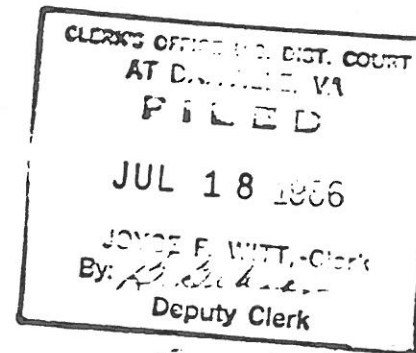


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

DANVILLE DIVISION



UNITED STATES OF AMERICA,)

Plaintiff)

v.)

JAY GREGORY, SHERIFF OF)
PATRICK COUNTY,)

Defendant)

Civil Action No. 83-0094-D

ORDER

In accordance with the Memorandum Opinion filed contemporaneously herewith, it is hereby ORDERED that:

1. All claims of sex discrimination against the Sheriff of Patrick County are DENIED, except for the filling of the position of deputy/courtroom security for which Ms. Ressel applied.

2. Sheriff Gregory, in his official capacity, is hereby ORDERED to pay over to the United States \$6,532.68 for the use and benefit of Ms. Ressel.

3. The request of the United States to be awarded reasonable attorneys' fees is DENIED, and the parties shall bear their respective court costs.

4. The Clerk is directed to dismiss this case from the active docket of this Court.

5. The Clerk is further directed to send a certified copy of this Order to all counsel of record.

ENTER this 18th day of July, 1986.


United States District Judge

A TRUE COPY, TESTE:

Joyce F. Witt, Clerk

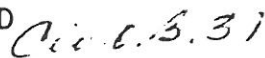
By: 
Deputy Clerk

DANVILLE DIVISION

Defendant

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By: Jackson L. Kiser, Judge
United States District Court



I delayed further consideration of this case until the Fourth Circuit decided the case of Brewster v. Barnes, et al, No. 83-1572, slip op. (4th Cir. April 10, 1986).

which also involved an issue of the personal staff exemption. After the Fourth Circuit handed down its decision in the Brewster case, I received briefs from counsel, and on May 15, 1986, the case was reargued and the issues are now ripe for decision.

Detailed findings of fact appear in my Memorandum Opinion of March 23, 1984, and I will here repeat only those facts which are necessary for comparative purposes with the Curl and Brewster opinions. To put these facts in their proper perspective, it is necessary to review the factual and legal basis of the Curl and Brewster decisions and the posture of those cases as they were presented to the Fourth Circuit on appeal.

Curl was an appeal from the United States District Court for the Western District of North Carolina, which had found that the defendant, Leroy Reavis, Sheriff of Iredell County, North Carolina, had discriminated against the plaintiff on the basis of her sex in violation of Title VII. The district court's findings of fact disclosed the following: Curl was hired in July of 1976 by Reavis predecessor. She was hired as a deputy sheriff and served as a dispatcher/matron and as a records clerk. Defendant Reavis was elected Sheriff in 1978, and a month after his election, he transferred Curl to the position of secretary of the Detective Division with no change in pay status. A position of road deputy came open in June, 1980, and Curl applied for it. She was denied the position by the

Sheriff's Chief Deputy and was told that a woman could not fill that job. Subsequently, she applied for the job of detective and was denied that. Ultimately, on April 13, 1981, Curl was fired by the Chief Deputy.

In North Carolina, the Sheriff is an elected official, and he has the authority to hire and fire his deputies and other employees. All of his employees serve at will. Reavis asserted in the district court, as he did in the circuit court, that Curl came within the personal staff exception of 42 U.S.C. § 2000e(f). The district court found that she did not, and the Fourth Circuit agreed. The court found her duties to be routine. In so finding, the court stated that there was no evidence that her position was "highly intimate and sensitive" nor was she under the personal direction and supervision of the Sheriff. 740 F.2d at 1328. See also Owens v. Rush, 654 F.2d 1370, 1375 (10th Cir. 1981).

The Fourth Circuit in Curl set out the legal principles which guided its determination. The court stated that plaintiff's status as an employee under Title VII was a question of federal law, but that state law was relevant in defining and describing the plaintiff's position, her duties, and the way she was hired, supervised, and fired. The court further pointed out that the personal staff exemption was to be narrowly construed. It then proceeded to analyze Curl's positions of dispatcher/matron and secretary and found that these duties did not place her in

the personal staff category. It is noteworthy that the Fourth Circuit did not undertake to analyze the positions of patrol deputy, supervisor, or detective because such analysis was not necessary to determine whether Curl had been discriminated against when she had been fired from the position of secretary. The Fourth Circuit specifically disclaimed any intent to enunciate a broad sweeping rule that applied to all deputy sheriffs. In so doing, it stated, "We are unwilling to treat all deputy sheriffs as employees, or to exclude them wholesale from Title VII's protection." 740 F.2d at 1328.

The Brewster case, supra, does not expand or contract the legal analysis of Curl. It does, however, make clear that there is "no significant difference between the legal relationship of sheriffs and deputies in North Carolina . . . and in Virginia" Brewster, slip op. at 12. It also reemphasizes that the broad issue of whether or not all deputy sheriffs are on the sheriff's "personal staff" is to be determined on a case-by-case basis requiring "a careful examination of the nature and circumstances of [the plaintiff's] role in the sheriff's department." Id. at 11-12, quoting Curl, 740 F.2d at 1328.

Factually, Brewster and Curl are very similar in that the positions which the Fourth Circuit analyzed were those of deputy sheriff/matron. In both instances, the court found that the job of matron was not one of an intimate or high level position nor was it involved in

policy decisions. In both cases, the position was found to be that of a routine correctional officer at the jail.

In my Memorandum Opinion of March 23, 1984, I noted that the question of whether a deputy sheriff fell within the personal staff exemption was a question of federal law, but that state law was pertinent in defining the job duty and the deputy's legal relationship to the sheriff. I further noted that the personal staff exemption was to be narrowly construed. These are the same standards enunciated in Curl and Brewster. Indeed, during the oral arguments on May 15, I pressed both counsel for the United States and counsel for the Defendant to point out where the legal framework used by this Court in analyzing the personal staff exemption differed from the legal framework used by the Fourth Circuit in Curl and Brewster. They could not.

Both Curl and Brewster make clear that the determination of whether a position on the sheriff's staff falls within the personal staff exemption must be made on a case-by-case basis. In conducting such an analysis, both the legal relationship and the actual (factual) relationship of the sheriff to the particular position and person who occupies it is critical to the analysis. The legal relationship of the sheriff to his deputies need not be repeated here. It was analyzed in depth in my earlier decision and was fully discussed by the Fourth Circuit in Curl and Brewster. It is the actual relationship of the

sheriff to the deputy that needs reexamination under the Fourth Circuit's mandate. That is the task to which I now turn.

The demographics of Patrick County are set forth in my March 23, 1984, Memorandum Opinion and will not be recounted in detail here. Suffice it to say that Patrick County is a sparsely populated, rural county with a relatively large land area. The Sheriff's Department for the period in question, i.e., January 1, 1980, to January 1, 1984, consisted of twenty-three persons including the sheriff.

Of the twenty-two persons who worked for the sheriff, eighteen were "sworn officers" or deputies, but all deputies do not have the same job assignment. The deputy classification includes four road deputies, two investigators, two supervisors, two court security officers, five correctional officers, one process server, and two clerk-steno matrons. The job classifications are important in determining whether a position falls within the personal staff exemption.

I am of the opinion that the four road deputies fall within the personal staff exemption, but some of the other jobs do not. It is the road deputy who is the alter-ego and personification of the sheriff in the geographical area to which he is assigned. These deputies are assigned a specific area of the county. They live in the area and become an extension of the sheriff. It is with

them that most of the residents of their geographically-assigned area have contact. They are the eyes and ears of the sheriff, not only for matters which fall within their official sphere but also as to matters political. For these reasons and the reasons assigned in my earlier holding, I continue to be of the opinion that the road deputies fall within the personal staff exemption. This affects not only them, however, because the job of supervisor and investigator are not entry level positions, but are those which require prior experience as a road deputy. Cf. Curl, 740 F.2d at 1326 and 1329.

Upon reconsideration of the remaining positions, I have concluded they are not within the personal staff exemption. The position of correctional officer, as pointed out in Curl and Brewster, is not in a highly intimate and sensitive position nor is it a policymaking position. The job calls for routine activity in conjunction with the handling of prisoners in the jail. However, the position of correctional officer in the Patrick County Jail was not one which could be occupied by a female. The requirement that the correctional officer be a male was interposed by the Defendant as being a bona fide occupational qualification, and I think that defense was clearly established by the evidence.

The evidence showed that female prisoners were not housed in the Patrick County Jail because the occasion for housing a female prisoner arose so seldom. Thus, the

correctional officers in the Patrick County Jail had an entirely male population with which to deal. The evidence revealed that in dealing with the prisoners the officer was often called upon to conduct a strip search, to assist with medical problems and hygiene needs, to respond to disturbances, to surveil the prisoners, and to conduct regular inspections of the cells and the prisoners. The United States suggests that some of these duties which involved the observation of prisoners could be conducted by a T.V. monitor. This is probably true, but it lacks the effectiveness of the personal on-sight inspection and does not fulfill the other duties which require personal contact with the prisoners. To have a female perform many of the duties which require personal and intimate contact with male prisoners would, in my opinion, be embarrassing to the officer and to the prisoners as well. Not only would such contact be embarrassing, it is fraught with the danger of creating disturbances among the prisoners and probably would lead to violence in some instances.

With the exception of the position of courtroom security deputy, the remaining positions of process server¹ and clerk-steno/matron were performed by females and, therefore, there can be no claim of sex discrimination in the filling of those positions. Thus, the sole remaining position to consider is that of courtroom security deputy.² The only time Sheriff Williams, Gregory's predecessor, had occasion to fill the position of deputy/courtroom security

officer during his tenure was in July of 1983. The manning roster shows that he filled two such positions on January 1, 1980, but these were carry-over positions from the prior sheriff's administration. The manning roster also shows that the persons occupying these positions were carried over to Sheriff Gregory's administration commencing January 1, 1984.³

The courtroom security position which was filled on July 1, 1983, was the one for which Stephanie Ressel had applied on June 3, 1983. Sheriff Williams filled the position with a man, David Morris. At trial, Williams testified that the reason he did not choose Ms. Ressel was that she was overqualified for the position. (She had a bachelors degree in criminal science). He felt that she would become dissatisfied in the job and leave in a short period of time. Ms. Ressel testified that she was never given any reason why she was rejected, but only received a form letter advising her that she had not been chosen.

The explanation that Sheriff Williams gave for rejecting Ms. Ressel is weak to say the least. His explanation would carry a great deal more weight had he advised Ms. Ressel at the time of her interview that he felt she was overqualified. Instead of doing that, Sheriff Williams went into some detail regarding the duties of the office, having to live in Patrick County, and the requirements of procuring uniforms and equipment. Moreover, when Mr. Morris' qualifications are compared with those of

Ms. Ressel, it is clear that she has the edge. Unlike Ms. Ressel, Morris had no formal education in law enforcement. Ms. Ressel had prior experience in law enforcement as an intern with the Harrisonburg Police Department and Morris had none. On the written examination given by Sheriff Williams, Ressel had a score of 86%, and Morris received 71%.

I think there is sufficient evidence to support a finding of sex discrimination by Sheriff Williams in choosing Mr. Morris over Ms. Ressel for the position of courtroom deputy. However, I do not feel that the United States is entitled to injunctive relief on behalf of Ms. Ressel. Ms. Ressel testified as of April 1, 1981, that she was no longer interested in a job with the Patrick County Sheriff's Department.⁴ Thus, she does not desire injunctive relief, but she is entitled to monetary damages to the extent of lost wages.

Ressel's lost wages are computed in Appendix A to Plaintiff's post-trial brief filed February 7, 1984. The computation shows her lost earnings for the period of July 1, 1980, to March 31, 1981, to be \$6,532.68 plus interest. This does not, however, take into account the fact that Ms. Ressel was employed in her husband's business from January 1, 1981, until March 31, 1981. Although she was not paid a wage by her husband, she did receive indirect benefits to the extent the business benefited from her services. I am, therefore, going to order that


Sheriff Gregory, the present occupant of the Sheriff's Office, pay over to the United States the amount of \$6,532.68, but I am not going to require the payment of interest on that amount because of Ms. Ressel's employment by her husband from January 1, 1981, until March 31, 1981.⁵

The Defendant moved to dismiss the Complaint under Fed.R.Civ.P. 19 because of the United States' failure to include indispensable parties. Defendant asserted in the motion that the Patrick County Board of Supervisors and the Virginia State Compensation Commission should have been joined as parties. The United States opposed the motion. Although it may have been desirable to join the Board of Supervisors and the Compensation Commission because ultimately one or both of these bodies will probably have to provide funds for the payment of the monetary relief, I don't believe it was fatal to the United States' case to fail to do so. It is clear that the Sheriff is fully responsible for the operation of his office and is the hiring and firing authority of all of his employees.⁶ It is also clear that the position of deputy/court security officer had been authorized by the Compensation Commission. Moreover, there is no challenge by the Defendant that the Sheriff was acting in his official capacity in filling that job. Thus, under the auspices of Brandon v. Holt, 469 U.S. ____, 105 S. Ct. ____, 83 L.Ed. 878 (1985) and Kentucky v. Graham, 473 U.S. ____, 105 S. Ct. ____, 87 L.Ed.2d 114 (1985), judgment against the Sheriff in his official

capacity is tantamount to judgment against the political entity.

The remaining relief requested by the United States is that of attorneys' fees. I will deny that relief because I am of the opinion that the Defendant substantially prevailed in this case. It was the United States' thesis that a pervasive violation of Title VII was ongoing in the Patrick County Sheriff's Office and that at least two females other than Ms. Ressel had been victims of it. The gravamen of the relief sought by the United States was an injunction, and in addition thereto compensation for the aggrieved females. It succeeded only in obtaining relief for one female for back wages for a short period of time. Thus, the Defendant, not the United States, must be considered the prevailing party in the case. An Order will be entered in conformity with the foregoing conclusions.

The Clerk is directed to send a certified copy of this Memorandum Opinion to all counsel of record.


United States District Judge

¹The position of process server was abolished by Sheriff Gregory. As noted in the March 23, 1984, Memorandum Opinion, this position was filled by a female during Sheriff Williams' tenure. When Sheriff Gregory assumed office in 1984, the position was abolished because of budgetary constraints. Although the United States urges that Sheriff Gregory had the ulterior motive of sex discrimination in abolishing this position, the evidence does not justify such a conclusion.

²Another position in the Sheriff's Department was that of dispatcher. The dispatcher was not a sworn deputy, and that position was filled by both males and females. The United States does not claim any discrimination in the filling of this position.

³See Post-trial Brief for United States at 17-18 (November 6, 1985).

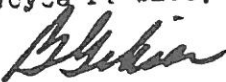
⁴The present Sheriff is Jay Gregory, who took office on January 1, 1984. There is no evidence that he in any way invidiously discriminated against women and, therefore, injunctive relief would be inappropriate regardless of Ms. Ressel's personal desires. See, e.g., City of Los Angeles v. Lyons, 461 U.S. 95 (1983); Spomer v. Littleton, 414 U.S. 514 (1974).

⁵The United States sued the Sheriff only in his official capacity. The United States pointedly disclaimed any attempt on its part to impose personal liability upon either Sheriff Williams or Sheriff Gregory. Consequently, the monetary relief here ordered must come from official sources.

⁶The sheriff of a county is a constitutional officer elected by the voters and is responsible for the operation of his office. Va. Const. art. VII, § 4.

A TRUE COPY, TESTE:

Joyce F. Witt, Clerk

By: 
Deputy Clerk