extent of racially discriminatory promotional practices. Choosing otherwise is obviously suboptimal.

To that end, the first option would be to choose all candidate panels. In particular, this choice would consider all panels from 09-26-17 through 10-04-21. Such a choice would include promotions to sergeant, lieutenant, and captain. Analysis of data based on that choice would investigate whether promotional decisions (to any of those ranks) during this time frame were generally made in a racially discriminatory manner. Although affirmative evidence from such an analysis would indicate racially discriminatory promotional practices were generally afoot, negative evidence would not imply that racially discriminatory promotional practices were not afoot at any particular level. For example, even rampant racially discriminatory promotional practices to captain could be easily obscured by non-racially discriminatory promotional practices to sergeant and lieutenant because of the much smaller number of promotions to captain. Therefore, the most appropriate slates of panels of candidates to analyze to determine whether captain promotions were made in a racially discriminatory manner would be only those slates of candidates who were competing for a captain position.

Another consideration would be whether all slates of candidates competing for captain should be analyzed or just some subset thereof. Basic observation of the captain panels reveals that some of the panels were composed of only white candidates. LSP rules require that the promotee for any position be chosen from only the list of qualified candidates who applied for that position. For example, suppose that all candidates for a

particular position were only white. Then including that panel in the final data set would taint the analysis because LSP had no choice over the race of the candidate it would choose to promote to captain from that panel. So, in addition to restricting analysis to only captain panels, only panels that permitted LSP to make racially discriminatory promotion decisions should be included in the data set to be analyzed to determine whether LSP acted in a racially discriminatory manner in making those promotions.

For any particular promotion, including those for captain, the LSP promotion system considers only qualified candidates who are presumptively eligible for promotion with eligibility being established by having sufficient experience as a lieutenant, completing all necessary leadership courses, passing a written promotional exam, timely applying for the desired promotion, and scoring in the top grade groups of fellow lieutenants who also applied for the same position. Therefore, the LSP promotion system itself when combined with the above panel restrictions facilitates a comparison of the demographics of lieutenants promoted to captain from a qualified pool of lieutenants eligible for promotion and thereby allows inferences about racial discrimination in those promotions.

I categorize members of the captain panels in two ways: black / non-black and non-white / white. The black / non-black categorization considers all candidates of only those captain panels at least one of whose candidates was black. Similarly, the non-white / white categorization considers all candidates of only those captain panels at least one of whose candidates was non-white. Of course, these divisions do not preclude the analysis of subcategories, for example analyzing white candidate promotions under the black / non-black categorization.

2. Methodologies.

My initial report analyzed captain promotional data under two methods. The first method assumed the data was binomially distributed. As previously mentioned, to satisfy the binomial constraint of the constant success rate of black (non-white) candidates being promoted, I used the average proportion of black (non-white) candidates across all panels that contained at least one black (non-white) candidate as the constant success rate. I found this a reasonable approximation given that black, non-white, non-black, and white candidates should be assumed to be generally equally qualified. Furthermore, to satisfy the binomial constraint that panel compositions be independent of each other, I noted that not only did I include for analysis only captain panels with at least one black (non-white) candidate regardless whether I was a candidate, all eligible lieutenants, regardless of race, were free to apply for any open

captain position regardless whether they applied for another previous position. In other words, relative to my analysis in my EEOC rebuttal to LSP's position statement, I eliminated any dependence potentially induced by restricting panels to only those for which I applied, and I further bolstered independence by observing that despite not being promoted, individuals of all races sometimes chose to apply for a later open position but sometimes chose not to apply.

My second method employed Monte Carlo simulations. In each simulation, the promotee was chosen uniformly in proportion to the racial makeup of each panel. For example, suppose a ten-candidate panel contained seven white candidates, two black candidates, and one Asian candidate. Then for each black / non-black simulation, the probability of choosing a black candidate to promote was 20% and the probability of choosing a non-black candidate to promote was 80%. Similarly, for each non-white / white simulation, the probability of choosing a non-white candidate to promote was 30% and the probability of choosing a white candidate to promote was 70%. These simulations were run 100,000 times under each scenario. This method obviously eliminated the constant success rate requirement of the binomial method and further bolstered independence of racial proportions between panels.

This report partly summarizes the results of my previous report and adds some further analysis, specifically relative risk calculations. For the relative risk calculations, I composed the list of all lieutenants who applied and were certified eligible for promotion to captain. Of course, this list contained only those lieutenants who were on a panel with at least one black (non-white) lieutenant. I then deduplicated that list by retaining only each lieutenant's last such record which contained his name, his race, and his promotional status. For lieutenants who were promoted to captain, their promotional status was recorded as positive; for lieutenants who were never promoted to captain, their promotional status was recorded as negative. My relative risk calculations are consistent with Broadway's.

Relative risk for two categories was then the ratio of the probabilities of promotion from within those categories. For example, if the categories were Black and Non-black, then the relative risk R associated with those two categories would be $R = \frac{b/B}{n/N}$ where b is the number of black candidates promoted, B is the total number of black candidates, n is the number of non-black candidates promoted, and N is the total number of non-black candidates. The closer R is to 1, the stronger the indication that racial discrimination

was not afoot. On the other hand, the farther R is from 1, the stronger the indication that racial discrimination was afoot.

As a numeric example, suppose that 9 of 10 black candidates were promoted and 10 of 40 non-black candidates were promoted. Superficial inspection of this scenario would show that more non-black candidates were promoted compared to black candidates, thereby refuting claims of racial discrimination. However, this is a specious conclusion because 90% of all black candidates were promoted but only 25% of all non-black candidates were promoted despite that non-black candidates out-numbered black candidates four-to-one. Relative risk quantifies this level of disparity. Here, the relative risk would be $R = \frac{9/10}{10/40} = \frac{18}{5} = 3.60$. The interpretation of 3.60 would be that black candidates were 3.60 times more likely to be promoted than non-black candidates. On the other hand, had 4 of 10 black candidates been promoted and 15 of 40 non-black candidates been promoted, then $R = \frac{4/10}{15/40} = \frac{16}{15} = 1.07$, meaning black candidates were barely more likely to be promoted than non-black candidates. Certainly, the significance of the 260% better chance of a black candidate being promoted with $R = 3.60$ dwarfs any significance of the trivial 7% better chance of a black candidate being promoted with $R = 1.07$.

The three sets of analyses below all exhibit gross statistical disparities between promotion rates of both white and non-black candidates to captain versus both non-white and black candidates. Specifically, white and non-black candidates experienced statistically significant lower rates of promotion to captain. In analyzing those rates, the various measures compare the number of minority candidates promoted to captain against the number of minority candidates that statistically should have been promoted to captain in the absence of any discrimination. These measures show that the numbers of minority candidates who were promoted to captain were statistically greater than the number of minority candidates expected to receive promotion to captain despite the insistence of COL Lamar Davis, LSP Superintendent from 10-30-20 through 01-08-24 who is black, that he did not have a policy to increase diversity. In his report, Broadway showed that objective criteria like promotional exam score and factors enumerated in LSP PO 229 / Promotions, eg years of service, time-in-grade as lieutenant, discipline, awards, and education, had no bearing on the actual promotional choice, leaving effectively only subjective criteria to establish those choices.

3. Analysis of captain panels conducted from 09-26-17 through 10-29-20.

From 09-26-17 through 10-29-20, COL Kevin Reeves conducted 14 captain panels whose candidates included at least one black candidate. Reeves promoted 6 black candidates and 8 non-black candidates.

- Binomial analysis.
 - On average, black candidates composed 19.0% of each panel and non-black candidates composed 81.0% of each panel.
 - The most probable number of black candidates to be promoted was 2.
 - $P(2 \text{ B}, 12 \text{ NB}) = 0.262$ and $P(6 \text{ B}, 8 \text{ NB}) = 0.026$.
 - LSP's promoting 6 black and 8 non-black candidates as it did was 9.99 times less probable than promoting 2 black and 12 non-black candidates.
 - LSP's promoting 6 black and 8 non-black candidates as it did was 2.27 standard deviations above expectation.
 - Black candidates were 3.20 times more likely to be promoted than non-black candidates.
 - This is statistically significant at the 95% confidence level ($p = 0.0350$).
- Relative Risk analysis.
 - 6 / 9 (66.7%) of all black candidates were promoted.
 - 8 / 35 (22.9%) of all white candidates were promoted.
 - 8 / 38 (21.1%) of all non-black candidates were promoted.
 - 6 / 14 (42.9%) of all promotions went to black candidates.
 - 8 / 14 (57.1%) of all promotions went to white candidates.
 - 8 / 14 (57.1%) of all promotions went to non-black candidates.
 - 9 / 47 (19.2%) of all candidates were black.
 - 35 / 47 (74.5%) of all candidates were white.
 - 38 / 47 (80.9%) of all candidates were non-black.
 - Black candidates were 2.92 times more likely to be promoted than white candidates.
 - Black candidates were 3.17 times more likely to be promoted than non-black candidates.
 - This is statistically significant at the 95% confidence level ($p = 0.0134$).

From 09-26-17 through 10-29-20, COL Kevin Reeves conducted 15 captain panels whose candidates included at least one non-white candidate. Reeves promoted 6 non-white candidates and 9 white candidates.

- Binomial analysis.
 - On average, non-white candidates composed 28.0% of each panel and white candidates composed 72.0% of each panel.
 - The most probable number of non-white candidates to be promoted was 4.
 - $P(4 \text{ NW}, 11 \text{ W}) = 0.226$ and $P(6 \text{ NW}, 9 \text{ W}) = 0.126$.
 - LSP's promoting 6 non-white and 9 white candidates as it did was 1.80 times less probable than promoting 4 non-white and 11 white candidates.
 - LSP's promoting 6 non-white and 9 white candidates as it did was 1.03 standard deviations above expectation.
 - Non-white candidates were 1.71 times more likely to be promoted than white candidates.
- Relative Risk analysis.
 - 6 / 12 (50.0%) of all non-white candidates were promoted.
 - 9 / 36 (25.0%) of all white candidates were promoted.
 - 6 / 15 (40.0%) of all promotions went to non-white candidates.
 - 9 / 15 (60.0%) of all promotions went to white candidates.
 - 12 / 48 (25.0%) of all candidates were non-white.
 - 36 / 48 (75.0%) of all candidates were white.
 - Non-white candidates were 2.00 times more likely to be promoted than white candidates.
 - This is statistically significant at the 85% confidence level ($p = 0.1057$)

4. Analysis of captain panels conducted from 10-30-20 through 10-04-21.

From 10-30-20 through 10-04-21, COL Lamar Davis conducted 4 captain panels whose candidates included at least one black candidate. Davis promoted 3 black candidates, 1 Asian candidate, and 0 white candidates.

- Binomial analysis.
 - On average, black candidates composed 20.3% of each panel and non-black candidates composed 79.7% of each panel.
 - The most probable number of black candidates to be promoted was 1.
 - $P(1 \text{ B}, 3 \text{ NB}) = 0.411$ and $P(3 \text{ B}, 1 \text{ NB}) = 0.027$.
 - LSP's promoting 3 black and 1 non-black candidates as it did was 15.46 times less probable than promoting 1 black and 3 non-black candidates.
 - LSP's promoting 3 black and 1 non-black candidates as it did was 2.72 standard deviations above expectation.

- Black candidates were 11.79 times more likely to be promoted than non-black candidates.
- This is statistically significant at the 95% confidence level ($p = 0.0283$).
- Relative Risk analysis.
 - 3 / 4 (75.0%) of all black candidates were promoted.
 - 0 / 10 (0.0%) of all white candidates were promoted.
 - 1 / 12 (8.3%) of all non-black candidates were promoted.
 - 3 / 4 (75.0%) of all promotions went to black candidates.
 - 0 / 4 (0.0%) of all promotions went to white candidates.
 - 1 / 4 (25.0%) of all promotions went to non-black candidates.
 - 4 / 16 (25.0%) of all candidates were black.
 - 10 / 16 (62.5%) of all candidates were white.
 - 12 / 16 (75.0%) of all candidates were non-black.
 - Black candidates were infinitely more likely to be promoted than white candidates (since no white candidates were promoted).
 - Black candidates were 9.00 times more likely to be promoted than non-black candidates.
 - This is statistically significant at the 95% confidence level ($p = 0.0269$).

From 10-30-20 through 10-04-21, COL Lamar Davis conducted 10 captain panels whose candidates included at least one non-white candidate. Davis promoted 4 non-white candidates and 6 white candidates.

- Binomial analysis.
 - On average, non-white candidates composed 25.1% of each panel and white candidates composed 74.9% of each panel.
 - The most probable number of non-white candidates to be promoted was 2.
 - $P(2 \text{ NW}, 8 \text{ W}) = 0.281$ and $P(4 \text{ NW}, 6 \text{ W}) = 0.147$.
 - LSP's promoting 4 non-white and 6 white candidates as it did was 1.92 times less probable than promoting 2 non-white and 8 white candidates.
 - LSP's promoting 4 non-white and 6 white candidates as it did was 1.09 standard deviations above expectation.
 - Non-white candidates were 1.99 times more likely to be promoted than white candidates.
- Relative Risk analysis.
 - 4 / 6 (66.7%) of all non-white candidates were promoted.
 - 6 / 21 (28.6%) of all white candidates were promoted.

- 4 / 10 (40.0%) of all promotions went to non-white candidates.
- 6 / 10 (60.0%) of all promotions went to white candidates.
- 6 / 27 (22.2%) of all candidates were non-white.
- 21 / 27 (77.8%) of all candidates were white.
- Non-white candidates were 2.33 times more likely to be promoted than white candidates.
- This is statistically significant at the 85% confidence level ($p = 0.1117$)

5. Analysis of captain panels conducted from 09-26-17 through 10-04-21.

From 09-26-17 through 10-04-21, LSP conducted 18 captain panels whose candidates included at least one black candidate. LSP promoted 9 black candidates, 1 Asian candidate, and 8 white candidates.

- Binomial analysis.
 - On average, black candidates composed 19.3% of each panel and non-black candidates composed 80.7% of each panel.
 - The most probable number of black candidates to be promoted was 3.
 - $P(3 B, 15 NB) = 0.235$ and $P(9 B, 9 NB) = 0.003$.
 - LSP's promoting 9 black and 9 non-black candidates as it did was 90.00 times less probable than promoting 3 black and 15 non-black candidates.
 - LSP's promoting 9 black and 9 non-black candidates as it did was 3.30 standard deviations above expectation.
 - This is statistically significant at the 99% confidence level ($p = 0.0033$).
 - Black candidates were 4.18 times more likely to be promoted than non-black candidates.
- Monte Carlo analysis.
 - The probability of LSP's selecting 9 black candidates and 9 non-black candidates for promotion as it did was approximately 0.0024.
 - The probability of alternatively selecting 3 black candidates and 15 non-black candidates for promotion was approximately 0.2359.
 - The probability of alternatively selecting 4 black candidates and 14 non-black candidates for promotion was approximately 0.2156.
 - LSP's actual scenario was about 100 times less probable than the most likely scenario and about 91 times less probable than the second most likely scenario.
- Relative Risk analysis.
 - 9 / 12 (75.0%) of all black candidates were promoted.

- 8 / 38 (21.1%) of all white candidates were promoted.
- 9 / 41 (22.0%) of all non-black candidates were promoted.
- 9 / 18 (50.0%) of all promotions went to black candidates.
- 8 / 18 (44.4%) of all promotions went to white candidates.
- 9 / 18 (50.0%) of all promotions went to non-black candidates.
- 12 / 53 (22.6%) of all candidates were black.
- 38 / 53 (71.7%) of all candidates were white.
- 41 / 53 (77.4%) of all candidates were non-black.
- Black candidates were 3.56 times more likely to be promoted than white candidates.
- Black candidates were 3.42 times more likely to be promoted than non-black candidates.
- This is statistically significant at the 95% confidence level ($p = 0.0013$).
- As a more concrete example, suppose that a bag contains 12 marbles all painted with B (for black) and 41 marbles all painted with NB (for non-black). Make 18 blind picks from the bag without returning the chosen marble each time. This is a hypergeometric distribution. What is the probability of choosing 9 B marbles and 9 NB marbles? Answer about 0.0012, or 0.12%, which is 3.38 standard deviations beyond the most probable answer of 4 B marbles and 14 NB marbles which has probability about 0.2700, or 27.00%. In other words, choosing 4 B and 14 NB is about 226.3 times more probable than 9 B and 9 NB, which corresponds to LSP's chosen promotion scenario.
- To appreciate how unlikely LSP's chosen promotion scenario is, Figure 1 is a plot of the probabilities of each (b, n) scenario, where b is the number of black promotees and n is the number of non-black promotees. LSP's scenario is in red above (9,9) in Figure 1. (This bar is barely visible because it is so small.)

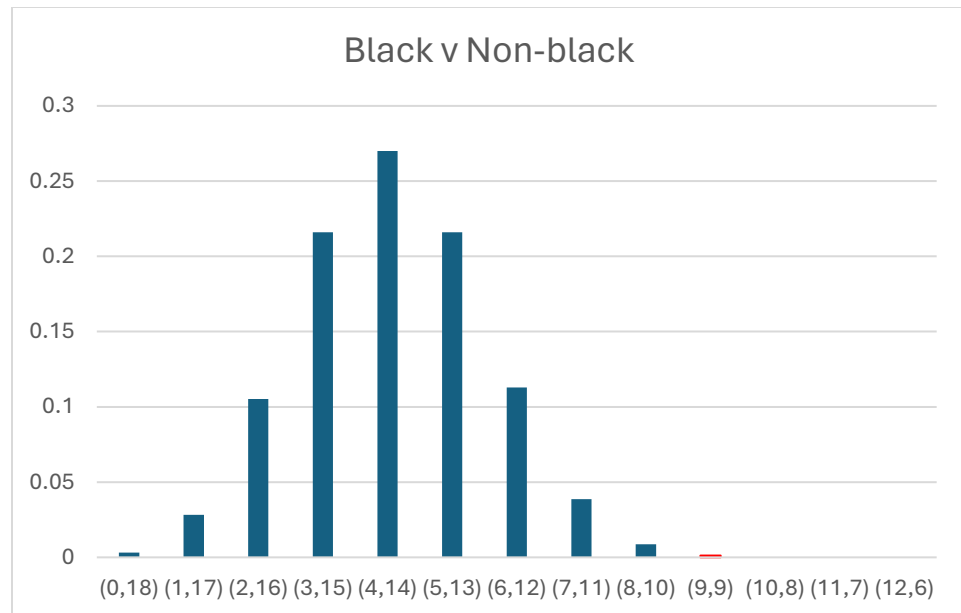


Figure 1.

From 09-26-17 through 10-04-21, LSP conducted 25 captain panels whose candidates included at least one non-white candidate. LSP promoted 10 non-white candidates and 15 white candidates.

- Binomial analysis.
 - On average, non-white candidates composed 26.9% of each panel and white candidates composed 73.1% of each panel.
 - The most probable number of non-white candidates to be promoted was 6.
 - $P(6 \text{ NW}, 19 \text{ W}) = 0.175$ and $P(10 \text{ NW}, 15 \text{ W}) = 0.058$.
 - LSP's promoting 10 non-white and 15 white candidates as it did was 2.99 times less probable than promoting 6 non-white and 19 white candidates.
 - LSP's promoting 10 non-white and 15 white candidates as it did was 1.48 standard deviations above expectation.
 - This is statistically significant at the 85% confidence level ($p = 0.1068$).
 - Non-white candidates were 1.82 times more likely to be promoted than white candidates.
- Monte Carlo analysis.
 - The probability of LSP's selecting 10 non-white candidates and 15 white candidates for promotion as it did was approximately 0.0583.
 - The probability of alternatively selecting 7 non-white candidates and 18 white candidates for promotion was approximately 0.1785.

- The probability of alternatively selecting 6 non-white candidates and 19 white candidates for promotion was approximately 0.1770.
- LSP's actual scenario was about 3.06 times less probable than the most likely scenario and about 3.04 times less probable than the second most likely scenario.
- Relative Risk analysis.
 - 10 / 15 (66.7%) of all non-white candidates were promoted.
 - 15 / 47 (31.9%) of all white candidates were promoted.
 - 10 / 25 (40.0%) of all promotions went to non-white candidates.
 - 15 / 25 (60.0%) of all promotions went to white candidates.
 - 15 / 62 (24.2%) of all candidates were non-white.
 - 47 / 62 (75.8%) of all candidates were white.
 - Non-white candidates were 2.09 times more likely to be promoted than white candidates.
 - This is statistically significant at the 95% confidence level ($p = 0.0189$).
 - As a more concrete example, suppose that a bag contains 15 marbles all painted with NW (for non-white) and 47 marbles all painted with W (for white). Make 25 blind picks from the bag without returning the chosen marble each time. This is a hypergeometric distribution. What is the probability of choosing 10 NW marbles and 15 W marbles? Answer about 0.0153, or 1.53%, which is 2.37 standard deviations beyond the most probable answer of 6 NW marbles and 19 W marbles which has probability about 0.2368, or 23.68%. In other words, choosing 6 NW and 19 W is about 15.5 times more probable than 10 NW and 15 W, which corresponds to LSP's chosen promotion scenario.
 - To appreciate how unlikely LSP's chosen promotion scenario is, Figure 2 is a plot of the probabilities of each (n, w) scenario, where n is the number of non-white promotees and w is the number of white promotees. LSP's scenario is in red above (10,15) in Figure 2.

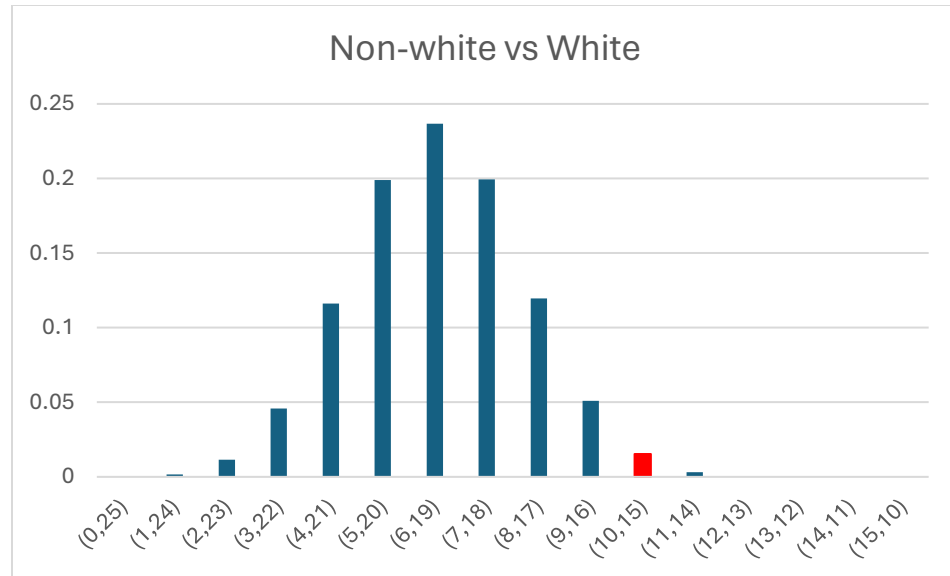


Figure 2.

Errors in the report by Kovacs, LSP's expert

LSP submitted an expert report by Melissa Kovacs, Ph.D. To fairly evaluate Kovacs' methodology, I attempted to organize the data in a manner that would result in the same values as she lists in her Tables 1 and 2. The only method I discovered resulting in almost identical values was to de-duplicate based solely on the applicant names once the list of all sergeant, lieutenant, and captain applicants was put in reverse chronological order. Kovacs' analysis suffers from several issues regardless whether she used the de-duplication of the reversed list methodology.

First, my complaint covers from 09-26-17 through 10-04-21. I chose 10-04-21 as the ending date of my complaint because, due to my experiences of discrimination from 09-06-17 through 10-04-21, on 10-05-21, I formally requested retirement – an irrevocable decision – on 12-17-21. This was after the LSP Commission found me eligible at least 32 times for promotion to captain but LSP rejected me for promotion every one of those times despite among other things my receiving the highest rating on my last 17 annual evaluations, my supervisors' repeated endorsements for my promotion, my extended formal education, my always receiving the highest promotional exam scores of my competitors, my greater experience as a lieutenant and an executive officer especially against those chosen for promotion, my supplementary training, and my co-developing and teaching LSP's leadership program that it still uses today. In her *Summary of Opinion* section, Kovacs wrote

there is no difference between the proportions of white and black personnel who were promoted to captain between September 26, 2017 through **January 25, 2022** (emphasis

added) in this matter, and no difference between the proportions of white and non-white personnel who were promoted to captain during this same time period in this matter.

Second, in contrast to her above wording in her *Summary of Opinion* section, in her *Analysis Approach* section, Kovacs wrote

I examined whether there is a difference in the proportion of white personnel who are promoted compared to black personnel, and the proportion of white personnel who are promoted compared to non-white personnel.

In her subsequent comments, Kovacs actually provided her analysis of the differences in the overall proportions of white vs black promotees and in the overall proportions of white vs non-white promotees. On the other hand, Kovacs offered no analysis of any particular level of promotions in specific. In particular, Kovacs offered no analysis of promotions to captain in specific. In support of my interpretation of Kovacs' analysis, I note that she reported that approximately 240 people were promoted but did not specify the ranks to which those approximately 240 people were promoted. However, LSP did not promote approximately 240 people to captain but only 37 people from 09-26-17 through 01-25-22 and only 32 people from 09-26-17 through 10-04-21. Kovacs based all of her numerical analyses on these approximately 240 promotions without regard for rank and thusly are inapplicable to captain promotions specifically. Therefore, all conclusions that Kovacs made about captain promotions are clearly unsupported. In particular, Kovacs' *Summary of Opinion* is unsupported as is her similarly worded ending conclusion in light of her providing absolutely no analysis of captain promotions specifically.

From another perspective, Kovacs' chosen data organization would restrict her analysis to allow her to render opinions on only whether LSP's promotions to sergeant, lieutenant, and captain were in general made in racially discriminatory manner. In other words, her choosing not to separate out promotions at each level precludes her from being able to opine whether LSP's promotions at any of the sergeant, lieutenant, or captain levels in particular exhibited evidence of having been made in a racially discriminatory manner. For example, Kovacs' chosen data organization would obscure even hypothetically grossly rampant racially discriminatory promotional practices at the captain level against hypothetically non-discriminatory promotional practices at the lieutenant and sergeant levels because the sub-population of captain-level promotions was smaller than lieutenant-level promotions and much smaller than sergeant-level promotions. Making such a distinction in this analysis is crucial because my complaint was specifically aimed at practices of promotions to the captain rank. By blending promotions to sergeant, lieutenant, and captain together, Kovacs diluted and artificially reduced the power and applicability of her analysis of promotions to the captain rank. Moreover,

Kovacs' report was completely silent on any measure of racial discrimination in awarding captain promotions specifically. Nevertheless, without any captain-specific analysis, Kovacs somehow concluded that there is no difference between the proportions of white and black personnel who were promoted to captain and no difference between the proportions of white and non-white personnel who were promoted to captain.

Third, Kovacs made no effort to isolate from consideration all panels in which LSP could not have made a racially discriminatory promotional decision because all candidates in those panels were of one race. In fact, Kovacs expressly included in her calculations panels in which LSP could not have made a racially discriminatory decision, thereby artificially decreasing both her measure of LSP's use race in promotions and the applicability of that measure. Kovacs analyzed black / white and non-white / white promotion rates only in a global sense. Further, Kovacs' inclusion of LSP's choosing white candidates on panels with all white candidates artificially increased LSP's white and non-black candidate promotion rates and artificially decreased LSP's black and non-white promotion rates. In other words, Kovacs effectively credited LSP for choosing white candidates on panels all of whose candidates were white. Most disturbingly, under Kovacs' reasoning, conducting enough panels with only white candidates and therefore promoting enough white candidates could "cure" even hypothetically blatant discrimination of always *de facto* choosing black candidates on all panels at least one of whose candidates was black.

In short, Kovacs' holistic methodology for selecting which records to include for analysis of indicators of racial discrimination does little to facilitate a fair analysis, especially relative to my complaint of racial discrimination in captain promotions. In particular, Kovacs' argument is akin to concluding that because the majority of American companies do not pollute the environment, then no sector is more likely to pollute the environment than any other sector. Such an argument and any consequent conclusions are obviously fatally invalid.

As for her critique of my report, I note that she erroneously interpreted my binomial analysis as being based on the identity of promotional candidates. If that were true, then her dependence argument would have some merit. However, my binomial analysis was instead based on the average proportion of black or non-white candidates on each panel irrespective of the identity of any candidate.

Conclusions

Binomial, Monte Carlo, and Relative Risk methodologies all consistently indicate the presence of racial discrimination in captain-level promotional decisions during COL Reeves' administration individually, COL Davis' administration individually, and from 09-06-17 through 10-04-21 which covered time during both their administrations.

All indicators above showed partiality to black and non-white lieutenants in comparison to their non-black and white counterparts when competing for promotion to captain.

Multiple indicators above conclude that large racial disparities favoring black and non-white candidates over non-black and white candidates in LSP's promotions to captain from 09-26-17 through 10-04-21 would occur by chance less than 5% of the time. These large disparities in promotion of black vs non-black and non-white vs white lieutenants to captain show that there was race discrimination in the LSP promotion system.

/s/John Ray Stelly II

05-31-24

In accordance with Rule 26 of the Federal Rules of Civil Procedure, I do hereby state the following:

I co-authored one publication within the preceding ten (10) years. That publication is a chapter on uncertainty in the textbook *Traffic Crash Reconstruction*, 3rd edition that is scheduled to be published in 2024. (This is the textbook that Northwestern University, Center for Public Safety uses in the traffic reconstruction courses that I teach for them.)

I have not testified as an expert at trial within the preceding four (4) years.

Other than for this case, I have not been deposed within the preceding four (4) years.

John Ray Stelly II

Professional and Business History

PreCrash, LLC, Founder, May 2022 to present

Northwestern University, Center for Public Safety, June 2021 to present

Louisiana State Police, January 1995 to December 2021

University of New Orleans, Mathematics Department, May 1993 to December 1994

Education

Master of Science, Mathematics, University of New Orleans (May 1993)

Bachelor of Science, Computer Science, Magna Cum Laude, University of New Orleans
(December 1991)

Bachelor of Science, Mathematics, Magna Cum Laude, University of New Orleans (May 1990)

Range of Experience

Stelly's experience includes application of various areas of general mathematics, programming in various computer languages, and consulting.

Qualifications

Co-author of Uncertainty chapter, *Traffic Accident Reconstruction*, 3rd edition. To be published 2024.

Personal

Stelly has served as the editor of Northwestern University, Center for Public Safety's *Traffic Crash Reconstruction*, 3rd edition since May 2022.

Stelly has been accredited by the Accreditation Commission for Traffic Accident Reconstruction, ACTAR.org, as a crash reconstructionist since January 2022.

Stelly is a member of the National Association of Professional Accident Reconstruction Specialists, NAPARS.org.

Stelly is a member of the Society of Automotive Engineers, SAE.org.

Stelly has been an adjunct instructor for crash investigation and reconstruction for Northwestern University, Center for Public Safety since June 2021.

Stelly served as the secretary and treasurer of the charitable non-profit Troop B Children's Grant A Wish Foundation from its founding in 1997 until around his retirement from Louisiana State Police in December 2021.

Stelly served as a faculty member of the Mathematics Department of the University of New Orleans from May 1993 through December 1994.

Andrew Tyler Broadway
151 Windstone Drive
Columbia, SC 29212

EXPERT REPORT

I. Materials Reviewed

- a. First Amended Complaint and Jury Demand
- b. Correspondence from Mr. Stelly to Sirwanda Hall from the U.S. Equal Employment Opportunity Commission
- c. Stelly Subpoena Duces Tecum SPC response
- d. LSPC Supplemental Production
- e. Student Workbook Operational Leadership Lieutenant
- f. Second Amended Complaint and Jury Demand
- g. Data From Discovery LSP commission

II. Introduction and Scope of Engagement

- a. I have been engaged to provide independent expert statistical opinions on LT Stelly's claim of race discrimination against Louisiana State Police (case Stelly v LSP, USDC, Eastern District of Louisiana, Civil Action # 23-772).
- b. More specifically I have been asked to do the following:
 - i. Review promotion records of the Louisiana State Police to investigate allegations of racially discriminatory promotion practices.
- c. This report summarizes my opinions based on the data provided to me.
- d. All of the opinions expressed in this document are opinions I genuinely hold and would be willing to testify to in open court under oath.
- e. I reserve the right to supplement or modify this report later based on additional information provided or discovered during proceedings.

III. Methodology and Statistical Information

- a. The main statistical measure being used in this document are relative risk ratios (RR), which is an intuitive and widely used metric within data sciences. In the context of this lawsuit, we calculate this by simply finding the probability of promotion among one racial group and the probability of promotion among another racial group and then dividing these probabilities. If the ratio is significantly greater than 1, we would consider the probability of promotion to be increased on the basis of race; if the ratio is significantly less than 1 we would consider the probability of promotion to be decreased on the basis of race; and if the ratio is 1, we would view race as having no bearing on the probability of promotion. As a hypothetical example, let us imagine a situation where in a company, there are 100 Black employees and 20 Asian employees. There are

20 promotions, and 10 Black employees are chosen as well as 10 Asian employees. The promotions are even, but the probability of being promoted while a Black employee is 10/100 or 10% and the probability of being promoted as an Asian employee is 10/20 or 50%. As 50%/10% is an RR of 5, we can interpret this as "In this company, promotion among Asian employees are 5 times as likely as promotions among Black employees."

- b. When making a conclusion about whether a ratio is higher or lower, it's important to consider statistical significance. Within statistics the default to comparisons between groups is to assume that there's no meaningful differences, this is called a null hypothesis. A test statistic is used to determine whether there is enough evidence of a difference to reject the null hypothesis. In most conventional analysis, we would consider a test statistic with a p-value below 0.05, or a confidence interval that has a range that does not include 1, to be statistically significant. It is worth noting that statistical significance is only a part of the picture of analysis. It is possible to have statistically significant results with large sample sizes that have very little practical significance, or results that are not statistically significant due to small sample sizes but are of practical significance. Given that our data set is relatively small, I used a test suited to examining smaller samples, called Fisher's Exact Test. Fisher's Exact Test requires stronger evidence than other similar statistical tests such as the Chi-Square test.
- c. For my main analysis, I only included panels where racial discrimination was plausible to demonstrate, such as panels where at least one white and one non-white candidate were applicants. Including panels that involved only one racial group would not be defensible for this analysis, as the panel would have no other options but to promote a candidate of that racial group. One can approach the race question analytically, in three different ways: 1. Comparing the rates of white versus non-white candidate promotion, 2. Rates of White versus Black candidate promotion, and 3. Rates of Black versus non-Black candidate promotion. My primary analysis revolves around white versus Black promotion, as it fits the lawsuit best, but all three possibilities were considered and all three have similar results. I took all candidates who applied for a promotion to Captain rank, sorted them by whether they were promoted or not, sorted by whether they had data on promotions or not, and deduplicated their records so that only one record was retained per person.
- d. During 09-26-17 through 10-04-21, 53 lieutenants in Louisiana State Police applied for 18 captain position openings that had both white and Black candidates. Among these 53, 38 are White, 12 are Black and 2 are Asian and 1 is Native American. Of these, 8 White officers, 9 Black officers, and 1 Asian officer were promoted.

IV. OPINIONS

- a. **OPINION 1: The data shows that the black officers were promoted 3.56 times as often as the white officers at the captain rank in panels that had black officers as a choice.**
Black officers were 3.56 times (95% CI 1.77-7.15, Fisher's P = 0.0012) as likely as white officers to be promoted to Captain. This result was statistically significant as the p-value from the Fisher's exact test is below 0.05 and the confidence interval includes 1.

- b. **OPINION 2: The data shows that the non-white officers were promoted 3.17 times as often as the white officers at the captain rank in panels that had non-white officers as a choice.**
Non-white officers were 3.17 times (95% CI 1.55-6.45, Fisher's P= 0.0031) as likely as white officers to be promoted to Captain. This result was statistically significant as the p-value from the Fisher's exact test is below 0.05 and the confidence interval includes 1.

Andrew Tyler Broadway does hereby state the following: In accordance with Rule 26 of the Federal Rules of Civil Procedure, I do hereby state the following:

I have authored one publication within the preceding 4 years:

Use of a cascade strategy to infer chronic Hepatitis C follow-up within an infectious disease surveillance system. BMC Proceedings 2023, 17(Suppl 19):P3

I expect to be compensated for my work according to my standard fee schedule, which is \$350 per hour, with the exception of depositions, for which my standard rate is \$420 an hour.

I have not testified as an expert at trial and/or been deposed within the preceding four (4) years.

I attach my curriculum vitae below.

Andrew Tyler Broadway

January 19th, 2024

Andrew Tyler Broadway

Date

Andrew Tyler Broadway, MSPH, BA

Professional and Business History

SC DHEC, Maternal and Child Health Epidemiologist, July 2023 to Present

SC DHEC, Infectious Disease Biostatistician, July 2019 to July 2023

SC DHEC, Opioid Epidemic Epidemiologist, October 2018 to July 2019

SC DHEC, Chronic Disease Epidemiology Graduate Assistant, March 2017 to August 2017

Education

Master of Science in Public Health Epidemiology, December 2018

Bachelor of Arts in Public Health with Research Distinction, May 2016

Range of Experience

Mr. Broadway has a wide variety of interests and experience within public health and has had professional or academic experience with opioid use disorder, injury, hospitalization, vaccinations, diabetes, veteran affairs, depression, maternal and infant health, infectious disease, rural health, lived experiences, and racial health disparities.

Mr. Broadway has personal and professional experience in statistical concepts including, but not limited to, data analysis, data management, descriptive statistics, linear regression, regression diagnostics, survey analysis, probability, logistic regression, statistical confounding, and statistical methodology.

JOHN STELLY

June 13, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN R. STELLY II	*
	* CIVIL ACTION
VERSUS	* NO. 23-772
	* JUDGE GUIDRY
STATE OF LOUISIANA,	*
THROUGH DEPARTMENT OF	*
PUBLIC SAFETY AND	*
CORRECTIONS, OFFICE OF	*
STATE POLICE	*
* * * * *	*

Deposition of
JOHN RAY STELLY II,
1588 Zephyr Way, Bozeman, Montana 59718, given
via ZOOM Videoconference on Thursday, June 13,
2024.

JOHN STELLY

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1 A No, sir, it was not.

2 Q Okay. So statistics was within the
3 math department; correct?

4 A Yes, sir. There was -- When I was
5 there, and as far as I know still to this day,
6 there is no statistics department at the
7 University of New Orleans. It's simply the
8 Department of Mathematics; and then there are
9 statistics courses taught by the Department of
10 Mathematics.

11 Q Got it. All right. Which statistics
12 courses did you take?

13 A I took Math -- two graduate courses in
14 statistics: Mat 6311 and Math 6312.

15 Q Okay. Did you take any other
16 statistics courses besides those two?

17 A Statistics courses, no, sir. So those
18 are my two statistics courses. They were both
19 graduate level statistics courses. They were
20 both Theory of Statistics 1 and Theory of
21 Statistics 2. I'm not sure what they're called
22 today.

23 Q Got it. Were there other statistics
24 courses offered by UNO at the time?

25 A To my recollection, there were not too

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1 many statistics courses, because the -- well, I
2 don't recall too many other statistics courses
3 offered. That was one of the areas -- I am not
4 sure if those were required courses or elective
5 courses. But regardless, those were the two in
6 which I was interested, so I certainly took
7 them.

8 Q All right. Were there any other
9 statistics courses offered besides those two
10 that you took?

11 A I'm not certain. That was a long time
12 ago. I couldn't tell you.

13 Q All right. So I know --

14 A Let me -- If I can rephrase. There
15 was one undergraduate statistics course. That
16 one I do recall. So -- But I couldn't tell you
17 more than that. So I know for a fact there was
18 at least three.

19 Q Okay. So the undergraduate course,
20 that was a course offered. Did you take that
21 undergraduate course?

22 A No, sir, I did not. That was -- I
23 didn't opt to take that. That was an elective.
24 So I did not take that. That is more just
25 basics, fundamental statistics, nothing fancy

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1 Certainly it's the case that the
2 length of the skidmark is probably the easiest
3 of those three to measure. So you just
4 basically get out a tape measure and pull a
5 tape measure and measure the skidmark. So
6 there is some, however, variability in the
7 measurement of a skidmark, because any two
8 people looking at a skidmark, let's say "I
9 think it starts here"; someone else says "No, I
10 see a little shadow for maybe ten feet prior,
11 so I think it starts here." So no two people
12 will come across the same length of a skidmark.
13 That's more for the beginning of the mark than
14 the end of the mark.

15 The same thing would apply to the drag
16 factor, the coefficient of friction of the
17 road. Two people come out and say "Hey, this
18 road here, for example, in front of a house
19 is -- is bituminous asphalt." You can look at
20 a table and come across that; say, it's in this
21 range here from here to here. Now, there's
22 also the categories. For example, is it new,
23 is it traveled, is it travel polished, is it
24 wet, dry; do you think the speed was higher or
25 lower than a certain threshold. So all of

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1 responsibility was their own supervisors. I
2 was the administrative coordinator.

3 So my software was instrumental in
4 going through and showing all those red flags
5 or pointing out the troopers who should have or
6 should be I guess looked at for further
7 investigation. And then on top of that,
8 pointing out instances that seemed suspicious
9 of things that they did do but should not have
10 been doing.

11 Q All right. Anything else? Any other
12 programs or statistical analyses?

13 A None that come to mind right now. I'm
14 sure there -- Well, I think there was probably
15 some much more minor projects that I was tasked
16 with, sort of doing performance metrics to
17 ensure that different places were doing things,
18 meeting the State Police missions and goals,
19 but I am -- none of those come to mind right
20 now. I have no doubt that I did those because
21 I do vaguely recall those, doing performance
22 metrics, but nothing specific comes to mind
23 like the examples I just cited.

24 Q All right. Are you a member of the
25 American Statistical Association?

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1 A No, sir.

2 Q Are you a member of any professional
3 statistics groups?

4 A Statistics groups? No, sir.

5 Q All right. The professional groups
6 that you are a member of, what are they?

7 A The Society of Automotive Engineers,
8 SAE. ACTAR, the Accreditation Commission For
9 Traffic Accident Reconstructionists. NAPARS is
10 the National Association of Professional
11 Accident Reconstruction Services. What else.
12 That's the three that come to mind right now.

13 Q All right. Let's change gears a
14 little bit here. Now, do you happen to have
15 your report, your two reports in front of you?

16 A Yes, sir. I printed all of that stuff
17 out in preparation for today.

18 Q I figured you would. Okay. Now, if
19 you would, let's go to your original one.
20 That's the report that is a 17-page report.

21 A Yes, sir.

22 Q Name and address at the top. Just
23 tell me when you're there.

24 A I have it.

25 Q Okay. So if you would, just turn to

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1 remained in the pool of people who could
2 continue to apply for captain; you would agree
3 with that?

4 A Yes, sir, I do agree with that.

5 Q All right. And each time you did not
6 get promoted during those 31 times, all right,
7 you would therefore be an applicant again in
8 the next panel up for captain; true?

9 A No, sir.

10 Q You would not?

11 A No, sir.

12 Q Okay. Because there's some captains
13 that you didn't apply for?

14 A There were many captains for which I
15 did not apply.

16 Q Okay. Got it. So you agree with me,
17 -- Let's narrow it then. So the 2017 to 2021
18 panels that really are the crux of your report,
19 you -- I think it's -- we'll use your numbers.
20 All right? There were a total of 18 panels
21 with non-white people on them from 2017 to
22 2021; true?

23 A You have to be a little more specific.
24 From when in 2017 to when in 2021?

25 Q Okay. That's a good point. Why don't

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1 we go there. All right. So I am bouncing
2 around a little bit, but I'm going where you're
3 taking me. So for your data, for your report,
4 you chose 2017 as the start point; correct?

5 A I chose -- well, a specific date in
6 2017.

7 Q Okay. What date did you choose?

8 A September 26 of '17.

9 Q All right. So you had data from
10 before September 26 of 2017; true?

11 A You'd have to clarify what you mean by
12 that. Data? What do you mean, I have data?

13 Q Yes. You had promotional panel data,
14 meaning the individuals who were promoted, all
15 right, the applicants, and then demographics,
16 you had that data for earlier than 2017; true?

17 A To a certain extent, yes, sir, but not
18 from as a by-product of this.

19 Q All right. And you had data for --
20 you had demographic data, applicants for
21 promotion to captain and who was selected for
22 at least some dates after -- after 2021, which
23 was the last date in your report; true?

24 A Yes, sir.

25 Q All right. And so you -- I now want

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1 Well, when you're yelling as much
2 as you do, Victor, it probably gets
3 tiring.

4 MR. FARRUGIA:

5 I object to that characterization
6 of my comments.

7 Okay. Let's take a break.

8 (Recess taken.)

9 EXAMINATION BY MR. MILES:

10 Q Mr. Stelly, we were just talking about
11 the Reeves promotions and I wanted to ask you
12 about the start date of the data set you used.
13 So you told us earlier that you started -- you
14 started with the promotions on 9/26/17 and did
15 not include in your analysis any promotional
16 panels to captain before that date; true?

17 A In this analysis, yes, sir.

18 Q All right. And it's true that -- I
19 think you said this -- you said you thought you
20 observed African-Americans being promoted at a
21 higher rate in 2017. Is that an accurate
22 statement of what you thought?

23 A No, I don't think I actually said
24 that. I don't recall saying that. So I could
25 recall saying something akin to that, but not

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1 So here, if you're talking panels, I think this
2 was only 16 of the 18 panels back then. So I
3 can have two panels' worth of the candidates;
4 and on top of that, I also did not have the
5 score -- the scorings of the people on panel
6 2017. So what I attempted to do here, since I
7 didn't have that and I wasn't able to get that
8 from State Police, I used the data from tables
9 1B onward to I guess give a guess -- best
10 guesstimate, a best projection I should say of
11 the information that was relative from 2017
12 through the end of the panels.

13 Q So even on August 3rd, 2022 for your
14 EEOC response, the Chavez Cammon promotion,
15 that for you was a start date of when you
16 thought there was racial discriminatory
17 practices; is that fair?

18 A That is almost. I would say that was
19 the start date in which I had indicators of
20 racial discriminatory practice. I can't say
21 obviously for certain it was, but certainly it
22 gave me indicators that there were.

23 Q Got it. Okay. All right. And so
24 that same Chavez Cammon promotion in September
25 of 2017, that's the same start date that you

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1 use in your expert reports that you have
2 delivered in this case; true?

3 A Yes, sir.

4 Q All right. And you actually have
5 data, some data from earlier than September,
6 2017; true?

7 A Relative to -- You have to clarify
8 what you mean by "some data".

9 Q Yes. You have promotional panel data
10 for promotions to captain including
11 demographics and who applied for it and who
12 obtained the promotion, you have that for at
13 least some panels prior to 2017 in September;
14 true?

15 A Again, you have to be a little more --
16 can you be more specific about what data? You
17 say "some data". Like data is like "I know
18 that Bill got this promotion." That's data.
19 So are you asking me do I know that or do I
20 know something more specific? You have to be
21 more specific what you mean by "data".

22 Q Yes. Sure. I can be more specific.
23 You have the data earlier than 2017 of who was
24 promoted to positions of captain when you
25 applied and what their race was.

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1 A I do not know -- Well, I have data
2 somewhere, which I did not use for these expert
3 reports, from 2000 -- sometime in 2000 through
4 sometime -- or early 2013, on which I based
5 that 2013 report in which I said hey, there's
6 no indicators that I could say that are
7 indicative of racial or gender discrimination
8 promotions. So if that's to what you're
9 referring, then yes, I have that, but I did not
10 rely on that for any of this other than the
11 fact that my conclusion back in 2013 was that I
12 saw no indicators of racial or gender
13 discrimination. So the only thing in addition
14 to that I could say would be that -- do I have
15 some sort of incidental piece of paper in one
16 of my files somewhere that lists who the
17 candidates were for occasional things that were
18 promoted, I might, but nothing on which I
19 relied for any of this analysis.

20 Q Okay.

21 A I'm not sure of the question, what
22 you're asking me.

23 Q No, no. Well, you answered my
24 question. But I guess my follow-up question
25 is, I just want to understand, is the reason --

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1 the reason you started September, 2017 is
2 because that's when Chavez Cammon was promoted
3 and you suspected that there may be racial
4 factors in promotion? That is the reason you
5 started September of 2017; true?

6 A Yes. I suspected there were -- there
7 were to me indicators of potential racism from
8 that promotion forward, so that's why I
9 started. And, for example, in 2013 to 2017 I
10 didn't say anything because -- well, from 2000
11 to 2013, obviously I said there was none. From
12 '13 to '17, I didn't see anything, even though
13 I certainly -- Well, I have no records when I
14 applied for then, but I think State Police does
15 and I think I applied for records back then.
16 Even though black individuals were promoted to
17 captain, I didn't see anything in there that
18 would have been a strong indicator to me that
19 this -- there's -- Hmm, there's something just
20 not right sitting about this. And while maybe
21 there's something wrong, and one thing that
22 State Police always taught us was document,
23 document, document. So I started making my
24 documentation from that point forward very much
25 more thoroughly than I did prior to that.

JOHNS, PENDLETON, FAIRBANKS AND FREESE

504 219-1993

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1 Q Okay. Got it. All right. So the
2 data set -- Let's move on to Lamar Davis's
3 tenure as Superintendent. So you used
4 promotional panels from -- for Lamar Davis, and
5 this is on page 8 of your report if you want to
6 look at it, your amended report.

7 A All right.

8 Q All right. So you conclude that
9 between October 30th, 2020 and October 4th of
10 '21 Colonel Davis led ten captain panels and he
11 promoted four non-white candidates and six
12 white candidates from those ten panels; true?

13 A Yes, sir. That's what it says here.

14 Q All right. And you concluded that the
15 most probable number of non-white candidates to
16 have been promoted during that time frame was
17 two instead of the four that actually occurred;
18 true?

19 A Yes, sir.

20 Q All right. And the standard deviation
21 on that was -- you said it was 1.09 standard
22 deviations above expectation; true?

23 A Yes, sir.

24 Q Okay. Now, you ended that data set,
25 all right, October 4th of '21. And as I read

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1 your report, your reason for doing that, tell
2 me if I am wrong, your reason for doing that is
3 because soon after October 4th of '21 you
4 submitted your paperwork to retire from the
5 State Police; is that right?

6 A I think it was either October 4th or
7 October 5th that I signed that paperwork.

8 Q Right. But your signing of that
9 paperwork caused you to end the data set that
10 you were looking at; true?

11 A Yes, sir. That was the rationale for
12 my termination of the analysis of the data set.
13 So if anything that happened after that, I was
14 only affected from that point forward, given
15 that that signing of that paperwork is
16 irrevocable. Nothing else that can happen,
17 good or bad, in my favor or against me, could
18 alter my opinion at that point.

19 Q Right. So because nothing that
20 happened after that could affect you, you ended
21 the data set collection and analyzed only
22 through October 4th of 2021; is that fair?

23 A Yes, because this was discriminatory
24 behavior against me. So nothing can be done --
25 I am not going to apply for promotion after I

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1 sign for retirement, especially knowing that
2 it's irrevocable. So that to me would be just
3 crazy. So it wouldn't make sense for me to
4 analyze opinion or I guess panels after I
5 signed my retirement paperwork. So that would
6 not be a logical data set. I would be
7 analyzing something that is inapplicable to me.
8 So that would not be -- can't be accurate.

9 Q Okay. Now, let me ask you this. I
10 know Mr. Broadway does, he does an analysis
11 similar to yours and he uses the same begin and
12 end date that you use, doesn't he?

13 A Yes, sir.

14 Q Okay. Now, did you instruct him to
15 use the beginning and end dates that you used?

16 A I don't remember instructing him in
17 that. I remember discussing with him that why
18 I ended mine that date --

19 Q Okay.

20 A -- as I explained earlier.

21 Q Was there any discussion between you
22 and he about continuing on and using data past
23 October 4th of '21?

24 A Other than Miss Kovacs using it, no.
25 That she used it, but I don't think we even

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1 discussed her using data after that date.

2 Q Okay. So neither one of you, neither
3 one of you thought it would have been prudent
4 or a good idea to use data after October 4th of
5 '21; is that fair?

6 MR. FARRUGIA:

7 Object to the form of the
8 question. It calls for speculation as
9 to what Mr. Broadway believes.

10 MR. MILES:

11 I can rephrase. That's a fair
12 objection.

13 EXAMINATION BY MR. MILES:

14 Q All right. Mr. Stelly, I guess you
15 didn't see fit to, you know, to use any data
16 past October 4th of '21 and Mr. Broadway did
17 not express any interest to you about using
18 data after October 4th of '21; true?

19 A Yes. He was given all the data. He
20 was given the same data set that I have. He
21 ended his date on October 4th, '21, despite
22 having the same data set that I had, which is
23 January of '22.

24 Q And from your discussions with him, do
25 you know yes ended his data, his analysis on

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1 is provide a reasonable, logical cogent
2 argument. I started on this date because of
3 this; I ended on this date because of this. I
4 could have ended earlier and it would have
5 benefited me. It would have made my argument
6 much stronger. Right? But I didn't, because
7 that to me would have been unfair, because I
8 still have the opportunity to apply for captain
9 positions past the date on which the last black
10 candidate was selected over me. And it just so
11 happened the next candidate was white. I
12 included that. To me, that is the ethically
13 responsible thing to do to make a good
14 argument.

15 Q Now, Mr. Stelly, do you believe that
16 -- Well, I know you believe that there were
17 racially discriminatory promotional practices,
18 but do you believe they ended when you retired?

19 A I have no evidence. I didn't look
20 past that, so I don't recall looking at that.
21 So I can't give you an answer to that question.

22 Q All right. Well, I'll tell you, and
23 we're going to put on evidence of this at
24 trial, that in 2022, all right, if you actually
25 looked at 2022, if you included that in your

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1 analysis, the standard deviations go way down.
2 All right? For black and non-white. All
3 right? So you didn't include that. All right?
4 And you didn't like my use of the word
5 "fixated", but you didn't include it because
6 your focus was on you. All right? Your focus
7 was on -- Isn't that right? Your focus was on
8 when you retired; true? That's why you didn't
9 include any of the 2022 data?

10 A Yeah, because this is discrimination
11 against me. So I am confused as to why I would
12 include the 2022 data when that's not
13 discriminatory against me. I didn't apply for
14 any of those panels. Those panels, I can't --
15 to me it's just as wrong to -- to me -- How
16 would I phrase that? It would be just as wrong
17 of me to include that data as to exclude the
18 data when a white candidate was selected for
19 the panel, was in the last panel when Jonas
20 Martin was selected over me. It would be just
21 as wrong to include what you're wanting me to
22 include as for me to exclude what I just told
23 you. Those things are -- I picked that date
24 range, as I explained to you, I picked that
25 date range not because that's the date range

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1 that's going to help me. I could have picked a
2 different date range that would have helped me
3 more. I didn't. I picked the date range that
4 affected me because I am the person who is
5 suing for discrimination. I can't help what
6 happens on the panels well after I retired in
7 2022. Those didn't affect me. I can't. Why
8 should I analyze those? Those are for someone
9 else to champion down the road. That's not for
10 me. Maybe State Police decided "All right.
11 Well, this is -- we have done this practice
12 long enough, it was wrong, let's not do this
13 any more, let's fix our ways." But that
14 doesn't affect -- that doesn't retroactively
15 cure my ailment. That only helps the people
16 from that point forward. And that's -- The way
17 you are characterizing things is -- that to me
18 is very disingenuous.

19 Q Now, Mr. Stelly, you just told me, you
20 said you picked the data that affected you.
21 That's why you ended in 2021; right?

22 A Yes, sir.

23 Q Okay. Well, you agree with me that
24 any decisions or practices prior to
25 September 26 of 2017 also would have affected

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1 shallow end of the pool, the kiddy end of the
2 pool. That's -- That's rather disingenuous.
3 That's not going to give you a correct
4 analysis.

5 Q Mr. Stelly, it's not disingenuous.
6 All right? Look, you mentioned earlier the ASA
7 ethical standards?

8 A Yes, sir.

9 Q All right. You're not a member of
10 that organization, but you are aware that they
11 have ethical standards; true?

12 A I think when I looked at their site
13 earlier, I do vaguely remember seeing something
14 on there about having some sort of ethical
15 standards, yes.

16 Q Have you ever read the ethical
17 standards?

18 A I did not, because I'm not a member.

19 Q All right. No, but you're never --
20 you never read them? Whether you're a member
21 or not, you have never read them and you don't
22 purport to follow them; is that fair?

23 A Well, I can't say that, because I
24 didn't read them. So I purport to follow
25 ethical rules which are to me the correct

JOHN STELLY

June 13, 2024

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1 things to do. Whether they might happen to
2 coincide with the ASA standards, I don't know,
3 because I haven't read those. So I can't say I
4 purport to follow or not follow them since I
5 haven't read them.

6 Q Got it. You don't know what they are
7 so you don't know if you're following them or
8 not; right?

9 A That is a correct statement. Yes,
10 sir.

11 Q And you are mentioning ethics rules.
12 What ethics rules are you following? Are they
13 ethics according to John Stelly?

14 A Well, this is just common sense
15 ethical, and just as the example I gave you.
16 So to me it would have been wrong for me to go
17 through and exclude that Jonas Martin. That's
18 just not an ethically correct thing. He's a
19 white guy. He was promoted over me. Right?
20 If I wanted to make my case stronger, I would
21 have ended it before that. I would have ended
22 it the last -- I would have ended on Saleem
23 El-Amin, right, and forgot about Jonas Martin
24 and sort of hid that from you. To me that
25 would have been being dishonest. Right? I

Transcript of the Testimony of
Andrew Broadway

Date: June 14, 2024

John R. Stelly II v. State of Louisiana, et al

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1 would make sense to take that perspective. However,
2 the lawsuit, as I understand it, focuses on John
3 Stelly's experience of being discriminated against,
4 so I -- I do believe that looking at the time frame
5 that pertains to John Stelly is defensible, though
6 there -- though there is some degree of philosophical
7 discussion that can be made with regard to statistics
8 in general.

9 BY MR. MILES:

10 Q. Let me ask you this. Did you -- did you know
11 that there were eight promotions in 2022 by Lamar
12 Davis's panels and seven went to white people and one
13 went to a nonwhite? Did you know that?

14 A. I did not know that.

15 Q. Okay. And that if you actually incorporated
16 that information into your analysis, it would
17 actually -- it would change the standard deviations,
18 it would change the -- it would change the outcome,
19 wouldn't it?

20 A. Quite possibly. I would have to look -- look
21 and see the data and run the analysis on -- however,
22 it also -- it also makes sense to argue that the -- it
23 doesn't -- going back and fixing -- changing hiring
24 patterns doesn't necessarily pertain to time frame
25 before that, so.

Andrew Broadway
John R. Stelly II v. State of Louisiana, et al

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1 Q. Okay. All right. So what you're saying is
2 that -- that the -- that one -- that, I guess,
3 discriminatory patterns in one time frame don't
4 necessarily equate to whether there were discriminatory
5 patterns in a different time frame, true?

6 A. I suppose.

7 Q. Okay. All right. And the date of -- the
8 October 2021 date that was selected as the end point,
9 you did not choose that end point, correct? It was
10 chosen by Mr. Stelly?

11 A. If I had insisted on the end point that was
12 later on in -- later on in the year or later on in the
13 month, I believe that -- that I would have been able to
14 get that. I understood that.

15 Q. To get -- go ahead.

16 A. I understood Mr. Stelly's reasoning as far as
17 choosing that end point, and I didn't -- I didn't
18 consider it to be unethical given that he -- that this
19 is about his experiences, personally. And you -- I
20 suppose you could argue that maybe -- maybe if he stuck
21 it out for, you know, a couple more years, he may have
22 been promoted, but I can't really put that into my
23 analysis. That's beyond the boundaries of what -- of
24 my analysis. It's beyond the boundaries of my data.
25 Things happened the way they happened, and I'm

Andrew Broadway
John R. Stelly II v. State of Louisiana, et al

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1 data that I have with the -- in terms of a lawsuit that
2 I am attempting to analyze the data for.

3 Q. Right. Now let's talk about the beginning
4 point of the dataset. Now, it's true that Mr. Stelly
5 gave you the beginning point of the dataset, too, being
6 September 26th of 2017?

7 A. Yes.

8 Q. Okay. You did not choose that beginning point
9 on your own, did you?

10 A. It was the beginning of the -- of the dataset
11 as requested -- as requested to LSP, as I understand
12 it, through discovery.

13 Q. Okay. And you did not request any additional
14 data from before September 26th of 2017, true?

15 A. True.

16 Q. All right. Let me ask you some questions
17 about your -- your report has got some very interesting
18 conclusions here. So if we look at page -- look at
19 page 3, your section starting about confounding.

20 A. Uh-huh.

21 Q. All right. So I want to focus in -- I'll ask
22 you about some of these particular paragraphs. First,
23 paragraph A, which talks about P.O. 226. That's the
24 state police policy about promotional panels.

25 You've reviewed that, correct?

Andrew Broadway
John R. Stelly II v. State of Louisiana, et al

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1 Q. Right, right. But you did not do it for all
2 of Davis's panels; you just did it for one year of
3 them. True?

4 A. I did it -- yes, I -- I conducted it for
5 Reeves' panels for that one year.

6 Q. You mean Davis's panels for the one year?

7 A. Sure, yeah.

8 Q. Okay.

9 A. Davis's panels for one year.

10 Q. Okay. All right. Just a few more questions
11 here. We're almost done.

12 I want to talk to you about independence, the
13 concept of independence. All right. And I know
14 Ms. Kovacs (inaudible) --

15 (Reporter clarification.)

16 BY MR. MILES:

17 Q. So I know Ms. Kovacs was, you know, critical
18 of you and of Mr. Stelly because the concept of -- of
19 independence was, in her view, not satisfied by your
20 analyses. I want you to tell me what your response is
21 to that, Mr. Broadway.

22 A. It's a very perplexing question -- or is a
23 very perplexing statement from her considering we
24 actually took, more or less, a very similar approach to
25 this problem. So she said in her report -- I don't

Andrew Broadway
John R. Stelly II v. State of Louisiana, et al

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1 (Reporter clarification.)

2 A. Just double-checking that I have this correct.

3 So I deduplicated -- sorry. I only isolated
4 to all captain rank panels. I sorted by time frame,
5 and I -- I sorted by promotion, and I sorted by time
6 frame so that -- so that most recent records were --
7 first test scores were retained for each individual.

8 BY MR. MILES:

9 Q. Okay. So I got it. So let me ask you this
10 question. So if you -- so you pooled the data, but you
11 pooled the data only for lieutenants who are on panels
12 with a nonwhite on them, correct?

13 A. Yes.

14 Q. Okay. So if you had a white lieutenant --

15 A. Sorry. To clarify, it's not a nonwhite. It's
16 a Black candidate.

17 Q. Okay. So you only -- so you only pooled the
18 data for if there was a Black candidate on that?

19 A. Yes.

20 Q. Okay. Why did you not only pool the data if
21 there was a nonwhite on there?

22 A. I felt it better -- I felt it better fit
23 the -- the overall case.

24 Q. Okay. But you do know that Mr. Stelly -- or
25 maybe you don't. Mr. Stelly's claim is that in two

Andrew Broadway
John R. Stelly II v. State of Louisiana, et al

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1 get in because you didn't qualify him. So I
2 guess we'll just -- that's fine, you know. So
3 you won't get to have him testify.

4 BY MR. MILES:

5 Q. So -- but let me ask you some questions,
6 Mr. Broadway, based on --

7 A. Sure.

8 Q. -- what was just -- what was just said.

9 So -- all right. Mr. Farrugia asked you some
10 questions about whether the number of nonwhites or
11 African Americans promoted over a particular time
12 frame -- whether -- the chances that that would be by
13 chance. You recall that line of questions, right?

14 A. Yes.

15 Q. Okay. And we're here today about the
16 promotions of two individuals. All right. One of them
17 is Mr. -- or Major Robert Burns, and the other one is
18 Captain Saleem El-Amin. All right.

19 So you've never met either one of these
20 gentleman, correct?

21 A. Yes.

22 Q. "Yes," you have met them?

23 A. I have not met them.

24 Q. Okay. So you've never met either of these
25 gentlemen. Do you know that Burns -- Robert Burns,

Andrew Broadway
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1 since this promotion to captain in July of 2021, has
2 been promoted to major in the state police? Do you
3 know that?

4 MR. FARRUGIA: Objection; irrelevant.

5 Irrelevant. What's --

6 BY MR. MILES:

7 Q. Did you know -- did you know that?

8 MR. FARRUGIA: -- (indiscernible) is
9 irrelevant.

10 A. It's --

11 MR. MILES: Objection noted.

12 A. No, I did not. But it's -- but it's outside
13 the relevance of my analysis, and it is -- I believe
14 it's outside of the relevance of the -- you know, the
15 lawsuit as a whole since -- since this -- this entire
16 thing pertains to John Stelly's experiences at the
17 Louisiana State Police. Whether they changed their
18 behavior or changed their hiring practices later, it
19 doesn't really relate to the issue of the analysis very
20 much.

21 BY MR. MILES:

22 Q. Yes. And that's -- you brought up a point
23 that I was going to ask you about, Mr. Broadway.

24 So practices during one time period or at one
25 point in time are not necessarily relevant to what

Andrew Broadway
John R. Stelly II v. State of Louisiana, et al

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1 happens at a later point in time, true?

2 A. True.

3 Q. All right. And so you mentioned a lot of what
4 you did in your statistical analysis. One thing you
5 did not do was you did not do any kind of statistical
6 analysis to see whether there was a correlation between
7 experience in the section into which someone is seeking
8 to be promoted and the likelihood of promotion. You
9 did not do that analysis, correct?

10 MR. FARRUGIA: Objection; asked and
11 answered. You've already asked him this for
12 about 15 or 20 minutes.

13 MR. MILES: Objection noted.

14 BY MR. MILES:

15 Q. Go ahead, Mr. Broadway.

16 MR. FARRUGIA: This -- wait. It's
17 outside the scope of my examination.

18 MR. MILES: Well, that's -- that's not a
19 proper -- that's not a proper objection for
20 cross, Victor. That's a -- that's an
21 objection that you make on redirect, not on
22 cross.

23 BY MR. MILES:

24 Q. Mr. Broadway, please answer the question.

25 A. Can you restate your question?

Andrew Broadway
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1 all right, were based on analyses that excluded panels
2 where there was a nonwhite on the panel but there was
3 no African American; isn't that true?

4 A. There -- my inclusion criteria was based on a
5 panel having at least one Black candidate. However,
6 this -- this -- there were very, very few candidates
7 that were excluded because of this reason, and it does
8 not play -- it plays almost no role whatsoever in
9 promotional factors.

10 Q. How do you know that if you didn't include
11 them in your analysis?

12 A. Because the -- because the complete data for
13 promotional factors is in my analysis. And I retained
14 all information for -- for -- information for -- all
15 information on John Stelly's panels, so I have complete
16 information for all -- all of his panels, and it was --
17 all that information was retained.

18 Q. Got it. So you retained the information. You
19 just didn't use it to -- for the opinions 1 through --
20 1 through 6, correct?

21 A. One through six?

22 Q. Yeah, opinions 1 through 6. You retained
23 the information, but you didn't use it to run your
24 statistical analysis?

25 A. I think you might be a little confused. Sir,

Andrew Broadway
John R. Stelly II v. State of Louisiana, et al

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1 there were 73 unique candidates who were qualified. My
2 analysis is on a subset of 53 of them. I ran analysis
3 on the -- on the 53, so basically of -- so originally,
4 there were 32 panels. Fourteen of them had only white
5 individuals. Eighteen of them had at least one Black
6 individual.

7 Q. Are you finished?

8 A. Give me a second. I'm trying to put my
9 thoughts together. It's been a long day.

10 So I have -- I have -- for the 53 -- for the
11 53 candidates that I have, they are -- I see very
12 strong associations for race. For John Stelly's
13 panels, I have 30 --

14 Q. Maybe I can help. And, look, you can continue
15 to answer if you need to, but I might be able to help
16 you out here with just a simple follow-up.

17 My question for you, Mr. Broadway, is: To
18 come up with your 53, you did not -- you did not look
19 at the candidates who are on the panels where there was
20 no African American on the panels, true?

21 A. Restate that.

22 Q. Sure. To come up with the 53 that you -- the
23 53 unique individuals that you analyzed --

24 A. Yeah.

25 Q. -- right, you did not look at panels where

JOHN STELLY, II

April 30, 2024

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN R. STELLY, II
Plaintiffs

* CIVIL ACTION
* NO. 23-772

*

versus

* JUDGE GUIDRY
* MAG. VAN MEERVELD

STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE
OF STATE POLICE

*
*
*
*

Defendants

*

* * * * *

Deposition of JOHN R. STELLY, II, 1588
Zephyr Way, Bozeman, Montana 59718, taken in the
offices of Farrugia Law Firm, LLC, 1340 Poydras
Street, Suite 2100, New Orleans, Louisiana
70112, on Tuesday, the 30th day of April, 2024,
commencing at 10:05 a.m.

JOHN STELLY, II

April 30, 2024

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1 A. Not that I know of. But the ones
2 from Nos. 14 down, that is exhaustive except for
3 the exclusion of Robert Burns. From Nos. 1 to
4 13, I cannot attest to whether that's exhaustive
5 or not exhaustive.

6 Q. Okay. So as I think I asked
7 earlier, before we got back on this, I want to
8 get into your allegations a little bit in the
9 lawsuit.

10 A. Sure.

11 Q. So you allege that you believe you
12 were first discriminated based on your race in
13 2017; is that right?

14 A. Yes, ma'am.

15 Q. And my understanding is that you
16 believe you were passed over for promotion in
17 2017 in favor of Chavez Cammon, who is black; is
18 that right?

19 A. Yes, ma'am.

20 Q. All right. Why don't you tell me
21 why you think you were denied captain in favor
22 of Mr. Cammon.

23 A. Because in my opinion, looking at
24 the -- our -- I guess our factors objectively, I
25 am much more qualified than him.

JOHN STELLY, II

April 30, 2024

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1 statistical analysis regarding promotions within
2 the LSP after the 2013, that 2013 analysis,
3 correct?

4 A. Yes, ma'am.

5 Q. And as we talked about in the
6 beginning of your deposition, you're serving as
7 your own expert in this case, correct?

8 A. Not exclusively, but yes.

9 Q. I understand you have others.

10 And so, as I told you, I'm not going
11 to walk through your reports or anything like
12 that in this deposition. We're going to do that
13 at a later time. But I just do want to ask a
14 couple of questions.

15 You mentioned in 2017 you first
16 started being concerned that you were being
17 passed over because of your race. Tell me when
18 you did the statistical analysis that you are
19 using in this case.

20 A. I would -- when the -- once I
21 started being concerned about those, I can't
22 tell you the exact date I started doing some
23 sort of statistical record-keeping, but I would
24 make a -- a chart that showed the, I guess,
25 years of service versus time in grade of every

JOHN STELLY, II

April 30, 2024

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1 candidate on the list. So I don't recall when I
2 started doing that, but I know it was probably
3 subsequent to 2017. So if that -- is that -- is
4 that the question you're asking --

5 Q. Yes.

6 A. -- or did you want something more
7 specific?

8 Q. No, that's right.

9 And so you mentioned earlier the
10 result of the analysis that you did in 2013 was
11 that there was no race discrimination or gender
12 discrimination?

13 A. No, ma'am. I said there was --

14 Q. Age?

15 A. -- evidence --

16 Q. I'm sorry. Go on.

17 A. I said there was no evidence of race
18 or gender. I didn't say there was none. I said
19 there's no evidence of race or gender
20 discrimination in promotions.

21 Q. From a statistical point of view,
22 correct?

23 A. Yes, ma'am.

24 Q. You did ultimately file an EEOC
25 complaint; is that correct?

JOHN STELLY, II

April 30, 2024

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1 bet on, I'm not going to bet on even odds if I
2 have four-to-one odds. I'm going to take,
3 certainly, four-to-one odds. That's a
4 hands-down bet.

5 So I had that, again. And then the
6 number of standard deviations past expectation
7 rose from two to three to above three. So now
8 you're talking above three standard deviations
9 above expectation. So, for example, for the 18
10 panels that were conducted for captain from
11 September -- from the panel of September 2017,
12 on which Chavez Cammon was accepted, through my
13 signing my retirement papers in early October of
14 2021, there was 18 panels for which I applied.

15 Of those 18 -- I'm sorry. There
16 were 18 captain panels, not for which I
17 necessarily applied. There were 18 captain
18 panels conducted. Of those 18 captain panels,
19 nine people were selected -- nine black
20 individuals, or candidates, were selected for
21 promotion, one Asian candidate was selected for
22 promotion. So despite the fact that black
23 candidates made up, on average, around a fifth
24 or sometimes less of an average panel
25 composition, they were promoted about half --

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN R. STELLY, II
NO. 23-772

VERSUS

STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
CORRECTIONS, OFFICE OF STATE
POLICE, KEVIN REEVES, IN HIS
INDIVIDUAL CAPACITY, AND LAMAR
DAVIS, IN HIS INDIVIDUAL CAPACITY

TRANSCRIPT OF THE DEPOSITION OF
LAMAR DAVIS

TAKEN ON BEHALF OF PLAINTIFF, REPORTED IN THE
ABOVE ENTITLED AND NUMBERED CAUSE BY SELINA P.
ROUSSEL, CERTIFIED COURT REPORTER FOR THE STATE OF
LOUISIANA.

REPORTED AT THE OFFICES OF:
OFFICE OF LEGAL AFFAIRS
7979 INDEPENDENCE BOULEVARD
BATON ROUGE, LOUISIANA 70806

COMMENCING AT 10:11 A.M. ON APRIL 29, 2024

LAMAR DAVIS

1 Lieutenant Stelly.

2 Q. Okay. And how long a period did you
3 teach that class?

4 A. I taught -- because I taught the
5 sergeant's level, the lieutenant's level and the
6 captain's level, so I forgot the number of years,
7 but I taught for a number of years at all three
8 levels.

9 Q. So when there's a captain's position
10 available, the procedure is to post that
11 availability, so that everyone is aware of that --
12 that position is available; is that correct?

13 A. Yes, sir. That's normally handled by the
14 chief of staff.

15 Q. Okay. And in order for a lieutenant to
16 be considered for promotion to captain, they have
17 to take a promotional test; is that correct?

18 A. Yes, sir.

19 Q. And there are strict guidelines as to how
20 that test is composed for the people that are
21 going to take that test?

22 A. Yes, sir. That's determined by our State
23 Police Commission. They set the rules with
24 regards to the test, test scores. For instance,
25 it's not a traditional pass or fail, although you

LAMAR DAVIS

1 have to pass. But you have to get in the top
2 seven grade groups in order to move to the next
3 phase of promotion.

4 Q. Okay. And before it was the top seven
5 grade groups, it was the top five grade groups,
6 correct?

7 A. Yes, sir.

8 Q. And why did it change from five to seven?

9 A. That's a State Police Commission
10 question. That was changed prior to my becoming
11 the superintendent, so that would have to be posed
12 to State Police Commission.

13 Q. Now, the -- after the troopers -- well,
14 actually in this case after the lieutenants took
15 the promotional test, they would be actually given
16 test scores on their examination results, correct?

17 A. Yes, sir.

18 Q. And the test tested them on state
19 statutes, State Police policy and procedure, the
20 entire DA's Handbook and certain leadership
21 principles?

22 A. Yes, sir.

23 Q. Can you think of other categories I
24 didn't mention that the test covers?

25 A. Not right offhand. As mentioned, I was

LAMAR DAVIS

1 deposition to be here today.

2 (Whereupon, the document referred to is
3 marked as Exhibit No. 1 for identification.)

4 BY MR. FARRUGIA:

5 Q. These panels that you were -- as
6 superintendent, you were on the promotional panels
7 for promotion of captain, correct?

8 A. Yes, sir.

9 Q. Okay. So while you were on those panels
10 -- let me hand you what we'll mark as Exhibit 2 --
11 and have you look at actually Page 9.

12 (Whereupon, the document referred to is
13 marked as Exhibit No. 2 for identification.)

14 BY MR. FARRUGIA:

15 Q. This is supplied by your -- well,
16 attorneys, State Police's attorneys here. Now, on
17 the -- the panels that are captain of Internal
18 Affairs, and Gaming, and captain of Operational
19 Development and LCJIS, you were on all of those
20 three panels in 2021; is that correct?

21 A. Yes, sir.

22 Q. Okay. And all three of those panels had
23 five other officers on the panels; is that
24 correct?

25 A. I can't say for sure whether there was

LAMAR DAVIS

1 five or six. That -- the positions in which serve
2 on the promotional panels are, of course, myself,
3 my chief of staff, and depending upon, obviously,
4 who that may have been on the time frame, I had
5 two chief of staffs during my tenure. One being
6 Lieutenant Colonel Cain, and the other one being
7 Lieutenant Colonel Cammon. And then the deputy
8 superintendent over Patrol, deputy superintendent
9 over Support, deputy superintendent over
10 Investigations.

11 And depending upon the position, if
12 the position had a major, then of course, the
13 major would also serve on the panel. And then of
14 course, that would be it as far as voting members.
15 Then Internal Affairs would have someone in a
16 nonvoting capacity to provide information. And
17 then, of course, we would have a legal
18 representative that served on the panel, again,
19 for legal purposes.

20 Q. Okay. So all three of these panels had
21 the six people that were invited to attend and
22 what would the -- so you recall that these six at
23 least were there and maybe there were some others?

24 A. I can't say that all six may have been
25 there or something, because we have other

LAMAR DAVIS

1 obligations and/or someone is sick. Now, it
2 doesn't stop the panel if I have one of my deputy
3 superintendents not there. So I can't say for
4 certain that all six were there for that
5 particular panel, but I can tell you, generally,
6 the protocol is if they're not there, we'll take
7 one or two actions: One would be to have someone
8 to serve in their capacity. So if the lieutenant
9 colonel was not available due to other commitment
10 and/or not being physically able to participate,
11 then we would ask them to have maybe a major serve
12 in that capacity.

13 Q. Okay. So you were on all these panels,
14 correct?

15 A. Yes.

16 Q. Was Cammon on the -- at those three
17 panels?

18 A. And, again --

19 Q. You don't remember?

20 A. I don't remember.

21 Q. Okay. Let me hand you what we'll mark as
22 Exhibit 3.

23 (Whereupon, the document referred to is
24 marked as Exhibit No. 3 for identification.)

25 BY MR. FARRUGIA:

LAMAR DAVIS

1 Q. Okay. And this is your policy of the
2 State Police for promotions; is that correct, P.O.
3 229?

4 A. Yes, sir.

5 Q. Okay. Let me -- so if you'll look at
6 Paragraph 5?

7 A. Yes, sir.

8 Q. These are the -- the factors that the
9 panel will review on each candidate as they are
10 being interviewed at the panel; is that correct?

11 A. Yes. But to give you proper context,
12 this is just some of the considerations. While it
13 says that, "Members of the promotional panel will
14 review the provided data pertinent to each
15 candidate, which shall contain the performance
16 reports, educational background, both in service
17 and outside agency, training records, awards and
18 letters of recommendation and commendations,
19 disciplinary actions, personal history file,
20 including military record, record of leave taken,
21 other relevant data requested by the promotional
22 panel."

23 Q. Okay. So your panels considered all of
24 these factors; is that correct?

25 A. And also other relevant data as well,

LAMAR DAVIS

1 yes, sir.

2 Q. Okay. So what relevant data, in general,
3 did you consider other than these seven factors
4 that are given?

5 A. Well, their resumés and other relevant
6 data that we also consider.

7 Q. Okay. Adding the resumé, is that a newer
8 policy?

9 A. Yes. In fact, it is, but it wasn't
10 during the time. And while it was not a mandate,
11 if they provided that information, that is
12 information that we considered.

13 Q. Okay.

14 A. And of course, we considered their
15 interview, and the information provided during the
16 interview.

17 Q. Okay.

18 MR. FARRUGIA:

19 So let's look at what we'll mark as
20 Exhibit 4.

21 (Whereupon, the document referred to is
22 marked as Exhibit No. 4 for identification.)

23 BY MR. FARRUGIA:

24 Q. Okay. And now, this is the Certificate
25 of Eligibles that was used when you were promoted

LAMAR DAVIS

1 on October 3rd, 2018, correct?

2 A. Okay.

3 Q. Okay. And this says your score on the

4 exam as being 84?

5 A. Okay.

6 Q. Is that correct?

7 A. Yes, sir. That's what it shows.

8 Q. And John Stelly at the time had a score

9 of 91; is that correct?

10 A. Yes, sir. According to this document.

11 Q. Okay. And this is the official

12 certificate?

13 A. Okay.

14 Q. And it's signed, correct?

15 A. Yes, sir.

16 Q. Okay. Now, if you -- in that category of

17 score on exam, Mr. -- or Lieutenant Stelly was

18 more qualified than you were with regard to this

19 factor of the exam, correct?

20 A. As I understand it, he had -- he

21 possessed a higher score, but didn't make him more

22 qualified for this position.

23 Q. I mean, in this one factor of exam

24 performance, he was more qualified in this factor,

25 correct?

LAMAR DAVIS

1 A. And, again, the exam did not measure
2 qualification. The exam tested us on information
3 pertaining to the information that was provided in
4 the exam. So in that essence, it did not
5 determine qualification.

6 Q. But -- but that exam was designed to test
7 the candidates on knowledge they would need to be
8 a captain in this position, correct?

9 A. Well, when you look at the Technology and
10 Business Support, if you're looking at
11 qualifications, there are other factors also that
12 are considered. That's why I said this does not
13 -- while this exam is a criteria in which is used
14 to determine whether or not we move on to the next
15 level to be promoted, it does not determine
16 qualification.

17 Q. Well, isn't it a requirement that -- that
18 this exam be competitive?

19 A. I can't say if that's a requirement. The
20 requirement states that, one, you must pass the
21 exam. The other requirement states that you must
22 be within the top seven grade groups in order to
23 move on to the next level. As far as
24 competitiveness, it doesn't state whether or not
25 it needs to be competitive.

LAMAR DAVIS

1 It states that -- the requirement
2 states that you must pass the exam and be within
3 the top seven grade groups.

4 Q. All right.

5 MR. FARRUGIA:

6 Well, let me hand you what we'll
7 mark as Exhibit 4.

8 MR. MILES:

9 I think you're on 5.

10 BY MR. FARRUGIA:

11 Q. I'm sorry, 5.

12 And are you aware that the
13 appointments are provided for in the Louisiana
14 Constitution? Are you aware of that?

15 A. I'm reading it right now. If you give me
16 an opportunity, please.

17 (Whereupon, the document referred to is
18 marked as Exhibit No. 5 for identification.)

19 THE WITNESS:

20 I also understand that it talks
21 about --

22 MR. MILES:

23 Hold on.

24 THE WITNESS:

25 -- "The Commission shall adopt

LAMAR DAVIS

1 I don't think so.

2 MR. MILES:

3 You can --

4 MR. FARRUGIA:

5 It's form of the question --

6 MR. MILES:

7 Look, you're asking him about

8 whether a blog, are you familiar what a blog

9 poster says, characterizes about something.

10 MR. FARRUGIA:

11 Okay. Okay.

12 MR. MILES:

13 If you want to say about his

14 statement, you would have a better argument.

15 MR. FARRUGIA:

16 Okay. I'm asking about his

17 statement.

18 BY MR. FARRUGIA:

19 Q. So you -- you -- you appeared before the

20 Senate Committee on Oversight of Louisiana State

21 Police, correct?

22 A. Yes, sir.

23 Q. And that committee was chaired by State

24 Senator Franklin Foil, correct?

25 A. Yes, sir.

LAMAR DAVIS

1 Q. Okay. And you made a statement there
2 before that committee, that said that the agency
3 has been historically comprised of white males,
4 correct?

5 A. Something to that effect, yes, sir.

6 Q. And you also said that the agency has got
7 to make change, correct?

8 A. I did make that statement, but I made
9 also some other statements. Because that was in
10 reference to a question that Senator Foil asked
11 with regards to whether or not the head of the
12 State Police should come from the outside or
13 inside. And as I recall, I talked about
14 diversity.

15 I talked about -- and that was some
16 of the concerns that our state's leaders, our
17 legislature discussed with our agency prior to
18 that administration as well as in my
19 administration. They had concerns with the agency
20 and its lack of diversity, lack of female
21 employment for troopers as well as lack of
22 diversity among troopers.

23 So as I responded to Senator Foil,
24 I advised him and gave him reasons to why I
25 thought it would be beneficial for personnel

LAMAR DAVIS

1 within our agency to rise through the ranks and be
2 promoted as to the head of the agency, as opposed
3 to bringing in someone from the outside.

4 But in those statements, I also
5 discussed diversity and it being a value added,
6 and I did not discuss diversity just in the form
7 of race. It's also beyond that in a more broader
8 view. But when we said we have to make changes,
9 that particular statement was made in reference to
10 us needing to change policies, needing to change
11 our operations -- needing to change operations and
12 how we did things. So that's two statements, but
13 yes, it was in a larger context.

14 Q. Okay. Well, you just -- in your
15 testimony just now, you mentioned females, but you
16 didn't mention race.

17 But you also -- when you said that
18 you got to make changes, you were indicating
19 making changes in race and gender, correct?

20 A. Well, I was thinking of also making
21 changes in technology, and making changes in
22 operations, making changes in protocols. What we
23 found as a part of that oversight was that
24 troopers, again, due to a lack of technology,
25 weren't able to document.

LAMAR DAVIS

1 One particular instance came about
2 when we did a use of force report. And that use
3 of force report pointed to 67 percent of the
4 people that were impacted by use of force
5 encounters were black or brown. And as I learned
6 later on, due to the limitations of the technology
7 that we had in place, we cannot delve deeper and
8 research deeper to determine why that was the
9 case.

10 Oftentimes, it was because we were
11 called into areas that were majority black and
12 brown, and that resulted, obviously, in us
13 performing duties in that area which resulted in a
14 higher number of contacts. But because of the
15 lack of technology, we couldn't pull that
16 information out and get more detailed information.

17 So as I mentioned before, in that
18 article, or in that oversight committee,
19 specifically, that was my comments that we've got
20 to make changes.

21 Q. Okay. So I'm going to play you -- play a
22 clip of what you said at the committee, and you
23 tell me if this is you and you talking, okay?

24 MR. FARRUGIA:

25 You want to come around and look?

LAMAR DAVIS

1 MR. MILES:

2 No. I've seen it.

3 MR. FARRUGIA:

4 It's seven seconds.

5 MR. MILES:

6 You're only going to play seven
7 seconds? Why don't you want to play the whole
8 thing, Victor? Why don't you want to play the
9 whole thing, Victor?

10 (Playing video.)

11 BY MR. FARRUGIA:

12 Q. So there's your picture. Is that --
13 that's the --

14 A. Senator Foil.

15 Q. -- Senator foil.

16 So is that you before the
17 committee?

18 A. Yes, sir. And as I mentioned, I
19 discussed how it was important for me as a trooper
20 to see people get promoted in this agency, so that
21 that sparks the idea and really desire, if we so
22 choose to get promoted, that it would be possible
23 to get promoted in this agency. So, yes, I did
24 make that statement, but in larger context.

25 Q. So you had a policy to increase diversity

LAMAR DAVIS

1 while you were superintendent?

2 A. No. No, sir. I did not have a policy to
3 increase diversity.

4 Q. Okay. So when you promoted people to
5 captain, lieutenants to captain --

6 A. Yes, sir.

7 Q. -- you considered race as one factor in
8 the decision --

9 A. No, sir.

10 Q. -- to promote, correct?

11 A. No, sir.

12 MR. FARRUGIA:

13 Let me hand you what we'll mark as
14 Exhibit 10.

15 (Whereupon, the document referred to is
16 marked as Exhibit No. 10 for identification.)

17 BY MR. FARRUGIA:

18 Q. Let me ask you if you've seen this
19 article by Wesley Muller for the "Louisiana
20 Illuminator"?

21 A. Yes, sir.

22 Q. You have seen it? Now, the title of this
23 is, "Louisiana State Police Chief Looks to Reform
24 Agency With Diversity and Technology."

25 Is that an accurate statement?

LAMAR DAVIS

1 I don't recall when this occurred, but I have no
2 qualms in saying that diversity was definitely
3 something that was considered, and that derived
4 from conversations with our female troopers, that
5 derived from my conversations with white male
6 troopers, that derived from my conversations with
7 black male troopers. So that was a point of
8 contention of our staff and our personnel. Okay.

9 Q. Okay.

10 A. But I can assure you that I did not use
11 race to determine promotion.

12 Q. Okay. Just for the record, this article
13 is on the front page, November 29th, 2021.

14 Do you see that?

15 A. Okay. Well, I've held many interviews
16 and speaking engagements between then and my
17 retirement, so I can't tell you exactly what I
18 said in each one.

19 Q. Okay. Now, isn't it true that -- well,
20 let's see.

21 Where -- where is Troop F? Is that
22 in Shreveport?

23 A. Monroe.

24 Q. Troop F was in Monroe?

25 A. Yes, sir.

LAMAR DAVIS

1 both candidates had a fleet crash, but Lieutenant
2 Stelly's crash was in 1997, and Lieutenant
3 Larvadain's fleet crash was 2014, correct?

4 A. Yes, sir.

5 Q. As far as awards go, Lieutenant Stelly
6 has many more awards than Lieutenant Larvadain,
7 correct?

8 A. Yes, sir.

9 Q. And commendations, they have equal number
10 of commendations, correct?

11 A. Yes, sir. I think one area that --
12 again, I know we talked about law enforcement
13 experience. Again, to bring to your attention is
14 the LSP experience, where Lieutenant Colonel --
15 and this is for the Internal Affairs position,
16 where I believe she served in Internal Affairs on
17 two different occasions prior to her promotion.

18 Q. Well, after looking at both of these
19 summary reports, would you agree that Lieutenant
20 Stelly is at least as qualified as Lieutenant
21 Larvadain for holding this new position?

22 A. And, again, when we talk about making
23 these promotions, we talk about suitability. We
24 promote based upon what's most suitable for the
25 agency and what's most suitable for that position.

LAMAR DAVIS

1 And in this particular case, I found Lieutenant
2 Colonel -- now Lieutenant Colonel Larvadain to be
3 more suitable.

4 And as mentioned, she's held
5 various different positions, and that's important
6 when you look at Internal Affairs as well as
7 investigative positions. Not just Internal
8 Affairs, but also in detectives as well, and she
9 also worked in other agencies in specialized
10 divisions. We took all of that into
11 consideration, not just her LSP, and not just
12 education and so forth.

13 So she was definitely -- to your
14 original question, as I remember, while I don't
15 remember who specifically said what, the majority
16 of the panel agreed that she was definitely the
17 most suitable for that position.

18 Q. So she was the only African-American
19 candidate and you promoted her, correct?

20 A. I also believe she was the only one with
21 prior Internal Affairs experience.

22 Q. And --

23 A. And the reason why --

24 Q. Wait for a question.

25 MR. MILES:

LAMAR DAVIS

1 In fact, I don't know if that was Colonel
2 Edmondson, Colonel Reeves, 2017 to -- so that may
3 been during Colonel Edmondson's tenure. I'm not
4 sure.

5 Q. Okay. But the disciplinary letter was
6 available to you to review before you promoted
7 him, correct?

8 A. And as mentioned, Internal Affairs
9 briefed me on the discipline. I did not read the
10 letter in its entirety.

11 Q. So you were aware of the information that
12 I'm telling you now?

13 A. I was aware of his discipline, yes.

14 Q. Were you aware that Burns admitted to 51
15 of the 52 allegations?

16 A. Not specifically, no, sir.

17 Q. And are you aware that Burns forwarded
18 some of this information to his ex-wife's
19 boyfriend, to his ex-wife, a non-law enforcement
20 person?

21 A. I can't -- I don't recall if -- how in
22 depth we went into it.

23 Q. Are you aware that Burns not only
24 admitted that, but he also admitted that he was
25 aware that doing so could result in his

LAMAR DAVIS

1 something that's all.

2 THE WITNESS:

3 And, again, I was briefed by
4 Internal Affairs on the discipline, but I can't
5 tell you I remember or recall everything that was
6 -- that I was briefed on. We have a multitude of
7 promotional panels that come aboard, and many of
8 them involve discipline. So I can't tell you that
9 I recall every aspect of what -- what discipline
10 was read to me or provided to me.

11 BY MR. FARRUGIA:

12 Q. So you were aware that these violations,
13 criminal and procedural violations over a
14 three-year period was, like, less than five years
15 prior to this panel? You were aware of that,
16 right?

17 A. Based upon the time, yes. And as I
18 understand it, and our policy does not dictate the
19 -- and I want to make sure I'm clear here, but I
20 don't believe it dictates that it should be within
21 one year or two years, five years or otherwise.

22 Q. Okay. So based on disciplinary action
23 and -- as a factor and many of the other factors,
24 isn't it true that Lieutenant Stelly was much more
25 qualified than Lieutenant Burns to be promoted to

LAMAR DAVIS

1 captain for this position?

2 A. As I can explain or tell you, in this
3 particular instance, Lieutenant Burns -- then
4 Lieutenant Burns, now Major Burns -- was more
5 suitable for this position. Having worked in
6 operational development, I knew the ins and outs
7 of it. I worked in it a little bit over a year.

8 And having worked in that section,
9 that section is responsible to not only the
10 superintendent, but it also works with agencies
11 throughout DPS, our departments through DPS.
12 Excuse me. It works with the legislature. It
13 works with various industry personnel. And in
14 doing so, now Mayor Burns had distinguished
15 himself in working in that capacity for seven
16 years, at such a level that he was considered by
17 many to be more of a higher rank than what he was.

18 And when I say many, I mean
19 legislators and other people in the industry.
20 They thought he was literally ranked higher than
21 what he was because of how he carried himself and
22 how he distinguished himself. So as a result of
23 his level of performance, his experience and all
24 the other factors that we looked at, that's why he
25 was promoted to captain of that section.

LAMAR DAVIS

1 Q. Okay. So a lot of that's subjective
2 opinions of other people as to his qualifications,
3 correct?

4 A. Well, it was based upon the information
5 and all the factors that we considered.

6 Q. Okay. And you considered all of the
7 factors on these summary reports because these are
8 the factors that you're required to consider
9 because of the policy -- the State Police Policy
10 on what to consider?

11 MR. MILES:

12 Hold on. I'm going to object. I'm
13 going to object that it mischaracterizes his prior
14 testimony.

15 BY MR. FARRUGIA:

16 Q. You can answer.

17 A. As I mentioned before, there's other
18 relevant information that we consider. And that's
19 what we considered. Now, I can't tell you today
20 that -- exactly what I looked at in all of the
21 panels that we convened, two, three, four years
22 ago. But I can tell you based upon my
23 recollection and my memory, those were the reasons
24 why we promoted now Major Burns.

25 Q. Okay. Did you consider the factors on

LAMAR DAVIS

1 the summary reports that compared the two
2 candidates?

3 A. That was also of consideration. His
4 discipline report was consideration. His
5 training, his time in grade, his specialized
6 training, just like his experience and his
7 performance were all considered.

8 Q. Did you consider his test score being
9 less than Lieutenant Stelly's test score?

10 A. I did not.

11 Q. Why not?

12 A. Because, again, as I mentioned before,
13 the test score is a requirement. It does not
14 speak to the specific nature of the job. So
15 performance, experience, and so forth, that was
16 the things that we considered. The test score is
17 a criteria to determine whether or not you can be
18 considered to move to the next step. If you do
19 not make the test score, it doesn't make a
20 difference what your test score is.

21 I also want to add --

22 Q. I'm sorry. No, no, he can't add.

23 MR. MILES:

24 Yes, he can. He's not finished his
25 answer.

LAMAR DAVIS

1 MR. FARRUGIA:

2 He has finished his answer.

3 MR. MILES:

4 No, he can -- he can -- he can --

5 he 100 percent has --

6 MR. FARRUGIA:

7 No.

8 MR. MILES:

9 Well, let's get the magistrate on

10 the phone and see if she'll let him finish his

11 answer.

12 MR. FARRUGIA:

13 What do you mean finish his answer?

14 I'm going to different --

15 MR. MILES:

16 He said -- he just said, I wanted

17 to add.

18 MR. FARRUGIA:

19 He finished his answer.

20 MR. MILES:

21 He just said, I wanted to add. He

22 said I wanted to add, and you're not letting this

23 witness add. He said I wanted to add.

24 MR. FARRUGIA:

25 I answered -- he answered my

LAMAR DAVIS

1 question. What was my question?

2 MR. MILES:

3 No, no. No, Victor, you're going

4 -- you're going to let him answer the question.

5 You're going to let him finish his answer.

6 All right. Go ahead, Colonel

7 Davis.

8 THE WITNESS:

9 One of the other factors we look at

10 also is leadership. And I think it's important to

11 understand all of these factors. There is no one

12 factor that is overarching more than the other.

13 It's a compilation of all the factors that we look

14 at. So when we consider that, we look at

15 leadership as being one. We look at time in

16 grade, we look at discipline. We look at all of

17 that. And all of those determine, again, the

18 suitability for that position.

19 MR. FARRUGIA:

20 Are you finished?

21 THE WITNESS:

22 Yes, sir.

23 BY MR. FARRUGIA:

24 Q. All right. Let me hand you what we'll

25 mark as Exhibit 15.

LAMAR DAVIS

1 Q. Okay. As far as commendations,
2 Lieutenant Stelly has 12, and Lieutenant El-Amin
3 has three, correct?

4 A. Yes, sir. And I think Lieutenant El-Amin
5 also has three years, United States Air Force, the
6 military.

7 Q. So I don't recall if -- if this question
8 has been asked and answered already about the test
9 score on El-Amin.

10 Did I ask you about his test score?

11 A. Yes, sir.

12 Q. All right. So would you say that
13 Lieutenant Stelly is -- based on the documents in
14 front of you and you having been on the panel, do
15 you -- do you believe that Lieutenant Stelly was
16 qualified for this position?

17 A. Based upon his qualifications, State
18 Police Commission, I believe that he met the
19 criteria to be considered for this position.

20 Q. Okay. So of -- of, all the candidates
21 for this position, do you believe that El-Amin was
22 qualified for the position?

23 A. And, again, the board, based upon the
24 information that was provided, one, Lieutenant --
25 now Captain El-Amin -- met the criteria, like all

LAMAR DAVIS

1 of the other candidates to be considered for this
2 position. Once we looked at the information that
3 was presented to us, then we determine that
4 lieutenant -- or now Captain El-Amin -- was best
5 suited for this position.

6 He had prior service in this
7 position. He had a diverse background, not only
8 in this position, but in department and he
9 distinguished himself in such a manner to make us
10 believe that he is best suited.

11 Q. Okay. Well, you didn't answer my
12 question.

13 MR. FARRUGIA:

14 Can you repeat the question for us?

15 MR. MILES:

16 He absolutely answered it.

17 THE WITNESS:

18 I did. You asked me was he
19 qualified for this position --

20 MR. FARRUGIA:

21 Yes.

22 THE WITNESS:

23 -- and I gave you the same
24 information as I gave for Lieutenant Stelly. He
25 met the criteria to be considered for this

LAMAR DAVIS

1 All right. I am -- let me hand you

2 what we'll mark as Exhibit 16.

3 (Whereupon, the document referred to is

4 marked as Exhibit No. 16 for identification.)

5 BY MR. FARRUGIA:

6 Q. Which is two pages, I mean two groups of

7 things.

8 MR. MILES:

9 What is this?

10 MR. FARRUGIA:

11 Summary, 16 --

12 MR. MILES:

13 Of what?

14 MR. FARRUGIA:

15 Of the documents I'm going

16 to need --

17 MR. MILES:

18 There's no documents --

19 MR. FARRUGIA:

20 Yeah, there are, right there

21 (indicating).

22 MR. MILES:

23 Oh.

24 BY MR. FARRUGIA:

25 Q. Okay, 16. So back to Burns, the blogger.