

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

COMMONWEALTH OF VIRGINIA,
DEPARTMENT OF HIGHWAYS AND
TRANSPORTATION,

Defendants.

CIVIL ACTION NO.
82-0933-R

AFFIDAVIT

I, David L. Rose, first being duly sworn, depose and state as follows:

1. I am the Chief of the Federal Enforcement Section of the Civil Rights Division of the United States Department of Justice. In that capacity I am responsible for the supervision of the Title VII cases litigated by the Civil Rights Division. In addition, in that capacity I appear from time to time to represent the Government in the district courts and the courts of appeals. I have served in that capacity since 1969 when the section, then called the Employment Section of the Civil Rights Division, was created. I have been an attorney with the United States Department of Justice since September, 1956. Since that time, I have represented the United States, its officers and

agents, in district courts, the Tax Court, the courts of appeals and the Supreme Court.

2. The Civil Rights Division attorneys who signed the complaint on behalf of the United States work under my supervision in the Federal Enforcement Section. They are experienced in the litigation of Title VII cases. Each of them has worked almost exclusively on Title VII and related cases since joining the Justice Department. Their dates of service with the Justice Department are as follows: Katherine Ransel, September 27, 1976; Marybeth Martin, August 14, 1978, and Teresa D. Johnson, September 24, 1978.

3. Katherine Ransel, who had lead responsibility in this case, was a lawyer for the United States in the trial in United States v. County of Fairfax, Civil Action No. 78-862-A, and was the lead lawyer in the trial on remand, 26 EPD ¶31,983 (decision after trial), and in the Stage II proceedings, 27 EPD ¶32,194, leading to the entry of a consent decree on April 29, 1982. Based upon her performance in that case in 1981-1982, Ms. Ransel was one of two lawyers in the Department of Justice awarded the Attorney General's John Marshall Award for Trial Litigation for that year. Ms. Ransel was the lead lawyer for the United States in a number of other pattern or practice employment discrimination cases including, United States v. Florida, Civil Action No. TCA-79-0927, N.D. Fla., consent decree entered July 12, 1979; United States v. Arkansas, Civil

Action No. LR-C-78-25, E.D. Ark., consent decree entered February 1, 1978; United States v. Cincinnati, Civil Action No. C-1-80-369, S.D. Ohio, consent decree entered August 13, 1981; United States v. South Carolina, Civil Action No. 76-1494, D. S.C., consent decree entered November 26, 1980. Ms. Ransel left the Department on January 7, 1983 to enter the private practice of law.

4. Marybeth Martin entered on duty with the Civil Rights Division, after having served as a law clerk to the Honorable James A. Belson, Judge of the Superior Court of the District of Columbia. She has worked under my general supervision since joining the Division. She has been engaged in the preparation for litigation, litigation settlement and enforcement of decrees in cases involving allegations of employment discrimination and related litigation since that time. In the last three years Ms. Martin was a lawyer for the United States in United States v. State of Texas, (Department of Highways and Public Transportation), No. A-78-287, W.D. Tex., who participated in discovery and other pre-trial proceedings, in the trial and post trial proceedings; in United States v. Jefferson County School District, No. 79-F-170, D. Colo.; and was a lawyer for defendants in Valley Construction Co. v. Marsh, No. W-81-0028 (R), S.D. Miss; and was the lead lawyer for the United States in United States v. City of Montgomery, No.

3739-N, M.D. Ala., and in United States v. City of Milwaukee, No. 74-C-480, E.D. Wis.

5. Teresa D. Johnson has worked under my general supervision since joining the Civil Rights Division. She has been engaged in the preparation for litigation, litigation, settlement and enforcement of decrees in cases involving allegations of employment discrimination and related litigation since that time. She has been assigned to work on the investigation of the Commonwealth of Virginia, Department of Highways and Transportation, with a lead lawyer, since September 1979. In addition, she has been a lawyer and in 1979 became the lead lawyer for the United States in United States v. Pinellas County, No. 80-849-TH, M.D. Fla.; and has been the lead lawyer in Player v. Alabama Department of Pensions and Securities, No. 3835-N, M.D. Fla. She was a lawyer for the United States in preparation for trial and trial in United States v. Jefferson County Personnel Board, No. 75-P-066-S, N.D. Ala.; and in trial preparation, settlement and post decree proceedings in United States v. Nassau County, No. 77-C-1881, E.D.N.Y.

6. I have supervised and directed the investigation of the employment practices of the Virginia Department of Highways and Transportation which culminated in the filing of this lawsuit.

7. I supervised and directed the settlement negotiations made on behalf of the United States which resulted in the

Consent Decree which was submitted to this Court on December 30, 1982.

8. Under my direction, in early 1977, Civil Rights Division attorneys began a preliminary investigation of the employment practices of the Virginia Department of Highways and Transportation. On July 14, 1977, pursuant to our usual practice, Civil Rights Division attorneys were authorized to proceed with a full investigation of the Virginia Department of Highways and Transportation.

9. Pursuant to our usual practice, the Commonwealth of Virginia was advised of our investigation in July 1977 by letter to then Attorney General Marshall Coleman, wherein we requested certain relevant information not available from other sources. Because the attorneys for the Commonwealth of Virginia questioned the authority of the Department of Justice to initiate a pattern or practice investigation, in December, 1977 the investigation was held in abeyance until the decision in United States v. North Carolina, 587 F.2d 625 (4th Cir. 1978) certiorari denied 422 U.S. 909, confirmed that authority. The investigation was thereafter resumed in September, 1979.

10. The investigation which has resulted in this lawsuit being filed was detailed and thorough. Civil Rights Division lawyers under my supervision interviewed applicants to and present and former employees of the Virginia Department of Highways and Transportation. Relevant data was collected from

numerous sources including the Virginia Department of Highways and Transportation and the Equal Employment Opportunity Commission.

11. Based on our investigation, Assistant Attorney General William Bradford Reynolds signed notice letters dated February 8 and 11, 1982, to the Attorney General and Governor of Virginia, and authorized the filing of a Title VII lawsuit against the Virginia Department of Highways and Transportation, either with a consent decree or, upon the conclusion of efforts to obtain such a decree if such efforts proved unsuccessful.

12. Pursuant to our usual practice, the Commonwealth of Virginia was notified in the notice letter of our authorization to file suit alleging discrimination in employment practices against blacks and females, and was invited to meet with us to work towards a settlement of the proposed lawsuit, in the form of a consent decree.

13. Civil Rights Division attorneys under my direction began settlement discussions with the Commonwealth of Virginia attorneys who represented the Department of Highways and Transportation. I participated in two settlement meetings. Those discussions continued until the negotiated settlement terms were embodied in a Consent Decree agreeable to attorneys for both parties. At all times, the negotiations were conducted at arms length, and in accord with the usual practices of this Division and this Department.

14. I reviewed the substance of each settlement proposal made on behalf of the United States and each counter-proposal submitted by the Virginia Department of Highways and Transportation.

15. I reviewed the terms of the Consent Decree which was submitted to this Court on December 30, 1982, and submitted the Decree to Assistant Attorney General Reynolds before the Decree was approved as a final document by the United States. I determined that the terms of the Consent Decree address and resolve the substance of the allegations of employment discrimination which the United States has asserted in the complaint in this matter. Based on that determination, and the consistency of the Decree with the law and with the policies of this Department, I recommended to Assistant Attorney General Reynolds that he approve the Consent Decree.

16. I have reviewed the Court's opinion of January 6, 1983 and again reviewed the consent decree as originally drafted. Pursuant to the directions of Assistant Attorney General Reynolds, I participated in the drafting of proposed modifications, and supervised the negotiation of modifications with counsel for the defendant.

17. I have reviewed the consent decree, as modified, and have determined that it is consistent with law; and that it is consistent with the policies of the Department. Accordingly, I have approved the Consent Decree, as modified, signed the

motion for its entry and recommended to Assistant Attorney General Reynolds that he approve the consent decree, as modified.

David L. Rose
DAVID L. ROSE

Sworn and Subscribed before me
This 13th day of February, 1983

Fannie L. Howard
NOTARY PUBLIC

My Commission Expires: 7/14/84