

1983 WL 30293

United States District Court, N.D. Florida.

GRIFFIN, ET AL., AND SMITH, INTERVENOR

v.

WAINWRIGHT, ETC., ET AL.

No. TCA 79-1016.

|

Aug. 25, 1983.

Attorneys and Law Firms

Harry L. Witte and Jerry G. Traynham (Patterson and Traynham), Tallahassee, Fla., for plaintiffs.

Mitchell D. Franks, Department of Legal Affairs, and Bruce A. Minnick, Assistant Attorney General of Florida, for defendants.

Opinion

STAFFORD, Chief Judge: -

*1 This is a civil rights class action brought pursuant to 42 U.S.C. §§ 1981, 1983 and 1980e alleging discriminatory employment practices based on race. Federal jurisdiction is found in 28 U.S.C. § 1343. This action also involves individual claims of the named plaintiff Peners L. Griffin which are stated in Counts II and III of the second amended complaint. The issue of liability for the class claims was tried before the court without a jury from August 17, 1982, to September 17, 1982, following which the parties submitted extensive post-trial memoranda. From the pretrial stipulation, the exhibits, admissions of the parties, and all testimony, and after considering the legal arguments made before, during, and after trial, the court now makes its findings of fact and conclusions of law as required by Rule 52, Federal Rules of Civil Procedure.

FINDINGS OF FACT

I. HISTORY OF THE CASE

Plaintiff Peners L. Griffin, a black male, became employed with defendant Florida Department of Corrections (FDOC) or its predecessor agency in April 1971. Plaintiff Griffin was the first black person hired as a Road Prison Officer at the Tallahassee Road Prison operated by defendant FDOC. Since January 1973, plaintiff Griffin has applied for several promotions, but has never been selected.

Griffin received at least satisfactory employee evaluations from his date of hiring until sometime in 1974 when Wayne Scott, a white male, became Chief Correctional Counselor in Tallahassee. Scott fired Griffin in 1974; however, Regional Superintendent Hicks, a white male, reinstated Griffin because FDOC failed to follow proper termination procedures. In early 1975 Griffin again was terminated, and he filed a Career Service appeal. The Career Service Commission found no "good cause" for Griffin's dismissal and ordered his reinstatement with back pay.

On or about February 22, 1975, Griffin also filed a charge of discrimination with the Equal Employment Opportunity Commission (the EEOC) in which he alleged discrimination by the FDOC against blacks in discipline, hiring, promotions, and other employment practices. Defendants contend and plaintiffs deny that Griffin withdrew his 1975 charge; however, this issue was never raised at trial. Griffin requested a right-to-sue letter and received it on about July 23, 1979. Griffin filed this suit as a class action on October 15, 1979.

Griffin has been disciplined several times, and he has filed at least one other charge of discrimination with the EEOC against the FDOC. He requested and received a right-to-sue letter on this later charge on or about April 10, 1980.

Henry L. Dejerinett, a black male, applied for the FDOC position of Property Manager III in November 1978. Plaintiff Dejerinett was not hired; Kenneth Hayes, a white male, was selected. Dejerinett filed a charge of discrimination against the FDOC and received a right-to-sue letter on or about April 2, 1980.

*2 On June 17, 1980, plaintiff Griffin sought leave of court to amend his complaint to add Henry L. Dejerinett as a named plaintiff. This court granted the motion by order dated November 25, 1980 (Document 53). Plaintiffs filed a second amended complaint (Document 54) on December 15, 1980.

Based on the parties' stipulation, this court, by order dated March 10, 1981 (Document 84), certified the action as a class action with Peners L. Griffin and Henry L. Dejerinett representing a class of all past, present, and potential black employees of the FDOC. On July 8, 1982, defendants filed a motion to vacate the order certifying the class and plaintiffs moved for an order permitting Alvin Smith to intervene.

Alvin Smith, a black male, was denied employment as a Correctional Officer I because he had not earned a high school diploma or a general education degree (GED). Smith obtained a GED but failed the written correctional officer examination in July 1981. He, therefore, was denied employment.

This court allowed Smith to intervene to represent potential black employees. The court also reviewed the class certification in light of the recent case of General Telephone Company of the Southwest v. Falcon, 457 U.S. 147, 72 L.Ed.2d 740, 28 FEP Cases 1745 (1982). By order dated July 28, 1982 (Document 150), the court continued to certify this action as a class action with Peners L. Griffin, Henry L. Dejerinett, and Alvin Smith as named plaintiffs and intervenor representing a class of all past, present, and potential black employees of the FDOC.

On July 30, 1982, this court entered an order (Document 157) granting partial summary judgment for plaintiffs and finding that the correctional officer written examination utilized by defendants in screening applicants for correctional officer positions had a disparate impact upon class members which had not been justified by business necessity. This court denied summary judgment on the hiring and promotion claims because the court found plaintiffs' statistics used to support their claims were flawed.

Phase I, the liability for class claims, commenced on September 17, 1982. Phase I, part 1, consisted mostly of witnesses who were experts in the fields of economics and statistics. Phase I, part 2, was anecdotal evidence.

II. CLASS REEVALUATION

The court has a continuing duty to reevaluate class status throughout the litigation. *Vuyanich v. Republic National Bank of Dallas*, 505 F.Supp. 224, 233, 24 FEP Cases 128 (N.D. Tex. 1980); see also *Cooper v. University of Texas at Dallas*, 482 F.Supp. 187, 190, 22 FEP Cases 1064 (N.D. Tex. 1979), *aff'd*, 648 F.2d 1039, 26 FEP Cases 139 (5th Cir. 1981). Although defendants have not filed a post-trial motion to decertify the class, they argue that plaintiff Griffin voluntarily withdrew his 1975 charge of discrimination and that there is no proof that the charge was an "across-the-board" claim. Defendants first raised the issue of whether Griffin withdrew the 1975 charge in a motion to dismiss the first amended complaint (Document 17). This court held that "the factual dispute regarding plaintiff's waiver of rights conferred by Title VII is an issue for trial." Document 53.

*3 This issue was next mentioned in the pre-trial stipulation under the heading "Admitted Facts Requiring No Proof." It states:

The Plaintiff, Peners L. Griffin, filed a charge of Discrimination, pursuant to Title VII, on or about February 22, 1975. A true copy of that charge has been filed in this action as Exhibit "A" to a Stipulation (Document 148) and is properly in evidence. A Notice of Right-to-Sue was duly issued by the Department of Justice regarding that charge, and this action was timely filed under Title VII. Defendants assert and Plaintiffs deny that Griffin withdrew the charge.

Document 166, p.11.

This issue was not litigated at trial and, in fact, was not raised until defendants' response and objections to plaintiffs' proposed findings and conclusions (Document 215).

This court is of the view that plaintiffs have both pleaded and proved that Griffin filed a charge of discrimination on or about February 22, 1975, and that he received a right-to-sue letter. As the pre-trial stipulation notes, the charge and letter are properly in evidence. Defendants

have failed to prove the defense that Griffin voluntarily withdrew the 1975 charge. The class, therefore, may rely on Griffin's 1975 charge, because the Fifth Circuit adopted the single filing rule whereby "once an aggrieved person raises a particular issue with the EEOC which he has standing to raise, he may bring an action for himself and the class of persons similarly situated...." *Oatis v. Crown Zellerbach Corp.*, 398 F.2d 496, 498, 1 FEP Cases 328 (5th Cir. 1968).

Defendants have also argued that there is only "the naked assertions of Griffin and his attorneys ... that the destroyed charge was an 'across-the-board' claim." Document 215, p.2. This statement is inaccurate. The 1975 charge is in evidence (Document 148, Exhibit A). A review of that charge clearly indicates that Griffin set forth an across-the-board claim challenging the FDOC's practices in hiring, discipline, and promotions of blacks.

Griffin has alleged that these discriminatory practices are the result of a subjective decision-making process which has its roots in pre-Act procedures and continues until the present. Because plaintiffs attempted to prove that this discrimination pervades a pattern of events and is not isolated incidents, the charge could have been filed at any time. See *Laffey v. Northwest Airlines, Inc.*, 567 F.2d 429, 472-73, 13 FEP Cases 1068 (D.C. Cir. 1976); *Wetzel v. Liberty Mutual Insurance Company*, 508 F.2d 239, 246, 9 FEP Cases 211 (3rd Cir. 1975); *Cooper v. University of Texas at Dallas*, 482 F.Supp. 187, 190, 22 FEP Cases 1064 (N.D. Tex. 1979). Defendants' liability commences March 24, 1972, the date which Title VII became applicable to the FDOC. The only employees barred from the class are those who left the employ of the FDOC more than 300 days before the filing of Griffin's 1975 charge. See *Laffey*, 567 F.2d at 472-74; *Wetzel*, 508 F.2d at 246; *Cooper*, 482 F.Supp. at 190.

*4 Defendants failed to present any evidence at trial which altered this court's findings that plaintiffs met the requirements for class certification set forth in Rule 23, Federal Rules of Civil Procedure (Document 150). This court now reaffirms its decision that this action shall be certified as a class action with Peners L. Griffin, Henry L. Dejerinett, and Alvin Smith as named plaintiffs and intervenor representing a class of all past, present, and potential black employees of the FDOC.

III. THE DEFENDANTS

Plaintiffs have sued Louie L. Wainwright, individually and in his official capacity as Secretary of the Department of Corrections of Florida. Defendant Wainwright is the chief executive officer of the FDOC.

Plaintiffs have also sued the State of Florida and the Department of Corrections. This court orally ruled that when referring to the State of Florida in this case, it shall mean the Florida Department of Corrections. Defendant FDOC is an executive department of the State of Florida and is an employee within the meaning of Title VII. 42 U.S.C. § 2000e(b).

Plaintiffs sued Raymond W. Geary, individually and in his official capacity as attorney for the FDOC. Defendant Geary was employed as general counsel for the FDOC during pertinent times encompassed in this litigation.

IV. THE FLORIDA DEPARTMENT OF CORRECTIONS

The Department of Corrections has "supervisory and protective care, custody, and control of the inmates, buildings, grounds, property, and all other matters" pertaining to the state correctional system. Fla. Stat. § 945.025 (1981). In 1981, over half of the FDOC work force, 4451 out of 8594 jobs, was in EEO Category No. 4, Protective Services. The following positions with the FDOC are protective service jobs:

Correctional Counselor Chief I

Correctional Counselor Chief II

Correctional Officer Chief I

Correctional Officer Chief II

Correctional Officer Chief III

Correctional Officer I

Correctional Officer II

Correctional Officer III

Correctional Security Coordinator

Correctional Security Shift Supervisor I

Correctional Security Shift Supervisor II

Fire Chief

Firefighter II

Prison Inspector and Investigation

Supervisor

Prison Inspector and Investigator

There are statutory qualifications for the correctional Officer position. The Florida Statutes required:

After July 1, 1974, any person employed as a correctional officer shall:

- (1) Have reached the age of majority.
- (2) Be a citizen of the United States.
- (3) Be a high school graduate or its "equivalent" as the term may be determined by the council.
- (4) Have his fingerprints on file with the council or agency designated by the council.
- *5 (5) Have passed an examination by a licensed physician based on specifications established by the council.
- (6) Have a good moral character as determined by investigation under procedures established by the council.

Fla. Stat. § 944.584 (1975). These requirements have changed slightly. Since July 1, 1980, one must be age nineteen and after July 1, 1981, meet the additional requirement of not having been convicted of a felony or misdemeanor involving moral turpitude. Fla. Stat. § 943.13 (1981).

An applicant seeking a position as a correctional officer was required to pass a written examination consisting of seventy-five questions to be considered for employment. Any applicant who failed to score at least thirty-eight on the test was automatically excluded from consideration. The FDOC ceased using a written examination in August,

1982, immediately after this court found that it had a disparate impact.

V. THE DECISION-MAKING PROCESS

A. *HIRING*

When there is a vacancy for a correctional officer, the FDOC issues a vacancy announcement. Applicants file applications which are reviewed by the personnel officer at the institution where there is a vacancy. The applications are screened for the minimal requirements such as age and education. Then the applications are reviewed by a committee which usually consists of a chief correctional officer, a lieutenant, and sometimes a personnel manager at the location. The committee interviews applicants who are deemed to be qualified and prior to August, 1982, those who had passed the written examination. The interview normally consists of questions about an applicant's prior work history, interest in the field, and questions designed to determine an applicant's potential effectiveness as a correctional officer. The committee makes a recommendation to the institution's superintendent who has the hiring authority.

The hiring process for clerical employees is similar to the procedure used for correctional officers. Usually a clerical vacancy is advertised locally and the personnel office screens the applications. The supervisor or department head further screens the applications and after interviewing the applicants, makes a recommendation through the personnel manager to the superintendent who is the hiring authority.

B. *PROMOTIONS*

When there is a vacancy for a position above a Correctional Officer I position, a vacancy announcement is published. The applications are reviewed by the

personnel office, which forwards applications of those who meet the training and experience requirements set forth in the class specifications to the chief correctional officer. A committee interviews the qualified applicants and makes a recommendation through the personnel officer to the superintendent. Generally the criteria considered in promotional decisions are:

*6 (1) seniority;

(2) training;

(3) education;

(4) time on the job (actual experience gained in the position sought, such as in an "acting" capacity);

(5) job stability;

(6) professional development;

(7) performance evaluation;

(8) recommendations from peers and superiors;

(9) demonstrated leadership; and

(10) administrative experience.

C. PERFORMANCE EVALUATIONS

An employee's supervisor completes an employee service rating or evaluation. The employee is rated unsatisfactory, conditional, satisfactory, above satisfactory, or outstanding in the following areas:

(1) appearance;

(2) attendance;

(3) cooperation;

(4) dependability;

(5) health;

(6) initiative;

(7) knowledge of job;

(8) quality of work;

(9) quantity of work; and

(10) safety.

The evaluation is routed through the next higher level supervisor and then to the institution's personnel manager for final review and filing.

VI. STATISTICAL EVIDENCE

A. THEORETICAL APPROACHES

The two theories which may be applied to a particular set of facts to show discrimination are disparate impact and disparate treatment. *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 335 n. 15, 14 FEP Cases 1514 (1977). Liability for claims of disparate impact arise when a facially neutral employment practice imposes a harsher result, on one group than another and cannot be justified by business necessity. A disparate impact plaintiff need not show intentional discrimination. *Griggs v. Duke Power Company*, 401 U.S. 424, 3 FEP Cases 175 (1971).

Disparate treatment is a type of discrimination where the employer treats some people less favorably than others because of their race, color, religion, sex, or national origin. The standards for evaluating classwide disparate treatment claims are found in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 14 FEP Cases 1514 (1977), and *Hazlewood School District v. United States*, 433 U.S. 299, 15 FEP Cases 1 (1977). The plaintiff has the burden of proving a prima facie case that defendant intentionally discriminated against a protected class as its regular practice. Plaintiff may prove the prima facie case solely by statistics. Discriminatory intent or motive may be inferred by the statistics alone if the statistical disparity is great. *Payne v. Travenol Laboratories Inc.*, 673 F.2d 798, 817, 28 FEP Cases 1212

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(5th Cir. 1982) (citing Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1971)). A plaintiff, however, may enhance his case by presenting evidence of the employer's history of discrimination. Payne, 673 F.2d at 817.

*7 Once plaintiff has proved his prima facie case, defendant must rebut this showing by demonstrating that plaintiff's proof is either inaccurate or insignificant. Teamsters, 421 U.S. at 360. If the employer fails to rebut plaintiff's case, there is a violation of Title VII. Teamsters, 431 U.S. at 361. The Teamsters' pattern of proof is appropriate for the §§ 1981 and 1983 claims as well as the Title VII claims. Payne, 673 F.2d at 818.

Plaintiffs have primarily relied on statistics to prove their claims of discrimination. Dr. David W. Rasmussen, Professor of Economics at Florida State University, Tallahassee, Florida, testified for plaintiffs at trial. Dr. Rasmussen defined his task as determining in an analytical way if the FDOC has been drawing from the labor pool in a racially random way. Dr. Rasmussen used the 1970 census and the Department of Administration's register summaries to construct a series of availability labor pools. He then tested his proxy availability pool of blacks against incumbents for statistical significance using the approximation to the binomial distribution test approved by the United States Supreme Court in Casteneda v. Partida, 430 U.S. 482 (1977). Plaintiffs' Exhibit No. D-1 amended. Dr. Rasmussen's benchmarks for his state workforce analyses ranged by .23 (Plaintiffs' Exhibit No. D-1 amended, Table 9) to .38 (Id., Table 2). This court will examine Tables 9 and 2 in detail.

B. PLAINTIFFS' STATISTICAL CASE

TABLE 9 CORRECTIONAL OFFICER I STATE WORKFORCE ANALYSIS

Year	Actual: Total Black	Geographic Adjusted Benchmark ₂	Expected Number of Blacks	Number of Std. Dev.
1972	1066 55	.23	245.18	13.84
FY 1974-75	1648 202	.23	379.04	10.36
1977	2518 336	.23	579.14	11.51
1978	3119 461	.23	717.37	10.91
1979	3232 523	.23	743.36	9.21
1980	3488 618	.23	802.24	7.41
1981	3415 631	.23	785.45	6.28

NEW HIRES

FY 77-78	1570 237	.23	361.10	7.44
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*8 In Table 9 Dr. Rasmussen reached a .23 benchmark which reflects four factors: geography, occupation, income, and education. This proxy labor pool excludes people living in eighteen counties which are not adjacent to counties with major prisons. Dr. Rasmussen assumed that people would not commute from these eighteen counties to work at a prison as a correctional officer. The .23 benchmark includes only people from the 1970 census who listed their occupations as farmers, laborers, operatives, or service workers exclusive of private household. Dr. Rasmussen hypothesized that correctional officer applicants would most likely come from those occupational groups. The benchmark was also adjusted for income to include those groups whose median income was less than \$6000. in 1969. In 1970 the starting salary for a correctional officer was approximately \$5600. Dr. Rasmussen assumed that persons in occupational groups earning more than an annual salary of \$6000 would be unwilling to apply for a position as correctional officer and receive a lower salary. The last adjustment to the

benchmark was for education. Dr. Rasmussen included only those persons with twelve to fifteen years education because a high school diploma or a general education degree is a statutory requirement for correctional officers.

After considering these four factors, Dr. Rasmussen calculated the appropriate benchmark at .23 which means that blacks comprised 23% of his proxy labor pool. Dr. Rasmussen theorized that if the FDOC drew from the labor pool in a racially random way, then 23% of its new hires should be black.

Table 9 was the incumbent workforce because data on new hires is limited. When Dr. Rasmussen tested his proxy availability pool of blacks against incumbents, he found statistically significant underrepresentation of blacks in defendants' workforce.

TABLE 2 CORRECTIONAL OFFICER I STATE WORKFORCE ANALYSIS

Year	Actual: Total Black	Income Adjusted Benchmark Males Only ₂	Expected Number of Blacks	Number of Std. Dev.
1972	1066 55	.38	405.08	22.09
FY 1974-75	1648 202	.38	626.24	21.53
1977	2518 336	.38	956.84	25.48
1978	3119 461	.38	1185.22	26.72
1979	3232 523	.38	1228.16	25.55
1980	3488 618	.38	1325.44	24.68
1981	3415 631	.38	1297.70	23.50

TABLE 10 CORRECTIONAL OFFICER I STATE WORKFORCE ANALYSIS

Year	Actual ¹ Total Black	Register State Benchmark ²	Expected Number of Blacks	Number Std. Dev.
1972	1066 55	.31	330.46	18.24
FY 1974-75	1648 202	.31	510.88	16.45
1977	2518 336	.31	780.58	19.16
1978	3119 461	.31	966.89	19.59
1979	3232 523	.31	1001.92	18.21
1980	3488 618	.31	1081.28	16.96
1981	3415 631	.31	1058.65	15.82

*9 In Table 10 of Plaintiffs' Exhibit No. D-1 amended, Dr. Rasmussen tested his proxy applicant pool of 31% blacks against incumbent data. He found statistically significant underrepresentation of blacks in the Correctional Officer I position in defendants' workforce.

comprised of clerical workers. Dr. Rasmussen prepared tables on the clerical position using both the 1970 census and the register summaries.

Approximately 10% of defendants' workforce is

TABLE 1 ANALYSIS OF PRIMARY CLERICAL CLASSES USING REGISTER BENCHMARK¹

JOB TITLE	TOTAL ²	BLACK ²	REGISTER BENCHMARK ³	EXP BLK	NO. OF DEVS.
1978					
Clerk Typist II	204	34	.32	65.28	4.69

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Secretary II	213	18	.29	61.77	6.61
			1979		
Clerk Typist II	208	18	.29	60.32	6.47
			1980		
Clerk Typist II	295	79	.32	94.40	1.92
Secretary II	217	25	.29	62.93	5.67
			1981		
Clerk Typist II	316	92	.32	101.12	1.10
Secretary II	215	23	.29	62.35	5.91

***10** Using the statewide register summary, Dr. Rasmussen calculated the benchmark for the Clerk Typist II and Secretary II positions as .32 and .29 respectively. He compared this with incumbent data and found gross statistical disparities except for the Clerk Typist II position beginning in 1980. See Plaintiffs' Exhibit No. D-2, Table 1.

Dr. Alan A. Parrow, Director of Research at Hoffman Research Associates, Inc. in Chapel Hill, North Carolina, also testified at trial as an expert for plaintiffs. Dr. Parrow analyzed gross hiring data which were set forth in the pre-trial stipulation (Document 166 §§ F(10)-12)).

	Total	White	Black
FY 1974-75			
Applications	3,967	3092	861
Hires	1,579	1300	268

FY 1976-77

Applications	10,643	8389	1972
Hires	3,212	2660	445

FY 1977-78

Applications	9,517	7312	1963
Hires	2,405	1957	371

These data represent hiring for all positions with the FDOC and all applications whether eligible or ineligible. Using the chi-square method, Dr. Parrow found that blacks were hired less frequently than whites and the results were statistically significant. See Plaintiffs' Exhibit No. D-10.

Dr. Parrow also testified about discrimination in promotions. Plaintiffs' Exhibit No. D-6 summarizes the correctional officer line of progression for each year when data were available. Plaintiffs' Exhibit D-6 demonstrates that blacks decrease in representation as one moves from

lower level positions to higher level positions. Dr. Parrow used the Wilcoxon two-sample test to determine whether the result was statistically significant. In each case Dr. Parrow found statistical significance exceeding two standard deviations.

Dr. Parrow also analyzed the FDOC's imposition of discipline from the data contained in the pre-trial stipulation (Document 166 ¶¶ F(10)-(12)).

Total	White	Black	
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FY 1974-75			
Involuntary Terminations*	57	44	12
Voluntary Terminations*	480	415	64

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Dismissals	89	52	37
Suspensions	25	16	9
Written Reprimands	104	81	23
Oral Reprimands	181	141	40
FY 1976-77			
Involuntary Terminations*	198	138	58
Voluntary Terminations*	1889	1609	239
Dismissals*	199	140	57
Suspensions	52	36	16
Demotions	21	21	0
Written Reprimands	246	177	69
Oral Reprimands	462	385	77
FY 1977-78			

Involuntary Terminations*	115	74	37
Voluntary Terminations*	1626	1345	245
Dismissals*	165	109	51
Suspensions ¹	101	74	26
Demotions	37	34	3
Written Reprimands* ¹	230	180	49
Oral Reprimands* ²	333	261	69

*11 In Table 2, Dr. Rasmussen reached a .38 benchmark which reflects three factors: occupation, income, and gender. Dr. Rasmussen made the same assumptions concerning occupation and income as he did for Table 9. He also counted only males in this benchmark because he assumed most correctional officers were men. Considering these factors, Dr. Rasmussen's proxy population consisted of 38% blacks. When Dr. Rasmussen tested his availability pool of blacks against incumbents, he found an even greater underrepresentation of blacks as correctional officers in the FDOC's workforce.

Dr. Rasmussen also constructed a benchmark using data from defendants' register summaries. The Department of Administration maintains a register of persons who have completed applications for state employment and have stated a class of positions or classes of positions of employment for which they are eligible and have an interest in applying. The register covers a four-year period beginning approximately October 8, 1977, and ending approximately October 8, 1981.

The Department of Administration processes all applications of applicants who are required to pass an examination. During the period covered by this report, the Department of Administration administered the Correctional Officer I examination only to those persons who were interested in becoming eligible for Correctional Officer I positions and met the age and education requirements. Data concerning applicants who fail the examination are purged from the register at the end of six months.

Data concerning applicants are deleted from the register upon specific request of the applicant, upon the expiration of a four-year period, or upon the expiration of a six-month period for applicants who failed the written examination. Information concerning an applicant remains on the register even though the applicant may have been hired, promoted, or otherwise become unavailable for employment in a class of positions.

This register is the data base for the statewide register summary. Plaintiffs' Exhibit No. A-1. The data contained

in the statewide register summary is a report of the race and gender characteristics of all applicants who provided race and gender information. Only half of the applicants, however, provided this information.

The race and gender identifications of those persons are reported by class code number for each class of positions for which such persons requested that their eligibility be determined. Those persons who have applied for more than one class and for whom race and gender are available are reported in each class for which they have applied. Within each class, such persons are reported only once.

The register is also the data base for the county register summary. Plaintiffs' Exhibit No. A-2. This report contains data about applicants who provided not only race and gender information but also indicated one or more counties where the applicant was willing to work. Only 30% of the applicants provided this information. Those applicants who expressed a willingness to work in more than one county are reported in this report in each such county in each class of positions for which they have applied; therefore, there would be multiple counting of those applicants.

*12 Dr. Rasmussen's register state benchmark was .31. Plaintiffs' Exhibit No. 2 shows that 31% of the applicants who sought eligibility for a Correctional Officer I position and who provided race and gender information and specified a county were black.

Dr. Parrow used the chi-square statistical tool to analyze the data. Plaintiffs' Exhibit No. D-9. He found that the level of statistical significance exceeded two to three standard deviations. Dr. Parrow testified that blacks received proportionately harsher discipline than whites and that the probability of chance occurrence of these results was less than one in ten thousand.

C. DEFENDANTS' CHALLENGES TO PLAINTIFFS' STATISTICS

Defendants contend that plaintiffs' benchmarks derived from the 1970 census are seriously flawed. Defendants' labor economics expert, Charles T. Haworth, Professor of Economics at Florida State University, Tallahassee, Florida, testified at trial that plaintiffs' inclusion in the

benchmark of only service workers, laborers, operatives, and farmers excluded many potential applicants. Dr. Haworth found that most correctional officer applications came from clericals. Although Dr. Rasmussen stated that he excluded clericals because mostly females were clericals, Dr. Haworth testified that in 1970, 2470 of the clericals were male. Dr. Haworth also thought it was erroneous to exclude all of the managerial and administrative category. That category is a broad one and would include, for example, a nineteen year old managing a small convenience store. Instead of excluding the entire category, Dr. Haworth would use a money criteria to eliminate those in the managerial and administrative category earning over a certain annual salary. Dr. Haworth expressed a similar concern with plaintiffs' exclusion of the sales category. He again would include some in the sales category and eliminate highly paid salespersons. Dr. Haworth took issue with the fact that plaintiffs' benchmarks did not consider those leaving the military because several applicants and employees had prior military experience. A major flaw in plaintiffs' benchmarks, Dr. Haworth testified, was that unemployed applicants were not considered. In summary, Dr. Haworth stated that a more appropriate benchmark would include laborers, operatives, farmers, service workers exclusive of private household workers, clericals, part sales, and part managers and administrators with those leaving military service and the unemployed factored into the benchmark.

Although Dr. Haworth did not compute such a benchmark, he offered evidence to prove that the benchmark would be a lower percentage of blacks than plaintiffs' benchmarks. Defendants' Exhibit No. 7-N, Table 3A. The groups excluded by Dr. Rasmussen that Dr. Haworth would include all have a lower percentage of blacks (2.8 - 5.9%) than the percentage of blacks in the labor force (14.9%) or the proportionate share of blacks represented in plaintiffs' benchmarks (23 - 38%). Additionally, to test the validity of plaintiffs' assumptions concerning the exclusion of some occupational groups, Dr. Haworth reviewed a sample of applications for the period 1979-81. See Defendants' Exhibit No. 7-J. He found that approximately $\frac{1}{3}$ of the applicants came from groups that Dr. Rasmussen excluded from his benchmark.

*13 Dr. Haworth also disagreed with Dr. Rasmussen's removal of all persons in each category in which the median income of the category was more than \$6000. Dr. Haworth points out that this procedure may exclude as many as 50% of the persons in that category who are in fact earning less than the median income. Dr. Haworth also sampled applications, Defendants' Exhibit No. 7-E,

and testified that persons with incomes above what correctional officers earn did apply for correctional officer positions. On cross-examination, however, Dr. Haworth reviewed the underlying data for the sample, Plaintiffs' Exhibit Nos. I-600-603, and found that only two of twenty-six earned higher salaries.

Dr. Haworth also took exception to plaintiffs' exclusion of some occupational categories that are primarily composed of females. Dr. Haworth reasoned that it would be more appropriate to weight the benchmark as to the relative proportion of females to males within these census categories than to totally exclude the groups.

Dr. Haworth testified that, in his opinion, the register summaries should not be used because they are unreliable. His first criticism is that the statewide summary and the county summary only represent 50% and 30% respectively of persons on the register. Dr. Haworth stated that the sample is not random because some people chose not to designate their race. He hypothesized that it would be likely for white persons not to state their race when the employer has an affirmative action plan. Dr. Haworth also stated that the summaries count incidences of eligibility not people. Furthermore, persons who have failed the written examination and are thereby ineligible nevertheless remain on the register. Defendants conclude that the summaries overrepresent black eligibility.

Dr. Haworth opined that a major flaw in Dr. Rasmussen's tables was that he compared his benchmarks with incumbent data instead of actual hiring data. Defendants admit that actual hiring data are sparse. The record does show, however, that 15.2% of the new hires for correctional officers in fiscal year 1977-78 were black. Plaintiff's Exhibit No. A-11. Twenty percent of persons hired as correctional officers in 1979 were black. Defendants' Exhibit No. 11-C. Plaintiffs' incumbent data, Plaintiffs' Exhibit No. D-1 amended, show only 16.2% blacks. In 1980, 24.5% of the correctional officers hired were black. Defendants' Exhibit No. 11-D. Plaintiffs' incumbent data, Plaintiffs' Exhibit No. D-1 amended, show only 17.7% blacks. Defendants' workforce in 1972 was 5% black. This rate has increased to over 18% in 1982. The incumbent data, therefore, understate the rate that blacks have been hired.

*14 Dr. Haworth testified that Dr. Parrow's calculations with the gross statistics had little value. The analysis of the gross hiring statistics was weak because the raw data did not account for whether the applicants were qualified.

The statistics were for the entire FDOC workforce and included a wide variety of occupations including doctors and other professionals where the black availability rate is low.

Dr. Haworth also discounted the significance of the disciplinary action analysis. Dr. Haworth testified that it is proper to compare what should have happened with what actually happened. The gross statistics did not account for the type of offense or frequency of disciplinary problems with the employee.

Dr. Haworth also testified that Dr. Parrow's analysis on promotions had little value because it failed to consider the fact that fewer blacks than whites are eligible for promotions because of insufficient time on the job or comparable experience.

CONCLUSIONS OF LAW

I. STATISTICAL CASE

Plaintiffs have used both disparate impact and disparate treatment theories for their case with the primary thrust directed toward the disparate impact of subjective decision-making. Defendants argue that except for the challenge to the written examination and high school diploma or equivalent requirement, the claims are disparate treatment claims. Plaintiffs do not assert that the FDOC applied distinct, facially neutral standards to its hiring, promotion, and disciplinary decisions. Plaintiffs, to the contrary, contend that the lack of objective criteria permits defendants to subjectively discriminate against blacks. Generally this subjective discrimination is analyzed under the disparate treatment theory. *Payne v. Travenol Laboratories, Inc.*, 673 F.2d 798, 816-17, 28 FEP Cases 1212 (5th Cir. 1982); *contra*: *Rowe v. Cleveland Pneumatic Company*, 690 F.2d 88, 29 FEP Cases 1682 (6th Cir. 1982). This court finds, however, that plaintiffs' statistical evidence is unpersuasive under either theory.

This court is of the view that because plaintiffs' statistics are so flawed, plaintiffs have failed to establish a prima

facie case. The court agrees with Dr. Haworth's attack on the 1970 census benchmarks. The major flaw is the exclusion of many occupational groups from which defendants showed several correctional officers were previously employed. This factor, in addition to the others mentioned by Dr. Haworth, casts grave doubt upon the credibility and reliability of plaintiffs' census benchmarks.

This court also finds that plaintiffs' register summary benchmarks are similarly unreliable. The register summaries, as Dr. Haworth pointed out, are non-random samples which contain information about both eligible and ineligible persons.

Finally, the court takes issue with the fact that Dr. Rasmussen's tables compare these suspect benchmarks with incumbent data. This practice produces misleading results, especially when the employer has made rapid strides as the FDOC has in going from 5% to over 18% blacks in the workforce in ten years.

***15** This Court is of the view that Dr. Haworth also successfully discredited Dr. Parrow's statistics. The analyses of the gross data for hiring, discipline, and promotions failed to account for many variables, such as: whether the applicant was eligible, the type of behavior being disciplined, or the qualifications of the employee seeking a promotion. The analyses of the raw data are deficient for failing to recognize that several factors operate simultaneously to influence decisions of hiring, discipline, and promotions. Thus, "the findings of statistically significant disparities derived therefrom will not permit an inference of discrimination." *Pegues v. Mississippi State Employment Service*, 699 F.2d 760, 770, 31 FEP Cases 257 (5th Cir. 1983).

Plaintiffs have argued that defendants had the burden of disproving plaintiffs' statistics with affirmative evidence, such as complete studies of their own. Defendants did attempt to put forth some of their own statistical studies, but the thrust of defendants' attack was to discredit plaintiffs' statistical evidence as unreliable. This court is of the view that defendants sufficiently proved that plaintiffs' statistics had little probative value. Plaintiffs, therefore, never established a prima facie case. See *Equal Employment Opportunity Commission v. Datapoint Corporation*, 570 F.2d 1264, 17 FEP Cases 281 (5th Cir. 1978); *Cooper v. University of Texas at Dallas*, 482 F.Supp. 187, 22 FEP Cases 1064 (N.D. Tex. 1979), *aff'd*, 648 F.2d 1039, 26 FEP Cases 139 (5th Cir. 1981); and *Dickerson v. United States Steel Corporation*, 472

F.Supp. 1304, 20 FEP Cases 371 (E.D. Pa. 1978).

II. ANECDOTAL TESTIMONY

Plaintiffs sought to bolster their discrimination claims through anecdotal testimony. Plaintiffs called approximately twenty witnesses who testified to individual acts of discrimination primarily in promotions, discipline, and job assignments. This court is of the view that plaintiffs still have failed to prove a prima facie case.

Some of plaintiffs' witnesses testified that they were denied promotions based on their race. Defendants, however, rebutted most of the testimony by demonstrating the following nondiscriminatory reasons for the failure to promote: employee ineligible for position sought (Whitfield Jenkins and Wilmatene Edwards) and employee's disciplinary record (Lester Kinsler and Zondra Harris). Other witnesses testified that they were discriminatively disciplined. Again, defendants advanced nondiscriminatory reasons such as failure to assist (William Turpin), taking money from an inmate (Walter Gray), and breach of security (William McCullough).

Testimony regarding discriminatory job assignments came from primarily eight witnesses representing three institutions (Florida State Prison: Larry Sullivan, William Turpin, and Mark Bevins; Glades Correctional Institution: Gwen Joseph, Virgilee Graham, and Bobby Ray Hall; Apalachee Correctional Institution: Sam Jones and Kenneth Gibson). Defendants failed to adequately rebut the testimony on the job assignment claims. Plaintiffs, however, presented no statistics on this issue and although the testimony was convincing, statements from eight people about three institutions is not sufficient to prove a claim of classwide discrimination against the FDOC.

III. INDIVIDUAL CLAIMS OF NAMED PLAINTIFFS

A. *PENERS L. GRIFFIN*

*16 Plaintiff Peners L. Griffin has filed an individual claim against the FDOC alleging discriminatory employment practices. Griffin has complained that he has not received a promotion during his eleven years of employment with the FDOC. In 1973 Griffin applied for a promotion as a Correctional Counselor II at the Tallahassee Community Correctional Center. He did not receive this promotion; however, evidence was not presented about the person who was promoted. In 1974 plaintiff Griffin again applied for a promotion as a Correctional Counselor II. David Arthur, a white male, was selected. Mr. Arthur was an ex-offender and the FDOC had an affirmative action policy for ex-offenders in 1974.

Plaintiff Griffin has unsuccessfully applied for several other promotions. Richard Roberts, a black male, was a Chief Correctional Counselor at Tallahassee Community Center. He testified that on several occasions he had considered Griffin for promotion opportunities but had not recommended him because of Griffin's general uncooperative attitude and poor employment record.

John Holland, a white Chief Correctional Counselor at Tallahassee Community Correctional Center, has supervisory duties over plaintiff Griffin. Mr. Holland testified that he would not recommend Griffin for promotion because he considers Griffin to be an unreliable, uncooperative, and hostile employee.

Analyzing plaintiff Griffin's promotion claims under a variant form of the standard set forth in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 5 FEP Cases 965 (1973), this court finds that Griffin cannot prevail. The burden of proof is that plaintiff must show (1) that he belongs to a racial minority; (2) that he applied and was qualified for the promotion he sought; (3) that, despite his qualifications, he was rejected; and (4) that the employer selected an individual from a nonprotected class. Then the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employee's rejection. Plaintiff thereafter has an opportunity to show that the employer's stated reason for the employer's rejection was in fact a pretext. *McDonnell*, 411 U.S. at 802-04.

Plaintiff Griffin has shown that he belongs to a racial minority. His second amended complaint lists twelve promotions for which he applied and the court has detected at least one other position in his personnel file

(Plaintiffs' Exhibit No. I-50 (Grif)). Although Griffin was not always qualified for the position (e.g. Inmate Classification Specialist in September 1974), he has proved that he was qualified for some of the positions (Correctional Counselor II). This court has no knowledge whether Griffin was qualified for the other positions, but for the sake of this analysis will assume that he was qualified. Despite Griffin's qualifications, he has never been promoted. Griffin has proved that the FDOC selected a person in a non-protected class in some but not all of the cases. For instance, Griffin applied for a Correctional Counselor II position in January 1973, but plaintiff did not prove that the FDOC selected an individual in a non-protected class. Plaintiff did prove that in January 1974, he again applied for a Correctional Counselor II position and David Arthur, a white male, was selected. With the above assumptions in mind, this court finds that Griffin did prove a *prima facie* case.

*17 Defendants did prove that in January 1974, they selected an ex-offender as Correctional Counselor II in keeping with their affirmative action policy for ex-offenders. Plaintiff never demonstrated that this reason was pretextual.

Griffin unsuccessfully applied for approximately ten promotions after December 17, 1974. Defendants advanced the reason that Griffin was not promoted because of his poor work record and attitude. This court finds that this reason is not a pretext. Although Griffin had been a satisfactory employee, his job performance was poor beginning in November 1974. His unsatisfactory record is evidenced by his performance evaluation dated December 17, 1974 (Plaintiffs' Exhibit No. I-50 (Grif)). This court has reviewed Griffin's personnel file excerpts and concludes that defendants have articulated a legitimate, nondiscriminatory reason for their failure to promote Griffin and plaintiffs have not shown that the stated reason is merely a pretext.

Griffin also advances a claim of discriminatory or retaliatory discipline. On or about December 17, 1974, Wayne Scott, Chief Correctional Counselor at the Tallahassee Center, fired plaintiff Griffin. The following day plaintiff discussed this matter with Wayne Scott, Jerry Hicks, the Assistant Superintendent, and Robert Martin, the Personnel Manager. Assistant Superintendent Hicks reinstated plaintiff because the FDOC's termination procedures were not followed.

By letter dated January 27, 1975, plaintiff Griffin was informed that he was dismissed effective at the close of

business on January 24, 1975. The letter stated seven reasons for his termination: (1) disobedience of order not to leave the Tallahassee Center to search for a resident; (2) failure to comply with instruction to clean the Tallahassee Center; (3) inability to complete a routine form for approval for community release and furlough; (4) unauthorized personal use of official state vehicle; (5) refusal to participate in a disciplinary committee hearing; (6) use of a vehicle entrusted to a resident; and (7) insubordinate and deceitful behavior. Plaintiff successfully appealed his 1975 termination to the Career Service Commission which found that the FDOC failed to offer competent, substantial evidence to support Griffin's dismissal. Plaintiff Griffin was reinstated with back pay.

On January 24, 1975, the Equal Employment Opportunity Program Office received a complaint from Griffin which detailed both his December 1974 and January 1975 dismissals. Donald M. Finley, a black male, investigated the complaint and found that discrimination was not a factor in Griffin's termination. See Plaintiffs' Exhibit No. I-50 (Grif), letter dated February 20, 1975, from Donald M. Finley. An Equal Employment Opportunity Program Office investigative report was issued on or about April 14, 1975. In part, the report states: "The above statistics tend to reflect that disciplinary actions have not been based upon race, but more likely, upon violations of regulations.... [T]he Equal Employment Opportunity Office finds no reasonable cause to believe that [Griffin] was discriminated against by [the FDOC] because of his race." This court finds that plaintiff's terminations were not racially discriminatory.

*18 Griffin has been disciplined several times since his reinstatement. For instance, Griffin received a written reprimand for failing to pay for meal tickets. Griffin alleges that his white coworkers were not similarly disciplined. John Holland, Chief Correctional Counselor at the Tallahassee Center, testified that four whites and two blacks failed to pay for meal tickets. Each of the six individuals was placed on probation for six months, at which time the letters of reprimand would be pulled from their files. Griffin and Chalecki, a white officer, again violated the meal ticket policy and their reprimands remained in their respective files.

Griffin often complained to his superiors that he would be disciplined when white officers would not be disciplined. Holland testified that he asked Griffin for the names of these other people, but Griffin has never provided this information. Plaintiff has not proven that he was treated differently because of his race.

B. HENRY DEJERINETT

In 1978, Henry Dejerinett applied for a position with the FDOC as a Property Manager III. The Department of Administration evaluated him, and Dejerinett received a score of 100 VP. James Vickers, a white male, interviewed Dejerinett. Kenneth Hayes, a white male, was selected. Mr. Vickers testified that he thought Mr. Hayes was more qualified than plaintiff Dejerinett because Mr. Hayes had experience in lease management, control, maintenance, and management of motor vehicles, and records management. Mr. Dejerinett testified that he did have experience in the areas of lease management and records management but Mr. Vickers never asked him about it during the interview. Dejerinett did not assert that he was prevented from discussing his prior experience or in any manner given an unfair interview.

In 1980, Dejerinett applied again for a Property Manager III position with the FDOC. James Vickers and two other white supervisory employees interviewed Dejerinett. Gloria Thomas, a white female, was selected; however, Mr. Vickers ranked Dejerinett higher than the other two panel members.

Plaintiff has proven that he is a member of a protected class and that he applied and was qualified for the position. White persons were selected for the vacancies. This court finds that James Vickers did not select Dejerinett because he sincerely believed Kenneth Hayes to be the best qualified applicant. Mr. Vicker's reason was legitimate and nondiscriminatory. At the worst, Mr. Vickers may be faulted for not being the best interviewer, but not for hiring in a racially discriminatory way.

Defendants have also articulated and proven a legitimate, nondiscriminatory reason for not hiring Dejerinett for the 1980 vacancy. James Vickers believed that Gloria Thomas, who had prior experience as a business manager at a state-operated facility for delinquent females, was more qualified than plaintiff Dejerinett. Dejerinett's individual claim for failure to hire must therefore fail.

PENDING MATTERS

I. HIGH SCHOOL DIPLOMA OR EQUIVALENT
REQUIREMENT

***19** Plaintiffs have challenged the statutory requirement that a correctional officer must be a high school graduate or its equivalent. See Fla. Stat. § 943.13 (1981). This issue was not tried during the trial. Instead, the parties took depositions (Documents 200-209) and then briefed the issue (Document 210, pp. 114-18; Document 211, pp. 28-53; and Document 21, pp. 18-25). The court has the issue of the validity of the high school diploma or equivalent requirement under advisement and will enter a separate order on this issue at a later date.

II. RELIEF

Plaintiffs have prevailed on one issue. This court granted summary judgment and found that the correctional officer written examination utilized by defendants in screening applicants for correctional officer positions had a disparate impact upon class members which had not been justified by business necessity (Document 157). The parties, through their counsel, have represented to the court that they will make a good faith effort to settle any issue of relief.

III. GRIFFIN'S INDIVIDUAL CLAIMS

Plaintiff Griffin has filed two pendent claims alleging lack of due process and malicious prosecution. (Second Amended Complaint, Counts II and III). The parties shall confer and then file a status report informing the court when the remainder of this case will be ready for trial.

An order to give effect to this opinion will be entered this date.

ORDER

In accord with a Memorandum Opinion of this date, it is ORDERED:

1. This action is hereby finally certified as a class action with Peners L. Griffin, Henry L. Dejerinett, and Alvin Smith as named plaintiffs and intervenor representing a class of all past, present, and potential black employees of the Florida Department of Corrections. The only employees barred from the class are those who left the employ of the Florida Department of Corrections more than 300 days before the filing of Griffin's 1975 charge.

2. Judgment is for the defendants on the class claim that since March 24, 1972, the Florida Department of Corrections has discriminated and continues to discriminate in its policies and practices against past, present, and potential black employees.

3. Judgment is for the defendants on plaintiff Peners L. Griffin's individual claim of racially discriminatory employment practices.

4. Judgment is for the defendants on plaintiff Henry L. Dejerinett's individual claim of racially discriminatory hiring practices.

5. Judgment is for the plaintiffs on the issue that the correctional officer written examination previously utilized by defendants has an adverse impact on class members and is not justified by business necessity.

6. The parties shall meet in a good faith effort to settle the form of relief for the court's finding of liability regarding the correctional officer written examination. The parties shall report to the court no later than thirty working days from the date of this order whether they were able to settle this issue or if not, their suggestion as to the best way to proceed on this issue.

***20** 7. The parties shall file a status report no later than thirty working days hence informing the court when Counts II and III will be ready for trial.

8. The parties will likewise advise the court within thirty working days of this order whether they have been able to resolve the issue and amount of attorney's fees.

All Citations

9. The Clerk of the Court will enter judgment accordingly.

Not Reported in F.Supp., 1983 WL 30293, 44 Fair Empl.Prac.Cas. (BNA) 916

DONE and ORDERED this 25th day of August, 1983.

Footnotes

1 Incumbents from DOC documents entitled:

6/30/ Division of Corrections, incumbents by job class (Plaintiffs' Exhibit A-3).
72

FY 74-75 DOR Job Classification Chart (Plaintiffs' Exhibit A-4).

6/30/ DOR Job Classification Chart (Plaintiffs' Exhibit A-5).
77

1978- Minority and Female Staffing Report (Plaintiffs' Exhibits A-6, 7, 8.9), New hires from Plaintiffs' Exhibit A-11.
1981

2 Includes Service workers exclusive of private household, Farmers, all Laborers and all Operative, earning less than \$6000 in 1969, and having completed 12 to 15 years of education. Sources: 1970 Census of the Population, Table 175 and 176.

This benchmark includes occupational groups throughout the State, exclusive of Bay, Duval, Escambia, Franklin, Gulf, Hamilton, Holmes, Jefferson, Madison, Nassau, Okaloosa, Santa Rosa, Taylor, Walton, Washington, St. Johns, Leon and Wakulla counties.

1 Incumbents from DOC documents entitled:

6/30/ Division of Corrections, incumbents by class (Plaintiffs' Exhibit A-3).
72

FY 74-75 DOR Job Classification Chart (Plaintiffs' Exhibit A-4)

6/30/ DOR Job Classification Chart (Plaintiffs' Exhibit A-5).

77

1978- Minority and Female Staffing Report (Plaintiffs Exhibits A-6, 7, 8, 9).

1981

2 Includes service workers exclusive of private household, all laborers, all operatives and farmers, earning less than \$6000 in 1969. Source: 1970 Census of the Population, Table 175.

1 Incumbents from DOC documents entitled:

6/30/ Division of Corrections, incumbents by job class (Plaintiffs' Exhibit A-3).

72

FY 74-75 DOR Job Classification Chart (Plaintiffs' Exhibit A-4).

6/30/ DOR Job Classification Chart (Plaintiffs' Exhibit A-5).

77

1978- Minority and Female Staffing Report (Plaintiffs' Exhibit A-6, 7, 8, 9).

1981

2 The benchmark is derived from Plaintiffs' Exhibit A-2, and is the proportion of black eligibles among all eligibles.

In Table 10 of Plaintiffs' Exhibit No. D-1 amended, Dr. Rasmussen tested his proxy applicant pool of 31% blacks against incumbent data. He found statistically significant underrepresentation of blacks in the Correctional Officer I position in defendants' workforce.

Appr 10% of defendants' workforce is comprised of clerical workers. Dr. Rasmussen prepared tables on the clerical position using both the 1970 census and the register summaries.
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1 Clerk Typist II and Secretaries II comprise between 38% - 56% of the clerical workforce during all periods between 1972 - 1981, and 41% to 56% between 1978 - 1981.

- 2 Number of total and black incumbents is taken from DOC Minority and Female Staffing Reports 1978-1981. (Plaintiffs' Exhibits A-6, 7, 8, 9).
 - 3 The register benchmark is the unduplicated total of all blacks eligible eligible for that position. (Plaintiffs' Exhibit A-1).
 - * The Black and White columns do not add up to the Total.
 - 1 Information for Dade Correctional Institution is unknown and not included.
 - 2 Information for Dade, Desota, and Avon Park Correctional Institutions is unknown and is not included.
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