

THE FIRE THIS TIME



ROBERT CARTER

The fire was real, but the rumors burned out of control. According to local bloggers, days after the black Jacksonville Brotherhood of Firefighters convinced a federal judge to reopen a 1971 civil rights lawsuit on discrimination in the Jacksonville Fire and Rescue Department, someone set fire to the group's headquarters.

In fact, the arsonist only targeted the mailbox. But the hostility behind the "message" to the predominately black Brotherhood instantly recalled years of similar communications: the nooses found on the bunker gear of two black firefighters in 2006, the greeting cards filled with racial slurs, the inflexible tradition of all-white leadership. That the Jacksonville fire department has long struggled with racial division is no secret. It's been the subject of lawsuits, the target of several investigations, a political wedge in local elections for more than a generation. But despite the wealth of data mined on the subject and repeated city

Twenty years after a court order to integrate, Jacksonville's fire department struggles with racial divisions, allegations of favoritism and more discrimination-based lawsuits

By Susan Cooper Eastman

pledges to improve, the department remains unable to shed its troubled past.

A federal judge's decision to reopen a nearly 40-year-old civil rights lawsuit over discrimination in the department

plunged the city back into a courtroom debate rooted in decades-old hiring practices. That suit is buttressed by a 2007 job-discrimination case filed by a black fire captain and by four recent complaints to the Equal Opportunity Employment Commission from black firefighters challenging the fairness of some promotional exams. The EEOC hasn't yet made a decision on whether to act on the four complaints, and litigation can't proceed unless EEOC decides not to act, but it's possible that, too, will lead to a lawsuit.

Dennis Thompson, the Ohio-based attorney representing black firefighters in all the cases, views Jacksonville as a microcosm of fire departments across the country, where fighting change is really about protecting one of the last bastions of white male superiority.

"It's just a little more vicious down there," Thompson says. "You've got an elitist, entitled group, and they are

white, and they are shiny, and they see this as their job. They see this as their domain, and they aren't going to give up any ground until a court tells them to."

A 1971 U.S. District Court ruling made one thing very clear: Discrimination existed in hiring practices at the Jacksonville fire department, and dramatic measures were needed to remedy the decades-long inequity. The ruling specifically required that any future hires be balanced one-for-one, black-for-white.

The decision forced the city to better integrate its department — and had rather dramatic results. The city didn't begin strictly adhering to the consent order until 1987, but once it did, large numbers of black firefighters came aboard. Some 220 were hired by 1991, bringing the percentage of blacks to more than 20 percent. But problems persisted. Black firefighters, once hired, found promotions elusive, if not impossible. More than 90 percent of leadership positions were held by whites. Worse, the department remained plagued by incidents of racism and allegations of race-based favoritism.

The bitter divisions played a big role in '90s-era politics. Numerous discrimination lawsuits pointed to the city's failure to promote black firefighters, including one named Winston Nash, who sued twice to get promoted. When John Delaney was elected mayor in 1995 — critically, without the endorsement of the firefighter's union — he moved boldly to change the face of the department or at least to improve outward appearances. He hired former Washington, D.C. Fire Chief Ray Alfred, an African American, then promoted Nash to chief of the fire training division. The appointments, while progressive, were viewed as retribution by white firefighters, and may have ultimately deepened interdepartmental division. Delaney's successor, Mayor John Peyton, earned the backing of the largely white firefighters union early on, when he promised to get rid of Ray Alfred and replace him with someone promoted "in-house" — presumably, a white officer. In

the end, he chose his new chief from a short list of three firefighters. All three were white.

Over the years, the leadership of the department has remained stubbornly white. White men held 92 percent of battalion chief, district chief, captain and lieutenant jobs in 1992. Four years later, they held 90 percent. According to updated figures provided to Folio Weekly by the department, white men today — 13 years later — hold 88 percent of those positions. And racial animosity continues to stew. A 2006 report by

"You thought your life was on the line at Station 44," one firefighter says he was told. "You're going to work at Station 26 under Hopkins, that ignorant nigger who doesn't know his job."

the city's Human Rights Commission, undertaken in response to the incident in which two black firefighters found nooses on their gear, was damning. Based on questionnaires given to 525 fire department employees, interviews about specific complaints and a University of North Florida-conducted focus group with 50 employees, the report



Former Fire Chief Ray Alfred was appointed by Mayor John Delaney in a move that was considered a dig at the largely white union, which didn't support him.

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FILE PHOTO/WALTER COKER

Current Jacksonville Fire and Rescue Department director Dan Kleman has been tasked with changing the culture of discrimination within the troubled organization.

characterized the department as racist, sexist and routinely discriminatory, a place where patterns of harassment and retaliation ensured that power remained in the hands of a select few. The report found that women and blacks were punished more severely for infractions than whites, and that union members were favored in most matters over non-union members. It also found that although diversity training was mandatory, only nine employees out of a force of 1,200 had completed the training between Oct. 1, 2003 and Feb. 28, 2006.

Despite Mayor Peyton's allegiance to the firefighters' union, he responded to the report by convening a task force of 15 Fire and Rescue employees to make specific recommendations for overhauling the department. He also assigned a senior administrator, Dan Kleman, as director of Fire and Rescue, and specifically charged him with fixing things.

Kleman has made many changes, and implemented some of the task force's recommendations, instituting mandatory diversity training and establishing a zero-tolerance policy for harassment. He's moved to ensure that all officers receive leadership and management training before they're promoted, though that training and additional new educational requirements will be phased in slowly from 2009-2016. And he's started recruitment programs to introduce high school students to a career with Fire and Rescue, with an emphasis on bringing in more minorities. Kleman points out that 40 percent of the department's latest recruit class is African American.

"We are very much trying to create a climate where all employees are treated with dignity, fairness and respect," says Kleman.

But Kleman and the Peyton Administration rejected some central recommendations of the Human Rights Commission study, including the suggestion that they fire several top leaders, among them Fire Chief Rick Barrett, Assistant Chief Randy White,

industrial psychologist and JFRD Human Resources Manager Richard Greenwood, and Compliance Officer Broderick Edwards. Peyton declined to fire the men, despite the recommendations of the report, saying he believed they were doing a good job.

The mayor's reluctance to adopt the more dramatic recommendations has made some minority firefighters skeptical that the other steps taken will make any difference. Several black firefighters who spoke to Folio Weekly on condition of anonymity described a culture riven by race, one that needs dramatic, rather than incremental, change.

"They come out with diversity bullcrap: 'Johnny is different than you. You may have a guy of a different race as a boss,'" says one. "They're spending money to say they're providing diversity training, but you can't change a person's heart."

"Things usually get interesting when you're working under a white officer and they tentatively don't want you at the station," says another firefighter. "They'll ask if you want to go somewhere else. That type of thing. They want the stations pretty much segregated at this point. If you've got a black captain, you're pretty much going to have black crews, for the most part."

A third black firefighter agrees. "They really don't want to work with us unless you're a guy that just doesn't say a lot and lets them do whatever they're going to do."

In 1970, the Jacksonville fire department hired its second black firefighter, according to a history introduced in U.S. Middle District Court by the Brotherhood of Firefighters. In 1971, after years of rejection, several would-be African-American firefighters sued, alleging discrimination in hiring. As in similar suits filed around the country at that time, the case claimed that hiring practices were crafted to limit minority participation, and that the result was systemic

disenfranchisement, a violation of the appellants' civil rights. The case led to a federal consent decree, a deal in which a state or local government agrees to court-supervised remedies to correct past violations. Jacksonville was ordered to hire one black firefighter for every white hired. By 1991, the department had hired 220 black firefighters. In 1992, the city decided it was free of the consent decree, saying the ratio of black firefighters in the city was comparable to the city's white/black ratio, although it provided no proof. According to firefighter and recruiter J.J. Hammond, who made a declaration in the case, the city's then-employment/labor attorney Steve Rohan (now Deputy General Counsel) advised them to stop following the decree and "see what happens." That year, the city stopped hiring 1:1.

The black Brotherhood of Firefighters questions whether the city was allowed to unilaterally declare itself free from the terms of the consent decree. In arguing to reopen the case, the Brotherhood contends the city was required to return to court and ask permission for release, prove they'd met the requirements and offer an opportunity for contradictory testimony.

The Brotherhood's argument may or may not be correct (U.S. Middle District Judge Timothy Corrigan has scheduled a June hearing, at which the city will likely argue too much time has passed to reopen the matter). But the city's post-consent-decree hiring practices were clearly a step backward

fire department to compare to the general population because, "We cannot hire 10-year-olds." (Greenwood was one of the officials the Human Rights Commission recommended firing.)

Whether or not the fire department can be expected to match the population's ratio of blacks to whites, the number of black firefighters can soon be expected to decline. With retirement looming for 160 black firefighters hired under the original consent decree, the ratio will worsen without aggressive recruiting.

Hiring is only part of the story, however. According to the Brotherhood of Firefighters, promotions within the department long favored whites, in part because of the way the agency is structured. They point to the department's 1992 decision to alter the promotional progression, making it necessary to have the rank of engineer to take the test to become a lieutenant. Prior to the change, 215 black firefighters were eligible to test for lieutenant. After the change, only four were. And because there were already 300 white engineers, there was no point in testing to become one. Black firefighters say the change effectively blocked them from moving into the officer ranks.

Indeed, it wasn't until 2003 that an African American was eligible to test for a district chief's position. And because there are still very few black officers on the force, the next generation of recruits will again work in a department where leadership is

Station 26, located in the traditionally African-American community of Picketville, is staffed mostly by African-American firefighters and is viewed as a "punishment station" for whites.

in terms of diversity. Between 1992, the year the city declared it had met its obligation, and 1995, the city hired 136 firefighters, according to data from the Brotherhood of Firefighters. Of that, only two were minority hires. The remaining 134 were whites.

And while the overall number of firefighters increased from 917 in 1993 to 1,131 in 2007, the number of black firefighters has remained roughly the same — around 220, or about 20 percent of the department, compared to the citywide black population of 30 percent, according to U.S. Census data. The city doesn't believe that matching Census data is a reasonable goal. In a 2008 deposition in a federal discrimination case, the city's Equal Employment Opportunity officer and Human Resources Director Richard Greenwood argued that the 30 percent figure includes children and the elderly — people who aren't candidates for fire department jobs. He said it isn't fair to expect the percentages of African Americans in the

mostly white, Thompson says, unless the promotional system is changed.

No one can argue that Adrian Johnson didn't earn his rank. The district chief scored sixth on the promotional exam in 2003 and assumed the post that same year. But according to Johnson, his rank and experience weren't enough to earn the respect of some white firefighters under him. In a Nov. 24, 2008, declaration in a federal discrimination case of another firefighter, Johnson, who is also president of the Jacksonville Brotherhood of Firefighters, wrote, "Caucasian officers and firefighters do not want to take orders from African-American officers and feel they are not required to."

As an example, Johnson offered a story about a white engineer at his station who refused to complete an accident form on some damaged equipment. When Johnson

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contacted the employee's white captain, he backed up the firefighter, and added that he was going to instruct the engineer not to complete the form. Later in the shift, the captain called back to say he'd contacted the Division Chief of Services and was assured he didn't have to complete the form. Johnson brought charges on both men, including insubordination and jumping the chain of command, but was told the charges wouldn't go anywhere because the whole matter had been a "misunderstanding."

"This type of attitude undermined my authority as a District Chief," wrote Johnson, "and JFRD would not have tolerated an African-American officer who had disobeyed a Caucasian District Chief's order."

Philip Hopkins, an African-American fire captain who also filed a job discrimination lawsuit against the city in 2007, details harassment he's endured since joining the department in 1987. For instance, when Hopkins scored in the top five on his lieutenant's test in 1992 and was promoted, rumors circulated that he'd cheated. Some white firefighters in the department made up T-shirts that read, "I studied."

Hopkins also fought the city in 2000, when he joined two other black lieutenants in suing the city over a 1994 captain's test. The three plaintiffs charged that the city had abandoned the consent decree from the 1971 lawsuit, favored white firefighters by adding "seniority points" to test scores, and had released promotional test questions and answers to an unspecified white male, which were subsequently used to help white job candidates. The city settled the case, and in 2001 promoted Hopkins and the other two plaintiffs to captain. But soon after, the Jacksonville Association of Firefighters Local 122, which, like the department, has a predominately white membership, sued the three captains and the city. The union said the settlement threatened the promotional system they had agreed to in collective bargaining, which requires hiring by highest

ranking on the written test. That lawsuit was settled in 2006; the three black captains were allowed their promotion, but were denied "rank points" (which are added to promotional test scores) for holding that position between 2001-'06.

Hopkins' current suit stems from that agreement. In the lawsuit, Hopkins says that rank points were denied him when he took the 2003 district chief's exam, because of terms in the union lawsuit settlement to which he never agreed. Hopkins also contends that when he was next on the list to be hired as district chief, the fire department called for a new district chief's exam instead of promoting him. (He didn't take the test.)

In his lawsuit, Hopkins describes working in an environment where he was treated with hostility and discrimination almost from the moment he was hired in 1987. He says black hires were kept separate from whites for the required Emergency Medical Technician training. He was also told by a lieutenant that he was hired only because the city was forced to, under the consent decree.

When Hopkins was assigned to Station 5 as a newly ranked captain in 2001, he says his boss, District Chief Larry Pulo, told him he didn't want Hopkins at his station because "the city had rolled over for the blacks." A short time later, Hopkins was reassigned to Station 55 in Atlantic Beach, an hour's drive from his home, an assignment he interpreted as punitive. Soon after his transfer, someone posted fliers on the cars belonging to Atlantic Beach's mayor and City Councilmembers warning them that an "unqualified captain" had been assigned to their fire station.

Hopkins appealed to then-Fire Chief Ray Alfred, and the department investigated, but the culprit was never caught. Hopkins faced other digs at his seniority. On a board where everyone in the battalion was listed by rank, Captain Hopkins' rank was listed as lieutenant instead of captain. He protested, but it wasn't changed until Chief Alfred specifically



WALTER COKER

Firefighter Mike McCue was disciplined for sending an e-mail in which he used the word "nigger" — even though he says he sent the e-mail to complain about the language used by then-Union President Roger Lewis.



PHOTO COURTESY DENNIS THOMPSON

“If any place deserves to get rid of racism, Jacksonville deserves it,” says firefighters’ attorney Dennis Thompson, pictured with co-counsel Christy Bishop.

ordered it. Alfred also had to intervene so that Hopkins received the day-long training that was mandated for captains by working alongside their Battalion Chiefs.

Hopkins was subsequently transferred to Station 26, located in the traditionally African-American community of Picketville, at a station staffed mostly with African-American firefighters. According to Hopkins’ 2009 amended declaration, the station is viewed as a “punishment station” for whites, and is treated as a second-class facility, required to do “scut-work” for other stations, such as loading hoses onto a spare apparatus about to be put into service. At fires, he says, the station is usually the last released to leave, “meaning we have to ‘clean up’ after the other firefighters at the scene, rather than fight the fire.”

In a deposition in the case, District Chief Stephen Gerbert, who is white, agreed that assignment to the station is generally considered a reprisal. Gerbert said he wouldn’t characterize Station 26 as one to which firefighters seek to be transferred, because it doesn’t do a lot of runs. He said that “go-getters” probably wouldn’t want to be transferred to that station and added that he doesn’t feel like Hopkins is a “go-getter.”

“I don’t have a problem with the way he fights fires,” said Gerbert. “I just wish he was a little more energetic and a little more ... a go-getter.”

Firefighter Mike McCue, who is white, definitely didn’t want to move to Station 26. McCue was transferred there in 2005 after he had complained about harassment by his fellow firefighters at Station 44, who he said had mocked him and damaged his gear. When he got word of the transfer to 26, McCue called then-Jacksonville Association of Firefighters Local 122 President Roger Lewis on his car’s speakerphone. He says Lewis responded, “You thought your life was on the line at Station 44. You’re going to work at Station 26 under Hopkins, that ignorant nigger who doesn’t know his job.” McCue sent an e-mail to Lewis (with Hopkins’ knowledge) seeking clarification of what the union president meant when he said McCue’s life was more

on the line working with Hopkins, “whom you characterized as an ‘ignorant nigger.’” Lewis deleted the e-mail; he said in a later deposition that he’d found it offensive. But McCue subsequently sent it to all the fire chiefs, an act that got him suspended without pay, for referring to Hopkins as an “ignorant nigger.” McCue’s suspension was later rescinded, but an investigation into his complaint against Lewis was deemed inconclusive. Lewis denied making the remark, although a friend of McCue’s, who was in the car at the time, signed a n affidavit saying he heard Lewis use the language.

“Not all whites in the department have racial animosity,” writes Hopkins, “but a core group that has considerable pull does, and I continue to experience retaliation, segregation, lost opportunity, missed training and overtime, and general animosity.”

Despite their presence in the department for more than 30 years, few African Americans have moved into leadership roles in the combat division, says attorney Thompson and Christy Bishop, his co-counsel. They argue that until the promotional system is changed, whites will continue to receive the majority of officer titles in combat.

Currently, promotions are based upon a multiple-choice test of job knowledge. Points are added for time spent in rank and time in service. Thompson argues that the test itself produces bias. He says it is widely acknowledged that cognitive tests favor whites over blacks and Hispanics, citing several books that detail the trend, including “The Black-White Test Score Gap” by Christopher Jencks and Meredith Phillips, published in 1998. Thompson and Bishop believe they can show that Jacksonville promotional exams meet the Equal Opportunity Commission’s criteria showing an adverse impact on black candidates because white promotions so outnumber black promotions.

Aside from favoring whites, Thompson contends the written exams don’t test for

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leadership, decision-making abilities or other qualities that make a good officer. (He cites a lawsuit filed by the Boston Chapter of the NAACP about similar testing in 1974, in which lawyers noted that if the Boston Red Sox chose players based on their understanding of baseball history and terminology, the team might have a really knowledgeable team that couldn't bat, pitch or catch.)

Some cities, including Birmingham and Minneapolis, have phased out written exams, and started using assessment centers, which incorporate real-life scenarios, such as administering discipline or prioritizing tasks — all actions observed by an assessment team. The task force appointed by Mayor Peyton after the Human Rights Commission report

of white officers have a list of test questions, which they share and circulate among other white firefighters. The concerns are supported by depositions taken in the Hopkins case, including that of District Chief Stephen Gerbert. Gerbert admitted under oath that he'd written down questions from the engineer, lieutenant and captain tests to create a bank of 3,000 questions. Gerbert also acknowledged that he'd invited certain firefighters over to his house to study from the list; he could remember inviting only one black firefighter.

According to attorney Thompson, the acknowledgement is proof the tests are compromised. Each person taking the test signs a confidentiality agreement that they won't

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thought that Jacksonville should consider switching to assessment centers, something former Chief Alfred had also pushed for. "A lot of people can take an exam and score 100 but be lacking in a number of other areas," Alfred says. "A lot of people that panic are smart as heck but don't take exams well."

The local union has fought fiercely to keep the current exam in place, however. And it has enshrined the test as the department's only method of promotion in its collective bargaining agreement with the city. In order to change the current promotional system, union President Randy Wyse says the union would have to agree to change the contract, something he doubts will happen. He also dismisses criticism of the test, saying that the probationary period that follows a promotion helps weed out those who can't handle it.

Thompson contends that the city shouldn't be bargaining with the union for a fair promotional system. He points out that Article 19.07 of the City Charter specifically excludes promotional matters from collective bargaining. Deputy General Counsel Steve Rohan says the city has deliberately ignored that ban since 1976, when the state passed Chapter 447, a law that dictates how all governments in the state manage collective bargaining. However, Thompson points out that Chapter 447 requires that local governments follow their existing ordinances on collective bargaining unless or until they repeal them.

Given that provision in the state law, Thompson finds the General Counsel's efforts to ensure the union's right to control the promotional system odd. "Why give them the power when you've got a frickin' charter that says you ain't got it?" he asks.

But concerns about the city's testing program aren't confined to general questions of fairness. Some contend the test has been compromised by the fact that a hand-

share the questions and answers. "The game is rigged," says Thompson. "They have the frickin' test questions."

Wyse disagrees and characterizes the sharing of questions as a study group, one that relies on study guides based on past exams.

Ferretting out who is right seems to depend on just how much the test changes year-to-year. According to a former employee of the test's manufacturer, based in Cuyahoga Falls, Ohio, the answer is not much. In depositions taken in a firefighter's lawsuit against the city of Cleveland, Timothy Polomsky, who began working full time at Barrett & Associates in 2000 as a graduate student, said that he would "simply take questions from one city's promotional examinations and put them on another city's." And in a deposition this year in the Hopkins case, Polomsky admitted that questions were probably repeated year-to-year. Although he doubted the tests were verbatim, "Barrett's big thing was always, 'You don't need to reinvent the wheel,'" he said.

Although a hearing isn't scheduled until June, the judge in the case has called for a May 11 status hearing, and asked all parties to consider whether mediation might be an option. Given the years of discord, and the inherently difficult nature of the dispute, it's hard to imagine it will be resolved with mediation. But Thompson — who has handled similar cases in Houston, Columbus and Akron — believes the city is at a crossroads.

"If any place deserves to get rid of racism, Jacksonville deserves it," he says. "People down there should be saying we want better. There is just no room for it anymore. It destroys effectiveness. It destroys morale. Then you will have a more cohesive department that responds better to crisis, rather than remaining in this appalling ignorance and false sense of superiority." □