

Report To

The Mississippi Legislature



ANALYSIS OF THE RESIGNATION OF MARY LAWRENCE GERVIN AND APPOINTMENT OF DR. MAX H. MCDANIEL AS STATE PERSONNEL DIRECTOR

April 20, 1989

PEER determined that with the exception of the Board chairman, Mary Lawrence Gervin did not inform any other State Personnel Board members of her intended resignation until the Board's January 16, 1989, meeting. At that same meeting, the Board appointed Dr. Max H. McDaniel as State Personnel Director. Although the Board followed the letter of the state personnel law in appointing Dr. McDaniel, it failed to "represent the public interest in the improvement of personnel administration in the state departments" by making a noncompetitive appointment. The Board's use of an open and competitive process to select a new State Personnel Director would have set a good example for other state agencies to follow.

The PEER Committee

PEER: The Mississippi Legislature's Oversight Agency

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**ANALYSIS OF THE RESIGNATION OF MARY LAWRENCE GERVIN AND
APPOINTMENT OF DR. MAX H. MCDANIEL
AS STATE PERSONNEL DIRECTOR**

April 20, 1989

Information Compiled and Prepared By:

Max K. Arinder, Ph.D.
James A. Barber
John W. Turcotte

Edited By:

Ava L. Welborn

The Mississippi Legislature
Joint Committee on Performance Evaluation and Expenditure Review

PEER Committee



SENATORS
CECIL E. MILLS
DOUG ANDERSON
BILL HARPOLE
ROBERT (BUNKY) HUGGINS
Vice Chairman
ROGER WICKER
Secretary

TELEPHONE:
(601) 359-1226

FAX:
(601) 359-1420

P. O. Box 1204
Jackson, Mississippi 39215-1204

JOHN W. TURCOTTE
Director

REPRESENTATIVES
J. P. COMPRETTE
Chairman
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OFFICES:
Central High Legislative
Service Building
259 North West
Jackson, Mississippi 39201

April 20, 1989

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HONORABLE BRAD DYE, LIEUTENANT GOVERNOR
HONORABLE TIM FORD, SPEAKER OF THE HOUSE
MEMBERS OF THE MISSISSIPPI STATE LEGISLATURE

At its meeting of April 20, 1989, the PEER Committee authorized release of the report entitled Analysis of the Resignation of Mary Lawrence Gervin and Appointment of Dr. Max H. McDaniel as State Personnel Director.


REPRESENTATIVE J. P. COMPRETTE, CHAIRMAN

**This report does not recommend
increased funding or additional staff.**

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INTRODUCTION

Authority

At its meeting on January 23, 1989, the PEER Committee responded to a legislative request and authorized a review of the State Personnel Board's action in hiring a new State Personnel Director. The Committee acted in accordance with MISS. CODE ANN. Section 5-3-57 (1972).

Scope and Purpose

This review had three primary purposes:

1. To document the events surrounding the resignation of the former State Personnel Director, Ms. Mary Lawrence Gervin;
2. To determine whether the board's action in hiring the current State Personnel Director, Dr. Max H. McDaniel, was in accordance with relevant law; and,
3. To determine the total amount paid to Morris & McDaniel, Inc., by the State Personnel Board (SPB) and other state agencies.

Methodology

In conducting this review, PEER:

1. Reviewed relevant state statutes and State Personnel Board rules and regulations;
2. Received and reviewed written responses (including board minutes) from the State Personnel Board and Ms. Gervin;
3. Interviewed Ms. Gervin and Dr. McDaniel; and,
4. Analyzed state agency expenditure data relative to the Morris & McDaniel, Inc., contracts.

Letter of Inquiry

PEER determined that a letter of inquiry would be the most efficient method to obtain information to respond to the legislative request. On January 24, 1989, PEER mailed a letter to the former State Personnel Director and members of the State Personnel Board requesting answers to specific questions. (See Exhibit 1, page 10.)

State Personnel Board's Request
for Non-Disclosure

On January 31, 1989, PEER staff met with Ms. Gervin to receive the State Personnel Board's written response to PEER's January 24 letter requesting specific information regarding the resignation and appointment. During the meeting, Ms. Gervin explained that the board's January 16 minutes were divided into two parts, regular session and executive session.

Ms. Gervin provided PEER with the regular session minutes as requested. Ms. Gervin then explained that the State Personnel Board had agreed to provide PEER with a copy of the January 16 executive session minutes if the PEER Director would sign a non-disclosure form. The form stated that PEER agreed that "the minutes of the Executive Session will be kept confidential and not disclosed to the press nor the public at large." (See Exhibit 2, page 12.)

Upon the advice of the PEER Committee Chairman, the PEER Director declined to sign the non-disclosure agreement. If the PEER Director had signed the non-disclosure form, he could not have fully disclosed to the Committee the events which transpired during the executive session. The Committee in turn could not have fulfilled its responsibility to the Legislature to fully report the actions of the State Personnel Board.

PEER again requested a copy of the executive session minutes. After conferring by telephone with the SPB Chairman, Ms. Gervin provided PEER with a certified copy of the January 16 executive session minutes. A letter accompanying the minutes expressed the board's "desire to keep these records confidential." (See Exhibit 3, page 13.)

Upon receipt of the executive session minutes, PEER staff made a request to the current State Personnel Director to review the source documents for the executive session minutes. SPB staff reported to PEER that executive sessions are not tape-recorded and that the minutes had been compiled from Ms. Gervin's handwritten notes and memory of the meeting. (See Appendix A, page 17, for the board's January 16 executive session minutes.)

PEER'S REVIEW OF THE REQUESTED AREAS

Resignation of Mary Lawrence Gervin

The State Personnel Board met for its regular monthly meeting on Monday, January 16, 1989, at 1:30 p.m. According to the minutes of the meeting, the board, upon a motion and second by Mr. Sanford Steckler and Mr. William Guy, respectively, entered into executive session to "discuss a confidential personnel matter." The agenda for the January 16 meeting does not indicate that an executive session was planned. During the executive session, Ms. Gervin tendered her resignation as State Personnel Director effective March 15, 1989. Upon a motion by Mr. Steckler and a second by Ms. Dorothy Ann Smith, the board accepted Ms. Gervin's resignation. (Ms. Gervin will use six weeks of accrued personal leave between February 1 and March 15.)

In response to questions posed by PEER, Ms. Gervin stated that she had informed the board Chairman, Ms. Sharion Richardson, of her intent to resign on Sunday, January 15, 1989, at a meeting in Tupelo. Ms. Gervin stated that she did not inform any other board members of her intended resignation until the executive session during the January 16 meeting.

Hiring of Dr. Max H. McDaniel

After reviewing the minutes of the January 16, 1989, State Personnel Board meeting, PEER concludes that the board acted in accord with state law and board regulations in making the appointment of Dr. Max H. McDaniel to the position of State Personnel Director. PEER's conclusion that the board acted within its authority in making the appointment does not constitute an endorsement of the action as the best of the alternatives available.

Although the board appears to have followed the letter of the state personnel law in appointing Dr. McDaniel, it failed to "represent the public interest in the improvement of personnel administration in the state departments" as required in MISS. CODE. ANN. Section 25-9-115 (1972). CODE Section 25-9-101 states the intent of the Legislature to establish a system of personnel administration based on sound methods of personnel administration governing the establishment of employment positions, classification of positions, and the employment, conduct, movement, and separation of state employees. One principle of the state's personnel system listed in CODE Section 25-9-103 (a) is to "recruit, select and advance employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for initial appointment." The board's use of an open and competitive process would have set a good example for other state agencies to follow. A brief explanation of the sequence of events leading to the appointment follows.

After offering her resignation, Ms. Gervin urged the board to act quickly in selecting a successor using the option of a non-competitive selection process. Ms.

Gervin gave three reasons why she felt immediate action was necessary: to avoid the "political interference" that accompanies the open competitive selection process; to alleviate the uncertainty and anxiety among staff that would be created by having no director; and to keep continuity with the Legislature in the upcoming budget process. Except for Mr. Claude Stuart's general opposition to the method of appointment, the record does not show any attempt by the other members of the board to make Ms. Gervin operationally define any of the specters she suggested would be associated with open, competitive selection.

In response to the board's inquiry into whether there was any requirement that the board advertise the vacancy, Ms. Gervin responded that "it was the board's decision as to whether to utilize the competitive or the non-competitive selection process." Her reasoning was based on her analysis of the personnel board statute and current personnel regulations.

PEER analyzed the statute and current personnel regulations and found three relevant points. First, MISS. CODE ANN. Section 25-9-119 (1) creates the position of state personnel director and states that the director "shall be selected by the state personnel board." Second, board rule 4.12.1 states that original appointments for state service may be made in two ways: competitively from a list of eligibles or non-competitively by appointment. Third, board rule 3.22.5 states that appointments to classes exempted from the selection process by action of the board are not made from a Certificate of Eligibles. The State Personnel Director need only certify those candidates referred by the appointing authority that meet the minimum requirements for the occupational class. In effect, the board had only to act on Ms. Gervin's request that the position be exempted from the selection process and then certify that Dr. McDaniel met the minimum requirements of the occupational class.

Dr. McDaniel's resume shows that he meets the qualifications set forth in MISS. CODE ANN. Section 25-9-119 (1), which provides that the "director shall have at least a master's degree in business administration, personnel management or the equivalent and shall have not less than five (5) years' experience therein." Although the minutes state that Ms. Gervin had reviewed the qualifications of other potential candidates, Dr. McDaniel was the only candidate Ms. Gervin submitted for board review.

Following a lengthy debate regarding the matter of whether to make the appointment non-competitively at that time or whether to delay the selection until other candidates could be considered and a background check conducted, the board acquiesced to Ms. Gervin's recommended action and approved the non-competitive appointment of Dr. McDaniel by a four to one vote.

Board member Mr. Claude Stuart voted against the motion, having expressed his concerns about the way in which the board handled the appointment. Among Mr. Stuart's concerns were the fact that the board was not informed of the need to appoint a successor until the day of the meeting, the fact that there was no legislative advisor present from which to seek counsel, the appearance of the action given the board's oversight function, and the absence of a background check for Dr. McDaniel. (MISS. CODE ANN. Section 25-9-111, as amended by The

Administrative Reorganization Act of 1984, provides for appointment of two legislative designees each from the House and the Senate to meet with the SPB. These designees serve as non-voting legislative advisors.) In summary, it was Mr. Stuart's concern over the failure of the board to adhere to what he felt were the "ordinary" processes promulgated by the board that led him to vote against Dr. McDaniel's appointment. (Appendix B, page 29, is a letter Mr. Stuart wrote to Ms. Gervin concerning the appointment process utilized by the board.)

Contrast with Previous Hirings

In order to provide perspective on the State Personnel Board's action in hiring Dr. McDaniel to replace Ms. Gervin, PEER reviewed the history of appointments to the position of State Personnel Director. From a legal perspective, previous actions described were no more correct or less correct than the recent action of the board. However, a review of these actions gives additional insight into the range of options that were available to the board.

The position of State Personnel Director was created in 1980 when the functions of the Classification Commission were expanded, the commission abolished, and the State Personnel Board created to take its place. At that time, the staff director for the Classification Commission, Mr. Guy Groff, was continued as State Personnel Director. No apparent effort was made to seek other candidates for the position and, subsequently, Mr. Groff played a vital role in bringing the Personnel Board and staff from statute to reality. His appointment, although technically non-competitive, was distinctly different from the recent appointment.

The first opportunity to view the board's actions in making an appointment to the position of State Personnel Director came in 1984 following Mr. Groff's resignation. According to board minutes, the State Personnel Board received official notice that Mr. Groff had accepted employment with the Joint Legislative Budget Committee at its May 29, 1984, meeting. The effective date of his termination was given as July 1, 1984. At the time he announced his resignation, Mr. Groff briefed the board on available options. He listed the options as follows: open competitive; state service competitive promotional; agency only non-competitive promotional; and agency only competitive promotional. After discussion, the board voted unanimously to utilize the open competitive recruitment option. The board had from May 29, 1984, until July 1, 1984, to seek a replacement and, as such, saw open competition as a viable option. The board then adopted the following timetable for the selection process: May 30, 1984, recruiting announcement; June 11, 1984, close recruiting; June 12, 1984, list of eligibles to board members; June 15, 1984, board to interview eligibles.

Subsequent minutes reflect that interviews were held on June 26, 1984, with the six top candidates selected from the twenty-five applicants. The final vote on a replacement was taken as a poll of the board and board members unanimously selected Mary Lawrence Gervin to begin service as Director on July 1, 1984.

Nothing in the record shows that "political interference" was associated with the open, competitive process which culminated in Gervin's appointment.

Divestiture of Dr. McDaniel from Morris & McDaniel, Inc.

A review of Dr. Max H. McDaniel's personal records reveals that on January 26, 1989, he entered into a contract with Morris & McDaniel, Inc., and David M. Morris for sale of McDaniel's stock in that corporation. The terms of the contract call for Dr. McDaniel's resignation as an officer and director of the corporation and a complete and irrevocable severing of all ties with the corporation with no remaining interest of any nature, either legal or equitable, in the business.

In addition, a trust agreement was executed on January 31, 1989, transferring to a trust all of McDaniel's right, title and interest in the income-producing real property currently owned jointly by Morris and McDaniel outside the corporation. The purpose of the trust is to retire McDaniel's share of outstanding corporate debt and to release him from any personal obligation on the indebtedness.

Finally, the corporation retained the right to use the trade name "Morris & McDaniel, Inc." outside the state of Mississippi, so long as no attempt is made to indicate or imply to any third party that McDaniel is still personally involved in the corporation in any way. Inside the state of Mississippi, the corporation must conduct business under the name of a wholly-owned subsidiary to be known as "Morris & Associates, Inc.," or some similar name, in order to avoid confusion or misunderstanding regarding McDaniel's role in the corporation.

Payments Made to Morris & McDaniel, Inc.

The requesting legislators asked the PEER Committee to determine the total amount paid to Morris & McDaniel, Inc., by the State Personnel Board and other state agencies. To respond to this request, PEER obtained expenditure information from the Fiscal Management Board's Fiscal Control Division for the period FY 1981 through FY 1989 (to date). Analysis of this information shows that Morris & McDaniel, Inc. has received \$3,181,232.79 from eighteen state agencies, as listed in Exhibit 4, page 14. Payments from the State Personnel Board represent 71% (\$2,260,983.97) of this total amount, as detailed in Exhibit 5, page 15. Exhibit 5 also provides a brief description of the contracts between the State Personnel Board and Morris & McDaniel, Inc.

PEER did not review the necessity for these contracts nor the quality of performance of Morris & McDaniel, Inc., during each of these contracts. On January 25, 1989, the former State Personnel Director asked the State Auditor to conduct a special audit of the State Personnel Board, including contracts. (See Exhibit 6, page 16.) According to SPB staff, soon after receiving the request letter, the State Auditor assigned an auditor to audit operations and contracts of the State Personnel Board. As of this report date, the results of this special audit have not been provided to the current State Personnel Director.

Role of Morris & McDaniel, Inc., in
Hiring Mary Lawrence Gervin

An additional question posed to PEER during the course of this review was whether the firm of Morris & McDaniel, Inc., played a key role in the hiring of Mary Lawrence Gervin as the previous State Personnel Director. The following information was developed from an interview with Dr. Max McDaniel and a review of board minutes related to the Gervin hiring.

Mr. Guy Groff, Ms. Gervin's predecessor, did request Morris & McDaniel to develop an assessment system to evaluate candidates for the position of State Personnel Director. Since the firm had been doing a significant amount of contract work for the board, Morris & McDaniel agreed to develop the assessment instrument as a professional courtesy. No contract existed and the firm received no compensation for the service. The instrument itself was based on an assessment center model in which each applicant's education and experience was rated in terms of mutually agreed upon evaluation dimensions and criteria. After developing the instrument and rating the candidates that had applied for the job, the names of the five or six (neither McDaniel nor Morris could remember exactly) top rated candidates were given to Mr. Groff. Dr. McDaniel stated that at no time did the firm recommend a single individual to the board as the best candidate for the job.

A follow-up review of State Personnel Board minutes of June 25-26, 1984, revealed the following: the Applicant Subcommittee of the board (Danny E. Cupit, Representative Thomas L. Brooks, and General E. A. Turnage) received twenty-five applications for the position of Director; the subcommittee reported that six applicants were considered to be best qualified for the position. Ms. Mary Lawrence Gervin was among the applicants listed by the Applicant Subcommittee as the best qualified. No reference was made as to how the ratings were obtained and there is no indication that any one of the six was given a preferential recommendation by the subcommittee or anyone else. The minutes further reveal that the board unanimously voted to conduct interviews with all six of the "finalists." The State Personnel Director (Mr. Groff) recused himself from the interview process and the subsequent discussions pertaining to the applicant interviews. In a subsequent poll of the board, the board unanimously selected Mary Lawrence Gervin to replace Mr. Guy Groff as Director.

PEER found no evidence that Morris & McDaniel, Inc., was involved in any more than an indirect way in the selection of Ms. Gervin as the State Personnel Director.

State Personnel Board Salary Increases Approved
During the Executive Session

Prior to resigning during the executive session, Ms. Gervin requested that the board approve a new job class series for Personnel Analysts at the State Personnel Board. According to information provided to the board by SPB staff, establishment of the new series will affect eleven current SPB employees who would each receive an approximate six percent salary increase. The board's action, according to SPB calculations, will cost approximately \$19,210.47 (including fringe benefits) in special funds during FY 1990.

Ms. Gervin explained that the new series was needed "in order to provide a career ladder for State Personnel Board employees that would be an incentive to stay at the Personnel Board and also create an incentive for personnel officers in other agencies to want to work at the Personnel Board." The new job class series will consist of three types of positions: SPB-Personnel Analyst; SPB-Personnel Analyst, Senior; and SPB-Personnel Analyst, Principal.

Upon a motion by Mr. Steckler and a second by Mr. Guy, the board approved the new job class series at the pay ranges recommended by SPB staff. The board approved the positions and pay ranges so that "these dollar amounts could be included in the budget projections for the next fiscal year." In approving the new series, the board directed SPB staff to develop higher minimum qualifications than those proposed by Ms. Gervin during the executive session.

PEER does not question the necessity of establishing this new job class series. However, PEER suggests that the board should have considered delaying a decision on the matter until its new director could make a recommendation.

The timing of the approval of the new series also illustrates a significant flaw in the state's budgeting system. The Joint Legislative Budget Committee is dependent on the State Personnel Board to provide a personal services projection for development of the next fiscal year's budget. State agencies routinely request reallocations and reclassifications of existing positions and establishment of new positions when filing budget request documents with the Legislative Budget Office. The State Personnel Board and Legislative Budget Office consider these requests and make recommendations on such positions prior to the compilation of the Joint Legislative Budget Committee's budget recommendation to the Legislature.

After the Joint Committee recommends a budget and prior to the two appropriations committees approving appropriation bills, LBO staff requests updated personal services printouts so that the most accurate salary base may be used for appropriation purposes. According to LBO staff, during the legislative session the State Personnel Board continues to approve personnel actions, such as reallocations, reclassifications, etc., which increase the state's salary base. In effect, LBO staff is working with a "moving target" while attempting to define the state's salary base for the next fiscal year. The net effect of this process is that employees whose positions are reallocated and/or realigned by the SPB during the

salary projection phase receive salary increases in the next fiscal year which are not presented as such to the two appropriations committees and entire Legislature.

Recommendation

Since the State Personnel Board and Morris & McDaniel, Inc., currently have an ongoing contract (see Exhibit 5, page 15), the State Personnel Board should consider requiring the current State Personnel Director to recuse himself from any supervision or administrative control of the contract. The State Personnel Director should delegate oversight responsibilities for the contract to an appropriate SPB staff person who should report directly to the board regarding the status of the contract.

PEER LETTER REQUESTING RESIGNATION/APPOINTMENT INFORMATION

Joint Committee on Performance Evaluation and Expenditure Review**PEER Committee**

P. O. Box 1204
Jackson, Mississippi 39215-1204

JOHN W. TURCOTTE
Director

SENATORS
CECIL E. MILLS
Chairman
DOUG ANDERSON
BILL HARPOLE
ROBERT (BUNKY) HUGGINS
ROGER WICKER

TELEPHONE:
(601) 359-1226

January 24, 1989

Honorable Sanford Steckler, Chairman
Honorable Mary Lawrence Gervin, State Personnel Director
State Personnel Board
301 North Lamar, Suite 100
Jackson, Mississippi 39201

Re: Joint PEER Committee Request for Information

Dear Mr. Steckler and Ms. Gervin:

At its January 23 meeting, the PEER Committee directed our staff to conduct a review of the State Personnel Board's recent appointment of Dr. Max McDaniel as State Personnel Director. The Joint Committee requests the following information from the State Personnel Board as soon as possible:

1. When did Mary Lawrence Gervin inform the individual board members of her intent to resign? Were the members informed in writing, by telephone, in person, or during your January 16, 1989 board meeting? Were the members told that she was resigning or were they told that she was considering resigning?
2. Describe the process of recruiting and selecting Gervin's replacement. How many potential candidates were considered? When did the board begin considering potential candidates? Who on the board screened or evaluated potential candidates? How many candidates were interviewed by the board? What written information was reviewed during the board's deliberations? Was this information developed by the board itself or was it furnished by the SPB staff?
3. Please list all contracts or agreements between the State Personnel Board and Dr. Max McDaniel or the firm Morris and McDaniel, Inc. in table form. For each contract, list the purpose of the contract, whether the contract was competitively bid or handled on a sole source basis, the original contract award amount and the total amount paid to the contractor including supplemental agreements or change orders.

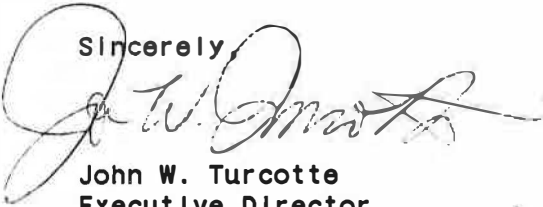
REPRESENTATIVES
J. P. COMPRETTE
Vice Chairman
HILLMAN T. FRAZIER
DON GRIST
Secretary
ASHLEY HINES
JERRY E. WILKERSON
OFFICES:
Central High Legislative
Service Building
259 North West
Jackson, Mississippi 39201

Mr. Steckler and Ms. Gervin
Page Two
January 24, 1989

Our staff would appreciate access to your minutes and financial records for the purpose of completing this review as soon as possible.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "John W. Turcotte". The signature is written in dark ink and is positioned to the left of the typed name.

John W. Turcotte
Executive Director

cc: PEER Committee
Dr. Max McDaniel

EXHIBIT 2

SPB NON-DISCLOSURE REQUEST

TO: Members of the State Personnel Board

DATE: January 31, 1989

Whereas, in a spirit of cooperation, the State Personnel Board has agreed to produce for inspection, a copy of the minutes of the Board's January 16, 1989, Executive Session, the topic of which was the selection of a new State Personnel Director. Such agreement is made, however, without waiving the confidentiality of the minutes. In that same spirit of cooperation, it is agreed that the minutes of the Executive Session will be kept confidential and not disclosed to the press nor the public at large.

This non-disclosure agreement is entered into pursuant to Miss. Code Ann. § 25-41-7, under the Opening Meetings Law, which provides that any public body may enter into a closed Executive Session for the transaction of public business, including but not limited to, transaction of business and discussion of personnel matters, and employment and termination of employees. In addition to the Executive Session exception to the Opening Meeting Law, Miss. Code Ann. § 25-1-100 provides an exception to the Access to Public Records Law (Miss. Code Ann. § 25-61-1 and following). Under this section personnel records may not be released without the prior written consent of an applicant or employee.

So agreed on behalf of the PEER Committee and PEER Staff.

John W. Turcotte, Executive Director
PEER Committee

SOURCE: PEER files.

EXHIBIT 3

SPB LETTER ACCOMPANYING RELEASE OF MINUTES



301 North Lamar Street, Suite 100, Jackson, MS 39201

William Guy
McComb

Sharion H. Richardson
Fulton

Dorothy Ann Smith
Hernando

Sanford R. Steckler
Biloxi

Claude L. Stuart III
Greenville

Mary Lawrence Gervin
State Personnel Director

January 31, 1989

Mr. John W. Turcotte, Director
Joint Committee on Performance Evaluation
and Expenditure Review
Central High Legislative Service Building
Jackson, Mississippi

Dear Mr. Turcotte:

Although the PEER Committee is unable to honor our request for an agreement to keep the minutes of the State Personnel Board's January 16, 1989, Executive Session confidential, the Chairman has authorized me to furnish the PEER staff, in a spirit of cooperation, a certified copy of the Minutes. Please note that these minutes also include the motion made in Open Session to appoint Dr. McDaniel State Personnel Director. The Chairman of the Board has requested that I convey to you and your staff our desire to keep these records confidential. We would appreciate very much your honoring this request.

If you have any questions, please do not hesitate to call me.

Very truly yours,

A handwritten signature in cursive script that reads "Mary Lawrence Gervin".

Mary Lawrence Gervin
State Personnel Director

MLG/BB

SOURCE: PEER files.

Exhibit 4
Total Funds Paid by State Agencies
to Morris & McDaniel, Inc. for Services
FY 1981 - FY 1989

Agency	Funds Paid	Percent of Total
Attorney General's Office	\$17,522.74	.55%
Central Data Processing Auth.	\$9,500.00	.30%
Bureau of Capitol Facilities	\$515.63	.02%
Classification Commission*	\$10,137.50	.32%
Dept. of Energy and Trans.	\$3,812.50	.12%
Office of Federal/State Progs.	\$537,413.85	16.89%
Health Care Commission	\$700.00	.02%
Highway Department	\$4,500.00	.14%
Gov. Off. of Job Devel. & Train.	\$65,436.00	2.06%
Kuhn Memorial Hospital	\$400.00	.01%
Library Commission	\$30,200.00	.95%
Medicaid Commission	\$7,000.00	.22%
National Guard	\$221.80	.01%
Personnel Board	\$2,260,983.97	71.07%
Dept. of Public Safety	\$8,700.00	.27%
Dept. of Public Welfare	\$133,500.00	4.20%
Tax Commission	\$37,039.05	1.16%
Dept. of Vocational Rehab.	\$6.00	.00%
Dept. of Wildlife Conservation	\$53,643.75	1.69%
	\$3,181,232.79	100%

* The total for the State Personnel Board and the Classification Commission combined is \$2,271,121.47.

SOURCE: PEER Staff analysis of State Personnel Board and Fiscal Management Board records.

EXHIBIT 5

STATE PERSONNEL BOARD CONTRACTS WITH MORRIS & MCDANIEL, INC.
 FY 1981 THROUGH FY 1989

Contract Description	Contract Date	Objectives	Value of Contract	Paid to Date
Evaluation of 1,400 or more applications for 27 job titles	04/13/81	To evaluate 1,400 or more position applications for 27 job titles to determine whether or not the applicants meet the minimum educational and/or experience requirements for said positions in accordance with board job specifications.	\$1.20 per application for 1,400 applications	\$1,390.80
Employee Performance Evaluation Training Program	05/01/81	To train approx. 250 agency directors in performance appraisal. To train approx. 200 personnel officers in their role in performance appraisal. To train approx 8,000 line supervisors in "How To" conduct performance appraisals. To provide 50,000 copies of the performance appraisal. To provide 30,000 copies of an employee performance appraisal worksheet. To provide expert testimony in defense of the system should the need arise (40 hours). To monitor the results of the evaluation	\$230,000	\$230,000
Employee Performance Evaluation Training (extension)	05/27/82	To conduct a 5-day training session for 30-personnel officers on verification of performance appraisal. To conduct five 2-day training sessions for 400 supervisors on job analysis	\$18,000	\$18,000
Employee Performance Appraisal Training	04/13/83	To assist in the development of a training program for the existing employee performance appraisal system.	\$25,000	\$25,000
Test Validation (3 yrs.)	07/12/83	To conduct a 3-year validation project and study to ensure and demonstrate the job-relatedness of some 240 selection tests used by the SPB to screen applicants for positions in the state service in Mississippi.	\$1,350,000	\$1,350,000
Age/Sex Discrimination Analysis	11/8/85	To determine the age and sex of applicants for position of Dept. of Public Welfare Super. II from 1981. To determine the selection ratio of female applicants and those 40 and over for above position. To determine if selection criteria adversely affected protected group. To provide expert testimony.	\$25,000	\$25,000
Management Training Institute	03/19/86	To develop and conduct a management training program for senior and mid-level managers to include; 12 hours of orientation; three classes of 33 managers meeting one six hour day per week for eight weeks; and supplies and materials.	\$40,000	\$40,000
Test Validation Extension to Provide Selection Validation Work	07/09/86	To conduct a one year Validation Project and Study to determine and develop data permitting efficient and practical selection of job applicants.	\$390,000	\$390,000
Development of Minimum Qualifications and Training and Experience Ratings (currently ongoing)	06/24/88	To research and evaluate literature on minimum qualifications and testing and evaluation ratings To develop a new system for development of minimum qualifications for state jobs. To field test system and train staff. To implement system for 50 jobs and testing and evaluation ratings for 25 of 50 classes To submit a validation report for each job included.	\$300,000	\$158,413.92
Employee Suggestion Program	No Contract (1982)	To develop a method to receive employee input on management		\$3,500
Additional Services Provided	No Contract	Expert witness; Implementation; etc		\$19,679.25
			TOTAL SPB WORK	\$2,260,983.97

SOURCE: PEER analysis of State Personnel Board contracts.

EXHIBIT 6

SPB LETTER REQUESTING AUDIT



MISSISSIPPI STATE
PERSONNEL BOARD

301 North Lamar Street, Suite 100, Jackson, MS 39201

William Guy
McCumb

Sharion H. Richardson
Fultrm

Dorothy Ann Smith
Hernando

Sanford R. Steckler
Biloxi

Claude L. Stuart III
Greenville

Mary Lawrence Gervin
State Personnel Director

January 25, 1989

Honorable Pete Johnson
State Auditor
State of Mississippi
300 Public Employees' Retirement Building
Jackson, Mississippi

Dear Mr. Johnson:

I have resigned as State Personnel Director and will be leaving the agency February 1, 1989. A majority of the State Personnel Board has approved my request to ask your department to audit my agency at this time. Mr. Stuart has dissented. I am therefore requesting that you conduct a special audit of all accounts, funds, contracts, etc., at the State Personnel Board during the time of my stewardship and management of the agency.

Very truly yours,

Mary Lawrence Gervin
State Personnel Director

MLG/mbq

SOURCE: SPB files.

APPENDIX A

SPB MINUTES OF JANUARY 16, 1989



301 North Lamar Street, Suite 100, Jackson, MS 39201

William Guy
McComb

Sharion H. Richardson
Fulton

Dorothy Ann Smith
Hernando

Sanford R. Steckler
Biloxi

Claude L. Stuart III
Greenville

Mary Lawrence Gervin
State Personnel Director

January 31, 1989

I hereby certify that the attached is a copy of the State Personnel Board's January 16, 1989, Executive Session Minutes.

Mary Lawrence Gervin
Mary Lawrence Gervin
State Personnel Director

SOURCE: SPB files.

STATE PERSONNEL BOARD

MINUTES OF THE EXECUTIVE SESSION

January 16, 1989

1:30 p.m.

Mr. Steckler made a motion that the Board consider entering into executive session to discuss a confidential personnel matter. The motion was seconded by Mr. Guy and unanimously carried.

Mr. Steckler then moved that the Board enter into executive session. The motion was seconded by Mr. Guy and unanimously carried.

During Executive Session Miss Gervin requested that the Board approve a new job class series for Personnel Analysts at the State Personnel Board in order to provide a career ladder for State Personnel Board employees that would be an incentive to stay at the Personnel Board and also create an incentive for personnel officers in other agencies to want to work at the Personnel Board. She explained that this agency has long been a training ground for personnel officers for other agencies because of our inability to compete salary-wise with agencies who could hire our personnel officers at Personnel Officer III and IV levels. She explained that over a period of time we have been able to reallocate some of our jobs upward to those job classes but that we need a specialized series that will have more difficult minimum qualifications and a higher pay range in order to make the job appear the most attractive from a professional and salary point of view. The proposed new job class series would have a SPB-Personnel Analyst, Pay Range 240 (\$20,954.88) - 321 (\$31,369.80); a SPB-Personnel Analyst, Senior, Pay Range 270 (\$24,336.12) - 351 (\$36,441.88); and a SPB-Personnel Analyst, Principal, Pay Range 300 (\$28,259.88) - 381 (\$42,118.56). Mr. Steckler expressed concern that the minimum qualifications being proposed were not high enough to attract the type of analyst we are looking for and to justify the new salary ranges.

During Executive Session Miss Gervin informed the entire Board for the first time that she had made the decision to tender her resignation in order to accept employment practicing law. Mrs. Richardson informed the Board members that the Director had met with her on Sunday, January 15, 1989, and was informed of her decision to resign. The Director expressed her concern over the selection of a successor. She felt that it was important that the Board act quickly in selecting her replacement in order to avoid the political interference that would be brought to bear if the open competitive selection process were utilized, to alleviate the uncertainty and anxiety among staff that would be created by having no Director at the agency, and to keep continuity with the legislature in the upcoming budget process. Mrs. Richardson asked if there was a requirement that the Board advertise the vacancy. Miss Gervin responded that it was the Board's decision as to whether to utilize the competitive or the non-competitive selection process. (A

copy of Section 4.12.1 of the State Personnel Board's Manual of Policies and Procedures concerning the appointment of state service employees is attached to the Minutes as Exhibit A.)

A discussion followed concerning other staff at the Personnel Board who might be qualified for the position of State Personnel Director. Miss Gervin stated that she had looked over printouts of staff in other agencies in order to attempt to be able to make a recommendation regarding a successor. She stated that there was no one in the agency she could recommend based on experience and education. She also stated that she knew of no one in other state agencies or neighboring states that she could recommend for the job. Miss Gervin recommended that the Board consider hiring Dr. Max McDaniel because of his outstanding qualifications for the job and his knowledge of the programs and staff at the agency. His firm has done work for the agency over a period of approximately ten years and, therefore, he is familiar with such programs as the performance appraisal system, the variable pay plan, test validation, and minimum qualifications revisions. The Board was provided with copies of Dr. McDaniel's resume. (A copy of the resume is made a part of the Minutes as Exhibit B.) After studying the resume and being advised by the State Personnel Director that Dr. McDaniel was available to meet with them, the Board requested that Dr. McDaniel come to the Executive Session. Shortly thereafter, Dr. McDaniel came to the meeting and was questioned by the Board members regarding his experience. Mr. Steckler raised the question of a conflict of interest. Dr. McDaniel assured the Board that he would be entirely disassociating himself from the firm of Morris & McDaniel, Inc. if chosen as the State Personnel Director. A salary range was discussed for the next State Personnel Director but no final decision was reached. After Dr. McDaniel left the Executive Session meeting, the Board members discussed his qualifications. The consensus was that he was imminently well qualified for the job, that he was familiar with several of the programs at the State Personnel Board, and that it was a unique opportunity for Mississippi to have someone with his qualifications willing to accept the position of State Personnel Director. However, Mr. Stuart stated that for him there was insufficient time to determine if Dr. McDaniel was qualified or not to be the Director. It was discussed that the newly appointed State Personnel Director, even though state service, would be probationary for a period of one year and could be terminated for any reason. There was considerable debate regarding the matter of whether or not to make the appointment non-competitively at that time or whether to delay the selection until other candidates could be considered and a background check done on Dr. McDaniel. After considerable debate, the Board, Mr. Stuart excepting, determined to use the non-competitive option of appointment, thereby exempting the appointment from the selection process. Mr. Stuart strongly urged delaying the selection. He stated his reasons for objecting to be (1) concern that the Board was not advised of the need to appoint a successor until day of the meeting, (2) that there were no legislative advisors present to advise the Board while selection was being made, (3) the appearance to other agencies given the State Personnel Board's oversight function, and (4) the lack of an opportunity for a background check on Dr. McDaniel. Both Mrs. Richardson and Mr. Steckler stated that they had known of Dr. McDaniel's work for several years through the Personnel

Board and that they were comfortable with his work and his qualifications and that they had sufficient knowledge not to require additional information or the applications of additional candidates. The consensus, except for Mr. Stuart, was that his qualifications were so outstanding that to look further would be an unnecessary delay. In addition, several Board members expressed their concern over the political interference that would be brought to bear if the open competitive process were utilized in selecting the next State Personnel Director.

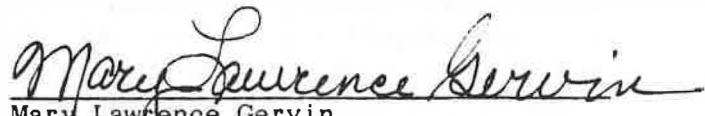
After approximately two-and-a-half hours of debate and discussion concerning the various matters brought up in Executive Session, Mr. Steckler moved that the Board return to Open Session. The motion was seconded by Mr. Guy and unanimously carried.

ACTION: Mr. Steckler made a motion to adopt the job class series with pay ranges so that these dollar amounts could be included in the budget projections for the next fiscal year but to direct the staff to redraft the minimum qualifications for the new job titles for further Board action, making them more demanding than those that presently exist for personnel officers in our system. The motion was seconded by Mr. Guy. Motion carried with Mr. Stuart voting against the motion.

ACTION: Mr. Steckler made the motion to reluctantly accept the resignation of Mary Lawrence Gervin as State Personnel Director to be effective March 15, 1989, allowing her to take approximately six weeks of unused personal leave between February 1 and the termination date. The motion was seconded by Ms. Smith. Motion carried with Mr. Stuart abstaining.

Mr. Guy stated that he believed Dr. McDaniel was exceptionally well-qualified for the position and made a motion to non-competitively appoint Dr. Max H. McDaniel State Personnel Director effective February 1, 1989. The motion was seconded by Ms. Smith. Motion carried with Mr. Stuart voting against the motion.


Sharion H. Richardson, Chairman


Mary Lawrence Gervin
State Personnel Director

4.11.5 NOTIFICATION OF APPLICANTS

Each applicant, including state service employees who have attained permanent status, shall be given notice, prior to their appointment to a nonstate service position by the appointing authority, that the State of Mississippi is under no obligation to continue their employment in a nonstate service position beyond the expiration of the life of the program or the program funds or the abolishment of the position.

4.12 STATE SERVICE APPOINTMENT AND SALARY CERTIFICATION

It is the policy of the State Personnel Board that vacancies in the state service which are not filled by transfer, promotion, or demotion are filled by probationary appointment, reemployment, reappointment, or emergency appointment. The minimum salary that will attract suitably qualified applicants for job openings consistent with the provisions set forth below shall be paid upon appointment.

4.12.1 ORIGINAL APPOINTMENT AND SALARY CERTIFICATION (PROBATIONARY)

Original appointments are made competitively from a list of eligibles, (Refer 3.42) or are made non-competitively by appointment. (Refer Glossary, 3.22.5)

- (a) The minimum rate of pay is normally paid upon appointment to a class. The State Personnel Director may authorize a salary to be certified above the minimum rate based upon the exceptional qualifications of the applicant or under such compensation rules as the Board may adopt.

4.12.2 PART-TIME APPOINTMENT AND SALARY CERTIFICATION

The appointment of an applicant to less than a full-time permanent position constitutes an hourly or part-time appointment.

- (a) Salary certification is the same as 4.12.1(a).

4.12.3 REAPPOINTMENT AND SALARY CERTIFICATION

An employee returning from authorized military leave or a leave of absence (such as for maternity, education, etc.) shall be appointed to a position in the same pay grade and step to include any occupational class salary revision(s), cost of living increase(s), or other general compensation adjustments effected since the date of separation.

3.22.3 AWARD OF VETERANS' PREFERENCE POINTS (Refer Mississippi Code Annotated Section 25-9-301 (1972) and Chapter 346, Laws 1980)

In establishing open-competitive and promotional lists, the veteran status of an applicant is considered. If the applicant attains a passing grade on an examination and is qualified to be placed on a list of eligibles, a total of five (5) points will be added to the final grade for veteran status, and a total of ten (10) points will be added for disabled veteran status. Final grade for an applicant is based on a one hundred (100) point scale. Points shall not be awarded for periods of active duty when duty was for "training purposes only" to meet obligations in the Reserve Forces, National Guard, etc.... Terms in this section are as follows:

- (a) Veteran: A person who has served in the active Armed Forces of the United States for a period of one hundred and eighty (180) days during a period of war or one who served in the active Armed Forces during a period of armed conflict and was granted an honorable discharge therefrom; or a person who served in the active Armed Forces during a period of war and was discharged therefrom for a service-connected injury in less than one hundred and eighty (180) days.
- (b) Disabled Veteran: A veteran whom the Veterans Administration has certified within the last ninety (90) days to have a service-connected disability.
- (c) Period of War: World War II, December 7, 1941, through July 25, 1947; Korean Action, June 25, 1950, through January 31, 1955; Post Korean/Vietnam Campaign, February 1, 1955, through May 7, 1975.
- (d) Proof of Eligibility: A certified copy of the veteran's discharge papers and separation record of certification from the Veterans Administration or Department of Defense will be accepted as proof of veteran status. Applicants requesting disabled veteran status shall submit, on such forms as may be required by the State Personnel Director, proof of disability certified by the Veterans Administration.

3.22.4 POSITIONS EXCLUDED FROM COVERAGE (Nonstate Service)

The State Personnel Director only acknowledges the appointment of nonstate service personnel.

3.22.5 OCCUPATIONAL CLASSES EXEMPTED FROM THE SELECTION PROCESS BY ACTION OF THE STATE PERSONNEL BOARD (State Service)

Appointments to exempt occupational classes are not made from a Certificate of Eligibles. The State Personnel Director certifies candidates referred by the appointing authority who meet the minimum requirements for the occupational class and pass the other appropriate required examination(s).

MAX H. McDANIEL

Personal: Date of Birth: November 2, 1935
Marital Status: Married with four children

Education: Millsaps College--B.A., 1957, Psychology
University of Mississippi - M.A., 1959,
General/Experimental Psychology
Purdue University-Ph.D., 1966,
Industrial/Organizational Psychology; Minor:
Statistics/Data Analysis

**Professional
Employment:** 1977 to present
President-Morris & McDaniel, Inc., Management
Consultants

1976 to 1977
Dean of Student Development, University of
Southern Mississippi, Hattiesburg, Mississippi

1971 to 1976
Associate Professor, Department of Psychology,
University of Southern Mississippi, Hattiesburg,
Mississippi

1964 to 1971
Assistant Professor, Department of Psychology,
University of Georgia, Athens, Georgia

1963 to 1964
Instructor, Department of Psychology, University
of Georgia, Athens, Georgia

1962 to 1963
Human Factors Engineer, Bell Aerosystems,
Buffalo, New York

Professional
Membership:

American Psychological Association
Division 14 (Industrial/Organizational) of the
American Psychological Association
Southern Society for Philosophy and Psychology
Mississippi Psychological Association
American Association for the Advancement of Science
Mississippi Academy of Science
Southeastern Psychological Association
International Personnel Management Association
American Society for Public Administration

Licensure:

Licensed Psychologist
Industrial/Organizational Psychology Specialty-
State of Mississippi/State of Louisiana

Professional
Experiences:

Co-presenter of workshop at the 1986 American
Psychological Convention. Topic - Recent Issues
in Industrial/organizational Psychology.
Attendees of this workshop received continuing
education units.

Development of over 200 tests or other procedures
for entry level selection into state agencies.

Development and implementation of over twenty
assessment centers designed to determine
promotability, as well as training and development
needs of employees (usually at managerial levels),
in organizations in eight states.

Development and validation (according to the
Uniform Guidelines on Employee Selection, 1978) of
over twenty tests for purposes of selection and
promotion in a variety of organizations.

In-depth assessment of upper level managerial
candidates, including assessment of knowledge,
skills, abilities and personal characteristics.

Invited speaker at the October International
Training and development conference of the
Management Centre Europe, in Brussels, Belgium.
Topic-Using Assessment Centers as a Management
Skills Audit.

Invited speaker at the 4th International
Conference on Assessment Centers for Police,
Corrections and Fire Services. Topic-Boston
Lieutenant and Sergeant Assessment Center: A
Psychometric, Legal, and Sociological Model.

Professional
Experience:

Psychological consultant to the Management

Assessment Program of The Bell System - evaluation of performance of executives (middle management levels) in a variety of tasks; e.g., group problem session, in-basket tests, interviews, etc., for the purpose of assessing training needs, "trainability," and readiness for promotion.

Development and revision of tests for the International Personnel Management Association.

Development of promotional examinations for the U.S. Capitol Police.

Development and presentation of training program to U.S. army personnel specialists on performance appraisal.

Expert witness in Federal Court in over a dozen cases. Qualified as Industrial/ Organizational Psychologist and Applied Statistician.

Assisted attorneys in preparation for trial (Title VII cases, trials involving labor unions, and disability trials).

Conducted annual Mississippi Banking Association survey (1986, 1987) of bank salaries and fringe benefits.

Conducted survey of attitudes of member banks concerning services provided by the Mississippi Banking Association.

Conducted attitude survey of bank employees for a major Mississippi bank.

Consultant to State Classification Commission on test validation and job analysis.

Consultant to State Air and Water Pollution Control Commission (job analysis and job evaluation).

Consultant to State Attorney General's Office (statistical analysis and test validation).

Consultant to State Tax Commission (job analysis and job evaluation).

Test validation for entry level patrolman selection test, three municipalities.

Consultant to State Highway Patrol on testing.

Consultant to State Department of Public Welfare-development of a statewide training and testing program.

Consultant to Private Food Industry for personnel and management assessment.

Consultant to Louisiana grain company for test validation.

Consultant to Louisiana lumber company for pre-employment screening.

Consultant to accounting firm on problem resolution.

Consultant to public utility company for management assessment and pre-employment screening.

Consultant to Mississippi State Personnel Board on validation of personnel procedures.

Journal Articles,
Papers and

Presentations: Crowder, W., Morris, J., & McDaniel, M.H.,
Secondary reinforcement or response facilitation?
Resistance to extinction. The Journal of
Psychology, 1959, 48, 299-302.

Tiffin, J., Teare, R.J., & McDaniel, M.H., An
investigation of vocational success with the
blind. Purdue University, November, 1960.

McDaniel, M.H., An investigation of vocational
success with the blind. Purdue University,
November, 1960.

McDaniel, M.H., Validation of the case analysis
technique. Project 2-H, Agency Research
Department, State Farm Mutual Insurance Company,
1961.

Walker, T.S., Taylor, R.E. & McDaniel, M.H.,
Delayed reinforcers in verbal conditioning and
awareness. Psychological Reports, 1968, 23, 411-
416.

Weiskopt-Joelson, E., Zimmerman, J., & McDaniel, M.H., Similarity between subject and stimulus as an influence on projection A. Journal of Projective Techniques and Personality Assessment, Volume 34, August, 1970, No. 4.

Contributor to Supervision for the Seventies, a booklet resulting from a supervisors' and principals' workshop conference. Funded by the Emergency School Assistance Program, Title 45. Published by Richard's Associates, Ltd., Baton Rouge, Louisiana, January, 1972.

McCullough, J.P., Cornell, J.E., McDaniel, M.H., & Muller, R.K., Utilization of the simultaneous treatment design to improve student behavior in a first grade classroom. Journal of Consulting and Clinical Psychology, 1974, Volume 42, No. 2, 288-292. Chosen for publication in Annual Review of Behavior Modification, Theory, and Practice, 1975.

Varnell, J.N., McDaniel, M.H., & McCullough, J.P., Effects of flooding and order of cue presentation on extinction of a serial conditioned avoidance response. Psychological Reports, 1975, 36, 623-629.

Author or co-author of over 50 reports on test development, validity of personnel procedures, adverse impact analyses, job analyses, job evaluation, salary surveys, etc.

McDaniel, M.H., Bio-data subgroup differences in gaming styles and strategies. Given at the Southern Society for Philosophy and Psychology, Durham, North Carolina, March, 1970.

Cornell, J.E., & McDaniel, M.H. Stimulus complexity in information processing. Given at the Southern Society for Philosophy and Psychology, Tampa Florida, April, 1974.

McDaniel, M.H., & Seymore, D.A., Multimeasure analysis of locus of control and field dependence. Given at Southeastern Psychological Association, Atlanta, Georgia, March, 1975.

Tomlinson, R.S. & McDaniel, M.H., The effect of

internal-external locus of control and field dependency as measured by the BIE & BFD scales upon information processing. Given at Southeastern Psychological Association, Atlanta, Georgia, March, 1975.

McDaniel, M.H., & Wakeman, R.J., Biodata correlates of anxiety. Given at Southeastern Psychological Association, New Orleans, Louisiana, March, 1976.

Eno, E.N., Lowe, J.D., McDaniel, M.H., Musgrave, R.S., & Sisemore, D.A., A comparison study of the level of state trait anxiety and muscle tension of alcoholics when treated by electromyograph biofeedback relaxation training and other clinical techniques. Given at Southeastern Psychological Association, New Orleans, Louisiana, March, 1976.

McDaniel, M.H., Industrial/Organizational Psychology in Louisiana. Given at Louisiana Psychological Association Meeting, 1987.
(Invited presentation)

McDaniel, M.H., Validation of an entry level police selection examination. Given at Mississippi Municipal Association Convention, July, 1977.

McDaniel, M.H., & Morris, D.M., EEOC Guidelines and Psychological Testing. Presented at Mississippi/Louisiana Psychological Association Meeting, 1978.

McDaniel, M.H. & Morris, D.M., Guidelines and Test Validation in the Public Sector. Presented at Statewide meeting of City Clerks, Assessors, and Tax Assessors.

Invited speaker at various Public Administration Seminars and Workshops.

APPENDIX B

SPB BOARD MEMBER'S LETTER CONCERNING MCDANIEL APPOINTMENT

LAW OFFICES OF

CAMPBELL, DELONG, HAGWOOD, WADE & STUART

P. O. BOX 1856

923 WASHINGTON AVENUE

GREENVILLE, MISSISSIPPI 38702-1856

(601) 335-6011

ROY D. CAMPBELL JR.
FRED C. DELONG, JR.
L. CARL HAGWOOD
LAWRENCE D. WADE
CLAUDE L. STUART, III
ROY D. CAMPBELL, III
JAMES T. MILAM
JOHN F. DAVIS, JR.
SALLY BASKIN BUNTIN
ROBERT N. WARRINGTON
RICHARD O. BURSON

January 18, 1989

OF COUNSEL:
J. WALKER STURDIVANT

Ms. Mary Lawrence Gervin, Director
Mississippi State Personnel Board
301 North Lamar Street, Suite 100
Jackson, MS 39201

Re: Appointment of Max H. McDaniel

Dear Lawrie:

The recent efforts to spin control what actually happened at the January 16, 1989, State Personnel Board meeting in which Max H. McDaniel was selected as the new Executive Director following the acceptance of your resignation would cause even a seasoned astronaut to blush. Consequently, I write this letter to set the record straight in regard to three inaccurate statements contained in recent editions of The Clarion-Ledger.

First, the Tuesday, January 17, 1989, edition contains an article by Beverly Canerdy entitled "State Personnel Board director resigns, surprising legislators". The article notes:

McDaniel said he met with the board Monday afternoon and was called back after the meeting and offered the job.

"I had a feeler from the state Personnel Board a week or two ago," he said. . . .

According to all Board members and yourself, no one other than Sharion Richardson had any advance knowledge concerning your resignation (much less the possible appointment of Max McDaniel) until disclosed by you in executive session at the board meeting late Monday afternoon on the 16th. Sharion advised the Board at the meeting on the 16th that you asked her to meet you in Tupelo at three o'clock in the afternoon on Sunday, January 15, 1989, at which time you told her simply of your possible resignation. Sharion did not impart this knowledge to any other Board member until the meeting on the 16th. Thus, Mr. McDaniel's statement that he had a feeler from the State Personnel Board, as opposed to you, is not true. It could only be you who put out the feeler "a week or two ago" without any prior discussion with your Board.

Second, an article in The Clarion-Ledger, Wednesday, January 18, 1989, by Jeff Copeskey entitled "Personnel director didn't quit until lawmakers saved agency" contains two additional inaccuracies. It states in the fifth paragraph:

Gervin, who informed board members over the weekend that she intended to resign, will be replaced Feb. 1 by Max McDaniel, the president of a management consulting firm with offices in Jackson, New Orleans and Washington.

The true facts are that other than Sharion, who had been told by you at three o'clock on Sunday, the 15th, less than 24 hours before the Monday meeting on the 16th, no other Board member had any prior knowledge of your planned resignation.

Third, the Wednesday article also contains the statement:

During a lengthy closed-door session Monday, Gervin said board members discussed several possible replacements but eventually settled on her choice. "They were given a lot of information. (McDaniel) has done a lot of work for the agency and the board was familiar with his work."

What actually happened is that you advised the Board that it was absolutely imperative in your judgment, because of what you perceived to be possible staff demoralization and a needed continuity with the Legislature regarding upcoming budget hearings that your successor be appointed Monday afternoon and that the successor be Max McDaniel. The only discussion of "several possible replacements" was simply your response to a question by one of the Board members as to whether you (not the Board) had considered anyone else. The "lot of information" the Board was given by you was a resume of Max McDaniel you had ready for each Board member and his being ushered from the wings in five minutes at your request to meet with the Board members. The Board had no other names (other than on-the-spot idle speculation), resumes, inquiries, or other information available to it as it made its decision within one hour. In addition to there being no legislative advisers present there was not even time to make a background check on Mr. McDaniel. The ordinary process promulgated by our agency and consisting of, at a minimum, advance knowledge to the Board, opportunity to consider fully other potential candidates, background checking, et cetera, were simply ignored in a rush to meet your self-imposed and carefully calculated deadline.

Over my dissenting vote the other Board members selected your annointed successor with the understanding that even though he is presently the only agency head under state service he could be terminated during the one-year probationary period for any reason. This understanding followed your statement that your being in state service offered no real protection to you from Board termination in any event.

I am told by persons whose judgment I respect that your accomplishments in state personnel functions during your tenure were significant. It is regrettable that these achievements have, in my judgment, become tinged by the same factors which led to the creation of the State Personnel Board in the first place, namely the politicizing of the personnel process. However laudable the goals may appear to the players, the process should always be followed. At a minimum, that process here demanded advance knowledge to the Board of your planned resignation and the need for a new director for at least the same one-to two-week period of time your successor had. The State Personnel Board should set an example above reproach for the other agencies in the selection of its director. What was done Monday was not only indefensibly deficient but it will also come back to haunt the Board in its oversight function. Our actions in permitting the process to be trampled by expediency have spoken louder than our words.

I sincerely hope your achievements in the personnel field will not be overlooked. However, I rather suspect the lasting legacy from this episode will be a constant reminder of the dark side of the "independent agency" argument illuminating what can happen when directors become too "independent" themselves and why the mechanism is in serious need of overhauling. In that sense, your swan song may be a phoenix yet.

Very sincerely yours,



Claude L. Stuart, III

5E3705

cc: Mr. Sanford R. Steckler
Ms. Sharion H. Richardson
Ms. Dorothy Ann Smith
Mr. William Guy
Honorable Billy D. Lancaster
Honorable Dorlos Robinson
Honorable Irb Benjamin
Honorable Nevin Sledge

AGENCY RESPONSE



MISSISSIPPI STATE
PERSONNEL BOARD

301 North Lamar Street, Suite 100, Jackson, MS 39201

February 20, 1989

Mr. John Turcotte, Director
Joint Committee on Performance Evaluation
and Expenditure Review
Central High Legislative Service Building
Jackson, Mississippi



William Guy
McComb
Sharion H. Richardson
Fulton
Dorothy Ann Smith
Hemando
Sanford R. Steckler
Biloxi
Claude L. Stuart III
Greenville
Max H. McDaniel, Ph.D.
State Personnel Director

Dear Mr. Turcotte:

Enclosed is a response to the draft PEER Committee report which various members of the State Personnel Board staff and I reviewed on February 14, 1989. I reviewed the draft on that morning and staff members did so that afternoon. Mr. Barber called me that afternoon around 5:00 p.m. informing me that one paragraph which I had questioned had been deleted, as had a sentence which I had not questioned.

The PEER report seems to us to be factually accurate in most respects. The exceptions to this are noted in our response. We have limited our comments to clarification and correction of what we believe to be inaccuracies.

I contacted Mrs. Sharion Richardson, Chairman of the State Personnel Board, on the day I reviewed the draft report and relayed the findings to her as best I could remember them. We discussed the advisability of requesting a delay so that the Board could have the opportunity to read the document and make their own comments in reply. However, given the facts that (1) the PEER Committee was to meet on the following Monday at which time they wish to have our response; (2) the State Personnel Board cannot meet until February 27 (finding a date for all the members to meet in February was nearly impossible); (3) we are not allowed to have copies of the report to disseminate to Board members; and (4) we all wish to have these matters behind us, Mrs. Richardson advised me not to request an extension, however desirable that might be.

The State Personnel Board is pleased that the PEER report finds no substantive problems within the scope of this inquiry. We at the State Personnel Board are working hard to continue to improve our service to the state. In my short tenure as Director, I see a number of areas, particularly in communication of our role and function, that need continued improvement. Toward that end, I would appreciate the opportunity to meet with the PEER Committee to more specifically engage the points of concern regarding this agency.

Sincerely,

Max H. McDaniel, Ph.D.
State Personnel Director

STATE PERSONNEL BOARD RESPONSE TO PEER REPORT

In the last paragraph on page 2 of the proposed PEER report, the last sentence is an inaccurate statement. The minutes were not compiled from Miss Gervin's handwritten notes and memory of the meeting. The January 16, 1989, executive session minutes were written with all the Board members participating in that writing during a four-hour executive session meeting on Saturday, January 28, 1989. The Board members worked from a "very rough" draft of the meeting that was presented to them in summary form that Miss Gervin had drafted the week before the January 28 executive session meeting. As the Chairman of the State Personnel Board, Mrs. Sharion Richardson, noted in her letter to the editor of The Clarion-Ledger on Sunday, February 5, 1989, "Absolutely no content or meaning of the minutes were changed. What was originally a 1½-page draft of minutes in summary fashion turned out to be three pages of a very detailed, accurate, 'play-by-play' accounting of that meeting."

In the first paragraph on page 3 of the proposed PEER report, the statement is made that the agenda for the January 16 meeting did not indicate an executive session was planned. The State Personnel Board does not indicate on their agenda that executive sessions are planned since a board member would have to make a motion that the Board consider entering into executive session. There is always the possibility that the motion would not receive a second; and, therefore, no executive session would be held. Only board members can determine if an executive session is necessary.

PEER has criticized the State Personnel Board for not using an open-competitive process in the appointment of Dr. McDaniel which "would have set a good example for other state agencies to follow."

Miss. Code Ann. § 25-9-103(a) establishes one of our State's principles of our personnel system as: "Recruiting, selecting, and advancing employees will be on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment." This principle and others contained in State Personnel Board law is taken directly from the federal Uniform Guidelines on Employee Selection Procedures (1978) which further recognizes the importance of giving state and local governments wide discretion in the method of appointment of persons to fill top level management positions in order "to assure proper organizational responsiveness." Therefore, it should be pointed out that most top level management positions within state government are filled on a non-competitive basis.

A factual discrepancy exists in that the PEER report attempts to draw a distinction between the non-competitive appointment of Mr. Guy Groff as State Personnel Director in 1980 and Dr. McDaniel's appointment. In fact, the state service position of State Personnel Director was created by law effective February 8, 1980. Mr. Groff was appointed non-competitively as State Personnel Director on February 20, 1980. The PEER report states Mr. Groff was "continued" as State Personnel Director, and that the appointment was only "technically" non-competitive. There is no provision in state law or regulation to be "continued" into a new employment position; you are either appointed or you are not. The PEER report never attempts to explain its claim that the two appointments are "distinctly different" or why Mr. Groff's appointment was only "technically" non-competitive. In actuality, the two appointments

were literally, legally, and substantively equivalent. Also, the PEER Committee staff never requested to review the legal record of Mr. Groff's non-competitive appointment as State Personnel Director contained in the Minutes of the February 20, 1980, meeting of the State Personnel Board. This presumably helps to explain why the PEER report does not attempt to substantiate its claims in this matter.

In regard to the work done for the state by Morris & McDaniel, Inc., it should be recognized that the great bulk of it was done in direct response to litigation. Take, for example, the Test Validation Project begun under Director Groff. In the Walls case (Walls vs. Mississippi Department of Public Welfare), the state was sued under Title VII of the Civil Rights Act of 1964. Discrimination was charged and the plaintiffs won on the issue of invalid testing (three entry level tests used for hiring into three positions at the Department of Public Welfare). Although the class in this class action suit is still being determined, the projected judgement amount may be into the several millions of dollars. This was a three-year project extended for an additional year to include the validation of training and experience ratings.

As a result of this case, all entry level tests (over 200) used by the state were suspect and their use was discontinued. The State Personnel Board and the State Legislature mandated new tests, hence the Test Validation Project. These tests were to be "tailor made" and developed in view of guidelines found in the AERA, APA, and NCME 1985 Standards for Educational and Psychological Testing, Society for Industrial and Organizational Psychology, Inc., (APA) 1987 Principles for the Validation and Use of Personnel Selection Procedures (3rd ed.), and 1978 Federal Register, 43(166), 38290-38315 (Adoption by four agencies of uniform guidelines on employee selection procedures and the 1979 and 1980 questions and answers to clarify and provide a common interpretation of the uniform guidelines on employee selection procedures, Federal Register, 44(43), 11996-12009 and Federal Register, 45(87), 29530-29531.).