

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

DANVILLE DIVISION

NO. 83-0094

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAY GREGORY, SHERIFF OF
PATRICK COUNTY, a Consti-
tutional Officer of the
Commonwealth of Virginia and
elected under the Laws of
the Commonwealth,

Defendant.

POST-TRIAL BRIEF OF PLAINTIFF UNITED STATES

WILLIAM B. FENTON
JOHN M. GADZICHOWSKI
MELISSA P. MARSHALL
Attorneys
Department of Justice
Civil Rights Division
Washington, D.C. 20530
(202) 633-2188

Counsel for Plaintiff United
States of America

TABLE OF CONTENTS

	<u>Page</u>
I INTRODUCTION	first page
II BACKGROUND	4
A. The Sheriff and His Duties; and the Operation of the Patrick County Sheriff's Department	4
B. Job Titles and Job Descriptions within the PCSD	6
C. Stated Qualification Standards and Selection Procedures.	10
III EVIDENCE OF DISCRIMINATION AGAINST WOMEN	14
A. Generally	14
B. The Sheriff's Stated Policy of Refusing to Consider Women for Hire as Corrections Officers	20
C. Evidence of Discrimination against Individual Women.	22
Stephanie Gregory Ressel.	22
Doris Scales.	35
Wanda Hylton.	64
Kathy Sheppard.	66
IV ARGUMENT	75
A. Liability.. . . .	75
B. Relief.	87
V CONCLUSION	last page
Computations of Earnings Loss for:	
Stephanie Gregory Ressel	Appendix A
Doris Scales	Appendix B

I

INTRODUCTION^{1/}

The United States brought this action on June 29, 1983 against defendant Jesse W. Williams in his official capacity as Sheriff of Patrick County. Mr. Williams had been elected Sheriff of Patrick County in November 1979 and assumed that office on January 1, 1980 (Williams Dep. 8/11/83, p. 7).^{2/} Sheriff Williams

^{1/} This Brief is being submitted with leave of the Court granted at the conclusion of trial on January 20, 1984. Although some of the evidence and argument set forth in our Pre-Trial Brief and other pre-trial submissions are replicated herein, such has been done for the convenience of the Court in its review of the evidence and applicable law.

^{2/} The depositions of Sheriff Williams taken by the United States on August 11 and October 12, 1983, the deposition of Sheriff Gregory taken by the United States on January 10, 1984, and the exhibits attached to those depositions were received into evidence by the Court at trial of this action, pursuant to Rule 32, F.R.Civ.P.

remained in office until January 1, 1984, when Jay Gregory assumed that office as a result of his defeat of Mr. Williams in the November 1983 election for Sheriff (Gregory Dep. 1/10/84, pp. 4-5). Accordingly, upon motion of the United States, the Court by bench ruling on January 11, 1984 substituted Mr. Gregory for Mr. Williams as defendant Sheriff in this action, pursuant to Rule 25(d), F.R.Civ.P. That ruling of the Court was later embodied in an order entered on January 20, 1984.

In our Complaint, we alleged (para. 7) that defendant Sheriff of Patrick County "has engaged and continues to engage" in discriminatory employment practices against women on the basis of their sex, in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq. In our prayer for relief (Complaint, pp. 4-5), we asked this Court to enter an order enjoining the Sheriff of Patrick County: from engaging in employment practices that unlawfully discriminate against women on the basis of their sex; and from failing or refusing to take appropriate measures to overcome the present effects of these discriminatory practices by - among other means - establishing a recruitment program on behalf of women, and providing remedial relief (in the form of an offer of employment, monetary compensation, retroactive seniority and fringe benefits) to any woman who has been unlawfully denied employment by the Sheriff.

This case stems from a referral of a discrimination charge from the Equal Employment Opportunity Commission (the "EEOC") to the Department of Justice in accordance with Section 706(f)(1) of Title VII, 42 U.S.C. §2000e-5(f)(1), upon a finding by the EEOC of reasonable cause and an unsuccessful effort to conciliate. That charge of discrimination was filed with the EEOC by Doris Scales on July 30, 1980. In her charge, Ms. Scales alleged that the Sheriff of Patrick County unlawfully refused to hire her on the basis of her sex (Govt. Ex. 82A attached to Williams Dep. 10/12/83). Thereafter, on August 12, 1980, the Sheriff acknowledged receipt of Ms. Scales' charge (Id.). On May 3, 1982, the EEOC served the defendant with the EEOC's determination that there was reasonable cause to believe that Ms. Scales' charge was true, and the EEOC invited the Sheriff to participate in conciliation efforts (Id.). On May 7, 1982, counsel for the Sheriff advised the EEOC that the defendant would not engage in settlement discussions (Id.).

On May 27, 1982, the EEOC referred Ms. Scales' charge of discrimination to the Department of Justice, in accordance with Section 706(f)(1) of Title VII, 42 U.S.C. §2000e-5(f)(1). By letter dated July 22, 1982, the Department of Justice advised counsel for the defendant of its receipt of Ms. Scales' charge from the EEOC. Following the Department's investigation and unsuccessful attempts to resolve this matter voluntarily, the United States filed its Complaint on June 29, 1983.

II BACKGROUND

A. The Sheriff and His Duties; and the Operation of the Patrick County Sheriff's Department

The Sheriff of Patrick County is a constitutional officer of the Commonwealth of Virginia and is elected under the laws of the Commonwealth (Constitution of Virginia, Art. VII, Sec. 4; and Va. Code Ann. §24.1-86). Jesse W. Williams was elected Sheriff of Patrick County in November 1979 and assumed that office on January 1, 1980 (Williams Dep. 8/11/83, p. 7).^{3/} Mr. Williams served as Sheriff until January 1, 1984, when Jay Gregory assumed that office as a result of his defeat of Mr. Williams in the November 1983 election for Sheriff (Gregory Dep. 1/10/84, pp. 4-5).

The Sheriff of Patrick County is responsible for the protection of life and property, the maintenance of order, the enforcement of State laws and local ordinances within the County, courtroom security, and the supervision and maintenance of the Patrick County jail (Pl. Complaint, para. 3; Def's. Answer, para. 3; Williams Dep. 8/11/83, p. 27; and Gregory Dep. 1/10/84, p. 5). In order to carry out his responsibilities, the Sheriff maintains and operates the Patrick County Sheriff's Department (the "PCSD") (Williams Dep. 8/11/83, p. 27). The Sheriff is responsible for the administration and operation of the PCSD, including: the preparation of the PCSD's annual budget and the submis-

^{3/} Sheriff Williams' immediate predecessor in office was Calvin Harbour, who served as Sheriff from 1972 until 1980 (Williams Dep. 8/11/83, pp. 37-38).

sion of that budget to the County Board of Supervisors and the Virginia Compensation Board for approval (Williams Dep. 8/11/83, p. 27; and Govt. Exs. 27-31 attached to Williams Dep. 10/12/83); the payment of all bills incurred, and the administration of all funds expended, by the Sheriff (Williams Dep. 8/11/83, p. 27); and the recruitment, selection, hiring and appointment of all applicants for employment in the PCSD, as well as the assignment, transfer, promotion, demotion and termination of all employees of the PCSD (Pl. Complaint, para. 4; Def's. Answer, para. 4; Williams Dep. 8/11/83, pp. 27-28, and Govt. Exs. 6-8 attached thereto; and Williams Dep. 10/12/83, pp. 294-319).

Pursuant to State law, the Virginia Compensation Board annually fixes the salaries of the Sheriff and all PCSD employees, as well as all expenses of the PCSD (Va. Code Ann. §14.1-51; and Govt. Exs. 27-31 attached to Williams Dep. 10/12/83).^{4/} Pursuant to State law, the Virginia Compensation Board also annually fixes the number of employees of the Sheriff which the Board will pay for, as well as their job classifications, salary ranges and expense allowances (Va. Code Ann. §14.1-70 - 14.1-79 (Cum. Supp. 1983)).^{5/} Indeed, Section 14.1-73.1:2 of the Virginia Code, adopted in 1980, specifically provides that:

4/ The Virginia Compensation Board and Patrick County jointly fund the operation of the PCSD. Those expenses of the PCSD allocable to each of them are set forth in Govt. Exs. 27-31 attached to Williams Dep. 8/11/83.

5/ To date, the Sheriff of Patrick County has not exceeded these ceilings set by the Board (Williams Dep. 8/11/83, pp. 64-65, and Govt. Exs. 27-31 attached thereto; and Gregory Dep. 1/10/84, pp. 7-8).

The salary range of any full-time deputy sheriff who is primarily a courtroom security officer, a correctional officer or a law-enforcement officer and, if employed on or after July one, nineteen hundred seventy-four, also has a high school education or the equivalent thereof, shall be equivalent at all times to that of a correctional officer within the classification and pay system for State employees and shall be administered in accordance with regulations for that system administered by the Department of Personnel and Training. The Governor shall provide the Compensation Board the salary range and regulations within that system as of July one, nineteen hundred eighty and as of any subsequent date on which changes in the salary ranges and regulations may be adopted.

Further, under State law, employees of the PCSD are considered employees for purposes of vacation and sick leave, and are entitled to receive for each year of service at least two weeks vacation with pay and at least seven days sick leave with pay (Va. Code Ann. § 15.1-19.3). Lastly, employees of the PCSD are covered by the Virginia Workman's Compensation Act and the Virginia Retirement Act (Va. Code Ann. §65.1-4; Va. Code Ann. §51-111.10; and Williams Dep. 8/11/83, pp. 62-63, 85), as well as by the Federal social security program for State and local employees (Va. Code Ann. §51.111.2).

B. Job Titles and Job Descriptions within the PCSD

All employees of the PCSD are assigned specific job titles and are expected to perform specific duties within those job titles. Indeed, the Sheriff is required to certify to the Virginia Compensation Board not only the job title of each of his employees, but also what duties each of them perform in their

respective jobs (Williams Dep. 8/11/83, pp. 71-72; and Govt. Exs. 27-31 attached to Williams Dep. 10/12/83).^{6/} Those job titles and job descriptions are as follows:

^{6/} In his July 28, 1983 Affidavit submitted to the Court, Sheriff Williams testified (pp. 1-2) that although he "made informal assignments" of his sworn officers to such job classifications as shift supervisor, investigator, road deputy, courtroom security officer, corrections officer and matron, "each sworn officer is expected to and does in fact perform all of the duties" of Sheriff.

There is however, nothing in the record to support this conclusory assertion made by Sheriff Williams. On the contrary, the record evidence belies the Sheriff's assertion. As noted above, the Sheriff is required to certify to the Virginia Compensation Board not only the job title of each of his employees, but also what duties each of them perform in their respective jobs. To that end, the Sheriff: maintained specific job descriptions and job duties and responsibilities for each job classification (Govt. Exs. 6, 11-15 attached to Williams Dep. 8/11/83); hired new employees and assigned incumbent employees to specific job classifications (Govt. Tr. Ex. 1); and in fact certified to the Compensation Board the job classification and job duties of each of his employees (Govt. Exs. 27-31 attached to Williams Dep. 10/12/83). Further, the Sheriff himself has testified that he alone drafted the PCSD's rules and regulations (Williams Dep. 8/11/83, p. 98), he alone formulated the job duties and responsibilities for each job classification in the PCSD (*Id.*, pp. 100-108), and he alone determined whether to hire an applicant (Williams Dep. 10/12/83, p. 294); and the PCSD's daily activity reports confirm that PCSD employees have in fact performed those tasks unique to their respective job classifications on a day-in-day-out basis (Govt. Exs. 82B-82N attached to Williams Dep. 10/12/83). Lastly, it strains one's imagination for the Sheriff to have stated that each of his sworn officers "does in fact perform all of the duties" of Sheriff. Indeed, Mr. Boyd, one of Sheriff Williams' shift supervisors, testified at trial (Tr. Trans. 10/20/84, pp. ⁴²⁹⁻⁴³⁰) that although he was a supervisor, he did very little supervising. Sheriff Gregory, who formerly was one of Sheriff Williams' investigators, testified (Gregory Dep. 1/10/84, p. 37) that he did not know that Sheriff Williams had a policy of not hiring women as corrections officers, and added "... I really was not privy to [Sheriff Williams'] decisions ... He made his decisions on his own..."

Deputy Sheriff A deputy sheriff in the PCSD performs work of a general police nature. The typical duties of a deputy include, inter alia: patrolling, normally in a radio-equipped car; responding to citizen calls for assistance; making arrests and transporting prisoners; conducting criminal investigations as assigned; testifying in court; enforcing traffic laws; and serving civil writs, warrants, etc. (Govt. Ex. 6, p. 4, and Govt. Ex. 15 attached to Williams Dep. 8/11/83). A deputy may also serve as a shift supervisor, a deputy having line responsibility for the operation of the PCSD in the absence of the Sheriff, or as an investigator (Govt. Ex. 30, p. 16, and Govt. Exs. 27-31 attached to Williams Dep. 10/12/83).

Corrections Officer A corrections officer in the PCSD is a deputy whose responsibility is to maintain the security of the Patrick County jail and the safety and welfare of its inmates (Govt. Ex. 6, p. 4, and Govt. Ex. 14 attached to Williams Dep. 8/11/83). A chief corrections officer has line responsibility for the County jail (Govt. Ex. 6 attached to Williams Dep. 8/11/83).

As discussed in greater detail, infra, pp. 20-21, the position of corrections officer in the PCSD has been and to date remains open only to men.

Courtroom Security Officer A courtroom security officer in the PCSD is a deputy whose responsibility is to provide courtroom security and to assist the court and its staff (Govt. Ex. 6, p. 3, and Govt. Ex. 13 attached to Williams Dep. 8/11/83).

Civil Process Server A civil process server in the PCSD is primarily responsible for serving civil papers, warrants, garnishee papers and summons throughout Patrick County (Williams Dep. 8/11/83, p. 111). This position was first created in 1982, and the only person who has held this position since its creation has been Kathy Sheppard, a former dispatcher who was promoted to civil process server on August 1, 1982 and who remained in that position until January 1, 1984, when she was terminated by Sheriff Gregory (Govt. Ex. 43 attached to Williams Dep. 8/11/83; and Gregory Dep. 1/10/84, pp. 18-19).

Dispatcher A dispatcher in the PCSD is a non-sworn civilian employee responsible for the screening of telephone calls for information and law enforcement assistance from the public, other jurisdictions and various other sources, as well as for the operation of a radio transmitter to dispatch law enforcement and emergency service personnel (Govt. Ex. 6, p. 3, and Govt. Ex. 12 attached to Williams Dep. 8/11/83).

Secretary and Clerk-Steno Secretary and clerk-steno are two civilian jobs in the PCSD having duties which are self-explanatory (Williams Dep. 8/11/83, pp. 108-110). Betty Martin is the only person who, since her hire in 1972, has worked as a secretary in the PCSD (Govt. Tr. Ex. 1; and Govt. Ex. 34 attached to Williams Dep. 10/12/83). Since 1980, Ms. Martin has held the dual job title of secretary-matron since, in addition to her secretarial duties, she occasionally assists in searching female

prisoners (Williams Dep. 8/11/83, pp. 108-110; and Govt. Ex. 34 attached to Williams Dep. 10/12/83).^{7/}

C. Stated Qualification Standards
and Selection Procedures

Under Virginia law, a candidate for deputy sheriff, corrections officer or courtroom security officer must: (a) be a United States citizen; (b) undergo a background investigation; (c) be a high school graduate or have a G.E.D.; (d) possess a valid Virginia driver's license; and (e) undergo a complete physical examination (Va. Code Ann. §15.1-131.8 (Cum. Supp. 1983)). Virginia law also requires that deputies, corrections officers and courtroom security officers successfully complete compulsory training courses^{8/} administered by the Virginia Department of Criminal Justice Services within one year of hire (Va. Code Ann. §§9-169 and 14.1-73.1 (Cum. Supp. 1983)),^{9/} and that failure to comply with such training requirement shall result in forfeiture of

^{7/} Indeed, Ms. Martin testified (Martin, Tr. Trans. 1/20/84, p.) that in the dual job of secretary-matron, she spends substantially all of her time working as a secretary; she has been asked to search female prisoners only on rare occasions; and at the time of her October 12, 1983 deposition taken by the United States, it had been more than a year since she had last searched a female prisoner.

^{8/} The compulsory training course for deputies is the "Law Enforcement Officers Training Course;" the compulsory training course for corrections officers is the "Jailors or Custodial Officers Course;" and the compulsory training course for courtroom security officers is the "Courtroom Security Officers Course" (Govt. Exs. 11, 11A, 13, 13A, 15 and 15A attached to Cimino Dep. 11/27/83, received into evidence during the trial of this action by stipulation of the parties).

^{9/} Prior to July 1, 1982, these compulsory training courses were administered by the Virginia Criminal Justice Services Commission (Va. Code Ann. §9-107-9-111.2 (Cum. Supp. 1983)).

employment and benefits (Va. Code Ann. §9-181 (Cum. Supp. 1983)).^{10/}

During his tenure as Sheriff from January 1, 1980 to January 1, 1984, Sheriff Williams had the following stated qualification standards and selection procedures.

It was the Sheriff's stated policy of requiring all applicants for employment with the PCSD to have a high school diploma or a G.E.D. equivalent,^{11/} and to submit a written application (Williams Dep. 8/11/83, p. 165, and Govt. Ex. 6, p. 2, attached thereto; and Williams Dep. 10/12/83, p. 294). The application itself, entitled "County of Patrick, Virginia Application for Employment," requested applicants to detail their personal record, education, military service, personal references and employment history (Govt. Ex. 16 attached to Williams Dep. 8/11/83).

Notwithstanding this stated policy of requiring all applicants for employment with the PCSD to submit a written application, Sheriff Williams did not require any of the eleven (11) persons who were employed in the PCSD at the time he took office on January 1, 1980, and who he hired on that date, to submit an

^{10/} The State also requires in-service training for deputies and corrections officers (Govt. Exs. 12, 12A, 14 and 14A attached to Cimino Dep. 11/29/83).

^{11/} Source: Govt. Exs. 12-15 attached to Williams Dep. 8/11/83. Applicants for dispatcher, however, are allowed to substitute equivalent experience for the high school diploma or G.E.D. requirement (Govt. Ex. 12 attached to Williams Dep. 8/11/83).

application (Williams Dep. 8/11/83, p. 149) or to undergo the selection procedures set forth below (Id., p. 150). Nor did Sheriff Williams require two other persons who he hired - Clifford Boyd as shift supervisor on January 1, 1980, and Hassell Nicholson as a corrections officer on June 1, 1980 - to submit written applications for employment (Williams Dep. 8/11/83, p. 165).^{12/}

It was also the stated policy of Sheriff Williams to maintain a "waiting list" of applicants (Williams Dep. 8/11/83, p. 164), and to maintain applications in an active file for a minimum of one year before they would have to be updated (Williams Dep. 10/12/83, pp. 320-321). Indeed, the record reflects that although Johnny Elgin, Jr., submitted his application for employment with the PCSD on May 24, 1982, he was not hired by the Sheriff until July 16, 1983 - some fourteen (14) months after his application (Govt. Ex. 55 attached to Williams Dep. 10/12/83).^{13/}

^{12/} Likewise, Sheriff Gregory did not require any of the twenty (20) persons who were employed in the PCSD at the time he took office on January 1, 1984, and who he hired on that date, to submit an application or to undergo the selection procedures set forth below (Gregory Dep. 1/10/84, pp. 14-15). Nor did Sheriff Gregory require two other persons who he hired - D.J. Runge as investigator on January 1, 1984, and Owen Isaacs as investigator on January 1, 1984 - to submit an application or to undergo the selection procedures set forth below (Id., p. 30).

^{13/} With respect to Mr. Elgin, the Sheriff testified (Williams Dep. 10/12/83, p. 321) that when he first contacted Mr. Elgin concerning his application, Mr. Elgin "had just recently gotten married or was getting married, was working in Danville, his wife was from Danville, and he did not want to leave Danville at the time." According to the Sheriff, he thereafter saw Mr. Elgin "on the street in Stuart" and Mr. Elgin told the Sheriff that "he was interested in moving back to Patrick County and asked [the Sheriff] if [he] had a job open" (Id., p. 322). The Sheriff thereafter hired Mr. Elgin.

Sheriff Williams next required that all applicants for employment with the PCSD take a law enforcement-related written examination administered by the Sheriff, and to obtain a score of at least 70 on that exam in order to be given further consideration for employment (Williams Dep. 8/11/83, p. 167, and Govt. Exs. 6, 10 and 11 attached thereto).^{14/} Sheriff Williams testified that he required applicants to take and pass a written examination as a means of trying to "get the best possible qualified candidates" (Williams Dep. 8/11/83, p. 167), and that the exam score achieved demonstrated relative ability to perform (Id., p. 169).^{15/}

Those applicants who passed the written examination were, during Sheriff Williams' tenure, required to pass a background investigation into their:

1. Criminal and civil record;
2. Past work performance and evaluation;
3. Community and neighbor recommendations; and
4. Proven dependability and reliability (Govt. Ex. 6, p. 2, attached to Williams Dep. 8/11/83; and Williams Dep. 10/12/83, pp. 294-302).

^{14/} One of the two written examinations used alternatively by the PCSD is a police officer examination which was developed at the request of the International Association of Chiefs of Police under the direction of the Director of Personnel Research of the former United States Civil Service Commission (Id., Govt. Ex. 10 attached thereto).

^{15/} The record reflects that neither Mr. Boyd nor Mr. Nicholson took a written examination prior to their hire by Sheriff Williams on January 1, and June 16, 1980, respectively (Williams Dep. 8/11/83, p. 165). The record further reflects that neither Mr. Runge nor Mr. Isaacs took a written examination prior to their hire by Sheriff Gregory on January 1, 1984 (Gregory Dep. 1/10/84, p. 30).

At the conclusion of an applicant's background investigation, the Sheriff would decide whether or not to hire the applicant (Govt. Ex. 6, p. 2, attached to Williams Dep. 8/11/83; and Williams Dep. 10/12/83, p. 294).

III EVIDENCE OF DISCRIMINATION AGAINST WOMEN

A. Generally

As of July 1983, the first complete month following the commencement of this action, the Sheriff of Patrick County employed a total of twenty-three (23) persons on a full-time basis. As of January 1984, when this case went to trial, the Sheriff employed a total of twenty-two (22) persons on a full-time basis. The personnel of the PCSD as of July 1983 and January 1984, respectively, were employed in the following job classifications, with a numerical breakdown by sex:

<u>Job Classification</u>	<u>July 1983^{16/}</u>			<u>January 1984^{17/}</u>		
	<u>Total</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>	<u>Male</u>	<u>Female</u>
Deputy-Shift Supervisor	2	2	0	1	1	0
Deputy-Investigator	2	2	0	2	2	0
Deputy-Road	4	4	0	6	6	0
Deputy-Courtroom Security Officer	2	2	0	2	2	0
Deputy-Chief Corrections Officer	1	1	0	1	1	0
Deputy-Corrections Officer	5	5	0	4	4	0

^{16/} Source: Govt. Exs. 33-55 attached to Williams Dep. 10/12/83.

^{17/} Source: Gregory Dep. 1/10/84, pp. 8-13; and Gregory Tr. Trans. 1/20/84, pp. 464-467.

<u>Job Classification</u>	<u>July 1983</u>			<u>January 1984</u>		
	<u>Total</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>	<u>Male</u>	<u>Female</u>
Civil Process Server	1	0	1	0	0	0
Dispatcher	4	2	2	4	1	3
Secretary-Matron ^{18/}	1	0	1	1	0	1
Clerk-Steno	1	0	1	1	0	1

The Sheriff of Patrick County has never employed a woman in any deputy position (i.e., shift supervisor, investigator, road deputy, courtroom security officer, chief corrections officer or corrections officer) (Williams Dep. 8/11/83, p. 255; Williams Dep. 10/12/83, p. 325, and Govt. Exs. 27-81 attached thereto; and Burton, Tr. Trans. 1/12/84, p. 291). There has been only one woman employed by the Sheriff in a job classification other than the civilian classifications of dispatcher, secretary and clerk-steno. That woman, Kathy Sheppard, was promoted from dispatcher

^{18/} In his July 28, 1983 Affidavit submitted to the Court, Sheriff Williams testified (p. 1) that he employed three women as sworn officers: Kathy Sheppard, assigned as civil process server; and Betty Martin and Naomi Pilson, assigned as matrons. However, contrary to the Sheriff's testimony in his Affidavit to the Court, Ms. Pilson never had been assigned by the Sheriff as a matron - and the Sheriff so admitted in his subsequent deposition taken by the United States as well as in his trial testimony (Williams Dep. 8/11/83, pp. 109, 134-135; Williams, Tr. Trans. 1/11/84, pp. 165-171). Rather, Ms. Pilson was assigned as a clerk-steno, as the Sheriff had so certified to the State Compensation Board (Govt. Ex. 39, p. 3, attached to Williams Dep. 10/12/83).

So also, although the Sheriff testified in his July 28, 1983 Affidavit to the Court that Ms. Martin was assigned as a matron, the Sheriff subsequently admitted in his August 11, 1983 deposition taken by the United States that Ms. Martin was assigned as secretary-matron, and that she worked almost exclusively as a secretary and only occasionally worked as a matron when she is called upon to search a female prisoner (Id., p. 134). As noted, supra, p. 10 n.7, Ms. Martin testified that she has been asked to search female prisoners only on rare occasions.

to civil process server on August 1, 1982, shortly after the Department of Justice's July 22, 1982 notification to the Sheriff of the Department's receipt of the EEOC referral indicating that the Sheriff may be engaged in discriminatory employment practices against women (Govt. Ex. 43 attached to Williams Dep. 10/12/83).

From January 1, 1980 through January 20, 1984, the Sheriff of Patrick County filled a total of sixty-three (63) full-time vacancies in the PCSD (Govt. Tr. Ex. 1; Gregory Dep. 1/10/84, pp. 8-13; and Gregory, Tr. Trans. 1/20/84, pp. ~~464-467~~).^{19/} Forty-six (46) of these vacancies were for deputy, all of which were filled by men. The name, date of hire and job assignment of each of these men are as follows:

19/ Sheriff Williams filled forty-one (41) of these vacancies during his term in office from January 1, 1980 through December 31, 1983; while Sheriff Gregory filled the remaining twenty-two vacancies since he assumed office on January 1, 1984.

When Sheriff Williams assumed office on January 1, 1980, he hired eleven (11) of the sixteen (16) persons who until he assumed office had been employed in the PCSD under Sheriff Williams' predecessor, Calvin Harbour (Williams Dep. 8/11/83, p. 154). Sheriff Williams testified that he hired these eleven (11) persons on the basis of merit (Williams Dep. 8/11/83, p. 155), and that he declined to hire the remaining five (5) persons for cause (Id., pp. 151-155).

When Sheriff Gregory assumed office on January 1, 1984, he hired twenty (20) of the twenty-three (23) persons who until he assumed office had been employed in the PCSD under Sheriff Williams (Gregory Dep. 1/10/84, pp. 8-14). Sheriff Gregory testified that he hired these twenty (20) persons on the basis of merit, and that he declined to hire two of the remaining three (3) persons for cause, and the third person (Kathy Sheppard) because he abolished the job classification of civil process server (Gregory Dep. 1/10/84, pp. 14-18).

DEPUTY SHERIFF HIRES: JANUARY 1, 1980 - JANUARY 20, 1984^{20/}

<u>Name</u>	<u>Date of Hire</u>	<u>Deputy Classification</u>
Charles Wright	January 1, 1980	Corrections Officer
Harry Frizell	January 1, 1980	Road Deputy
Larry Baliles	January 1, 1980	Shift Supervisor
Robert Day, Jr.	January 1, 1980	Road Deputy
Thomas Gregory	January 1, 1980	Corrections Officer
Jay Gregory	January 1, 1980	Road Deputy
D.J. Runge	January 1, 1980	Investigator
Thomas Tatum	January 1, 1980	Road Deputy
Michael Bridges	January 1, 1980	Courtroom Security Officer
Clyde Earles	January 1, 1980	Courtroom Security Officer
Clifford Boyd	January 1, 1980	Shift Supervisor
Roger Gray	January 7, 1980	Corrections Officer
Lester Purdue	January 7, 1980	Road Deputy
William O. Ring	May 1, 1980	Corrections Officer
Hassell Nicholson	June 1, 1980	Corrections Officer
Elmer L. Sehen	June 16, 1980	Road Deputy
Bradford P. Roane	July 1, 1980	Road Deputy
Danny Stacy	July 1, 1980	Road Deputy
Owen Issacs	September 17, 1980	Road Deputy
John Sehen	October 1, 1980	Corrections Officer
Bruce A. Pendleton	August 1, 1981	Road Deputy

^{20/} Source: Govt. Tr. Ex. 1; Govt. Exs. 33, 35-38, 40, 41, 44, 45, 47, 48, 50, 51, 55, 55A, 61-65, 70-75, 79-81 and 81A attached to Williams Dep. 10/12/83; Gregory, Tr. Trans. 1/20/84, pp. ⁴⁶⁴⁻⁴⁶⁷ 464-467; and Gregory Dep. 1/10/84, pp. 8-13.

<u>Name</u>	<u>Date of Hire</u>	<u>Deputy Classification</u>
Terry L. Jones	October 1, 1981	Road Deputy
Claude F. Bowman	February 1, 1982	Corrections Officer
Kenneth C. Nowlin	August 16, 1982	Corrections Officer
Darrell K. Shockley	September 1, 1982	Corrections Officer
Darryl C. Smith	September 16, 1982	Corrections Officer
David E. Hubbard	October 1, 1982	Corrections Officer
David L. Morse	July 1, 1983	Courtroom Security Officer
Johnny Elgin	July 16, 1983	Corrections Officer
Michael Craig	October 1, 1983	Corrections Officer
Larry Baliles	January 1, 1984	Shift Supervisor
D.J. Runge	January 1, 1984	Investigator
Owen Isaacs	January 1, 1984	Investigator
David Morse	January 1, 1984	Courtroom Security Officer
Thomas Gregory	January 1, 1984	Courtroom Security Officer
Danny Stacy	January 1, 1984	Road Deputy
Hassell Nicholson	January 1, 1984	Road Deputy
Johnny Elgin	January 1, 1984	Road Deputy
Bruce Pendleton	January 1, 1984	Road Deputy
David E. Hubbard	January 1, 1984	Road Deputy
Claude F. Bowman	January 1, 1984	Road Deputy
Roger Gray	January 1, 1984	Chief Corrections Officer
Keith Bocock	January 1, 1984	Corrections Officer
Darryl C. Smith	January 1, 1984	Corrections Officer
Michael Craig	January 1, 1984	Corrections Officer
Lawrence DeHart	January 1, 1984	Corrections Officer

From January 1, 1980 through January 20, 1984, the Sheriff also filled sixteen (16) full-time dispatcher vacancies, six (6) of which were filled by men and ten (10) of which were filled by women, as follows:

DISPATCHER HIRES: JANUARY 1, 1980 - JANUARY 20, 1984^{21/}

<u>NAME</u>	<u>DATE OF HIRE</u>
Timmy Rogers	July 1, 1980
Lynne Berquist	July 1, 1980
Douglas Joyce	July 1, 1980
Katherine Sheppard	July 1, 1980
Steven Tatum	April 15, 1981
Wanda Hylton	April 16, 1981
Gail Keith	December 1, 1981
Rhonda Sehen	March 1, 1982
John Bocock	December 16, 1982
Lawrence DeHart	March 16, 1983
Pamela Nowlin	March 16, 1983
Theresa Hubbard	October 1, 1983
Steven Tatum	January 1, 1984
Rhona (Sehen) Hughes	January 1, 1984
Pamela Nowlin	January 1, 1984
Teresa Hubbard	January 1, 1984

^{21/} Source: Govt. Tr. Ex. 1; Govt. Exs. 42, 43 46, 49, 52-54, 55B, 69 and 76-78 attached to Williams Dep. 10/12/83; Gregory, Tr. Trans. 1/20/84, pp. ⁴⁶⁴⁻⁴⁶⁷; and Gregory Dep. 1/10/84, pp. 8-13.

Four (4) of the men hired by the Sheriff as dispatchers since January 1, 1980 were subsequently promoted to deputy sheriff on the dates indicated;^{22/}

<u>Name</u>	<u>Date of Promotion</u>
Timmy Rogers	March 16, 1981
Douglas Joyce	February 16, 1982
Steven Tatum	March 1, 1982
John Bocock	April 16, 1982

However, none of the women hired by the Sheriff as dispatchers since January 1, 1980 was subsequently promoted to deputy sheriff; and as noted, supra, pp. 15-16, only one (1) of these women, Katherine Sheppard (promoted to civil process server on August 1, 1982) was ever promoted from dispatcher.

B. The Sheriff's Stated Policy of Refusing to Consider Women for Hire as Corrections Officers

Sheriff Williams testified that during his tenure as Sheriff he maintained a policy of refusing to consider women for hire as corrections officers in the PCSD (Williams Dep. 8/11/83, p. 225; and Williams Dep. 10/12/83, pp. 311-316). The Sheriff testified that he did not know of any State law which prohibited him from hiring women as corrections officers (Williams Dep. 10/12/83, p. 312), and that he was not of the view that women could not physically handle the job of corrections officer in the PCSD (Id., p. 316). Rather, the Sheriff testified that the sole reason for his

^{22/} Source: Govt. Tr. Ex. 1; and Govt. Exs. 42, 46, 52 and 69 attached to Williams Dep. 10/12/83).

policy of refusing to consider women for hire as corrections officers was that the Patrick County jail houses only adult male inmates (Id., pp. 312, 316). In this regard, however, the Sheriff conceded that the Patrick County jail maintains, on each of its two floors having cells, two video monitors which are hooked up to a video console on the dispatcher's desk to monitor the activities of the inmates (Williams Dep. 10/12/83, pp. 312, 313).^{23/}

Sheriff Gregory apparently intends to maintain former Sheriff Williams' policy of refusing to consider women for hire as corrections officers. When Sheriff Gregory was asked during his January 10, 1984 deposition taken by the United States whether he considered Kathy Sheppard for a corrections officer job when he decided to abolish her job of civil process server effective January 1, 1984, Sheriff Gregory responded (Id., pp. 27-28):

I did not seriously consider her for that position. I considered it, but due to some possible complications that I could see coming up in the jail - we house only men here at the jail, we house no females, and so, I did not hire her as a correctional officer.

^{23/} As noted, supra, pp. 14-15, two of the four persons employed by the Sheriff as dispatchers as of July 1983 were women. As of January 1984, the Sheriff employed three (3) women as dispatchers (See, pp. 14-15, supra).

C. Evidence of Discrimination
against Individual Women

Stephanie Gregory Ressel

Stephanie Gregory Ressel applied for employment with the PCSD on June 3, 1980 (Govt. Tr. Ex. 12; Ressel, Tr. Trans. 1/11/84, pp. 35-36; and Govt. Ex. 6, p. 4, attached to Williams Dep. 8/11/83). On that date, Ms. Ressel went to the PCSD seeking employment as a deputy, because she wanted a career in law enforcement (Govt. Tr. Ex. 12; and Ressel, Tr. Trans. 1/11/84, p. 30, 31, 36). At the time of her application, Ms. Ressel had a B.S. college degree with a major in Psychology and Sociology and a minor in Criminal Justice, and had worked for one month as an intern in the Harrisonburg Police Department while attending college (Govt. Tr. Ex. 12; and Ressel, Tr. Trans. 1/11/84, pp. 27-29).

At the PCSD on June 3, 1980, Ms. Ressel asked for and was provided an application, which she then proceeded to fill out on the booking table in front of the office. After she had filled out the application, Ms. Ressel gave it to one of the two male deputies who had been standing near the dispatcher's desk, Jay Gregory or Larry Baliles, and Ms. Ressel asked that deputy to make sure that her application was given to the Sheriff or other appropriate person (Ressel, Tr. Trans. 1/11/84, pp. 37-38). The deputy looked at the application and noted that Ms. Ressel had not filled out the line on the application asking what position was being applied for (Id., p. 37). Ms. Ressel responded that she

really did not want to put down a specific job, because she did not know the correct terminology for each job classification within the PCSD and, further, did not know what positions were open (Id., p. 37). The deputy then told Ms. Ressel that the only opening the PCSD then had was for deputy "and he [the Sheriff] ain't going to hire no woman." (Id., pp. 38-45). Notwithstanding the deputy's admonition that the Sheriff would not hire a woman as a deputy, Ressel wrote "deputy" in the blank space provided on the application for name of position being sought, submitted her application and left the PCSD (Id., p. 39; and Govt. Tr. Ex. 12).

Later that afternoon, Ms. Ressel received a call at home from a woman who identified herself as the Sheriff's secretary and who informed Ms. Ressel that the Sheriff wanted to meet with her at 8:00 the following morning, June 4, 1980 (Ressel, Tr. Trans. 1/11/84, pp. 39-40).

Upon her arrival at the PCSD the following morning, the Sheriff gave Ms. Ressel a one and one-half hour written examination, which he graded immediately upon completion (Ressel, Tr. Trans. 1/11/84, p. 40). She passed this exam with a score of 86 (Govt. Tr. Ex. 12). The Sheriff then interviewed Ms. Ressel for approximately one-half hour. During the interview, the Sheriff explained to Ms. Ressel that the position he had open was for a courtroom security officer and he explained to her the job's duties and responsibilities, as well as the procedure for buying uniforms and being issued a gun, holster and belt. The Sheriff

also told Ms. Ressel that in order for her to be hired, she would have to move from Martinsville, Virginia, where she then lived, into Patrick County. Ms. Ressel assured the Sheriff that it would be no problem for her to move into Patrick County. At the conclusion of this interview, the Sheriff assured Ms. Ressel that he would contact her by the middle of the following week to advise her of his decision concerning her application (Ressel, Tr. Trans. 1/11/84, p. 41).

Immediately following her interview with the Sheriff on June 4, 1980, Ms. Ressel advised her uncle of her interview and of her need to move into Patrick County; and her uncle went to Patrick Springs that same day and located a place for her to rent (Ressel, Tr. Trans. 1/11/84, p. 41).

After a week passed without hearing from the Sheriff, Ms. Ressel telephoned him at the PCSD. During this telephone call, the Sheriff told her that he had hired someone else (Ressel, Tr. Trans. 1/11/84, pp. 41-42). Ms. Ressel subsequently received a letter from the Sheriff dated June 18, 1980, informing her that she had not been selected for hire (Govt. Tr. Ex. 13).

At trial, Sheriff Williams confirmed his prior testimony during his August 11, 1983 deposition taken by the United States that he did not hire Stephanie Gregory Ressel, because "she was very - she was overqualified for the position by far" and "[s]he had much more potential to develop somewhere else than she could have [in the PCSD] in her field" (Williams, Tr. Trans. 1/11/84,

pp. 178-180; and Williams Dep. 8/11/83, p. 227). The Sheriff further testified that the person whom he selected for the position instead of Ms. Ressel - David L. Morse - had "family ties in the County," and that his decision to hire Mr. Morse instead of Ms. Ressel was "just a personal choice..." (Williams, Tr. Trans. 1/11/84, p. 181; and Williams Dep. 8/11/83, p. 227). Lastly, after reiterating that he felt that Ms. Ressel was overqualified, the Sheriff stated that he felt that she might not stay at the PCSD long enough "to justify the cost incurred in training her" (Williams, Tr. Trans. 1/11/84, p. 179, and Williams Dep. 8/11/83, p. 227).

1. Initially, although Sheriff Williams testified that Mr. Morse - the person he selected instead of Ms. Ressel - had "family ties with the county," so also did Ms. Ressel. Her family has lived in Patrick County for several generations; and her grandmother and great uncle, as well as several cousins, still live in the County (Ressel, Tr. Trans. 1/11/84, pp. 41-43). Further, Sheriff Williams conceded that there is no requirement that applicants for employment in the PCSD live in Patrick County, but only that they move into the County upon hire (Williams Dep. 8/11/83, p. 214). It is uncontested that during her June 4, 1980 interview with Sheriff Williams, Ms. Ressel assured the Sheriff that it would be no problem for her to move into Patrick County, and that same day Ms. Ressel secured an apartment to rent in Patrick Springs, which is in Patrick County (Ressel, Tr. Trans. 1/11/84, pp. 40-41).

2. Moreover, the record reflects that Sheriff Williams offered employment to and hired a number of male deputies who, at the time of application, either lived outside of Patrick County or had just recently moved into the County. For example:

a. In March 1980 - two months before Ms. Ressel's application - the Sheriff offered a deputy job to David N. Pleasants, even though Mr. Pleasants was at the time of that offer a resident of Greensboro, North Carolina (Govt. Ex. 6, p. 3, and Govt. Ex. 20 attached to Williams Dep. 8/11/83).^{24/}

b. As noted, supra, p. 12, Johnny Elgin submitted his application for employment as a deputy with the PCSD on May 24, 1982. At the time Mr. Elgin submitted his application, he was a resident of Danville, Virginia (Govt. Ex. 55 attached to Williams Dep. 10/12/83); and the Sheriff testified that when he contacted Mr. Elgin concerning his application, Mr. Elgin "had just recently gotten married or was getting married, was working in Danville, his wife was from Danville, and he did not want to

^{24/} At trial, Sheriff Williams testified that he had not actually offered to hire Mr. Pleasants (Williams, Tr. Trans. 1/11/84, pp. ¹⁸⁵⁻¹⁸⁷). However, the Sheriff conceded (Id., pp. ¹⁸⁵⁻¹⁸⁶) that it was he who wrote on the face of Mr. Pleasants' application "Did Not Accept" (see Govt. Ex. 20 attached to Williams Dep. 8/11/83) and, further, that he advised the EEOC by letter dated October 1, 1980 that the reason he did not hire Mr. Pleasants was because Mr. Pleasants "did not accept" employment (see Govt. Ex. 6, p. 3, attached to Williams Dep. 8/11/83).

In any event, the Sheriff testified that the fact that Mr. Pleasants lived in Greensboro, North Carolina, would not have prevented him from being hired, as long as he would have moved to Patrick County upon hire (Williams Dep. 8/11/83, p. 214).

leave Danville at the time" (Williams, Tr. Trans. 1/11/84, p. 189, and Williams Dep. 10/12/83, p. 321). Mr. Elgin was subsequently hired by the Sheriff on July 16, 1983 - some fourteen (14) months after his application (Govt. Ex. 55 attached to Williams Dep. 10/12/83) - and following a conversation Mr. Elgin had with the Sheriff "on the street in Stuart" during which the Sheriff testified Mr. Elgin told the Sheriff that "he was interested in moving back to Patrick County and asked [the Sheriff] if [he] had a job open" (Williams, Tr. Trans. 1/11/84, p. 189; and Williams Dep. 10/12/83, p. 322). Lastly, the record reflects that: Mr. Elgin failed the first written examination administered to him by the Sheriff (Govt. Ex. 6, p. 3, attached to Williams Dep. 8/11/83); he obtained a score of only 75 on the second written examination he was administered (Govt. Ex. 55 attached to Williams Dep. 10/12/83) - substantially lower than the score of 86 obtained by Ms. Ressel; and he had no prior law enforcement experience at the time of his hire by the Sheriff (Id.).

c. Sheriff Williams hired Darrell K. Shockley as a deputy on August 31, 1982, notwithstanding the fact that, at the time of his July 1982 application, Mr. Shockley lived in Spencer, Virginia, which is located in Henry County (Govt. Ex. 80 attached to Williams Dep. 10/12/83). When hired by the Sheriff, Mr. Shockley was 21 years old, single, had no formal education in law enforcement and had no prior law enforcement experience (Id.).

d. On July 1, 1980, Sheriff Williams hired Bradford Roane as a deputy, although Mr. Roane's application dated June 3, 1980 - the same date as Ms. Ressel's - reflected that Mr. Roane had lived in Patrick County for only six (6) days following his move from Richmond, Virginia (Govt. Ex. 73 attached to Williams Dep. 10/12/83).

3. Thirdly, the record reflects that - unlike Ms. Ressel - Mr. Morse had no formal education in law enforcement, had no prior law enforcement experience and had obtained a low score (71% as compared to Ms. Ressel's score of 86%) on the entry level written exam (Govt. Ex. 41 attached to Williams Dep. 10/12/83).

4. Lastly, tacit in Sheriff Williams' testimony that he hired Mr. Morse instead of Ms. Ressel is an admission by the Sheriff that he did not consider Ms. Ressel for any of other deputy vacancies that he filled subsequent to her June 3, 1980 application. The record reflects that Sheriff Williams hired four other men, besides Mr. Morse, as deputies within approximately one month of Ms. Ressel's application, one of whom (Bradford Roane) did not meet the stated qualification standards for hire and resigned from the PCSD within approximately two (2) months of hire; two of whom (Hassell Nicholson and Danny Stacy) did not meet the Sheriff's stated qualification standards for hire; and the last of whom (Elmer Sehen) resigned from the PCSD within approximately two (2) months of hire:

a. On June 16, 1980, Sheriff Williams hired Hassell Nicholson as a deputy (Govt. Ex. 40 attached to Williams Dep. 10/12/83; and Govt. Tr. Ex. 1). Notwithstanding the Sheriff's stated requirement that all applicants must take and pass a written examination in order to be considered for hire (Govt. Ex. 6 attached to Williams Dep. 8/11/83), the Sheriff conceded that he did not administer a written examination to Mr. Nicholson (Id., p. 165). Further, notwithstanding his stated policy of contacting applicants' prior employers, and despite his knowledge that Mr. Nicholson had been employed for two years (1972-1974) by the PCSD under former Sheriff Harbour, Sheriff Williams testified that he never contacted the former Sheriff to find out about Mr. Nicholson's work record and the circumstances surrounding his termination from employment with the PCSD (Id., p. 180). Indeed, the Sheriff testified that the only persons he talked to about Mr. Nicholson's prior employment with the PCSD were Mr. Nicholson himself and Clifford Boyd, who also previously had been employed by the PCSD, and that both of them told the Sheriff that Mr. Nicholson's prior termination was by resignation rather than by dismissal (Williams Dep. 8/11/83, pp. 187-189, 196). The Sheriff further conceded, however, that he did not know the particular facts and circumstances surrounding Mr. Nicholson's prior termination and, further, that he never inquired about them (Id., p. 188). The Sheriff testified that all he had been told by Mr. Nicholson was that Mr. Nicholson had resigned because he felt

that he was being harassed by the former Sheriff regarding an incident in which he was seen sitting in his car talking to a woman who was sitting in her car (Id., p. 188). More fully, however, the record reflects that: following a routine investigation of an auto accident in which Mr. Nicholson was involved while on duty, the former Sheriff and Andrew D. Jones, then a trooper and now a special agent with the Virginia State Police, observed Mr. Nicholson with a woman in her car which was parked approximately twenty-five to thirty feet off of a rural road at the edge of a wooded area in the County (Govt. Tr. Ex. 36; and Jones, Tr. Trans. 1/20/84, pp. 382-383); following their observation of Mr. Nicholson, the former Sheriff and then-Trooper Jones returned to the PCSD; and shortly after their arrival at the PCSD, Mr. Nicholson came into the PCSD, unpinned his badge and tendered his resignation to the former Sheriff, who accepted it (Id., pp. 384-385). To date, Mr. Nicholson remains employed as a deputy in the PCSD (Gregroy Dep. 1/10/84, pp. 8-14).^{25/}

^{25/} Mr. Nicholson admitted in his deposition taken by the United States on November 10, 1983 that on the day of this auto accident he was on duty and on his way to the Patrick County line with Henry County to serve papers (Govt. Tr. Ex. 35 Proffered - Nicholson Dep. 11/10/83, p. 21). However, contrary to the testimony of Special Agent Jones as to the incident which precipitated Mr. Nicholson's termination - and, indeed, contrary even to what Sheriff Williams testified Mr. Nicholson had told the Sheriff about the reason for his prior resignation from the PCSD - Mr. Nicholson denied sitting in a car parked off the road with a woman (Id., pp. 27, 35), and denied returning to the PCSD later that day (Id., pp. 28, 36).

b. Nor apparently did Sheriff Williams consider Ms. Ressel for the deputy vacancy he filled on June 16, 1980, when he hired Elmer L. Sehen (Govt. Ex. 74 attached to Williams Dep. 10/12/83). Unlike Ms. Ressel, Mr. Sehen had no formal education in law enforcement and had no prior law enforcement experience (Id.). Further, Mr. Sehen resigned from the PCSD on August 31, 1980 - a little over two (2) months after his hire - to accept other employment (Id.).

c. On July 1, 1980 - the same date upon which Mr. Morse was hired - the Sheriff hired Bradford Roane as a deputy (Govt. Ex. 73 attached to Williams Dep. 10/12/83). As previously noted (supra, p. 28), Mr. Roane's application for employment to the PCSD reflected that he formerly was from Richmond, Virginia and had lived in Patrick County for only six (6) days. Further, in his October 13, 1983 deposition taken by the United States, the Sheriff testified (Id., pp. 295-296) that he would not hire a person who had a history of disregard for the law, that a person who had a series of motor vehicle moving violations demonstrated a disregard for the law, and that he would not hire a person who had four (4) or more moving violations. The record, however, reflects that the Sheriff did not apply this standard to Mr. Roane, since Mr. Roane had four (4) moving violation convictions - excessive speed (65/55), excessive speed (60/40), excessive speed (62/55), and following close - at the time of his hire as a road deputy, and this information had been set forth on Mr. Roane's application for employment (Govt. Ex. 73 attached to

Williams Dep. 10/12/83). The record also reflects that - like Mr. Sehen - Mr. Roane resigned from the PCSD only a little over two (2) months after his hire (6/16/80 - 8/31/80) (Id.). However, unlike Ms. Ressel - who had completed her education and was interested in a career in law enforcement when she sought employment in the PCSD - Mr. Roane resigned from the PCSD shortly after his hire in order to return to college, where his courses of study had been general education, chemistry, math and barbering (Id.).

d. On July 1, 1980, the same day that Messrs. Morse and Roane were hired, the Sheriff also hired Danny Stacy as a deputy. The Sheriff's standards reflect that all applicants must pass a background investigation with respect to, among other things, their past work performance and whether they have "proven dependability and reliability" (Govt. Ex. 6 attached to Williams Dep. 8/11/83); and the Sheriff testified that in evaluating these two factors, he regularly contacts prior employers and community members (Williams Dep. 10/12/83, pp. 298-301). The only law enforcement experience Mr. Stacy had prior to his hire by the Sheriff was as a probationary trooper for the Virginia State Police for five (5) months, from November 1975 to April 1976 (Govt. Tr. Ex. 37-39), and Mr. Stacy indicated on his application for employment with the PCSD that he had left the State Police for "personal" reasons (Govt. Ex. 44 attached to Williams Dep. 10/12/83). Contrary to his "regular" policy of checking an

applicant's past work performance with prior employers, the Sheriff testified (Williams Dep. 8/11/83, p. 220) that he never contacted the State Police with respect to Mr. Stacy's work record. Indeed, Mr. Stacy testified (Stacy, Tr. Trans. 1/20/84, p. 255a) that prior to his hire by the Sheriff he did not discuss his background or prior employment with the Sheriff. Had the Sheriff checked Mr. Stacy's work record with the Virginia State Police, he would have learned that: the Virginia State Police conditionally approved Mr. Stacy's resignation on April 16, 1976, before Mr. Stacy had completed either his probationary period or his basic training; Mr. Stacy's letter of resignation followed a directive from his commanding officer to submit a letter explaining his absence from the State Police's training school, which Mr. Stacy never wrote; Mr. Stacy stated in his letter of resignation that he was resigning "[d]ue to the many rules and regulations which the Department sets for a trooper I feel I could not live and adjust my way of life to comply with them;" and Mr.

Stacy is not recommended for any position with the State Police (Govt. Tr. Ex. 37-39).^{26/}

^{26/} Mr. Stacy, who testified at trial, complained that he thought that one of his commanding officers at the State Police, Sgt. J.R. Watts, had treated him unfairly. However, the only example provided by Mr. Stacy of such "unfair" treatment was that following his absence from the State Police's training school, Sgt. Watts allegedly took him into a "broom closet" and talked to him in way that Mr. Stacy's own father would not have (Stacy, Tr. Trans. 1/20/84, p. ⁴²⁷). Further, Mr. Stacy testified that he felt that all of his other commanding officers at the State Police - including Sgt. Pennington and Lt. Graham - had treated him fairly (Id., pp. ⁴⁰⁷⁻⁴⁰⁸).

The record reflects - and Mr. Stacy did not deny - that: on Monday April 15, 1976, Sgt. Pennington permitted Mr. Stacy to leave the school due to his wife's illness, on the condition that Mr. Stacy return to the school "as soon as he had learned the condition of his wife and he had arranged for her care;" the State Police was unable to contact Mr. Stacy on Tuesday, Wednesday and Thursday, April 16, 17 and 18th because Mr. Stacy had changed his telephone number, had not reported his new telephone number to his commanding officer as required and had not contacted the State Police himself; on Thursday, the State Police located Mr. Stacy and, after finding out that Mr. Stacy's wife had returned to work earlier that day, directed him to report back to school; Mr. Stacy told the State Police that since it was close to the end of the week (Thursday), he had decided to wait until Sunday (four days after his wife had returned to work) to report for duty; instead of writing a letter explaining his absence as he had been directed to do, Mr. Stacy instead resigned; it was the feeling of Lt. Graham that Mr. Stacy chose to resign rather than to have faced disciplinary action for an unauthorized absence; and Lt. Graham would not recommend Mr. Stacy for any position in the State Police (Govt. Tr. Exs. 38 and 39).

Doris Scales

On a Saturday morning, in mid-April 1980, Doris Scales ran into Clifford Boyd, a deputy and shift supervisor in the PCSD, at Arthur Boyd's Restaurant in Ararat, Virginia (Scales, Tr. Trans. 1/11/84, p. 19; and Govt. Tr. Ex. 15). On that day, Ms. Scales and a number of other women were conducting a yard sale at the restaurant (Id.). Mr. Boyd, while in uniform, came into the restaurant, and asked Ms. Scales and the other women what they were doing (Id.). Ms. Scales replied that they were having a yard sale, and asked Mr. Boyd if they could sell him something (Id.). When Mr. Boyd asked Ms. Scales what they were doing having a yard sale on such a cold day, Ms. Scales told him that they were trying to make some money (Id.). Ms. Scales then told Mr. Boyd that she was looking for a job, and she asked him if the PCSD had any openings (Scales, Tr. Trans. 1/11/84, p. 80). Mr. Boyd responded: "Yes, Doris, there are some openings for a couple of deputies" (Id., p. 80). Ms. Scales told Mr. Boyd that she was interested in a job as a deputy (Id., p. 80). Mr. Boyd responded by suggesting that Ms. Scales come to the PCSD and fill out an application, adding that she would "look good in a uniform" (Id., p. 80). When Ms. Scales asked Mr. Boyd if she could use his name as a reference, Mr. Boyd told her: "Sure, why not, go ahead"

(Scales, Tr. Trans. 1/11/84, pp. 80-81; and Boyd, Tr. Trans. 1/20/84, p. 433).^{27/}

On the following Monday morning, Ms. Scales telephoned Sheriff Williams at the PCSD, informed the Sheriff that Mr. Boyd had told her that there were deputy openings, and inquired as to whether what Mr. Boyd had told her was correct (Scales, Tr. Trans. 1/11/84, pp. 82-83). The Sheriff told Ms. Scales that he had two deputy openings (Id., p. 83). When Ms. Scales then asked the Sheriff whether she could come to the PCSD and submit an application, the Sheriff responded (Id., p. ⁸³85):

Well, Mrs. Scales, you can come in and put an application in, but I will tell you right now, I do not have any plans now or in the future to hire any women for deputies, because I do not feel like they are capable of handling the job.^{28/}

When Ms. Scales persisted and asked the Sheriff what she would have to do in order to be appointed as a deputy, the Sheriff responded that she would have to pass a three-hour written police

^{27/} Although Mr. Boyd could not recall exactly where or when this conversation between he and Ms. Scales took place (Boyd, Tr. Trans. 1/20/84, p. 436), he did recall that the conversation took place in Ararat, Virginia (Id., p. 436), and that he did tell Ms. Scales that she could use his name as a reference (Id., p. 433). As he testified (Id., p. 434):

[Ms. Scales] was interested in getting a job at the Sheriff's office and she asked me if I thought she could get a job. I thought that, you know, that would be fine, she would have as good an opportunity as anyone.^j

^{28/} See also, Govt. Tr. Ex. 15.

exam, pass a background investigation, have good references and have a high school diploma or the equivalent (Scales, Tr. Trans. 1/11/84, p. 83; and Govt. Tr. Ex. 15).^{29/}

A couple of days after her telephone conversation with the Sheriff, Ms. Scales went to the PCSD (Scales, Tr. Trans. 1/11/84, p. 84). At the PCSD, Ms. Scales asked Thomas Gregory, who at the time was a deputy in the PCSD assigned as a corrections officer, if she could be permitted to talk to the Sheriff about submitting an application for employment with the PCSD; and Mr. Gregory went and got the Sheriff (Id., p. 84; and Govt. Ex. 35 attached to Williams Dep. 10/12/83). Ms. Scales told the Sheriff that it was she who had talked to him by telephone a couple of days before, and she asked the Sheriff for an application for employment (Scales, Tr. Trans. 1/11/84, p. 85). The Sheriff then told Ms. Scales - as he had during their prior telephone conversation - that she could fill out an application, but that he did not think that women were capable of handling a deputy job and he had no plans then or in the future to hire any women as deputies (Id., p. 85). Ms. Scales again requested an application. The

^{29/} In his August 11, 1983 deposition taken by United States, as well as at trial, Sheriff Williams testified (Williams Dep. 8/11/83, pp. 230-231; and Williams, Tr. Trans. 1/11/84, pp. ²²⁵⁻226) that he could not recall having talked to Ms. Scales by telephone prior to her actual visit to the PCSD to pick up an application for employment.

Sheriff gave Ms. Scales an application which she took home to fill out (Id., p. 85).^{30/}

A couple of days thereafter, on or about April 22, 1980, Ms. Scales returned her completed application to the PCSD (Scales, Tr. Trans. 1/11/84, p. 85; and Govt. Ex. 6, p. 6, attached to Williams Dep. 8/11/83). At the PCSD, Ms. Scales told the Sheriff that she had brought back her completed application, and she submitted it to him. She then asked the Sheriff to schedule her to take the written examination, which he did (Id., p. 87; and Williams Dep. 8/11/83, pp. 237-238). Before leaving the PCSD that day, Ms. Scales provided the Sheriff with letters of reference from prior employers and persons who knew her, in response to the Sheriff's advice to her during their earlier telephone conversation that she would have to submit references (Scales, Tr. Trans. 1/11/84, p. 86; and Williams Dep. 8/11/83, p. 242, and Govt. Ex. 23 attached thereto). The Sheriff stuffed her letters of reference in his coat pocket, and Ms. Scales left the PCSD (Scales, Tr. Trans. 1/11/84, p. 86).

On April 28, 1980, Ms. Scales returned to the PCSD to take the written examination. On this occasion, the Sheriff took Ms. Scales to a desk in an inside room, in front of the desk of his

^{30/} Although the Sheriff, in his August 11, 1983 deposition, conceded that Ms. Scales told him during this conversation that she was interested in a corrections officer job as well as a road deputy job (Williams Dep. 8/11/83, p. 235) and that he told her that he would not hire a woman as a corrections officer (Id., p. 234), the Sheriff testified during that deposition and at trial that he told Ms. Scales that the only openings he had at that time were for male corrections officers (Id., pp. 234-235; Williams, Tr. Trans. 1/11/84, p. 226), and that he did not tell Ms. Scales that he would not hire women as deputies (Id., p. 235; and Williams, Tr. Trans. 1/11/84, pp. 225-226).

secretary, Betty Martin. He told Ms. Martin to give Ms. Scales the exam. No one read any exam instructions to Scales. Ms. Scales completed the exam in approximately two and one-half hours. Upon completion, she asked the Sheriff whether it could be graded immediately. The Sheriff told Ms. Scales that he had no time to grade it then, as he was leaving in a minute to go out of town, and that he would call her and let her know how she did on the exam (Scales, Tr. Trans. 1/11/84, p. 89).

In an effort to learn how she did on the written exam, Ms. Scales subsequently called the PCSD three or four times, but was always told that the Sheriff was out of town (Scales, Tr. Trans. 1/11/84, p. 90).

Approximately a week after she took the exam, Ms. Scales reached the Sheriff by telephone (Scales, Tr. Trans. 1/11/84, p. 90). The Sheriff told her that she had "made real good on the exam" scoring 90, that her references were good and that there was "nothing in [her] background to keep [the Sheriff] from hiring [her]" (Id., p. 90). However, the Sheriff reiterated that he had no plans then or in the future to hire any women as deputies (Id., pp. 90-91). The Sheriff went on to tell Ms. Scales that there was the possibility of some openings for dispatcher if the State approved such funding, and Ms. Scales told the Sheriff that she also would be interested in a dispatcher job (Id., p. 90).

That same day, Ms. Scales called Lawrence Burton, then the Commonwealth's Attorney, and reported that the Sheriff had told her he would not hire women as deputies. Mr. Burton told Ms. Scales that he had seen her at the PCSD and had thought that she was working for the PCSD. Mr. Burton subsequently called Ms. Scales back, told her that he had telephoned the Sheriff and told her during that telephone conversation the Sheriff confirmed that he thought it was not a woman's place to be a deputy. Mr. Burton told Ms. Scales that, after talking to the Sheriff, he thought that he agreed with the Sheriff's position, since deputies might have to go out at night and into old, dark buildings (Scales, Tr. Trans. 1/11/84, p. 92). 31/

31/ At trial, Mr. Burton testified that he had been retained as counsel by Patrick County to represent the Sheriff concerning Ms. Scales' charge during the EEOC proceedings in 1980 (Burton, Tr. Trans. 1/12/84, p. 276). When asked whether Ms. Scales had telephoned him and had told him what the Sheriff had told her, Mr. Burton testified that he did not recall for sure, but confirmed his 12/28/83 deposition testimony that it was "quite possible that she did" (Burton, Tr. Trans. 1/12/84, p. 271; and Govt. Tr. Ex. 28 Proffered - Burton Dep. 12/12/83, p. 41). When asked whether he subsequently got back to the Sheriff with respect to Ms. Scales' allegations, Mr. Burton testified (Burton, Tr. Trans. 1/12/84, p. 288; and Govt. Tr. Ex. 28 - Proffered, p. 47). that:

... it is quite possible that I did. I would not be surprised if I did, but at the time, I placed no great importance on the situation.

Mr. Burton also testified that Ms. Scales kept "bugging" him by telephone about the Sheriff's denial of employment to her, and that he kept telling her: "Don't come to me with your problems; I do not want to hear you problems" (Burton, Tr. Trans. 1/12/84, pp. 272-275; and Govt. Tr. Ex. 28-Proffered, pp. 41, 42, 45).

By letter dated June 18, 1980 - the same date of the Sheriff's letter of rejection to Ms. Ressel - the Sheriff informed Ms. Scales that she had been rejected for employment with the PCSD (Govt. Tr. Ex. 24). After she received that letter, Ms. Scales called the Sheriff because she wanted to know why she had not been hired. The Sheriff told her that she "did not meet our needs" (Scales, Tr. Trans. 1/11/84, pp. 117-119).

1. By letter to the EEOC dated October 1, 1980, Sheriff Williams advised the EEOC that he rejected Ms. Scales for employment on the ground that his "background investigation [of her] revealed things that led [him] to believe that Ms. Scales would not be dependable or reliable" (Govt. Ex. 6, pp. 1, 8, attached to Williams Dep. 8/11/83). In his August 11, 1983 deposition taken by the United States, Sheriff Williams testified that there were two things revealed in his background investigation of Ms. Scales which led him to believe that she would not be "dependable or reliable," and upon which he decided not to hire her: namely, that in 1979 there had been issued a civil judgment against her in the amount of \$285 for rent arrears on her apartment; and that he had been told by Clifford Boyd, one of his shift supervisors, during a ten minute conversation that Ms. Scales "had a history of not paying her bills" (Williams Dep. 8/11/83, pp. 248-249, 257-258, 268, and Govt. Ex. 25 attached thereto). Indeed, the Sheriff testified that the civil judgment against Ms. Scales and

her "history of not paying her bills" were the only bases upon which he rejected Ms. Scales for employment (Id., p. 268);^{32/} and that the 1979 civil judgment against Ms. Scales was alone a sufficient basis for rejecting her for employment (Id., p. 261).

Although there had been a civil judgment issued against Ms. Scales on September 27, 1979, that judgment was fully satisfied by Ms. Scales on October 12, 1979 (Govt. Ex. 25 attached to Wil-

^{32/} See, p. 268 of Williams Dep. 8/11/83, wherein the Sheriff testified as follows:

Q: There was a judgment against [Ms. Scales] for apparently not paying rent after she sub-leased a place and then Mr. Boyd's conversation with you during which he says that she is late in paying bills?

A: Right.

Q: Those were the only two bases, were they not, upon which you decided not to hire [Ms. Scales] at that time?

A: Basically, yes.

Q: Were there any others at that time; you said basically; is that it?

A: At that time?

Q: At that time.

A: Yes.

liams Dep. 8/11/83).^{33/} Further, the Sheriff conceded in his deposition that he had never asked Ms. Scales to explain the facts and circumstances surrounding the 1979 civil judgment against her (Williams Dep. 8/11/83, p. 263), that he never contacted any of the work or personal references provided to him by Ms. Scales when she applied (Id., p. 259), and that the only

^{33/} In this regard, the record reflects that it was Dorn V. Williams who had obtained the 1979 civil judgment against Ms. Scales in the amount of \$285 for rent arrears (Govt. Ex. 25 attached to Williams Dep. 8/11/83). At trial, Ms. Scales testified (Scales, Tr. Trans. 1/11/84, pp. ¹²¹-¹²³) that: in early 1979, she had moved into an apartment owned by Mr. Williams, and for which she entered into a one year's lease; after a couple of months, she decided to move out of this apartment and so advised Mr. Williams' building superintendent; the superintendent told her that it would be okay for her to move out and that the apartment could be sublet; several months after she moved out, Mr. Williams demanded that she pay him \$1,750 for having broken her lease; she refused to pay Mr. Williams this amount of money because she knew that the apartment had been rented to another person a month or so after she left and she believed it was wrong for Mr. Williams to demand that she pay him rent for that period of time during which the apartment had been rented to someone else and during which Mr. Williams had been paid rent; Mr. Williams subsequently filed a civil complaint against Ms. Scales in the amount of \$1,750; after the complaint was amended to \$285 and judgment entered, Ms. Scales promptly paid the judgment without ever having had her wages garnisheed.

Mr. Dorn Williams, who was called by Sheriff Williams as a witness at trial, admitted on cross-examination that: he had demanded that Ms. Scales pay \$1,750; he had filed a civil complaint against Ms. Scales for that amount; shortly after the complaint was amended to \$285 and judgment entered, Ms. Scales paid the judgment; and he does not know whether her wages were garnisheed (D. Williams, Tr. Trans. 1/20/84, pp. 508-510).

person he spoke to about Ms. Scales before he decided not to hire her was Mr. Boyd (Id., p. 259).^{34/}

The treatment accorded Doris Scales by Sheriff Williams is in stark contrast to that accorded David L. Morse, an incumbent deputy in the PCSD hired as a deputy by Sheriff Williams on July 1, 1980, less than two weeks after Ms. Scales was notified by the Sheriff that she had been rejected for employment. Not only does the record reflect that in 1979 a civil judgment had been entered against Mr. Morse in the amount of \$2,481 (or almost nine times the amount of the judgment against Ms. Scales), but the Sheriff has testified that he learned about the judgment against

^{34/} See p. 259 of Williams Dep. 8/11/83, wherein the Sheriff testified as follows:

Q: Let me ask you this. Did you contact the references supplied by Mrs. Scales on her application?

A: No, I did not.

Q: Are you sure you did not?

A: Clifford Boyd was the only one I talked to.

Q: Why did you not talk to anybody else?

A: Because, I made my decision based on the other applications and selected them over [Ms. Scales] at that time. j

Notwithstanding this testimony of the Sheriff at his August 11, 1983 deposition, the Sheriff testified at trial (Williams, Tr. Trans. 1/11/84, pp. ²⁴⁵⁻²⁴⁷) that prior to his decision not hire hire Ms. Scales, he talked to Dorn V. Williams (whom the Sheriff identified as a distant relative of his) since it was Mr. Williams who had obtained the 1979 civil judgment against Ms. Scales.

Mr. Morse during his background investigation of Mr. Morse and before he hired Mr. Morse (Williams Dep. 8/11/83, pp. 262-263). Indeed, while the Sheriff admitted that he never inquired about the facts and circumstances surrounding the judgment against Ms. Scales, the Sheriff has testified (Id., pp. 262-265) that when he learned about the judgment against Mr. Morse, he talked to the loan officer of the bank which held the note upon which Mr. Morse defaulted, and learned from the loan officer that the judgment against Mr. Morse had been entered as a result of Mr. Morse's default on a loan which he had obtained from the bank for the purchase of a car, and that the bank subsequently repossessed the car.

2. The Sheriff's appointment of David Morse as a deputy is not the only example of the disparate treatment accorded Doris Scales by the Sheriff. The record reflects that - prior to Ms. Scales' application, during the pendency of her application, and after her rejection for employment - the Sheriff did not adhere to his own procedures and standards in hiring men for deputy positions, and the Sheriff hired numerous men as deputies who did not meet the Sheriff's own stated minimum qualification standards:

a. For example, on July 1, 1980 - the same day on which Mr. Morse was hired and less than two (2) weeks after Ms. Scales' rejection - the Sheriff hired Bradford Roane as a deputy sheriff. In his October 13, 1983 deposition taken by the United States, the Sheriff testified (at pp. 295-296) that he would not hire a person who had a history of disregard for the law, that a person

who had a series of motor vehicle moving violations demonstrated a disregard for the law, and that he would not hire a person who had four (4) or more moving violations. However, as noted, supra, the Sheriff did not apply this standard to Mr. Roane, since Mr. Roane had four (4) moving violation convictions - excessive speed (62/55), and following close - at the time of his hire as a road deputy, and this information had been set forth on Mr. Roane's application for employment (Govt. Ex. 73 attached to Williams Dep. 10/12/83).

b. On July 1, 1980, the same day that Messrs. Morse and Roane were hired, the Sheriff also hired Danny Stacy as a deputy. The Sheriff's standards reflect that all applicants must pass a background investigation with respect to, among other things, their past work performance and whether they have "proven dependability and reliability" (Govt. Ex. 6 attached to Williams Dep. 8/11/83); and, as noted supra, p. 32, the Sheriff testified that in evaluating these two factors, he regularly contacts prior employers and community members (Williams Dep. 10/12/83, pp. 298-301). The only law enforcement experience Mr. Stacy had prior to his hire by the Sheriff was as a probationary trooper for the Virginia State police for five (5) months, from November 1975 to April 1976 (Govt. Tr. Exs. 37-39), and Mr. Stacy indicated on his application for employment with the PCSD that he had left the State Police for "personal" reasons (Govt. Ex. 44 attached to

Williams Dep. 10/12/83). Contrary to his "regular" policy of checking an applicant's past work performance with prior employers, the Sheriff has testified (Williams Dep. 8/11/83, 220) that he never contacted the State Police with respect to Mr. Stacy's work record. Indeed, Mr. Stacy testified (Stacy, Tr. Trans. 1/20/84, pp. ³⁹⁷⁻398) that prior to his hire by the Sheriff he did not discuss his background or prior employment with the Sheriff. Had the Sheriff checked Mr. Stacy's work record with the Virginia State Police, he would have learned that: the Virginia State Police conditionally approved Mr. Stacy's resignation on April 16, 1976, before Mr. Stacy had completed either his probationary period or his basic training; Mr. Stacy's letter of resignation followed a directive from his commanding officer to submit a letter explaining his absence from the State Police's training school, which Mr. Stacy never wrote; Mr. Stacy stated in his letter of resignation that he was resigning "[d]ue to the many rules and regulations which the Department sets for a trooper I feel I could not live and adjust my way of life to comply with them;" and Mr. Stacy is not recommended for any position with the State police (Govt. Tr. Exs. 37-39).

Between the time that Doris Scales submitted her application and the time that she was notified of her rejection by the Sheriff, the Sheriff hired two more men as deputies: William O. Ring, on May 1, 1980; and Hassell Nicholson on June 1, 1980 (Govt. Exs. 40 and 72 attached to Williams Dep. 10/12/83):

a. The Sheriff testified that he has required applicants for hire to be physically fit and that he would not hire a person who listed on his application a physical ailment which would prohibit him from performing duties assigned to him (Williams Dep. 10/12/83, pp. 308-309). Nevertheless, the Sheriff hired Mr. Ring and did not have Mr. Ring take a physical examination prior to hire, despite the fact that Mr. Ring stated on his application that he was physically "limited in lifting" (Govt. Ex. 72 attached to Williams Dep. 10/12/83). The record reflects that Mr. Ring resigned on March 13, 1981 - less than one year after he was hired - because he could not carry food trays, weighing approximately thirty (30) pounds, to the PCSD from the restaurant across the street because of a back injury; and the PCSD's records reflect that Mr. Ring resigned for medical reasons (Id.).

b. As previously stated, the Sheriff hired Hassell Nicholson as a deputy on June 1, 1980. Notwithstanding the Sheriff's stated requirement that all applicants must take and pass a written examination in order to be considered for hire (Govt. Ex. 6 attached to Williams Dep. 8/11/83), the Sheriff conceded that he did not administer a written examination to Mr. Nicholson (Id., p. 165). Further, notwithstanding his stated policy of contacting applicants' prior employers, and despite his knowledge that Mr. Nicholson had been employed for two years (1972-1974) by the PCSD under former Sheriff Harbour, Sheriff Williams testified that he never contacted the former Sheriff to find out about

Mr. Nicholson's work record and the circumstances surrounding his termination from employment (Id., p. 180). Indeed, the Sheriff testified that the only persons he talked to about Mr. Nicholson's prior employment with the PCSD were Mr. Nicholson himself and Mr. Boyd, who also had been previously employed by the PCSD, and that both of them told the Sheriff that Mr. Nicholson's prior termination was by resignation rather than by dismissal (Williams Dep. 8/11/83, pp. 187-189, 196). The Sheriff further conceded, however, that he did not know the particular facts and circumstances surrounding Mr. Nicholson's prior termination and, further, that he never inquired about them (Id., p. 188). The Sheriff testified that all he had been told by Mr. Nicholson was that Mr. Nicholson had resigned because he felt that he was being harassed by the former Sheriff regarding an incident in which he was seen sitting in his car talking to a woman who was sitting in her car (Id., p. 188). The record, however, more fully reflects that Mr. Nicholson tendered his resignation to the former Sheriff (who accepted it) after Mr. Nicholson was observed while on duty, by the former Sheriff and Andrew D. Jones, then a trooper and now a special agent with the Virginia State Police, with a woman in her car which was parked some distance off a rural road in the County (Jones, Tr. Trans. 1/20/84, ³⁸²⁻p. 383).

c. Notwithstanding the Sheriff's stated requirements (Govt. Ex. 6 attached to Williams Dep. 8/11/83) that all applicants must submit an application, take and pass a written exam-

ination and pass a background investigation in order to be considered for hire, the record reflects that on January 1, 1980, the Sheriff hired Clifford Boyd as a deputy, without having Mr. Boyd submit an application, without having administered a written examination to Mr. Boyd, and without having conducted any background investigation of Mr. Boyd (Williams Dep. 8/11/83, pp. 165, 172). Indeed, Sheriff Williams testified (Id., p. 198) that the only thing he did prior to hiring Mr. Boyd was to talk with him concerning his dismissal from the PCSD by the prior Sheriff. So also, while Sheriff Williams testified that "[a]nything that is of a criminal nature other than traffic violations" would disqualify an applicant for employment (Williams Dep. 10/12/83, p. 294) and, indeed, that if an applicant had a criminal conviction, the Sheriff would not continue to process that applicant for employment (Id., p. 302), the Sheriff conceded that before he hired Mr. Boyd, he knew that Mr. Boyd had a prior conviction for the possession of illegal alcohol (Williams Dep. 8/11/83, p. 205).

d. On the same day that the Sheriff hired Mr. Boyd, January 1, 1980, the Sheriff also hired _____^{35/} and _____, both males, as deputy sheriffs, assigning the former to road deputy and the latter to corrections officer (Govt. Exs. 61 and 63 attached to Williams Dep. 10/12/83). Until their hire by Sheriff Williams, Messrs. _____ and _____ had been employed _____

^{35/} For confidentiality reasons, the United States has deleted these and the following names as denoted by an asterisk.

in the PCSD under Sheriff Williams' predecessor since 1976. Although Sheriff Williams' stated standards for hire require that an applicant have a good past work record and have proven dependability and reliability (Govt. Ex. 6 attached to Williams Dep. 8/11/83), and notwithstanding the Sheriff's own Rules and Regulations prohibiting immoral or indecent conduct (Govt. Ex. 8 attached to Williams Dep. 8/11/83), the Sheriff has admitted that he hired Messrs. _____ * _____ and _____ * _____ with the knowledge that both of them had been "sleeping with a female that was not neither one of them's wife" while they were employed by the PCSD under the prior Sheriff (Williams Dep. 8/11/83, pp. 146-147, 158-160). The record also reflects that the woman with whom Messrs. _____ * _____ and _____ * _____ were involved was _____ * _____, and that she had been employed as a clerk in the PCSD under Sheriff Williams' predecessor but was not hired by Sheriff Williams when he took office on January 1, 1980. The Sheriff has testified that he decided to hire Messrs. _____ * _____ and _____ * _____, but not Ms. _____ * _____, because he "was hoping that [he] could correct the problem" (Williams Dep. 8/11/83, p. 159) and that their jobs

(road deputy and correctional officer) were "more vital than a clerk" (Id., p. 160).^{36/}

Lastly, the Sheriff testified that he requires applicants to take and pass a written examination as a means of trying to "get the best possible candidates" (Williams Dep. 8/11/83, p. 167) and that the exam score achieved demonstrates relative ability to perform (Id., p. 169). As noted, supra, p. 39, Doris Scales achieved a score of 90 on the written examination. The record

36/ In this regard, Sheriff Williams advised the EEOC by letter dated October 15, 1980, that he discharged both Mr. * and Mr. * on June 15, 1980 for violating Rule 7 of the Sheriff's Rules and Regulations which prohibits immoral or indecent conduct (Govt. Exs. 7 and 8 attached to Williams Dep. 8/11/83).

Contrary to his advice to the EEOC, Sheriff Williams testified during his August 11, 1983 deposition taken by the United States that although Mr. * was fired, Mr. * resigned (Williams Dep. 8/11/83, pp. 147, 158).

However, contrary still to both the Sheriff's advice to the EEOC and the Sheriff's deposition testimony, the Sheriff's own records, as well as those records signed by him and submitted to the Virginia Compensation Board, reflect that both Mr. * and Mr. * resigned (Govt. Exs. 32, 61 and 63 attached to Williams Dep. 10/12/83). Indeed, in his letter of resignation to the Sheriff dated May 20, 1980, Mr. * stated that his resignation was to be effective June 15, 1980, and that he was resigning "[d]ue to [his] present eye condition arising from a disability received in the Armed Service along with present problems relating towards [his] work" (Govt. Ex. 63, p. 7, attached to Williams Dep. 10/12/83).

Lastly, not only did Sheriff Williams have knowledge that Messrs. * and * had been sexually involved with Ms. * before Sheriff Williams hired them, but also the Sheriff's own records reflect that this activity of theirs went unabated after their hire (Govt. Exs. 61 and 63 attached to Williams Dep. 10/12/83).

reflects that, during 1980, the Sheriff hired twenty-one (21) persons, all of whom were men, as deputy sheriffs, twelve (12) of whom were administered no written examination,^{37/} and nine (9) of whom were administered the same written examination that was administered to Ms. Scales and on which she obtained a score of 90. As reflected below, only one of those nine (9) men obtained a score on that exam that was higher than that obtained by Ms. Scales:^{38/}

<u>Name</u>	<u>Date of Hire</u>	<u>Exam Score</u>
Roger Gray	January 7, 1980	75
Lester Purdue	January 7, 1980	75
William O. Ring	May 1, 1980	76
Elmer L. Sehen	June 16, 1980	97
Bradford P. Roane	July 1, 1980	89
David L. Morse	July 1, 1980	71
Danny Stacy	July 1, 1980	84
Owen Issacs	September 17, 1980	87
John Sehen	October 1, 1980	90

Further, Ms. Scales' score of 90 on the written examination was also higher than the scores achieved by three (3) of the four (4) persons (including two males) hired during 1980 as dispatchers:^{39/}

^{37/} Source: Williams Dep. 8/11/83, pp. 144-150, 154; and Govt. Exs. 33, 35-37, 40, 61-65, 75 and 81 attached to Williams Dep. 10/12/83.

^{38/} Source: Govt. Exs. 38, 41, 44, 45 and 70-74 attached to Williams Dep. 10/12/83.

^{39/} Source: Govt. Exs. 42, 43, 69 and 76 attached to Williams Dep. 10/12/83.

<u>Name</u>	<u>Date of Hire</u>	<u>Exam Score</u>
Timmy Rogers	July 1, 1980	72
Lynn Berquist	July 1, 1980	93
Douglas Joyce	July 1, 1980	75
Katherine Sheppard	July 1, 1980	75

3. As noted, supra, p. 41, Sheriff Williams testified in his August 11, 1983 deposition taken by the United States that there were two reasons why he did not hire Doris Scales: because she had incurred a civil judgment against her in 1979 in the amount of \$285; and because the Sheriff had been told by Mr. Boyd during a ten-minute conversation with him that Ms. Scales "had a history of not paying her bills." The Sheriff also testified, both in his August 11, 1983 deposition and at trial, that he never told anyone that he had rejected Ms. Scales for employment because he thought that she had "an immoral reputation" (Williams Dep. 8/11/83, p. 267; Williams, Tr. Trans. 1/11/84, p. 195).

Notwithstanding this testimony of the Sheriff, Dorothy (Rollerson) Mays, the EEOC investigator who handled the October 14, 1980 fact-finding conference attended by Ms. Scales, the Sheriff and his attorney, Mr. Lawrence Burton, testified at trial that on that date and during the pre-fact-finding conference interview she conducted of the Sheriff, the Sheriff told her that he did not want to hire Ms. Scales because of "her immoral reputation," but that he did not wish to state that reason during the fact-finding conference itself (Mays, Tr. Trans. 1/12/84, p.

303). In addition to the testimony of Ms. Mays, the Court received into evidence (Govt. Tr. Ex. 29) Ms. Mays' hand-written notes, made contemporaneously with her interview of the Sheriff on October 14, 1980, which confirm what the Sheriff had told her.

So also, notwithstanding the above-referenced testimony of the Sheriff both during his August 11, 1983 deposition and at trial, Mr. Burton - who was counsel to the Sheriff in 1980 - confirmed at trial his earlier testimony during his December 28, 1983 deposition taken by the United States; namely, that the Sheriff had told him that he did not hire Ms. Scales because she had failed the "morality test," and she had a reputation for sexual promiscuity (Burton, Tr. Trans. 1/12/84, pp. ²⁶⁸⁻270; Govt. Tr. Ex. 28 - Proffered, Burton Dep. 12/28/83, pp. 31, 33 and 40).

At trial, the defendant sought to provide some factual basis for the Sheriff's statements to Ms. Mays and to Mr. Burton that he had rejected Ms. Scales because he thought that she had an immoral reputation, a reputation for sexual promiscuity - statements which, as noted above, the Sheriff himself denied having made. Thus, Clifford Boyd testified, upon examination by counsel for the defendant, that: following his initial conversation with Ms. Scales in Ararat, Virginia in April 1980 (see, pp. 35-36, supra), he had talked to "over one hundred people in Ararat who, according to Mr. Boyd, had told him, variously, that: "they" thought the Sheriff would be "crazy" to hire Ms. Scales; "they" thought that Ms. Scales had an immoral reputation, a reputation for sexual promiscuity; and "they" thought that Ms. Scales did

not pay her bills and was a "deadbeat" (Boyd, Tr. Trans. 1/20/84, pp. ⁴³⁸⁻440). Mr. Boyd further testified that he subsequently met with Sheriff Williams and conveyed this information to the Sheriff (Id., p. ⁴⁴⁰).

Even assuming, arguendo, that Mr. Boyd's testimony is credible, that would not have provided a basis for Sheriff Williams to have rejected Ms. Scales for employment, since the Sheriff admitted that he never contacted her work or personal references, the Sheriff never sought to verify any of the information provided to him by Mr. Boyd and, in any event, the Sheriff has hired men as deputies whose morals and personal backgrounds left much to be desired. Further, however, this testimony of Mr. Boyd should not be credited by the Court for several reasons.

Initially, it must be recalled (see, p. 36, n.27, supra) that Mr. Boyd testified during his October 12, 1983 deposition taken by the United States, and he later confirmed under examination by counsel for the United States at trial, that when he talked to Ms. Scales in Ararat in April 1980 about her interest in employment in the PCSD, he suggested that Ms. Scales go to the PCSD to fill out an application, and he told her that it would be fine with him if she used his name as a reference (Boyd, Tr. Trans. 1/20/84, pp. ⁴³³⁻434). Indeed, at trial, Mr. Boyd confirmed (Id., p. ⁴³⁴) his prior deposition testimony that:

[Ms. Scales] was interested in getting a job at the Sheriff's Office and she asked me if I thought she could get a job. I thought that, you know, that would be fine, she would have as good an opportunity as anyone. (Emphasis supplied)

Mr. Boyd also testified (Boyd, Tr. Trans. 1/20/84, ⁴⁴²⁻pp. ⁴⁴³) that, with the exception of a period of time from August 1977 to October 1978 when he was in the Air Force, he had lived in Ararat, Virginia continuously since 1972; and that for a couple of years during the mid-1970s he even owned and operated a general store in Ararat (Boyd, Tr. Trans. 1/20/84, p. ⁴³²). As noted, supra, Mr. Boyd previously had been employed by the PCSD as a deputy under former Sheriff Harbour for approximately two years, until his discharge by the former Sheriff in 1974.^{40/}

In light of these facts - that Mr. Boyd had been a long time resident of Ararat at the time of his April 1980 conversation with Ms. Scales, herself a 20-year resident of Ararat as of 1980;^{41/} that Mr. Boyd had previously worked for the PCSD as a deputy for two (2) years; that Mr. Boyd had owned and operated a general store in Ararat for a couple of years; that Mr. Boyd had thought it would be fine with him if Ms. Scales used his name as a reference; and, indeed that Mr. Boyd thought Ms. Scales "would have as good an opportunity as anyone" to get a job at the PCSD - Mr. Boyd's testimony is simply not credible that, following his conversation with Ms. Scales, he had occasion to talk to "over one hundred people" in the Ararat community who, according to Mr.

^{40/} According to Sheriff Williams, Mr. Boyd had been discharged by former Sheriff Harbour for refusing to take a polygraph examination following the theft of some liquor from the property room of the PCSD (Williams Dep. 8/11/83, pp. 191-195).

^{41/} Source: Govt. Tr. Ex.14, p. 1.

Boyd, told him they thought that the Sheriff would be "crazy" to hire Ms. Scales, that Ms. Scales had an immoral reputation and a reputation for sexual promiscuity, and that Ms. Scales did not pay her bills and was a "deadbeat."

Further, a review of the record before this Court confirms that Mr. Boyd's testimony is not credible. Thus, although Mr. Boyd testified upon examination by counsel for the defendant that some people with whom he spoke told him that they thought the Sheriff would be "crazy" to hire Ms. Scales (Boyd, Tr. Trans. 1/20/84, pp. ⁴³⁸~~448~~), upon examination by counsel for the United States Mr. Boyd was unable to recall the name of a single one of those persons (Boyd, Tr. Trans. 1/20/84, p. ⁴⁴⁸~~448~~). Further, although Mr. Boyd testified upon examination by counsel for the defendant that he had talked to "over one hundred people" in the Ararat community who allegedly told him Ms. Scales had an immoral reputation and about these other matters (Boyd, Tr. Trans. 1/20/84, p. ⁴³⁹~~439~~), upon examination by counsel for the United States Mr. Boyd could identify only six (6) individuals (Boyd, Tr. Trans. 1/20/84, p. ⁴⁵¹~~451~~; and Govt. Tr. Ex. 40 - under seal). Moreover, the record reflects that two (2) of the six (6) persons who Mr. Boyd named (Mr. R.L. and Mr. R.P.)^{42/} had signed a petition which Ms. Scales had personally circulated in the Ararat community after she had been rejected for employment by Sheriff

^{42/} Since Govt. Tr. Ex. 40 has been placed under seal by the Court, we refer to the persons whose names appear thereon by their initials.

Williams and had heard that the Sheriff had said that the reason why he did not hire her was because he thought she had an immoral reputation (Scales, Tr. Trans. 1/11/84, p. 103; Govt. Tr. Ex. 16, pp. 2 and 6). That petition, signed by Messrs. R.L. and R.P. as well as by approximately 150 other residents of Ararat, read (Govt. Tr. Ex. 16):

Sheriff Jesse Williams said that he did not hire Doris Scales for deputy because she had an immoral reputation.

Below is a list of people of the community who have never heard of this alleged immoral reputation.

Indeed, the record reflects that Mr. R.L., a merchant in Ararat, had, by letter to Sheriff Williams dated April 18, 1980, recommended that the Sheriff hire Ms. Scales (Williams Dep. 8/11/83, pp. 242-243; and Govt. Ex. 25, p. 3 attached thereto).^{43/}

Mr. Boyd's testimony is made further incredible when it is weighed against the specific letters of recommendation submitted on behalf of Ms. Scales by named individuals, which letters are part of the record before this Court. Thus, Sheriff Williams testified in his August 11, 1983 deposition that in addition to Mr. R.L.'s letter of recommendation discussed above, Ms. Scales submitted three (3) other letters of reference when she applied

^{43/} Ms. Scales' petition also reflects (Govt. Tr. Ex. 16) the signature of two relatives of Mr. R.L. and seven relatives of Mr. R.P.

Although the names of the other four persons named by Mr. Boyd do not also appear on Ms. Scales' petition, many of their relatives' names do. Thus, five relatives of Mr. R.M. signed Ms. Scales' petition; five relatives of Ms. F.Y. signed Ms. Scales' petition; and six relatives of Mr. C.B. signed Ms. Scales' petition (see Govt. Tr. Ex. 16).

for employment with the PCSD (Williams Dep. 8/11/83, pp. 242-243, and Govt. Ex. 23 attached thereto).^{44/} One of these letters was from Nick K. Epperson of Ararat, Virginia, and states that while he was cub master for the cub scouts in Ararat, Ms. Scales was a den mother who "spent many voluntary hours contributing to a better community through scouting," and who "did an excellent job" (Govt. Ex. 23, p. 1, attached to Williams Dep. 8/11/83). Another letter, from Elbert Suphin, superintendent of finishing at Oakdale Knitting Company, reflects that while Ms. Scales was employed by Oakdale (Id., p. 2):

...[h]er ability to supervise and get the job done and get along with people and her attendance was excellent.

The reason she is not now employed at Oakdale Knitting Company as second shift supervisor is due to the fact that the second shift has been discontinued.

Similarly, another letter, from Sherman E. Hubbard, departmental manager at J.P. Stevens and Company, reflects that Ms. Scales "had a good rating on her quality and quantity of work..." (Id., p. 4).

So also, contrary to Mr. Boyd's testimony that he had been told that Ms. Scales had an immoral reputation and was a "dead-beat," the record before the Court contains a letter dated April 16, 1980 from Bob H. Powell of Twin Ford Sales of Stuart, in which Mr. Powell states that Twin Ford Sales "have traded vehicles with [Ms. Scales] several times in the past and have found her to be

^{44/} In this regard, it should be recalled (see, p. 43, supra) that Sheriff Williams testified that he never contacted any of the work or personal references provided to him by Ms. Scales when she applied (Williams Dep. 8/11/83, p. 259).

honest and of good character" (Govt. Ex. 82A attached to Williams Dep. 8/11/83). Again, a letter dated October 28, 1980 from Haywood Jordan, manager of Heilig-Meyers Furniture Co. in Mt. Airy, reflects that Ms. Scales had been buying from his store since June 1977, that "[s]he has a good paying record" with his company, and that he "consider[s] her to be a very valuable customer and reliable person" (Id.).

Finally, in analyzing Mr. Boyd's testimony critical of Ms. Scales, it should not go unnoticed that Sheriff Gregory testified both at trial (Gregory, Tr. Trans. 1/20/84, ⁴⁷⁴⁻pp. 476) and during his January 10, 1984 deposition taken by the United States (Gregory Dep. 1/10/84, pp. 17-18) that one of the reasons he did not retain Mr. Boyd as an employee in the PCSD when he took office was because of Mr. Boyd's dishonesty.

4. Although Sheriff Williams had been repeatedly asked at his August 11, 1983 deposition taken by the United States to state each and every reason why he did not hire Doris Scales (See, Williams Dep. 8/11/83, pp. 251-270), it was not until the trial of this action that the Sheriff, for the first time, mentioned yet another reason why he allegedly did not hire Ms. Scales: namely, that he was allergic to strong smells; and, when he interviewed Ms. Scales, she was wearing a strong perfume (Williams, Tr. Trans. 1/11/84, ²²⁹⁻pp. 230). 45/

45/ In this regard, the Sheriff conceded (Williams Tr. Trans. 1/11/84, p. ; and Williams Dep. 8/11/83, pp. 236, 260) that his "interview" of Ms. Scales actually consisted of two interviews; the first "interview," when she applied, was approximately two (2) minutes in length, and the second, when she took the written exam, was approximately one minute in length.

Betty Martin, Sheriff Williams' secretary at that time and a witness for the defendant at trial, testified on direct examination that she recalled that after Ms. Scales left the PCSD the day she took the written examination, the Sheriff spoke to Ms. Martin about having to air out the office as a result of the perfume worn by Ms. Scales (Martin, Tr. Trans. 1/20/84, p. 514).

However, on cross-examination by counsel for the United States, Ms. Martin confirmed that during her October 12, 1983 deposition taken by the United States (Martin, Tr. Trans. 1/20/84, p. 523; Martin Dep. 10/12/83, pp. 39-41) she had testified as follows:

Q: Were you present when Scales, Doris Scales, came into the office and either made an application or took the examination for a position?

A: I remember her coming in; she stood out no more than anybody else. It is not something that I would vividly remember, but I do remember her coming in.

Q: Do you remember her coming in to make an application?

A: I remember her coming in.

Q: Do you remember when she came in to take the examination?

A: I do not remember; I know that she took the examination, but as far as remembering specifically when or even what she looked like or what she wore or anything that went on that day, I could not tell you, because it was no different than any other day when anybody came into take a test.

Q: In other words, you would not remember what Doris Scales would have said on that occasion?

A: I do not remember; I know she came in and she --I could not tell you verbally, you know, everything that was said.

Q: You do remember parts of the conversation?

A: Maybe if it were refreshed; if it was anything asked of me, you know, did I hear, I could tell you. But, as far as me telling you exactly what was said or what was not, you know, I cannot do it.

Q: Did she speak to you?

A: I do not believe she did; I do not think that she spoke directly to me. I am sure she spoke while she was in the office; you know, most of the time, they do.

But, like I say, she stands out no more than any other applicant that could have come in. I do not remember that much about it.

Q: Were you present when she talked to Sheriff Williams, or did you overhear the conversation?

A: I remember she went into the office; I remember she came out of the office. But, today, as far as saying what happened, I cannot.

* * *

Q: Have you ever had any discussions with the sheriff regarding Doris Scales?

A: Well, not really discussions, no. I mean, you know --

Q: Have you talked to the sheriff regarding Doris Scales?

A: What, in depth, do you mean?

Q: I mean, can you just tell me any discussion, any time you have spoken with--

A: No, not really. (Emphasis supplied)

In light of the above discussion and references to the prior testimony of both Sheriff Williams and his secretary, Ms. Martin, this Court should view this eleventh-hour "perfume defense" for what it is - a sham.

Wanda Hylton

Wanda Hylton applied for employment with the PCSD on March 25, 1981 (Hylton, Tr. Trans. 1/11/84, p. ¹³⁸138; and Govt. Ex. 77 attached to Williams Dep. 10/12/83). Ms. Hylton was prompted to apply for employment with the PCSD because she was very interested in law enforcement, she needed a job and wanted one that was compatible with her education (a B.S. college degree in Sociology and Criminology), and she lived in Patrick County (Hylton, Tr. Trans. 1/11/83, ¹³⁶⁻pp. ¹³⁷137; Govt. Ex. 77 attached to Williams Dep. 10/12/83).

On March 25, 1981, Ms. Hylton went to the PCSD and asked Betty Martin, Sheriff Williams' secretary, for an application for employment with the PCSD, which she was then given (Hylton, Tr. Trans. 1/11/84, p. ¹³⁸138). At the time that she requested an application, Ms. Hylton also asked Ms. Martin that she be permitted to speak to the Sheriff (Hylton, Tr. Trans. 1/11/84, p. ¹³⁸138). The Sheriff immediately conducted a one-half hour interview of Ms. Hylton, during which the Sheriff and Ms. Hylton discussed, inter alia, Ms. Hylton's college degree, her course work in criminology and her career plans (Hylton, Tr. Trans. 1/11/84, pp. ¹³⁸⁻¹³⁹139). During this interview, Ms. Hylton asked the Sheriff whether he would consider hiring a woman as a deputy (Id., ¹³⁸⁻pp. ¹³⁹139). According to Ms. Hylton, the Sheriff responded to her question "by chuckling and saying that he would not hire a woman in his department as a deputy, that he did not think that women could

handle the job, that they could not handle the men" (Id., p. 139). The Sheriff asked Ms. Hylton whether she would be interested in a dispatcher's job, and she replied that she would be interested "In a dispatcher's job or any other job" (Id., p. 139). Ms. Hylton achieved a score of 94 on the written examination (Govt. Ex. 77 attached to Williams Dep. 8/11/83), and subsequently was hired as a dispatcher in the PCSD on April 16, 1981 (Id.).

At trial, as well as during his October 12, 1983 deposition taken by the United States, Sheriff Williams testified that, to his knowledge, Ms. Hylton did not ask him to be considered for a deputy position when she applied for employment (Williams, Tr. Trans. 1/11/84, p. 236; and Williams Dep. 10/12/83, p. 325). However, when the Sheriff was asked whether he would remember if Ms. Hylton had asked him to be considered for a deputy position, the Sheriff stated: "I would think so, but I am not positive" (Williams Dep. 10/12/83, p. 325).

After her hire by the Sheriff as a dispatcher, Ms. Hylton did not request a transfer or promotion to a higher position, because the Sheriff already had told her when she applied for employment that he would not hire a woman as a deputy, she did not see any prospect of the Sheriff changing his mind from what she observed at the PCSD, and she did not want to do anything that would jeopardize her position as a dispatcher. (Hylton, Tr. Trans. 1/11/84, ¹⁴⁴⁻pp. 145). In this regard, Ms. Hylton would have

considered continuing her employment with the PCSD instead of resigning -which she did on November 23, 1981 - had she believed that the Sheriff would have considered promoting her to deputy sheriff (Id., pp. ¹⁴⁵⁻146). ^{46/}

Kathy Sheppard

Kathy Sheppard was hired as a dispatcher in the PCSD on July 1, 1980 (Govt. Tr. Ex. 1; and Govt. Ex. 43 attached to Williams Dep. 10/12/83). Ms. Sheppard was promoted from dispatcher to civil process server on August 1, 1982, shortly after the Department of Justice's July 22, 1982 notification to the Sheriff of the Department's receipt of the EEOC referral indicating that the Sheriff may be engaged in discriminatory employment practices against women (Govt. Ex. 43 attached to Williams Dep. 10/12/83). Ms. Sheppard continued to be employed as a civil process server in the PCSD until January 1, 1984, when Sheriff Gregory assumed office, abolished the job of civil process server and terminated her (Gregory, Tr. Trans. 1/20/84, pp. ⁴⁷⁶⁻478; and Gregory Dep. 1/10/84, p. 15).

As stated, supra, pp. 15-16, Ms. Sheppard had been the only woman ever employed by the Sheriff of Patrick County in a job classification other than those of dispatcher, secretary or

^{46/} The record reflects that while Ms. Hylton was employed by the PCSD, Sheriff Williams hired two deputies, both of whom were male: Bruce Pendleton, on August 1, 1981; and Terry L. Jones, on October 1, 1981 (Govt. Tr. Ex. 1; and Govt. Exs. 47 and 79 attached to Williams Dep. 10/12/83). At the time of his application, Mr. Jones had lived in Patrick County for one month (Govt. Ex. 19 attached to Williams Dep. 10/12/83); and at the times of their respective hires, Mr. Jones had no college law enforcement education and Mr. Pendleton had not completed his college law enforcement education, as had Ms. Hylton (Govt. Exs. 47 and 79 attached to Williams Dep. 10/12/83).

clerk-steno. Further, although civil process server was a sworn position, it was not considered by the Virginia Compensation Board to be comparable to that of deputy for compensation purposes (Williams Dep. 8/11/83, pp. 70-71, 83, 226; and Govt. Exs. 27-31 attached to Williams Dep. 10/12/83). Thus, according to the FY 1984 budget for the PCSD approved by the Virginia Compensation Board on June 20, 1983, Ms. Sheppard's annual salary as civil process server was \$11,144, while John Bocock - who was hired as a dispatcher on December 16, 1982 (approximately two and one-half years after Ms. Sheppard) and who was promoted to deputy on April 16, 1983 (more than eight months after Ms. Sheppard's promotion to civil process server) - had an annual salary of \$11,956 (Govt. Exs. 27, 43 and 52 attached to Williams Dep. 10/12/83).

Sheriff Gregory testified, both at trial and during his January 10, 1984 deposition taken by the United States, that he terminated only three (3) of the twenty-three (23) persons who were employed by the PCSD at the time he assumed office on January 1, 1984: Messrs. Boyd and Day, for cause; and Ms. Sheppard, because he decided to abolish the job of civil process server (Gregory, Tr. Trans. 1/20/84, pp. ⁴⁷⁶⁻477; and Gregory Dep. 1/10/84, pp. 8-18). Sheriff Gregory testified that he had decided to abolish the job of civil process server as a cost-cutting measure, with an estimated projected savings of \$66,696 over the next four years (Gregory, Tr. Trans. 1/20/84, pp. ⁴⁷⁶⁻477; and Gregory Dep. 1/10/84, pp. 22-23, and Govt. Ex. 1 attached thereto). In

this regard, Sheriff Gregory testified that he did not think the job of civil process server was needed, because for much of the time Ms. Sheppard was employed in that job she had been assigned by Sheriff Williams to perform duties other than serving process, such as dispatching (Gregory, Tr. Trans. 1/20/84, p. __; Gregory Dep. 1/10/84, pp. 23-24, and Govt. Ex. 1 attached thereto). As Sheriff Gregory noted: during the first six months after Ms. Sheppard had been promoted to civil process server (July through December 1982), she had been assigned by Sheriff Williams to serve papers on only eight (8) days; and from January through June 1983, Ms. Sheppard had been assigned by Sheriff Williams to serve papers on only 63 of 122 work days, or approximately only one-half of her work days (Govt. Ex. 1, p. 2, attached to Gregory Dep. 1/10/84).^{47/}

The record before this Court confirms Sheriff Gregory's analysis that although Ms. Sheppard had been "promoted" to the job of civil process server by Sheriff Williams in August 1982, she was never regularly assigned the duties of that job (Govt. Exs. 82C-82N attached to Williams Dep. 10/12/83). Thus, the United States in its prayer for relief in its Complaint (p.5) asked this Court to enjoin the Sheriff of Patrick County from "discriminating on the basis of sex in the ... assignment and transfer of women employees in the PCSD." Further, Sheriff Williams conceded that after Ms. Sheppard assumed the duties of

^{47/} Indeed, Sheriff Williams conceded in his August 11, 1983 deposition taken by the United States that it was not until December 1982 that Ms. Sheppard was relieved of her full-time dispatcher duties (Williams Dep. 8/11/83, p. 112).

civil process server in December 1982, she performed not only as a civil process server and as a dispatcher, but also as a courtroom security officer, a matron and a deputy for the transport of female prisoners when needed (Id., p. 112).

Although Sheriff Gregory testified that he projects an estimated \$66,696 in savings over the next four years by having abolished the job of civil process server, the Sheriff's own analysis reflects that: \$44,576 of such projected savings (\$11,144 x 4) is allocable to salary, an expense fully funded by the Virginia Compensation Board (Gregory, Tr. Trans. 1/20/84, pp. 481-482; Govt. Ex. 1, p. 2, attached to Gregory Dep. 1/10/84; and Govt. Exs. 27-31 attached to Williams Dep. 10/12/84); and \$14,320 of such projected savings (\$3,580 x 4) is allocable to the operating costs of one squad car, an expense fully funded by the Virginia Compensation Board with the exception of the cost of car insurance (Govt. Ex. 1, p. 2, attached to Gregory Dep. 1/10/84; and Govt. Exs. 27-31 attached to Williams Dep. 10/12/84). Thus, according to Sheriff Gregory's analysis, the actual projected savings to Patrick County over the next four years is \$7,800 (\$7,000 for the cost of a vehicle; and \$200 per year for uniform allowance) (Govt. Ex. 1, p. 2, attached to Gregory Dep. 1/10/84). However, the County will not save practically any of that \$7,800, because \$7,000 represented the estimated cost of the squad car which was used by Ms. Sheppard and which, according to Sheriff Gregory, remains in use to date (Gregory, Tr. Trans. 1/20/84, p.

482). Nor, in final analysis, will the Virginia Compensation Board save much money as a result of Sheriff Gregory having abolished Ms. Sheppard's job. Subpoenas still must be served, and while Sheriff Gregory has projected that road deputies (all of whom are men) will in the future serve subpoenas, the PCSD still will require gasoline, parts, labor and insurance for all of its squad cars - including that car formerly driven by Ms. Sheppard, which still is in use. More importantly, Sheriff Gregory recognized that when Ms. Sheppard was not serving papers she was performing as a dispatcher (Govt. Ex. 1, p. 2, attached to Gregory Dep. 1/10/84); and indeed, Sheriff Williams conceded that in addition to working as a civil process server and as a dispatcher, Ms. Sheppard also worked, as needed, as a courtroom security officer and a deputy for the transport of female prisoners - both of which in fact are higher-paying jobs than civil process server and both of which are held exclusively by men.

When Sheriff Gregory was asked whether he considered transferring Ms. Sheppard to another position in the PCSD instead of terminating her when he abolished the position of civil process server, the Sheriff testified that he had, but that he "could not see transferring her into a position" when "in [his] opinion, she lacked the performance that [he felt] was necessary to do the job" (Gregory, Tr. Trans. 1/20/84, pp. ⁴⁷⁸⁻479; and Gregory Dep. 1/10/84, p. 26). In this regard, the Sheriff testified that he did not transfer Ms. Sheppard back to the dispatcher's job which she had held for two years (July 1, 1980 - August 1, 1982), be-

cause he felt that the four persons then in that job "were doing a satisfactory job" and that, given Ms. Sheppard's past performance as a dispatcher, he could not see replacing any of them with her (Gregory Dep. 1/20/84, p. 27). However, notwithstanding the Sheriff's testimony with respect to Ms. Sheppard's performance as a dispatcher, the record reflects that: from the time of Ms. Sheppard's hire on July 1, 1980 until May 31, 1983, when Mr. Gregory was discharged by Sheriff Williams, Mr. Gregory was an investigator with the PCSD and had no supervisory responsibilities with respect to Ms. Sheppard or any of the other dispatchers (Govt. Tr. Ex. No. 1). More importantly, Sheriff Williams, based upon the recommendations of his two shift supervisors, had evaluated Ms. Sheppard's performance on both her 1981 and 1982 annual performance reviews as "superior," the highest level of performance obtainable (Govt. Ex. 43 attached to Williams Dep. 10/12/83).^{48/} Indeed, Ms. Sheppard's supervisors commented in her 1982 annual performance review that her "performance as dispatcher was consistently superior during the period evaluated," and in her 1981 annual performance review that she "has consistently produced high quality work. She has submitted several suggestions aimed at improving the dispatcher operation" (Id.). Further, each of the four dispatchers who Sheriff Gregory chose

^{48/} No employees of the PCSD were issued annual performance reviews for 1983; and, consistent with Sheriff Williams' practice of not issuing annual performance reviews to employees in their first year with the PCSD, Ms. Sheppard was not issued an annual performance review for 1980.

to retain had been employed by the PCSD for a substantially shorter period of time than had been Ms. Sheppard. Indeed, while Sheriff Gregory testified that he thought each of them was doing a "satisfactory" job (Gregory Dep. 1/10/84, p. 27), one of these dispatchers, Pamela Nowlin, had been hired by the PCSD on March 16, 1983, only two months before Mr. Gregory's discharge by Sheriff Williams in May 1983 (Govt. Tr. Ex. 1; and Govt. Ex. 53 attached to Williams Dep. 10/12/83); and another, Teresa Hubbard (the wife of David Hubbard, hired by Sheriff Gregory as a deputy) had been hired by the PCSD on October 1, 1983, over four (4) months after Mr. Gregory's May 1983 discharge (Govt. Tr. Ex. 1; and Govt. Exs. 51 and 55B attached to Williams Dep. 10/12/83). Neither Ms. Nowlin nor Ms. Hubbard had had any prior law enforcement, or even dispatching experience when they were hired in 1983 (Id.). The other two dispatchers retained by Sheriff Gregory were Steve Tatum, originally hired on April 15, 1981 (almost one year after Ms. Sheppard) and Rhona (Sehen) Hughes, originally hired on March 1, 1982 (more than one and one-half years after Ms. Sheppard) (Govt. Exs. 46 and 49 attached to Williams Dep. 10/12/83).

Sheriff Gregory also testified that he did not transfer Ms. Sheppard to a deputy position, because, according to the Sheriff (Gregory Dep. 1/10/84, p. 27):

...the performance that these other deputies were doing, I could not see knocking them out of a job when, as far as I knew, they were doing a satisfactory job; so that is why I did not do that.

The deputies to whom the Sheriff was referring were eight in number, all of whom were men and only two of whom had been hired by the PCSD prior to Ms. Sheppard. The name, job classification and initial date of hire by the PCSD of each of them is as follows:^{49/}

<u>Name</u>	<u>Job Classification</u>	<u>Initial Date of Hire by the PCSD</u>
Johnny Elgin	Road Deputy	July 16, 1983
David Hubbard	Road Deputy	October 1, 1982
Claude Bowman	Road Deputy	February 1, 1982
Bruce Pendleton	Road Deputy	August 1, 1981
Danny Stacy	Road Deputy	July 1, 1980
David Morse	Courtroom Security Officer	Hired: July 1, 1980 Resigned: September 1, 1982 Rehired: July 1, 1983
Hassell Nicholson	Road Deputy	June 1, 1980
Thomas Gregory	Courtroom Security Officer	January 1, 1980

Although Sheriff Gregory testified that he did not transfer Ms. Sheppard to a deputy position because he thought that each of the other deputies was doing a "satisfactory job", Mr. Elgin was initially hired by the PCSD on July 16, 1983, almost two (2) months after Mr. Gregory's discharge by Sheriff Williams. Further, unlike Ms. Sheppard, Mr. Elgin had failed the first written

^{49/} Source: Govt. Tr. Ex. 1; and Govt. Exs. 35, 40, 41, 44, 47, 48, 51 and 55 attached to Williams Dep. 10/12/83.

examination administered to him before he was hired and had no prior law enforcement experience in 1983 when he was hired (Govt. Ex. 6, p. 3, attached to Williams Dep. 8/11/83; and Govt. Ex. 55 attached to Williams Dep. 10/12/83). Nor did Messrs. Hubbard and Bowman have any law enforcement experience when they were hired - over two (2) years and over one and one-half years, respectively, after Ms. Sheppard's hire (Govt. Exs. 48 and 51 attached to Williams Dep. 10/12/83). With respect to the qualifications, or lack thereof, and prior work histories of Messrs. Stacy, Morse and Nicholson, we refer to pp. 28-33, supra.

Lastly, when asked whether he considered Ms. Sheppard for transfer to a corrections officer position, Sheriff Gregory testified (Gregory, Tr. Trans. 1/20/84, p. 480; and Gregory Dep. 1/10/84, pp. 27-28):

I did not seriously consider her for that position. I considered it, but due to some possible complications that I could see coming up in the jail - we house only men here at the jail; we house no females, and so, I did not hire her as a correctional officer.

The record reflects that Sheriff Gregory retained four (4) corrections officers, all of whom were men, all of whom had been employed by the PCSD for substantially shorter lengths of time than Ms. Sheppard, and none of whom had prior law enforcement experience when hired: Michael Craig, October 1, 1983; Lawrence DeHart, March 16, 1983; Keith Bocock, December 16, 1982; and Darryl Smith, September 16, 1982 (Govt. Exs. 50, 52, 54 and 55A attached to Williams Dep. 10/12/83).

IV
ARGUMENT

A. Liability

Section 703(a) of Title VII, 42 U.S.C. §2000e-2(a), provides in relevant part, that:

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's...sex...; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's...sex...

Disparate treatment, which has been alleged by the United States here, "is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their...sex..." International Brotherhood of Teamsters v. United States, 431 U.S. 324, 335 n.15 (1977).

The Supreme Court, in McDonnell Douglas v. Green, 411 U.S. 792, 802 (1973), addressed the issues of allocation of burdens and order of presentation of proof generally applicable in actions brought under Section 706 of Title VII, 42 U.S.C. §2000e-5. Under McDonnell Douglas, the plaintiff has the initial burden of demonstrating a prima facie case of discrimination. 411 U.S. at 802. In cases dealing with allegations of unlawful failure to

hire on the basis of sex, the plaintiff may demonstrate a prima facie case of discrimination by showing that (411 U.S. 802):

1. the claimant, as a woman, belongs to a group protected under Title VII;
2. the woman applied for and was qualified for a job for which the employer was seeking applicants;
3. despite her qualifications, the woman was rejected; and
4. following such rejection, the position remained open, and the employer continued to seek applicants from persons of that woman's qualifications.

This formula is not inflexible, but must be applied in light of the particular facts in the case under adjudication. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253-254 n.6 (1981); Thorne v. City of El Segundo, Nos. 80-5618, 80-5699 (9th Cir., Nov. 21, 1983) (copy attached). Further, "the burden of establishing a prima facie case of disparate treatment is not onerous." Burdine, supra, 450 U.S. at 253.

If the plaintiff succeeds in demonstrating a prima facie case of discrimination, the burden then shifts to the employer "to articulate some legitimate, nondiscriminatory reason" for rejecting the woman for hire. McDonnell Douglas, supra, 411 U.S. at 802. Should the employer carry this burden, the plaintiff must then be allowed the opportunity to demonstrate that the employer's assigned reason for refusing to hire the woman was a pretext for discrimination. Id., 411 U.S. at 804, 807. In this regard,

the Court in McDonnell Douglas, a Section 706 action brought by a black alleging that the company unlawfully refused to rehire him because of his race, instructed that (411 U.S. at 804-805):

Especially relevant to such a showing [of pretext] would be evidence that white employees involved in acts against [the company] of comparable seriousness to the [plaintiff's] 'stall-in' were nevertheless retained or rehired. [The company] may justifiably refuse to rehire one who was engaged in unlawful, disruptive acts against it, but only if this criterion is applied to members of all races.

Other evidence that may be relevant to any showing of pretext includes facts as to the [company's] treatment of [the plaintiff] during his prior term of employment...and [the company's] general policy and practice with respect to minority employment. On the latter point, statistics as to [the company's] employment policy and practice may be helpful to a determination of whether [the company's] refusal to rehire [the plaintiff] in this case conformed to a general pattern of discrimination against blacks.

However, unlike the record before the Court in McDonnell Douglas, which contained no direct evidence of overt discrimination against the plaintiff, the record before this Court contains direct evidence of overt discrimination against women by the Sheriff of Patrick County. As such, reliance on the McDonnell Douglas formula for establishing discrimination is unnecessary here. On the contrary, where as here, a prima facie case of discrimination has been established by direct evidence of overt discrimination against women, the defendant has the burden of demonstrating "by clear and convincing evidence" that its actions were not motivated by discrimination. Evans v. Harnett County

Board of Education, 684 F2d 304, 307 (4th Cir. 1982); Perryman v. Johnson Products Co., 698 F2d 1138, 1142-1143 (11th Cir. 1983).

Nevertheless, even if this Court were to choose to review the evidence in this action under the McDonnell Douglas formula, the evidence still clearly demonstrates that the Sheriff of Patrick County has discriminated against women on the basis of their sex in violation of Title VII.

The evidence of the United States clearly establishes a prima facie case of unlawful discrimination by the Sheriff of Patrick County against Stephanie Ressel, Doris Scales, Wanda Hylton and Kathy Sheppard: the Sheriff unlawfully refused to hire Ms. Ressel, Ms. Scales and Ms. Hylton as deputies on the basis of sex; the Sheriff unlawfully refused to hire Ms. Scales as a dispatcher on the basis of sex, and because of and in retaliation for her efforts to be hired as a deputy; the Sheriff unlawfully refused to assign Ms. Hylton to deputy after her hire on the basis of sex; the Sheriff unlawfully refused to assign Ms. Sheppard the full duties of civil process server on the basis of sex and, instead, unlawfully assigned Ms. Sheppard to perform either duties not commensurate with her job (such as dispatching) or duties normally performed by men in the higher-paying job of deputy (such as courtroom security and transporting prisoners); and the Sheriff unlawfully terminated Ms. Sheppard on the basis of sex.

As demonstrated, supra, Part III, Ms. Ressel, Ms. Scales and Ms. Hylton sought employment in the PCSD as deputies (ie., road deputy, courtroom security officer, or corrections officer); and Ms. Scales also sought employment as a dispatcher. Each of these three women were as qualified - if not more qualified - than the men hired by Sheriff Williams as deputies and, in the case of Ms. Scales, as dispatchers. Indeed, one of the two (2) reasons the Sheriff gave for rejecting Ms. Ressel for employment was that she was overqualified. Similarly, Mr. Boyd, Sheriff Williams' shift supervisor, admitted that he agreed to let Ms. Scales use him as a reference and that he felt that she had just as good an opportunity at being hired by the PCSD as anyone else. Each of these three women was denied employment by the Sheriff in the above jobs, and the record confirms that the Sheriff thereafter not only continued to take applications for those jobs but continued to hire numerous men into those jobs. With respect to Ms. Sheppard, the record reflects that even after she had been "promoted" to civil process server, she was not assigned to perform the duties of that job on a full-time basis. Rather, in addition to performing some civil process server duties, Ms. Sheppard continued to be assigned to perform duties not commensurate with her job (such as dispatching) or duties (such as courtroom security and transporting prisoners) normally performed by men in the higher-paying job of deputy. Further, while employed by the PCSD, Ms. Sheppard's performance was, according to the PCSD's own

records, "superior." Ms. Sheppard was at the time of her termination as qualified - if not more qualified - than the men retained by the Sheriff in deputy and dispatcher positions. Indeed, all but two of the men retained as deputies had been employed by the PCSD for a shorter period of time than had Ms. Sheppard, and a number of these male deputies had not even met the Sheriff's own stated qualification standards when they had initially been hired and/or had no prior law enforcement experience.

Under McDonnell Douglas, once a prima facie case is established, the employer has the burden of articulating a legitimate and nondiscriminatory reason for its actions. Should such a reason be articulated, the plaintiff has the right to introduce evidence showing that the articulated reason is but a pretext for discrimination. 411. U.S. at 802.

The Sheriff articulated no reason whatever why he did not consider Wanda Hylton for a deputy job, either at the time of her application or subsequent thereto, other than to state he did not recall Ms. Hylton having asked him to be considered for a deputy job. However, Ms. Hylton testified credibly that when she asked the Sheriff whether he would consider hiring a woman as a deputy, he responded:

...by chuckling and saying that he would not hire a woman in his department as a deputy, that he did not think that women could handle the job, that they could not handle the men.

Sheriff Williams testified that he did not hire Stephanie Ressel because "she was very -- she was overqualified for the

position by far" and "[s]he had much more potential to develop somewhere else than she could have here in her field," and the Sheriff further mentioned that the person he selected for the position instead of Ms. Ressel - Robert Morse - had "family ties with the county." However, so also did Ms. Ressel. Further, Sheriff Williams conceded that there is no requirement that applicants for employment in the PCSD live in Patrick County, but only that they move into the County upon hire; and it is uncontested not only that Ms. Ressel assured the Sheriff that she would move into the County, but also that Ms. Ressel secured a place to live in the County on the same day that she gave the Sheriff such assurance. The record also reflects that the Sheriff offered employment to and hired a number of male deputies who, at the time of application, either lived outside of Patrick County or had just recently moved into the County.

Moreover, although the Sheriff testified that his decision to hire Mr. Morse instead of Ms. Ressel was "just a personal choice," the fact remains that Ms. Ressel was clearly more qualified than was he by the Sheriff's own standards. Lastly, tacit in the Sheriff's testimony that he hired Mr. Morse instead of Ms. Ressel is an admission by the Sheriff that he did not consider Ms. Ressel for any of the other deputy vacancies that he filled subsequent to her application - vacancies which the record reflects were filled by men who did not meet the Sheriff's stated qualification standards for hire and/or resigned from the PCSD shortly after hire.

Sheriff Williams testified in his pre-trial deposition that there were two things revealed in his background investigation of Doris Scales which led him to believe that she would not be "dependable or reliable," and upon which he decided not to hire her: namely, that in 1979 there had been issued a civil judgment against her in the amount of \$285 for rent arrears; and that he had been told by Clifford Boyd, one of his shift supervisors, during a ten minute conversation that Ms. Scales "had a history of not paying her bills." Indeed, the Sheriff testified that the civil judgment against Ms. Scales and her "history of not paying her bills" were the only bases upon which he rejected Ms. Scales for employment, and that the 1979 civil judgment against Ms. Scales was alone a sufficient basis for rejecting her for employment.

Although a civil judgment had been issued against Ms. Scales in 1979, that judgment was fully satisfied by Ms. Scales within two weeks after entry. Further, the Sheriff conceded that he never asked Ms. Scales to explain the facts and circumstances surrounding the 1979 civil judgment against her, that he never contacted any of the work or personal references provided to him by Ms. Scales, and that the only person he spoke to about Ms. Scales before he decided not to hire her was Mr. Boyd.

As noted supra, the treatment accorded Doris Scales by Sheriff Williams is in stark contrast to that accorded David Morse, an incumbent male deputy in the PCSD hired as a deputy by Sheriff Williams on July 1, 1980, less than two weeks after Ms. Scales was notified by the Sheriff that she had been rejected for employment. Not only had a civil judgment been entered against Mr. Morse in 1979 in the amount of \$2,481 (or almost nine times the amount of the judgment against Ms. Scales), but the Sheriff conceded that he had learned about the judgment against Mr. Morse during his background investigation of Mr. Morse and before he hired him. Indeed, while the Sheriff admitted that he never inquired about the facts and circumstances surrounding the judgment against Ms. Scales, the Sheriff testified that when he learned about the judgment against Mr. Morse, he talked to the loan officer of the bank which held the note upon which Mr. Morse defaulted, and learned from the loan officer that the judgment against Mr. Morse had been entered as a result of Mr. Morse's default on a loan he had obtained from the bank for the purchase of a car, and that the bank subsequently repossessed the car.

The Sheriff's appointment of David Morse as a deputy is not the only example of the disparate treatment accorded Doris Scales by the Sheriff. The record reflects that - prior to Ms. Scales' application, during the pendency of her application, and after her rejection for employment - the Sheriff did not adhere to his

own procedures and standards in hiring men for deputy positions, and the Sheriff hired numerous men as deputies who did not meet the Sheriff's own stated minimum qualification standards.

As noted, supra, Sheriff Williams testified in his deposition that there were two reasons why he did not hire Doris Scales: because she had incurred a civil judgment in 1979 in the amount of \$285; and because the Sheriff had been told by Mr. Boyd that Ms. Scales "had a history of not paying her bills." The Sheriff also testified, both in his deposition and again at trial, that he never told anyone that he had rejected Ms. Scales for employment because he thought that she had "an immoral reputation."

Notwithstanding this testimony of the Sheriff, Dorothy Mays, the EEOC investigator who handled the October 1980 fact-finding conference attended by Ms. Scales, the Sheriff and his attorney, Mr. Lawrence Burton, testified that during the pre-fact-finding conference interview she conducted of the Sheriff, the Sheriff told her that he did not want to hire Ms. Scales because of "her immoral reputation," but that he did not wish to state that reason during the fact-finding conference itself.

So also, notwithstanding the above-referenced testimony of the Sheriff both during his deposition and at trial, Mr. Burton - who was counsel to the Sheriff in 1980 - at trial confirmed his deposition testimony that the Sheriff had told him that he did

not hire Ms. Scales because she had failed the "morality test," and she had a reputation for "sexual promiscuity."

At trial, the defendant sought to provide some factual basis for the Sheriff's statements to Ms. Mays and to Mr. Burton by eliciting from Clifford Boyd, one of the Sheriff's shift supervisors, testimony to the effect that he had talked to "over one hundred people" in the Ararat community in which Ms. Scales lived and, according to Mr. Boyd, they told him she had an immoral reputation and was a deadbeat. For the reasons fully set forth, supra, and which need not be replicated here, Mr. Boyd's testimony on this issue is simply not credible. Further, the Sheriff did not apply any morality test criterion to men he hired, as is amply demonstrated by the evidence.

The Sheriff's eleventh-hour "perfume defense," raised for the first time at trial, is similarly unworthy of belief. It in no way warrants his refusal to hire Ms. Scales. Not only did the Sheriff fail to bring any such concern of his to Ms. Scales' attention, but also if such a concern actually existed it could have easily been cured by Ms. Scales changing her perfume or wearing none at all while employed as a deputy in the PCSD.

With respect to Kathy Sheppard, the defendant has not even sought to "articulate some legitimate, nondiscriminatory reason" why, subsequent to her "promotion" to civil process server, she

was not assigned the duties of that job on a regular basis and, instead, was assigned duties not commensurate with her job (dispatching) or duties typically performed by men in the higher-paying job of deputy (such as courtroom security and the transport of prisoners). Further, although Sheriff Gregory testified that he terminated Ms. Sheppard because he abolished the job of civil process server as a cost-cutting measure, in point of fact the abolition of this job will result in virtually no savings to the County and little if any savings to the Virginia Compensation Board. More importantly, although Sheriff Gregory testified that he considered transferring Ms. Sheppard to a different position in the PCSD, he did not do so because he questioned her performance while she was a dispatcher and the Sheriff thought that the dispatchers and deputies he decided to keep were doing a "satisfactory job." The fact of the matter is, however, that the PCSD's own records reflect not only that Ms. Sheppard's performance was "superior," but also that all of the dispatchers and most of the deputies retained by Sheriff Gregory had been employed by the PCSD for a shorter - and in many cases, far shorter - length of time than had Ms. Sheppard. Indeed, a number of these deputies (all of who are male) had no prior law enforcement experience when hired and/or had not even met the Sheriff's stated qualification standards at the time of their hire.

Thus, Sheriff Williams' stated reasons for not hiring Ms. Ressel and Ms. Scales, as with Sheriff Gregory's stated reasons for terminating Ms. Sheppard, are clearly pretextual. The evidence demonstrates that: Sheriff Williams' refusal to hire Ms. Ressel and Ms. Scales was because of their sex and, thus, unlawful; and Sheriff Gregory's termination of Ms. Sheppard was because of her sex and, thus, unlawful.

B. Relief

Title VII contains its own remedial relief provision, Section 706(g), 42 U.S.C. §2000e-5(g).^{50/} In Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975), the Supreme Court observed that the legislative history of Section 706(g) strongly reaffirmed Title VII's dual purpose of eliminating employment discrimination and "making whole" those persons who have been the victims of such discrimination.

In particular, the Court in Albemarle referred (422 U.S. at 420-421) to the Section-by-Section Analysis accompanying the Conference Committee Report on the Equal Employment Opportunity Act of 1972 which, among other things, extended Title VII's coverage

^{50/} Section 706(g) of Title VII provides, in relevant part, that upon a finding of unlawful discrimination:

...the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate.

to State and local governments, governmental agencies and political subdivisions. As the Court observed (422 U.S. at 421), that Report stated:

The provisions of this subsection are intended to give the courts wide discretion exercising their equitable powers to fashion the most complete relief possible. In dealing with the present section 706(g) the courts have stressed that the scope of relief under that section of the Act is intended to make the victims of unlawful discrimination whole, and that the attainment of this objective rests not only upon the elimination of the particular unlawful employment practice complained of, but also requires that persons aggrieved by the consequences and effects of the unlawful employment practice be, so far as possible, restored to a position where they would have been were it not for the unlawful discrimination. 118 Cong. Rec. 7168 (1972).

The Court in Albemarle instructed (422 U.S. at 421) that, as the legislative history of the 1972 Act makes clear:

...Congress' purpose in vesting a variety of 'discretionary' powers in the courts was not to limit appellate review of trial courts, or to invite inconsistency and caprice, but rather to make possible the 'fashion[ing] [of] the most complete relief possible'.

Noting that one of the dual purposes of Title VII was to make persons whole for injuries suffered on account of unlawful employment discrimination, the Court in Albemarle stressed (422 U.S. at 421) that:

Backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purpose of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination.

The Court subsequently instructed in Franks v. Bowman Transportation Co., 424 U.S. 747 (1976) that the "make whole" purpose of Title VII requires that job offers and retroactive seniority

relief be provided to those persons who have been unlawfully denied hire.

These teachings of the Supreme Court in Albemarle and Franks have been expressly applied by the Court of Appeals for this Circuit in United States v. County of Fairfax, Va., 629 F.2d 932 (1980), also a Title VII action. In Fairfax, the lower court entered judgment largely for the County. See 629 F.2d at 936. Thus, the lower court found that the County had discriminated against blacks in only two job categories (protective services and service and maintenance) and against women in only one job category (service and maintenance). 629 F.2d at 936. Further, the lower court concluded that equitable relief was unnecessary to correct for the racial discrimination it had found, since the County had maintained an affirmative action plan since 1978, two years prior to the filing of suit by the United States. 629 F.2d at 936-938. Lastly, the lower court declined to order the County to comply with the record keeping and reporting relief sought by the United States, since the court was of the view that the County would voluntarily comply with Title VII. 629 F.2d at 936. On appeal, the Court of Appeals held that the lower court erred by rejecting the United States' evidence of applicant flow data, stating that when resort is had to that evidence, "it is obvious that the government proved a more extensive prima facie case than the district court realized." 629 F.2d at 941. The Court of Appeals vacated the judgment of the district court and remanded

the action to the lower court with the following instructions (629 F.2d at 941-942):

While we express no view on the extent of the violation of Title VII which the district court may find on remand, we are constrained to comment on the limited relief the district court granted the victims it identified and its further refusal to grant a mandatory injunction to insure compliance with the record-keeping requirements of law. In both respects, we think that the district court was in error.

To the extent that the district court finds racial discrimination, it is under a duty to render a decree which will both eliminate past discrimination and bar discrimination in the future. Albemarle Paper Co. v. Moody, 422 U.S. 405, 418, 95 S.Ct. 2362, 2372, 45 L.Ed.2d 280 (1975). It is commendable that the County is continuing its affirmative action programs, although there was some evidence that the goals may soon be reduced. But, in any event, as we said in Barnett v. W.T. Grant Co., 518 F.2d at 550, 'a court cannot abdicate to defendants' good faith its duty of insuring removal of all vestiges of discrimination.'^{51/}

Thus, we think that the district court should have granted injunctive relief against future discrimination. In granting injunctive relief, it should both have required compliance with the record keeping and disclosure requirements of existing law, see EEOC v. Rogers Brothers, Inc., 470 F.2d 965 (5 Cir. 1972), and imposed requirements for periodic reports to enable it to monitor compliance with its decree. Finally, if proof is offered of identifiable economic injury to blacks or women, or both, who have suffered from the County's discriminatory practices, it should grant back pay or retroactive seniority or both. Teamsters v. United States, 431 U.S. at 361-62, 97 S.Ct. at 1867-68;

^{51/} See also, United States v. International Brotherhood of Electrical Workers, Local 38, 428 F.2d 144, 151 (6th Cir. 1970) (that a new union administration which favored compliance with Title VII was elected after the commencement of the action but before trial, did not warrant the district court's refusal to retain jurisdiction or its refusal to grant affirmative relief).

Albemarle Paper Co. v. Moody, 422 U.S. at 421, 95 S.Ct. at 2373; Hill v. Western Electric Co., 596 F.2d 99, 104 (4 Cir. 1979), cert. denied, 444 U.S. 929, 100 S.Ct. 271, 62 L.Ed.2d 186 (1979); Sledge v. J.P. Stevens & Co., 585 F.2d 625, 637 (4 Cir. 1978); Robinson v. Lorillard Corp., 444 F.2d 791, 803-04 (4 Cir. 1971).

Title VII provides that "[i]nterim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable." 42 U.S.C. §2000e-5(g). The record reflects that those women on whose behalf the United States is seeking back pay relief (Stephanie Ressel and Doris Scales) have reasonably mitigated their respective back pay losses; and the Sheriff has not attempted to demonstrate otherwise, as is his burden. United Staes v. Lee Way Motor Freight, Inc., 625 F.2d 918 (10th Cir. 1979); Kaplan v. Int'l Alliance of Theatrical and Stage Employees (IATSE), 525 F.2d 1354 (9th Cir. 1975).

In calculating back pay awards, absolute precision is not required, Ostropowicz v. Johnson Bronz Co., 541 F.2d 394 (3rd Cir. 1976); and uncertainties are to be resolved against the employer, rather than against the person who suffered discrimination through the employer's acts. United States v. Lee Way Motor Freight, supra, 625 F.2d at 932-33.

In accordance with the controlling law as referenced above, the United States requests that this Court grant the following relief:

1. The Court should enjoin the Sheriff of Patrick County from engaging in any act or practice with respect to the recruitment, hire or appointment of applicants for employment in the

PCSD, or the training, assignment, transfer, promotion, discipline, retention, compensation, or terms and conditions of employment of employees in the PCSD, which has either the purpose or the effect of unlawfully discriminating against women on the basis of sex.

2. The Court should direct that the Sheriff shall immediately adopt and implement an active and continuing recruitment program aimed at increasing substantially the number of qualified women applicants for appointment to deputy sheriff (ie., road deputy, courtroom security officer and corrections officer).

3. The Court should direct that, whenever a vacancy hereafter occurs in a deputy position in the PCSD which the Sheriff seeks to fill, the Sheriff shall, at least thirty days prior to filling that vacancy, post a notice of such vacancy in the front office of the PCSD and cause such notice to be placed in the Bull Mountain Bugle and in the Enterprise. Such notice should also contain the following information:

a. emphasize that the Sheriff is an Equal Employment Opportunity employer;

b. emphasize the Sheriff's active and continuing recruitment program on behalf of women for appointment to deputy in the PCSD;

c. summarize the qualifications required for appointment to the position;

d. provide details as to the method by which application must be made; and

e. specifically invite women, as well as men, to apply.

4. The Court should direct that the Sheriff provide the following remedial relief to Stephanie Ressel, Doris Scales and Kathy Sheppard:^{52/}

a. Stephanie Ressel - a back pay award of \$6,532.68, plus interest to be computed in the manner set forth in Appendix A attached hereto, to compensate Ms. Ressel for the monetary loss she incurred as a result of the Sheriff's unlawful refusal to hire her as a deputy. The record reflects that, absent discrimination, Ms. Ressel would have been hired as a deputy on or before July 1, 1980, and that she continued to maintain an interest in employment in a deputy position in the PCSD until at least March 31, 1981.^{53/}

b. Doris Scales - a back pay award of \$37,611.76, plus interest to be computed in the manner set forth in Appendix B attached hereto, to compensate Ms. Scales for the monetary loss she incurred as a result of the Sheriff's unlawful refusal to hire her as a deputy, and subsequently as a dispatcher. The record reflects that, absent discrimination, Ms. Scales would have been hired as a deputy, as well as a dispatcher, on or before

52/ Although the evidence reflects that Wanda Hylton also was a victim of unlawful discrimination by the Sheriff, Ms. Hylton does not desire any individual relief. Accordingly, we are not seeking remedial relief on her behalf.

53/ An individual such as Ms. Ressel, who for a legitimate reason such as, inter alia, a change in job condition, no longer desires the opportunity to fill a future vacancy in a job formerly denied to her at the PCSD because of sex, is nevertheless entitled to back pay relief. Bowe v. Colgate-Palmolive Co., 489 F.2d 896, 903 (7th Cir. 1973).

July 1, 1980, and that she continues to date to maintain an interest in employment in both a deputy position and a dispatcher position in the PCSD. In addition to this award of back pay, Ms. Scales should be offered the opportunity to fill the next vacancy which occurs in the position of deputy or dispatcher, at her option. If Ms. Scales accepts this offer of employment, she should, at the time of hire, be provided with all of the emoluments of the position she has elected, including but not limited to retroactive seniority for all purposes (including pension and all other fringe benefits) in the PCSD as of July 1, 1980, as well as an award of front pay from the date of judgment until such job offer is made to her by the Sheriff.

c. Kathy Sheppard - immediate reinstatement in the PCSD as either a deputy or as a dispatcher, at her option.

5. This Court should direct that the Sheriff is to submit to the United States every six (6) months for a period of five (5) years from the entry of judgment a report which sets forth: the full name, sex, position, rate of pay and date of hire of each person employed by the PCSD as of the end of that six month period; and the full name and sex of each person who, during that six-month period, applied for employment in the PCSD, as well as the identity of the position sought and, if the applicant was rejected, the reason(s) therefor.

6. This Court should award to the United States its recoverable costs and expenses.

7. Lastly, this Court should retain jurisdiction of this action for the purposes of entering all orders and judgments which may be necessary to implement the relief provided.

V
CONCLUSION

For the foregoing reasons, this Court properly should find that defendant Sheriff of Patrick County has engaged in discriminatory employment practices against women in violation of Title VII, and enter judgment granting the relief sought.

Respectfully submitted,



WILLIAM B. BENTON
JOHN M. GADZICHOWSKI
MELISSA P. MARSHALL

Attorneys
Department of Justice
Civil Rights Division
Washington, D.C. 20530
(202) 633-2188

Counsel for Plaintiff United
States of America

COMPUTATION OF EARNINGS LOSS
FOR BACK PAY PURPOSES

STEPHANIE GREGORY RESSEL

<u>Dates</u>	<u>Ms. Ressel's Interim Earnings^{1/}</u>	<u>Interim Earnings of PCSD Personnel^{2/}</u>	<u>Ms. Ressel's Earnings Loss</u>
July 1, 1980-Dec. 31, 1980	\$1,169.80	\$5,134.99	\$3,965.19
Jan. 1, 1981-March 31, 1981 ^{3/}	\$ 0.00 ^{4/}	\$2,567.49	\$2,567.49
		Earnings Loss =	\$6,532.68
		Plus Interest ^{5/} =	_____
		Total Earnings Loss =	_____

^{1/} See Gov't. Tr. Exs. 10 and 11.

^{2/} The statutory base rate salary for a deputy with zero to one year of experience for 1980 through 1981 was \$10,271. See Compensation Board Deputy Salary Scale, included in Gov't Ex. 30 attached to the 10/12/83 Williams Deposition.

^{3/} March 31, 1981 is the date upon which Ms. Ressel effectively lost interest in employment in the PCSD.

^{4/} From January 1, 1981 to March 31, 1981, Ms. Ressel was employed by Ronbuilt on an uncompensated basis.

^{5/} Interest on earnings loss accrues commencing with the last day of each calendar quarter of the last back pay period on the total amount then due and owing at the adjusted prime rate then in effect and continuing at such rate, as modified from time to time by the Secretary of the Treasury, until compliance with this Court's order for relief. EEOC v. Pacific Press Publishing Association, 482 F.Supp. 1291, 1320 (M.D. Cal. 1979), aff'd 676 F.2d 1272 (9th Cir. 1982).

COMPUTATION OF EARNINGS LOSS
FOR BACK PAY PURPOSES

DORIS SCALES

<u>Dates</u>	<u>Ms. Scales' Interim Earnings</u>	<u>Interim Earnings of PCSD Personnel^{1/}</u>	<u>Ms. Scales' Earnings Loss</u>
July 1, 1980-June 30, 1981	\$3,313.00 ^{2/}	\$10,270.00	\$ 6,957.00
July 1, 1981-June 30, 1982	\$ 0.00	\$10,740.00	\$10,740.00
July 1, 1982- June 31, 1983	\$ 0.00	\$12,731.00	\$12,731.00
July 1, 1983-Jan. 20, 1984	\$ 200.00 ^{3/}	\$ 7,383.76 ^{4/}	\$ 7,183.76
		Earnings Loss ^{5/} =	\$37,611.76
		Plus Interest =	_____
		Total Earnings Loss =	_____

^{1/} These figures reflect the statutory base salary rate for deputies as set forth by the Compensation Board. For FY 1980 to 1981, the base rate for a deputy with zero to one year of experience was \$10,270.00; for FY 1981 to 1982, the base rate for a deputy with one to two years of experience was \$10,740.00; for FY 1982 to 1983, the base rate for two to three years of experience was \$12,731; and for FY 1983 to 1984, the base rate for three to four years of experience was \$13,309.00. See Gov't Exs. 27-30, the 1980 through 1984 Budgets, attached to the 10/12/83 Williams Deposition.

^{2/} Ms. Scales earned \$610 from Spencer's during July 1980 and \$1,483 from Oakdale Knitting Company for the period February 4, 1981 to April 14, 1981. See Ms. Scales' W-2 forms and Federal Income Tax Returns, Gov't. Tr. Exs. 19-22.

3/ Ms. Scales' estimated income from employment as a salesperson for Lloyd's House of Gifts; she has not yet received a W-2 form for that employment.

4/ This is based on an annual salary of \$13,309.00 for a deputy with four years of experience. Six months and twenty days at that salary is \$7,383.76. See the statutory pay scale included in Gov't. Ex. 30 attached to 10/12/83 Williams Deposition.


5/ Interest on earnings loss accrues commencing with the last day of each calendar quarter of the last back pay period on the total amount then due and owing at the adjusted prime rate then in effect and continuing at such rate, as modified from time to time by the Secretary of the Treasury, until compliance with this Court's order for relief. EEOC v. Pacific Press Publishing Association, 482 F.Supp. 1291, 1320 (M.D. Cal. 1979), aff'd 676 F.2d 1272 (9th Cir. 1982).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Trial Brief of Plaintiff United States was this 3rd day of February 1984 served by Federal Express upon:

Anthony P. Giorno, Esquire
Blue Ridge Street
Stuart, Virginia 24171

Counsel for the Defendant



JOHN M. GADZICHOWSKI
Senior Trial Attorney
Department of Justice
Civil Rights Division
Washington, D.C. 20530
(202) 633-2188

Counsel for Plaintiff United
States of America