

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA,
Plaintiff(s),

v.

JEFFERSON COUNTY, ET AL.,
Defendant(s).

No. CV-75-P-666-S

ENTERED

APR 24 1996

ORDER

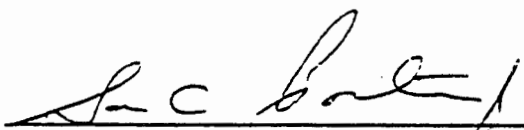
After provisionally approving modifications to the 1981 Consent Decrees on December 19, 1995, this court held a fairness hearing on February 28, 1996. At the hearing it was determined that the modifications should be finally approved.

The December 19, 1995 Order Modifying the Jefferson County Personnel Board Decree is hereby APPROVED with the following additional change. Paragraph 9 should read as follows:

Paragraphs, 4, 6, 7, 20b, 34, 35, 47-C and 55 of the Personnel Board's August 1, 1981 Consent Decree as well as the District Court's Orders of May 20, 1991, and September 25, 1991, are hereby vacated. The District Court's Order of January 1, 1977, remains in effect and is superseded only to the extent that its terms are inconsistent with this Order.

The December 19, 1995 Order Modifying the City of Birmingham Consent Decree is hereby APPROVED with the following additional change. The dates provided in Paragraph 27 for the submission of the City's second semi-annual report shall be altered to comport with the schedule provided in Paragraph 26.

Dated: April 23, 1996


Chief Judge Sam C. Pointer, Jr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

95 DEC 19 PM
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA,
Plaintiff(s);

vs.

No. CV75-P-00666-S

JEFFERSON COUNTY, ET AL.,
Defendant(s).

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ORDER

The two attached orders, the Order Modifying the Jefferson County Personnel Board Consent Decree and the Order Modifying the City of Birmingham Consent Decree, and the notive provision attached as Appendix A are hereby PROVISIONALLY APPROVED AND PROVISIONALLY EFFECTIVE as of this day, December 19, 1995. The effective dates contained therein shall begin running as of the date of this order.

Dated: December 19, 1995


Chief Judge Sam C. Pointer, Jr.

Service List:

Mr. James S. Angus
Ms. Barbara E. Thawley
Ms. Caryl P. Privett
Ms. Karin Dell'Antonia
Mr. Rowan D. Wilson
Mr. Thomas D. Barr
Ms. Leslie Proll
Ms. Susan W. Reeves
Mr. Stephen L. Spitz
Mr. O. William Adams, III
Mr. Edwin A. Strickland
Mr. Charles S. Wagner
Mr. Michael G. Graffeo
Ms. Laveeda Morgan Battle
Mr. Thomas L. Stewart
Mr. James P. Alexander
Mr. James K. Baker
Mr. J. Terrell McElheny
Mr. Raymond P. Fitzpatrick, Jr.

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APPENDIX A

I. NOTICE OF PROPOSED ORDERS MODIFYING CONSENT DECREES

YOU ARE HEREBY NOTIFIED THAT A HEARING HAS BEEN SCHEDULED FOR WEDNESDAY, FEBRUARY 28, 1996 AT 9AM BEFORE THE HONORABLE SAM C. POINTER, JR., CHIEF JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, IN COURTROOM 8, UNITED STATES COURTHOUSE, 1739 NORTH 5TH AVENUE, BIRMINGHAM, ALABAMA, FOR CONSIDERATION OF PROPOSED MODIFICATIONS TO THE CITY OF BIRMINGHAM AND JEFFERSON COUNTY PERSONNEL BOARD CONSENT DECREES.

In 1981, this Court entered orders approving consent decrees in the following consolidated employment discrimination cases: Ensley Branch of the N.A.A.C.P., et al. v. City of Birmingham, et al., (C.A. No. 74-Z-12-S); John W. Martin, et al. v. City of Birmingham, et al., (C.A. No. 74-Z-17-S) and United States v. Jefferson County, et al., (C.A. No. 75-P-0666-S). One of the Consent Decrees is between each of the plaintiffs in the above cases and the City of Birmingham. The other Consent Decree is between these same plaintiffs and the Jefferson County Personnel Board ("the Personnel Board").

In these cases the plaintiffs have alleged that the City of Birmingham and the Personnel Board engaged in employment practices that unlawfully discriminated against blacks and women on the basis of their race and sex. In 1981 Consent Decrees were agreed to by the parties that settled the allegations raised by the plaintiffs. The parties have agreed that the 1981 consent decrees with both the City of Birmingham and the Personnel Board should be modified in some respects.

One proposed Order would modify the 1981 Personnel Board Consent Decree in the following respects:

- (1) provide that the long-term objective of the parties is to ensure that any unlawful barriers to employment, assignment and promotion that have existed for blacks and women are removed and that any present effects of past discrimination by the Personnel Board, or by the jurisdictions served by the Personnel Board, are fully remedied and that equal employment opportunities are available to all persons, regardless of race or sex, as required by Title VII of the Civil Rights Act of 1964, as amended;
- (2) provide for increased recruitment efforts by the Personnel Board;
- (3) require that the Personnel Board develop and implement nondiscriminatory selection procedures for hiring and promotion in the classified service according to a four-year timetable;
- (4) eliminate provisions of the 1981 Board Consent Decree and subsequent orders that required that in certain job classifications the Board was required to certify certain percentages of black and/or female applicants to jurisdictions served by the Board;

- (5) pending the development of selection procedures that either have no adverse impact against blacks or women or are demonstrated to be job-related for the position in question and consistent with business necessity, the modification order would require the Personnel Board to certify black and or female individuals for appointment to vacancies in the classified service in proportion to the representation of blacks and women in the qualified applicant pool for that job classification. Once nondiscriminatory selection procedures for that job classification are developed, selective certification for that job classification will end, unless the Court orders selective certification to continue on the grounds that vestiges of earlier unlawful employment discrimination against blacks or women continues to exist in that job classification; and
- (6) require the Personnel Board to file semi-annual compliance reports with the Court describing its efforts to meet with the timetable set by the proposed Order and to otherwise comply with the requirements of the Order.

A separate proposed Order would also provide for similar modifications to the 1981 City Consent Decree. The proposed Order modifying the City Consent Decree would:

- (1) replace the original long-term goal of attaining workforce parity in each job classification with the representation of blacks and women in the civilian labor force of Jefferson County with the long-term goal of ensuring that any unlawful barriers to employment, assignment and promotion with the City that have existed for blacks and women are removed and that any present effects of past discrimination by the Personnel Board, or by the City, are fully remedied and that equal employment opportunities with the City are available to all persons, regardless of race or sex, as required by Title VII of the Civil Rights Act of 1964, as amended;
- (2) require the City of Birmingham to cooperate with the Personnel Board in the Board's efforts to develop nondiscriminatory selection procedures and for the City to use selection procedures that either have no adverse impact on the basis of race and sex or are demonstrated to be job-related for the job classification in question and consistent with business necessity;
- (3) require the City to establish an interim selection plan designed to counteract identified adverse impact in job classifications in which the City administers a selection procedure that has adverse impact on blacks or women. The interim plan may include race or gender-conscious appointment goals based on the representation of blacks and/or females in the qualified applicant pool only where a race or gender neutral remedy would not adequately counteract or eliminate the identified adverse impact and the plan is specifically approved by the District Court. These plans would be temporary measures used only until the City establishes that its present or revised selection procedure for that job classification either have no adverse impact on blacks and women or are demonstrated to be job-related for the job classification and consistent with business necessity; and
- (4) eliminate all temporary appointment goals for blacks and women established by the 1981 City Consent Decree or subsequent orders.

On December 19, 1995 the District Court entered an order granting provisional approval of both proposed Orders Modifying the 1981 Consent Decrees subject to further hearings. In that order the Court withheld final approval of the Orders Modifying the 1981 Consent Decrees until after hearing any objections which may be filed to them.

II. NOTICE OF RIGHT TO FILE OBJECTIONS

This notice is directed to all persons who have an interest that may be affected by the 1981 Jefferson County Personnel Board or City of Birmingham Consent Decrees or by the proposed Orders modifying those Consent Decrees. Copies of the 1981 Consent Decrees, the proposed Orders modifying the 1981 Consent Decrees and the file in this proceeding are located in the Office of the Clerk of the United States District Court for the Northern District of Alabama in Birmingham, Alabama. These documents may be examined in the Clerk's Office during normal working hours from Monday to Friday. The address of the Clerk's Office is:

Office of the Clerk
United States District Court
Northern District of Alabama
Room 140
Hugo L. Black United States Courthouse
1729 5th Avenue North
Birmingham, Alabama 35203

Any person who wishes to register an objection to either proposed Order to modify the Consent Decrees must file such an objection in writing with the Clerk of the Court by 5:00 p.m., February 16, 1996. Objections filed after this date will not be considered by the Court in determining whether to grant final approval to the proposed Orders Modifying the Consent Decrees.

On February 28, 1996, at 9 am, the District Court will hold a fairness hearing at which it will consider any timely filed objections to the proposed Orders Modifying the Consent Decrees with the City of Birmingham and the Jefferson County Personnel Board. Individual objectors may appear at that hearing with or without the assistance of counsel. HOWEVER, NO SUCH PERSON SHALL BE HEARD AT THE HEARING UNLESS HE OR SHE HAS FILED A TIMELY OBJECTION WITH THE CLERK OF THE COURT.

If you have any questions concerning the modification proceedings or this notice, you may contact the following counsel for class representatives:

Robert D. Joffe, Esq.
Rowan Wilson, Esq.
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019
(212) 474-1000

Counsel for the class of present and future black and female employees of and present and future black and female applicants for employment with the City of Birmingham.

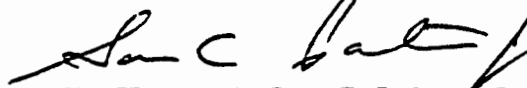
Raymond P. Fitzpatrick, Jr., Esq.
Whiteside & Fitzpatrick
Sixth Floor - Farley Building
1929 Third Avenue, North
Birmingham, Alabama 35203
(205) 320-0555

Counsel for the class of present and future male, non-black employees of and present and future male, non-black applicants for employment with the City of Birmingham.

Barbara E. Thawley
Employment Litigation Section -
Civil Rights Division
United States Department of Justice
Post Office Box 65968
Washington, D.C. 20035-5968
(202) 514-3852

Counsel for the United States.

By order of the United States District Court for the Northern District of Alabama.


The Honorable Sam C. Pointer, Jr.
United States District Judge

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
Southern Division**

95 DEC 19 PM 3:30
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA,)
Plaintiff,)

v.)

Civil Action No. 75-P-0666-S

JEFFERSON COUNTY, et al.,)
Defendants.)

DEC 20 1995

JOHN W. MARTIN, et al.,)
Plaintiffs,)

v.)

Civil Action No. 74-Z-17-S

CITY OF BIRMINGHAM, et al.,)
Defendants.)

ENSLEY BRANCH OF THE N.A.A.C.P., et al.,)
Plaintiffs,)

v.)

Civil Action No. 74-Z-12-S

GEORGE SEIBELS, et al.,)
Defendants.)

**ORDER MODIFYING THE JEFFERSON COUNTY
PERSONNEL BOARD CONSENT DECREE**

I. INTRODUCTION

1. The Jefferson County Personnel Board Consent Decree entered by the Court in August 1981 in this action resolved all issues raised against the Jefferson County, Alabama Personnel Board (hereinafter "the Personnel Board") by the complaints of the Martin plaintiffs, the Ensley Branch of the N.A.A.C.P. and the United States in this case. The passage of time, changes in the workforces of the jurisdictions served by the Personnel Board, including the City of Birmingham (hereinafter "the City"), changes in the

entry-level and promotional testing and certification procedures used by the Personnel Board, and the State of Alabama's 1994 amendment to Section 18 of Legislative Act No. 248 (1945 Legislative Session) to provide for additional names to be certified for vacancies in the classified service, have required that the Court and the parties reevaluate and modify the provisions of that Decree.

2. In 1990, the United States and the Wilks Intervenors filed motions for modification of both the Personnel Board and the City Consent Decrees. In 1991, after a hearing, the District Court issued an order dated May 20, 1991, granting those motions in part and denying them in part. Upon motions of the United States, the Martin and Bryant Plaintiffs and the City, the District Court amended its May 20, 1991, Modification Order by its September 25, 1991, Order. Both the United States and the Wilks Intervenors appealed the District Court's partial denial of their motions to modify.

3. In a revised opinion and order issued August 25, 1994, upon rehearing, the Eleventh Circuit affirmed in part, reversed in part and vacated in part this Court's May 20, 1991, and September 25, 1991, modification orders. Ensley Branch N.A.A.C.P. v. Seibels, 31 F.3d 1548 (11th Cir. 1994). The Eleventh Circuit concluded that the City Decree's long term goals of work-force parity with civilian labor force representation in all City job classifications were "fundamentally flawed" and directed that the City and Personnel Board decrees be rewritten "to reflect that their true long-term purpose is to remedy past and present discrimination, not to achieve work-force parity." 31 F.3d at 1570-71.

4. In its 1994 decision the Eleventh Circuit directed that both the Personnel Board and the City be required forthwith to develop race-neutral and gender-neutral selection procedures. Further, as the Court stated with regard to race-conscious decision making, "until valid job-selection procedures are in place, some use of racial preferences is necessary to counteract the on-going effects of racially discriminatory testing." 31 F.3d at 1575.

5. In April 1994, the State of Alabama amended State law by enacting Legislative Act No. 94-564, an amendment to Section 18 of Legislative Act No. 248 (1945 Legislative Session), to allow the Personnel Board to certify "to the appointing authority the ranking eligibles, correlating to the 10 highest test scores from the appropriate register and, if more than one vacancy is to be filled, the ranking names of the next highest test score for each available vacancy, or all of the names on the register if there were fewer than 10." This new rule, commonly called "the Rule of Ten", replaced the former "Rule of Three." Legislative Act No. 94-564 further provides that: "Notwithstanding any other provision of this act, when one or more vacancies in the entry-level position of police officer or firefighter is to be filled by appointment, the appointing authority may elect to have the director certify to the appointing authority the names of five different eligibles for each vacancy."

6. In recognition of these facts and of the mandate of the Eleventh Circuit, the 1981 Personnel Board Consent Decree is hereby amended as set out in this Order. The original provisions of the Personnel Board's 1981 Consent Decree remain in force unless specifically amended herein.

7. The long term objective of the parties through the Decrees and this Order is to ensure that any and all alleged unlawful barriers to employment, assignment, and promotion that have existed for blacks and women are removed, that any present effects of alleged past employment discrimination by the Personnel Board are fully remedied, and that equal employment opportunities are available to all persons, regardless of race or sex, as required by Title VII of the Civil Rights Act of 1964, as amended.

8. It shall be the Personnel Board's duty to use its best efforts to develop and implement lawful non-discriminatory selection procedures for hiring and promotion within the next four years.

9. Paragraphs 4, 6, 7, 20b, 23, 24, 25, 26, 27, 28, 34, 35, 47-C and 55 of the Personnel Board's August 1981 Consent Decree, as well as the District Court's Orders of May 20, 1991, and September 25,

1991, are hereby vacated. The District Court's Order of January 10, 1977, remains in effect and is superseded only to the extent that its terms are inconsistent with this Order.

II. RECRUITMENT

10. This paragraph supplements but does not replace the recruitment requirements of paragraphs 29-31 of the Personnel Board's 1981 Consent Decree. The Personnel Board shall maintain a recruitment program designed to inform interested persons of job opportunities with the Personnel Board and with the jurisdictions served by the Personnel Board. The recruitment program shall include: (1) providing copies of vacancy announcements to the jurisdictions served by the Personnel Board at least two weeks prior to the announcement's closing date; and (2) maintaining contacts with area high schools, technical and vocational schools, colleges, and organizations to inform them of employment opportunities with the Personnel Board and with the jurisdictions served by the Personnel Board. For job classifications open to outside applicants in which blacks or women have been traditionally under-represented, including, but not limited to police officer, deputy sheriff, firefighter, engineering positions, and skilled craft positions, the Personnel Board shall also advertise employment opportunities in a daily newspaper of general circulation in Birmingham, in the Birmingham Times or the Birmingham World, and in other media, for the purpose of emphasizing to blacks and women the availability of employment opportunities in those job classifications. The Personnel Board shall also place public service announcements on local radio and television media as part of its recruitment efforts for police officer, deputy sheriff and firefighter. Upon request, the Personnel Board will cooperate with recruitment programs implemented by the City of Birmingham or other jurisdictions.

III. DEVELOPMENT OF JOB RELATED SELECTION PROCEDURES

11. The Personnel Board shall develop and implement lawful selection procedures^{1/} for hiring and promotion in the classified service according to the timetables set out in this Order. Pursuant to State law, the Personnel Board is not obligated to rank candidates it certifies to jurisdictions for hiring or promotion consideration. The Personnel Board shall list applicants on certifications to the jurisdictions it serves in random order.

12. It shall be the Personnel Board's responsibility to establish that each selection procedure required or used by the Personnel Board, including each standard (including minimum qualifications used to determine which applicants are qualified or eligible to apply for a job or submit to a selection device), procedure, test or other device, shall either (1) have no adverse impact on the basis of race or sex, as defined by the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607 *et seq.* (1994), (hereinafter "the Uniform Guidelines"); or (2) be job related for the job classification(s) in question and consistent with business necessity, in accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, the Uniform Guidelines and other applicable Federal law.^{2/} If a selection procedure or combination of selection procedures is used by the Personnel Board to rank candidates, the parties and the Court will consider the candidates' relative ranking and the actual effect of that ranking in determining whether the procedure has adverse impact for that use. In accordance with the Uniform Guidelines, where there exists adverse impact in a selection procedure, as part of its consideration of the job relatedness and validity of any selection procedure, the Personnel Board shall conduct a

1. "Selection procedure" as used in this Order is defined as any measure, combination of measures, or procedure used as a basis for any employment decision, including the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational and work experience requirements through informal or casual interviews and unscored application forms. See Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. § 1607.16 (Q). The term "selection procedure" is used herein to describe the screening, testing and certification procedures of the Personnel Board. The Personnel Board does not make final employment selection decisions for the jurisdictions it serves.

2. For all purposes relevant to this Order, adverse impact shall be defined as it is in the Uniform Guidelines.

reasonable investigation of suitable alternative selection procedures and explore suitable alternative methods of using the selection procedures which have less adverse impact. Whenever the Personnel Board, a jurisdiction served by the Personnel Board, or any party identifies a race-neutral selection procedure that has less adverse impact than a selection procedure required by the Personnel Board and that alternative procedure is also agreed by the parties to be job related for the job classification in question and consistent with business necessity and in accordance with applicable law, such alternative selection procedure shall be used by the Personnel Board, absent good cause shown.

13. Job classifications that exist in the Department of Health shall be exempt from the requirements of paragraph 14 and the remainder of this Order. Within 60 days of the date of this Order the United States, the Martin/Bryant Plaintiffs and the Wilks Intervenors shall provide the Personnel Board with a list of the job classifications which they agree to exempt from the requirements of paragraph 14 and the remainder of this Order. Those job classifications that the United States, the Martin/Bryant Plaintiffs and the Wilks Intervenors each have agreed, in writing, to exempt from the requirements of paragraph 14 and the remainder of this Order shall be exempt. Further, at any time, the parties may agree that there shall be no temporary certification goals for any particular job classification and that the Personnel Board shall not be required to provide any additional evidence that the selection procedures for that job classification meet the requirements of paragraph 12 of this Order.

14. Within one hundred (100) days of the entry of this Order the Personnel Board shall submit to the parties a list of all job classifications remaining after the exclusion of jobs exempted by paragraph 13. Simultaneously and in conjunction with that submission, the Personnel Board shall provide the parties with applicant testing, ranking and selection information for each non-exempt job classification for January 1, 1990 through the date of the submission, including for each job classification:

(a) the job announcement or other document containing a detailed description of all selection procedures used by the Personnel Board, and the time period during which each was used, including any changes in use since January 1, 1990;

(b) the source or author of each selection procedure used by the Personnel Board;

(c) for each administration of a selection procedure, by job classification, a list of all applicants, identified by name, social security identification number, race, sex, jurisdiction(s) for which he or she is being considered, an indication of whether each applicant met the minimum standards to participate in the selection procedure, and if not, the particular minimum standard which caused the applicant to be deemed ineligible, any selection procedure or part thereof that the individual failed, the individual score(s), seniority points, final score and final ranking of each applicant;

(d) the individuals certified by the Personnel Board, by job classification and jurisdiction, identified by name, social security identification number, race, sex, certification number and approximate certification date(s);

(e) the individuals hired by each jurisdiction served by the Personnel Board from each eligible list, by name, social security number, race and sex;

(f) a summary of the certification method used for each job classification since January 1, 1990, including any supplemental certification, and the approximate dates of any changes in the certification method.

The Personnel Board shall also provide a copy of the information described in subsections (d) and (e) of this paragraph to the City of Birmingham for all certifications to the City of Birmingham since January 1, 1990, for the purpose of assisting the City in meeting its obligation under its Decree. To the extent they exist in machine-readable form, the Personnel Board shall provide the data described in (c), (d) and (e) above in machine-readable form on one or more diskettes. A copy of the data from the Personnel Board's

applicant record is sufficient to comply with the requirement to provide the data listed in (c), (d) and (e) above, to the extent that the data is contained in that record. A hard copy of this data shall be provided by the Personnel Board where machine readable data is not maintained by the Personnel Board or upon written request of a party. If additional data on the impact of any other selection procedure administered by or for the Personnel Board since 1981 exist, the Personnel Board shall so indicate to the parties and shall also provide such data to any party upon written request. The parties to this Order agree to limit such requests to those job classifications where a party has a good faith desire to obtain additional information to evaluate the adverse impact of the Personnel Board's selection procedures.

15. Within ninety (90) days of parties' receipt of the Personnel Board's submission pursuant to paragraph 14 of this Order, including a supplemental submission pursuant to a request for additional information, the United States, the Martin/Bryant Plaintiffs and the Wilks Intervenors shall each submit to the Personnel Board a list of up to fifteen job classifications. The Personnel Board shall provide the following information for these fifteen job classifications, and for entry level and promotional sworn police/Sheriff's department and fire service job classifications, to the United States, the Martin/Bryant Plaintiffs and the Wilks Intervenors within two-hundred-eighty (280) days of the entry of this Order:

(a) an analysis of whether the method of certification, if done without regard to the race and sex of the candidates, would have had an adverse impact on the basis of race or sex against blacks or women, analyzing both by the certification rule then in effect and the current certification rule; and

(b) the extent to which each selection procedure, or part thereof, that it uses or has used for each such job classification has had an adverse impact on the basis of race or sex against blacks or women from January 1, 1990, to the present, as defined by the Uniform Guidelines.

In the event that the United States, the Martin/Bryant Plaintiffs or the Wilks Intervenors wish to obtain information from the Personnel Board required by this paragraph for more than fifteen job classifications each, the parties shall attempt to agree on a schedule for the Personnel Board to provide additional information. The parties agree to limit such requests to those job classifications where a party has a good faith desire to obtain additional information to evaluate the adverse impact of the Personnel Board's selection procedures. If within sixty (60) days of such a request, the Personnel Board and the requesting party have not agreed on the information to be provided or an appropriate schedule for providing the requested information, any party may submit this matter to the Court for resolution.

16. Within ninety (90) days of the parties' receipt of the Personnel Board's submission pursuant to paragraph 15 of this Order, including a supplemental submission pursuant to a request for additional information, each of the other parties shall file a response listing any job classifications in the Personnel Board's submission (or any other job classifications) that it contends have one or more selection procedures that have an adverse impact against blacks and/or women, along with an explanation for the basis of its contentions. If any party contends that the information submitted by the Personnel Board is insufficient to assess whether any selection procedure at issue has adverse impact against blacks and/or women, in its initial response that party shall also list each such selection procedure and state the basis for its contention. A pending request for additional information for a job classification will not affect the party's duty to file a timely response with respect to job classifications for which it has no outstanding request for information.

17. If the Personnel Board lists selection procedures for a job classification as not having adverse impact in its paragraph 15 submission, and none of the parties contends in their paragraph 16 submission that any of the selection procedures for that job classification has an adverse impact on blacks and/or women or that the information supplied by the Personnel Board is insufficient to make an assessment of adverse impact, there shall be no temporary certification goal for that job classification and the Personnel Board will not be required to provide any additional evidence that the selection procedures for that job classification meet the requirements of paragraph 12 of this Order.

18. For each job classification that the Personnel Board identifies in its report pursuant to paragraph 15 of this Order as having one or more selection procedures that has an adverse impact on the basis of race or sex, or that a party contends in its report pursuant to paragraph 16 of this Order has an adverse impact on the basis of race or sex against blacks and/or women, unless the Court determines the selection procedure(s) in question meets the requirements of paragraph 12 of this Order or the Personnel Board revises its selection procedure to eliminate adverse impact, the Personnel Board shall complete a written job analysis and validation report according to the timetable set out in paragraph 19 of this Order. Using the results of the completed job analyses, the Personnel Board shall revise its selection procedures consistent with implementing selection devices which are job related, consistent with business necessity and which reduce or eliminate adverse impact.

19. The Personnel Board agrees to develop and implement selection procedures for hiring and promotion meeting the requirements of paragraph 12 of this Order and to provide the parties information concerning its use and proposed use of these selection procedures, including the information described in paragraph 30 of this Order, pursuant to the following timetable:

(a) for promotional police service job classifications in the police departments and County Sheriff's Office and promotional fire service job classifications in the fire departments, within 12 months of the entry of this Order;

(b) for the remaining sworn positions in the police departments and Jefferson County Sheriff's Office and fire service positions in the fire departments, within 18 months of the entry of this Order;

(c) for all remaining job classifications to be scheduled for review and not covered by subparagraphs (a) or (b) or exempted by paragraph 13, in accordance with a schedule to be submitted by the Personnel Board for the development of selection procedures meeting the requirements of paragraph 12 of this Order twelve (12) months from the entry of this Order as part of its second semi-annual compliance report. That schedule shall provide that the Personnel Board shall develop its selection procedures and provide the information described in paragraph 30 of this Order to the parties in six-month intervals from 24 to 48 months from the date of entry of this Order. In each semi-annual report the Personnel Board shall describe the status of its efforts to comply with this schedule and shall report any changes to the schedule it proposed for job classifications other than those listed in subparagraphs (a) and (b).

The Personnel Board shall not be required to include job classifications on its schedule that were identified in the Personnel Board's paragraph 15 submission as not having adverse impact on the basis of race or sex against blacks or women and to which no party contended otherwise in its paragraph 16 submission. Nor shall it include any job classifications that the parties have agreed, in writing, need not be included or that the Court has determined meets the requirements of paragraph 12.

20. Within ninety (90) days of receiving the Personnel Board's proposal as to selection procedures for any job classification pursuant to its obligations under paragraphs 18 and 19, including all information described in paragraph 30 of this Order, each party shall advise the Personnel Board, and all other parties, in writing, of any selection procedure so proposed for use by the Personnel Board that the party contends lacks sufficient evidence to demonstrate that it meets the requirements of paragraph 12 of this Order and shall state with particularity the bases for each such contention that the selection procedure does not meet the requirements of paragraph 12. If, after an additional sixty (60) days, the parties cannot reach agreement on whether a selection procedure proposed by the Personnel Board for any particular job classification meets the requirements of paragraph 12 of this Order, any party may submit that matter to the Court for resolution.

21. In advance of the dates established pursuant to paragraph 19 of this Order, the Personnel Board may notify the parties of any Personnel Board administered selection procedure that it believes satisfies the

requirements of paragraph 12 of this Order, together with the basis for its contention, including the information set forth in paragraph 30 of this Order. Within ninety (90) days of receiving such notice and all evidence provided by the Personnel Board concerning its contention, including the information described in paragraph 30 of this Order, each party shall advise the Personnel Board, in writing, whether it contends that the selection procedure at issue does not meet the requirements of paragraph 12 of this Order, and, if not, the bases for its contention. If, after an additional thirty (30) days, the parties cannot reach agreement on whether such a selection procedure meets the requirements of paragraph 12 of this Order, any party may submit that matter to the Court for resolution.

IV. TEMPORARY CERTIFICATION AND SCREENING PROCEDURES

22. This Section amends and replaces Section IV, paragraphs 23-28, of the 1981 Personnel Board Consent Decree.

23. For each job classification covered by paragraph 18 of this Order, until the Personnel Board develops and implements selection procedures for that job classification that the parties agree, in writing, or the Court finds are in compliance with the Personnel Board's obligations under paragraph 12 of this Order for the use proposed, the Personnel Board shall attempt to certify black and/or female individuals for appointments to vacancies in the classified service in approximate proportion to the representation of blacks and women in the qualified applicant pool for that job classification.^{3/}

24. Any temporary certification goals established pursuant to this Order shall terminate as to any job classification: (1) by operation of paragraph 17 of this Order; (2) by operation of paragraphs 20 and 21 of this Order; (3) when the parties agree, in writing, that all selection procedures for that job classification meet the requirements of paragraph 12 of this Order; or (4) upon the Court's finding that the Board's selection procedures meet the requirements of paragraph 12 of this Order for their intended use, or that for good cause no certification goals for that job classification are necessary. At any time a party may move for the termination or modification of a temporary certification goal for good cause.

25. Notwithstanding the provisions of paragraph 23 of this Order, at any time any party may apply to the Court to continue or modify the temporary selective certification of candidates by the Personnel Board for any job classification, or for other appropriate relief, on the grounds that the effects of alleged present unlawful employment discrimination or the vestiges of earlier unlawful employment discrimination against blacks and/or women by either the Personnel Board or the appointing jurisdiction continue to exist in that job classification and require such relief.

26. Two years from the date of entry of this Order, the parties shall advise the Court in writing whether any of the parties to this Order wish to schedule a hearing or conference concerning compliance with this Order and whether temporary race or gender based certification procedures should remain in effect. If any party to this Order requests such a conference or hearing, the Court shall schedule the matter within sixty days of the request.

VI. RECORDS AND REPORTS

27. This section supplements but does not replace Section X of the 1981 Personnel Board Consent Decree. The Personnel Board shall henceforth send a copy of each semi-annual compliance report required by paragraphs 47 - 53 of the 1981 Personnel Board Consent Decree, and each report submitted pursuant

3. Qualified applicants are defined to include all applicants who are eligible, apply for, and submit to the selection procedure set by the Personnel Board for the relevant period of consideration. Qualified applicants may also be limited to those who pass a selection procedure if that selection procedure is agreed, in writing, by the parties or found by the Court, to meet the requirements of paragraph 12 of this Order for its proposed use.

to this Order, to counsel for the Wilks Intervenors, as well as counsel for the United States, the Martin and Bryant Plaintiffs and the Court.

28. Within nine (9) months after the entry of this Order, and at six-month intervals thereafter, the Personnel Board shall submit a report to the Court and to the parties describing its efforts to develop selection procedures meeting the requirements of paragraph 12 of this Order and otherwise to comply with this Order. The semi-annual report shall specifically address the progress made during the preceding six months, areas of agreement, areas of disagreement, allegations of non-cooperation, and a compliance timetable for the accomplishment of tasks within the next six months. Any party may supplement that report within thirty (30) days after it is filed.

29. In its semi-annual compliance reports, the Personnel Board shall describe, in detail, the efforts it made during the preceding six month period to meet the timetable set out in paragraph 19 of this Order. In the event that the Personnel Board has not met one or more of the dates established by paragraph 19, the Personnel Board shall explain in its semi-annual report for that period why it failed to do so.

30. The Personnel Board shall make all data concerning the development of any selection procedures used or proposed to be used by the Personnel Board, including but not limited to, the adverse impact of the selection procedure when used by the Personnel Board, or if applicable, by other users, the effect of the selection procedure on the composition of eligibility registers for the job classifications at issue, the effect of the use of the selection procedure on the composition of certification lists for the job classifications at issue, job analyses, expert reports and validation studies, available to counsel for the parties. This information shall be provided to all parties by the Personnel Board on the dates set out in paragraph 19 of this Order. This information shall be provided in machine-readable form to the extent it exists in that form.

Further, within fourteen (14) days of its receipt of a written request from any party, the Personnel Board shall provide the requesting party with copies of any additional information concerning the adverse impact or job relatedness of the job classification at issue in the possession or control of the Personnel Board but not provided by the Personnel Board pursuant to the dates set out in paragraph 19 of this Order. However, if an examination is in progress for the job classification for which additional information is requested, the Personnel Board may defer providing information about the current examination process for fourteen (14) days after the examination process is completed.

31. The Personnel Board shall retain during the period of this Order all records concerning its implementation. These records shall be made available to any party for inspection and copying within thirty (30) days upon written request. The information described in sub-paragraphs 14(c), 14(d) and 14(e) of this Order shall be maintained by the Personnel Board in machine-readable form and provided in such form to the parties to this Order upon written request or as required by this Order.

32. All material related to the development of selection procedures, including copies of tests or proposed tests, test keys and test results, names of applicants and test scores of individual candidates shall be marked "Confidential Test Material Under Seal" by the Personnel Board prior to being forwarded to counsel for the parties. This confidential test material shall not be disclosed to anyone other than counsel, their immediate staff, the court and its staff, and expert consultants retained by the parties and their staffs, without the written permission of the Personnel Board or an Order of this Court. Such confidential test material shall not be filed with the Court unless it is filed in a sealed envelope marked "Confidential Testing Material Under Seal." Any material that is marked "Confidential Testing Material Under Seal" shall not be disclosed by the Clerk of the Court to the public without an Order from this Court.

VII. NOTICE AND IMPLEMENTATION

33. In the event any party seeks to enforce any provision of this Order, that party shall provide notice of its intentions to the counsel for the parties. Such notice shall state, with reasonable particularity, the

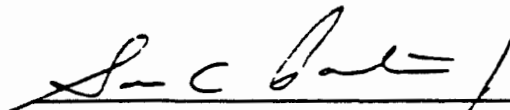
nature of the alleged violation and the relief sought. The parties shall attempt to resolve informally any disputes which may occur under this Order. If the parties are unable to reach agreement within thirty (30) days after a matter has been brought to the attention of one of the parties by another party, the issue may be submitted to the Court for resolution. Any party may apply to the Court at any time for an Order concerning an urgent matter.

34. Within ten (10) days after provisional approval of this Order by the Court, notice, in the form attached as Appendix A, will be published at the expense of the Personnel Board in the Sunday edition of the Birmingham News for two consecutive weeks, and in the Birmingham Times on one weekday and directed to all interested persons, informing them of their right to review a copy of the Order which will be on file with the Clerk of the Court. Additional notice shall be provided by the defendant Personnel Board to affected persons as may be ordered by this Court.

This notice shall inform persons to whom such notices are directed of their right to be heard and to file objections, if any, to this Order. Such objections must be filed with the Clerk of the Court by a date to be set by the Court in its Order granting provisional approval to this Order. The Court will hold a fairness hearing at 9 am, February 28, 1996, at which those persons who file timely objections to the Order will be heard. At the close of such hearing, or as soon as practicable thereafter, the Court shall rule upon such objections and grant final approval to or reject this Order.

35. This paragraph amends paragraph 55 of the 1981 Personnel Board Consent Decree. The Court retains jurisdiction of this action for such further relief or other orders as may be appropriate, including enforcement of this Order and resolution of disputes that may arise between the parties. This Order, as well as the 1981 Personnel Board Consent Decree, shall expire five years from the date of the entry of this Order unless its term is extended by the Court. Prior to its termination any party may move, for good cause shown, for the extension of this Order and/or the 1981 Consent Decree. In that event, this Order and the 1981 Consent Decree shall remain in effect until the Court rules on the Motion for Extension. In considering whether the 1981 Consent Decree and this Order should be dissolved, the Court shall take into account whether and to what extent the purposes of this Order have been achieved and whether there is any continuing unlawful employment discrimination or vestiges of prior unlawful discrimination prohibited by Federal law.

Provisionally approved this 19th day of December, 1995.



SAM C. POINTER, JR.
UNITED STATES DISTRICT JUDGE