

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESSE W. WILLIAMS, SHERIFF
OF PATRICK COUNTY, a Constitu-
tional Officer of the Common-
wealth of Virginia and
Elected under the Laws of the
Commonwealth,

Defendant.

CIVIL ACTION
NO. 83-0094-D

PRE-TRIAL BRIEF OF PLAINTIFF UNITED STATES

I
INTRODUCTION

The United States brought this action on June 29, 1983 against defendant Jesse W. Williams in his official capacity as Sheriff of Patrick County. In our Complaint, we alleged (para. 7) that defendant Sheriff of Patrick County has engaged and continues to engage in discriminatory practices against women on the basis of their sex with respect to employment as sworn officers in the Patrick County Sheriff's Department (the "PCSP"), in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e et seq.

Mr. 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). Sheriff Williams 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. Accordingly, Mr. Gregory properly should be substituted for Mr. Williams as defendant Sheriff in this action, pursuant to Rule 25(d), F.R.Civ.P.

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 Sheriff Williams unlawfully refused to hire her as a deputy on the basis of her sex in May 1980 (Govt. Ex. 82A attached to Williams Dep. 10/12/83). Thereafter, on August 12, 1980, Sheriff Williams 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).^{1/} 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.

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,

^{1/} 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).

courtroom security, and the supervision and maintenance of the Patrick County jail (Pl. Complaint, para. 3; Def's. Answer, para. 3; and Williams Dep. 8/11/83, p. 27). 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 submission of such 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). 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); and Sheriff Williams never exceeded these ceilings set by the Board during his tenure as Sheriff (Williams Dep. 8/11/83, pp. 64-65). Indeed, Section 14.1-73.1:2 of the Virginia Code, adopted in 1980, specifically provides that:

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). Those job titles and job descriptions are as follows:

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. 17-18, 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 Jay Gregory (Govt. Ex. 43 attached to Williams Dep. 8/11/83).

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 (Martin Dep. 10/12/83; 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).^{2/}

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

^{2/} Indeed, Ms. Martin testified, in her October 12, 1983 deposition taken by the United States, 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 she last searched a female prisoner more than a year prior to the taking of that deposition (Martin Dep. 10/12/83, pp. 13-16).

courses^{3/} administered by the Virginia Department of Criminal Justice Services within one year of hire, Va. Code Ann. §§9-169 and 14.1-73.1 (Cumm. Supp. 1983),^{4/} and that failure to comply with such training requirement shall result in forfeiture of employment and benefits. Va. Code Ann. §9-181 (Cum. Supp. 1983).^{5/}

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,^{6/} 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

^{3/} 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).

^{4/} 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).

^{5/} 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).

^{6/} 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).

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).

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).^{7/} Notwithstanding the Sheriff's stated policy of requiring all applicants for employment with the PCSD to submit a written application, the Sheriff did not require any of the eleven (11) persons who were employed by the PCSD at the time he took office on January 1, 1980, and who he hired on that date, to submit an application (Williams Dep. 8/11/83, p. 149) or to undergo the selection procedures set forth below (Id., p. 150).^{8/}

^{7/} 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.

^{8/} Nor did the Sheriff require two other persons who he hired - Clifford Boyd as shift supervisor on January 1, 1980, and Raymond H. Nicholson as a corrections officer on June 1, 1980 - to submit written applications for employment (Williams Dep. 8/11/83, p. 165).

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).^{9/} Sheriff Williams has 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).^{10/}

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)

^{9/} 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).

^{10/} The record reflects that neither Mr. Boyd nor Mr. Nicholson took a written examination prior to their hire by Sheriff Williams (Williams Dep. 8/11/83, p. 165).

At the conclusion of an applicant's background investigation, Sheriff Williams would decide whether or not to hire the applicant (Govt. Ex. 6, p. 2, attached to Williams Dep. 8/10/83; 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 in the following job classifications, with a numerical breakdown by sex:^{11/}

<u>Job Classification</u>	<u>Total</u>	<u>Male</u>	<u>Female</u>
Deputy-Shift Supervisor	2	2	0
Deputy-Investigator	2	2	0
Deputy-Road	4	4	0
Deputy-Courtroom Security Officer	2	2	0
Deputy-Chief Corrections Officer	1	1	0
Deputy-Corrections Officer	5	5	0
Civil Process Server	1	0	1
Dispatcher	4	2	2

^{11/} Source: Govt. Exs. 33-55 attached to Williams Dep. 10/12/83.

<u>Job Classification</u>	<u>Total</u>	<u>Male</u>	<u>Female</u>
Secretary-Matron <u>12/</u>	1	0	1
Clerk-Steno	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 Dep. 12/28/83, pp. 11-12). 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 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

12/ In his July 28, 1983 Affidavit submitted to the Court, the Sheriff 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 (Williams Dep. 8/11/83, pp. 109, 134-135). 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 works almost exclusively as a secretary and only occasionally works as a matron when she is called upon to search a female prisoner (Id., p. 134). As noted, supra, p. 8, fn. 2, Ms. Martin has testified that she has been asked to search female prisoners only on rare occasions.

the Sheriff may be engaged in discriminatory employment practices against women (Govt. Ex. 43 attached to Williams Dep. 10/12/83). Further, although civil process server is a sworn position, it is 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).

From January 1, 1980 through December 31, 1983, the Sheriff hired thirty (30) persons, all of whom were men, as deputies. The name, date of hire and job assignments of each of these men are as follows:

DEPUTY SHERIFF HIRES: JANUARY 1, 1980- DECEMBER 31, 1983^{13/}

<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
Raymond H. 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

^{13/} Source: 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).

<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

From January 1, 1980 through December 31, 1983, the Sheriff also hired twelve (12) persons as dispatchers, five (5) of whom were men and seven (7) of whom were women. The name and date of hire of each of these twelve (12) persons are as follows:

DISPATCHER HIRES: JANUARY 1, 1980 - DECEMBER 13, 1983^{14/}

<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

^{14/} Source: Govt. Exs. 42, 43 46, 49, 52-54, 55B, 69 and 76-78 attached to Williams Dep. 10/12/83).

<u>NAME</u>	<u>DATE OF HIRE</u>
John Bocock	December 16, 1982
Lawrence DeHart	March 16, 1983
Pamela Nowlin	March 16, 1983
Theresa Hubbard	October 1, 1983

Four (4) of the five (5) men hired by the Sheriff as dispatchers since January 1, 1980 were subsequently promoted to deputy sheriff on the dates indicated:^{15/}

<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 seven (7) women hired by the Sheriff as dispatchers since January 1, 1980 was subsequently promoted to deputy sheriff; and as noted, supra, p. 14, only one (1) of these seven (7) 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 has 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

^{15/} Source: Govt. Exs. 42, 46, 52 and 69 attached to Williams Dep. 10/12/83).

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 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).^{16/} Indeed, this video surveillance system was installed at a time - before Sheriff Williams' tenure - when the PCSD did not have dispatchers, and corrections officers monitored the activities of the jail inmates by watching the video console on the dispatching desk while performing dispatching duties (Id., pp. 313-315).

C. Evidence of Discrimination
against Individual Women

Stephanie Gregory Ressel

Stephanie Gregory Ressel applied for employment with the PCSD on June 3, 1980 (Ressel Application, Govt. Tr. Ex. ____; Ressel Dep. 12/22/83, pp. 12-13; and Govt. Ex. 6, p. 4, attached

16/ As noted, supra, p. 13, two of the four persons employed by the Sheriff as dispatchers as of July 1983 were women. These women continue to work as dispatchers to date.

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 (Ressel Application, Govt. Tr. Ex. __; and Ressel Dep. 12/22/83, p. 50). 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 (Ressel Application, Govt. Tr. Ex. __; and Ressel Dep. 12/22/83, pp. 5, 31-35, 42).

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 Dep. 12/22/83, pp. 12-15). 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. 15). 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., pp. 15-16). 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., p. 16). 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., pp. 16-17).

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 Dep. 12/22/83, p. 17).

On 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 Dep. 12/22/83, p. 18). She passed this exam with a score of 86 (Govt. Tr. Ex. ____). 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 (Id., pp. 18-21).

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. Her uncle went to Patrick Springs that same day and located a place for her to rent.

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 (Id., pp. 21-22). Ms. Ressel subsequently received a letter from the Sheriff dated June 18, 1980, informing her that she had not been selected for hire (Def. Ex. A attached to Ressel Dep. 12/22/83).

In his August 11, 1983 deposition, 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" (Williams Dep. 8/11/83, pp. 227). The Sheriff further mentioned that the person he selected for the position instead of Ms. Ressel had "family ties with the county" (Id.). However, so also does Ms. Ressel (See, e.g., Ressel Dep. 12/22/83, p. 6). Her family has lived in Patrick County for several generations. Her grandmother, Alma Hundley Coleman, and her great uncle, Thomas Coleman, still live on the family farms in the Moorefield Store Community of the County, and Ms. Ressel has many more family members who live in the County. Indeed, Ms. Ressel was married in downtown Stuart, in the park behind the First National Bank.

Moreover, the record reflects that 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). Again, as noted, supra, p. 10, 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 leave Danville at the time" (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 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.).

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 Dep. 12/22/83, pp. 97, 147-148, and Govt. Ex. 7 attached thereto). 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 on earth" 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 Dep. 12/22/83, pp. 97, 148). Mr. Boyd responded: "Yes, Doris, there are some openings for a couple of deputies" (Id.). Ms. Scales told Mr. Boyd that she was interested in a job as a deputy, and she asked Mr. Boyd whether he would drop off an application for employment on his way home (Id.). Mr. Boyd responded that he was not allowed to

take applications out of the PCSD, and suggested that Ms. Scales come to the PCSD and fill out an application, adding that she would "look good in a uniform" (Scales Dep. 12/22/83, pp. 97, 148-149). When Ms. Scales asked Mr. Boyd if she could use his name as a reference, Mr. Boyd told her: "Sure, why not, go ahead" (Id., p. 149; and Boyd Dep. 10/12/83, p. 30).^{17/}

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 Dep. 12/22/83, pp. 98, 149). The Sheriff told Ms. Scales that he had two deputy openings (Id., pp. 99, 149-150). When Ms. Scales then asked the Sheriff whether she could come to the PCSD and submit an application, the Sheriff responded (Id., pp. 99):

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.^{18/}

^{17/} Although Mr. Boyd, whose deposition was taken by the United States on October 12, 1983, did not recall exactly where or when this conversation between he and Ms. Scales took place (Boyd Dep. 10/12/83, pp. 29-31), he did recall that the conversation took place in Ararat, Virginia (Id., p. 29), and that he did tell Ms. Scales that she could use his name as a reference (Id. p. 30). As he testified at his deposition (Id., p. 29):

[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.

^{18/} See also, Id., pp. 149-150, and Govt. Ex. 7 attached thereto.

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 exam, pass a background investigation, have good references and have a high school diploma or the equivalent (Scales Dep. 8/11/83, p. 150, and Govt. Ex. 7 attached thereto).^{19/}

A couple of days after her telephone conversation with the Sheriff, Ms. Scales went to the PCSD (Scales Dep. 12/22/83, pp. 100, 150-151). At the PCSC, 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.; 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 Dep. 12/22/83, pp. 100-101, 150-151). 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

^{19/} In his August 11, 1983 deposition taken by the United States, Sheriff Williams testified (Williams Dep. 8/11/83, pp. 230-231) 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.

had no plans then or in the future to hire any women as deputies (Scales Dep. 12/22/83, pp. 100-101, 151). Ms. Scales again requested an application. The Sheriff gave Ms. Scales an application which she took home to fill out (Scales Dep. 12/22/83, pp. 101, 151).^{20/}

A couple of days thereafter, on or about April 22, 1980, Ms. Scales returned her completed application to the PCSD (Scales Dep. 12/22/83, pp. 101-102, 151-152; 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 (Scales Dep. 12/22/83, pp. 151-153; 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 have good references (Scales Dep. 12/22/83, pp. 152-153; 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 Dep. 12/22/83, p. 152).

^{20/} 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 that he told Ms. Scales that the only openings he had at that time were for male corrections officers (Id., pp. 234-235) and that he did not tell Ms. Scales that he would not hire women as deputies (Id., p. 235).

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 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 Dep. 12/22/83, pp. 102, 104).

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 Dep. 12/22/83, pp. 105-106, 154).

Approximately a week after she took the exam, Ms. Scales reached the Sheriff by telephone (Scales Dep. 12/22/83, pp. 105-106). 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]" (Scales Dep. 12/22/83, pp. 106, 154). However, the Sheriff reiterated that he had no plans then or in the future to hire any women as deputies (Id.). 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 would also be interested in a dispatcher job (Id.).

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 that 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 Dep. 12/22/83, pp. 114-116)^{21/}

^{21/} Mr. Burton's deposition was taken by the United States on December 28, 1983. During the course of his deposition, 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 Dep. 12/28/83, pp. 6-9). When asked at deposition 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 that it was "quite possible that she did" (Id., p. 41). When asked whether he subsequently got back to the Sheriff with respect to Ms. Scales' allegations, Mr. Burton testified (Id., 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.

During his deposition, Mr. Burton also testified that Ms. Scales kept "bugging" him by telephone about the Sheriff's denial of employment to her (Id., pp. 41-42, 45), and that he kept telling her: "Don't come to me with your problems; I do not want to hear your problems" (Id., p. 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. Ex. 6, p. 8, attached to Williams Dep. 8/11/83; and Govt. Tr. Ex. ____). 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."

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).^{22/} In his August 11, 1983 deposition taken by the United States, Sheriff Williams testified that there

^{22/} In passing, we note that during his August 11, 1983 deposition, the Sheriff also testified that he had never told anyone that he had rejected Ms. Scales for employment because he thought she had "an immoral reputation" (Williams Dep. 8/11/83, p. 267). Notwithstanding this testimony of the Sheriff, the record reflects that on October 14, 1980, and just prior to the commencement of the fact-finding conference with the EEOC concerning Ms. Scales' charge, Sheriff Williams told Dorothy K. Rollerson, the EEOC investigator handling the conference, that he did not want to hire Ms. Scales because of "her immoral reputation" (Govt. Ex. 82A attached to Williams Dep. 10/12/83). So also, during his December 28, 1983 deposition taken by the United States, Mr. Burton - who was counsel to the Sheriff in 1980 - testified that, sometime prior to the October 1980 conference with the EEOC (Burton Dep. 12/28/83, p. 31), the Sheriff told him that he did not hire Ms. Scales because she had failed the "morality test" (Id., p. 33), and she had a reputation for sexual promiscuity (Id., p. 40). Although Mr. Burton testified that the Sheriff may have told him other reasons why he did not hire Ms. Scales, Mr. Burton could not remember any others (Id.).

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 after she apparently had subleased 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); 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 Williams Dep. 8/11/83). Further, the Sheriff conceded in his deposition that he 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 person he spoke

to about Ms. Scales before he decided not to hire her was Mr. Boyd
(Id., p. 259).^{23/}

The treatment accorded Doris Scales by Sheriff Williams is in stark contrast to that accorded David L. 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 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 Mr. Morse during his background investigation of Mr. Morse and before he hired Mr. Morse (Id., 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.

^{23/} This testimony of the Sheriff conflicts with his representation to the EEOC by letter dated October 1, 1980 that he had conducted a background investigation with respect to Ms. Scales (Govt. Ex. 6, p. 8, attached to Williams Dep. 8/11/83).

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.

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, male, 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. 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).

On July 1, 1980, the same day that Messrs. Morse and Roane were hired, the Sheriff also hired Danny Stacy, male, as a deputy sheriff. 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 has 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. ___), 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, p. 220) that he never contacted the State Police with respect to Mr. Stacy's work record. Indeed, Mr. Stacy has testified (Stacy Dep. 11/10/83, pp. 101-102) 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. ____).

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).

The Sheriff has 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 the 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.).

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 has 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 the prior Sheriff, 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, reflects that the former Sheriff asked for Mr. Nicholson's resignation 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 Dep. 11/10/83, pp. 84-85, 88-90).

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 examination 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 sheriff, 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 has 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 the Sheriff has 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 him 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; see also Boyd Dep. 10/12/83, p. 12).

On the same day that the Sheriff hired Mr. Boyd, January 1, 1980, the Sheriff also hired _____*^{24/} 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 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.

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

_____ * 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).^{25/}

^{25/} 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 William's Dep. 10/12/83).

Lastly, the Sheriff has 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. 27, Doris Scales achieved a score of 90 on the written examination. The record 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,^{26/} 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. The score achieved by each of these nine deputies is as follows:^{27/}

<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

^{26/} 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).

^{27/} Source: Govt. Exs. 38, 41, 44, 45 and 70-74 attached to Williams Dep. 10/12/83).

<u>Name</u>	<u>Date of Hire</u>	<u>Exam Score</u>
Danny Stacy	July 1, 1980	84
Owen Issacs	September 17, 1980	87
John Sehen	October 1, 1980	90

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:^{28/}

<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

Wanda Hylton

Wanda Hylton applied for employment with the PCSD on March 25, 1981 (Hylton Dep. 12/2/83, p. 15; 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 Dep. 12/2/83, pp. 12-14; and Hylton Dep. 12/22/83, p. 4).

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 Dep.

^{28/} Source: Govt. Exs. 42, 43, 69 and 76 attached to Williams Dep. 10/12/83).

12/2/83, pp. 15-16; and Hylton Dep. 12/22/83, pp. 13-14). At the time that she requested an application, Ms. Hylton also asked Ms. Martin that she be permitted to speak to the Sheriff (Hylton Dep. 12/2/83, p. 15; and Hylton Dep. 12/22/83, p. 14). 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 Dep. 12/2/83, pp. 16-18; and Hylton Dep. 12/22/83, pp. 14-17). During this interview, Ms. Hylton asked the Sheriff whether he would consider hiring a woman as a deputy (Hylton Dep. 12/2/83, p. 16; and Hylton Dep. 12/22/83, p. 15). 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" (Hylton Dep. 12/2/83, p. 17; and Hylton Dep. 12/22/83, p. 16). 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" (Hylton Dep. 12/2/83, pp. 17-18; and Hylton Dep. 12/22/83, p. 15). 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 (Hylton Dep. 12/2/83, p. 18; and Govt. Ex. 77 attached to Williams Dep. 10/12/83).

In 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 Dep. 10/12/83, p. 325). However, when the Sheriff was asked at deposition 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" (Id.).

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 Dep. 12/2/83, p. 24). 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., at p. 25).

IV
ARGUMENT

A. Liability

The evidence in this case demonstrates direct evidence of discrimination against women on the basis of their sex by the Sheriff of Patrick County, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (hereinafter "Title VII"). Specifically, the evidence shows that the Sheriff has overtly violated the prohibitions of Section 703 of Title VII by refusing to hire women as deputies,^{29/} and by otherwise depriving women of employment opportunities because of their sex.^{30/}

Where, as here, there is direct evidence of overt discrimination under Title VII, reliance on the traditional four-part

^{29/} The job classification "deputy" encompasses the jobs of road deputy, courtroom security officer, investigator and corrections officer.

^{30/} Section 703(a) of the Civil Rights Act of 1964, 42 U.S.C. §2000e-2(a), in pertinent part, provides:

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 [her] compensation, terms, conditions or privileges of employment, because of such individual's...sex; or

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

test for a prima facie case of discrimination set out in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), is unnecessary. Where, as here, there is direct evidence of discrimination against women on the basis of sex, the burden is on the defendant not merely to produce evidence that a woman was rejected - or someone else preferred - for a legitimate, nondiscriminatory reason, but to persuade the district court of that fact. That is to say, it is the defendant's burden either to refute the presumption of intentional discrimination by clear and convincing evidence or else to concede such discrimination and attempt to demonstrate a business necessity for it. Perryman v. Johnson Products Co., Inc., 698 F.2d 1138, 1142-43 (11th Cir. 1983); Lee v. Russell County Board of Education, 684 F.2d 769 (11th Cir. 1982). The Sheriff cannot meet this burden in this case.

The Sheriff appears to concede that he has engaged in intentional discrimination by affirmatively pleading in his Answer "that sex is a bona fide occupational qualification ("bfoq") for some positions as sworn officers within the Patrick County Sheriff's Department." Answer, para. 11.^{31/} However, Section 703(e)

^{31/} The Sheriff did not file his Answer in this action until December 12, 1983, almost six (6) months after the United States' Complaint was filed. Still, the Sheriff has not articulated - in his Answer or in any other papers submitted to the Court - any rationale or factual basis to support his bfoq contention.

Additionally, it appears that the Sheriff waived his bfoq defense before he even raised it, since the Sheriff testified during his August 11, 1983 deposition that one of the two reasons why he did not hire Stephanie Gregory Ressel as a deputy was because she was overqualified.

of Title VII (42 U.S.C. §2000e-2(e)), the bona fide occupational qualification section, provides "only the narrowest of exceptions to the general rule requiring equality of employment opportunities." Dothard v. Rawlinson, 433 U.S. 321, 333 (1977). See also, Saunders v. Hercules, Inc., 510 F.Supp. 1137 (W.D. Va. 1981).

In order for the Sheriff to make out a bfoq defense, he must, having first conceded discrimination on the basis of sex, go on to prove that "the essence of the business operation would be undermined by not hiring members of one sex exclusively." (emphasis in original) Diaz v. Pan American World Airways, 442 F.2d 385, 388 (5th Cir.), cert. denied, 404 U.S. 950 (1971). See also, Weeks v. Southern Bell Telephone & Telegraph Co., 408 F.2d 228, 235 (5th Cir. 1969); Bowe v. Colgate-Palmolive Co., 416 F.2d 711 (7th Cir. 1969); Rosenfeld v. Southern Pacific Co., 444 F.2d 1219 (9th Cir. 1971); and the Equal Employment Opportunity Commission's, Guidelines on Sex as a Bona Fide Occupational Qualification, 29, C.F.R. 1604, et seq.

The Supreme Court and the circuit courts agree that "it is impermissible under Title VII to refuse to hire an individual woman or man on the basis of stereotyped characterizations of the sexes..." Dothard, 433 U.S. at 333. See, e.g., Bowe v. Colgate-Palmolive Co., 416 F.2d at 717-8 (Title VII prohibits employer from relying on stereotyped view of physical capabilities of women and requires consideration of employees as individuals); In

re Consolidated Pretrial Proceedings in the Airline Cases, 582 F.2d 1142, 1146 (7th Cir. 1978), rev'd in part on the other grounds, Zipes v. Trans World Airlines, Inc., 444 U.S. 1199 (narrow exception in 703(e) requires employers to treat employees as individuals); Weeks v. Southern Bell Telephone & Telegraph, 408 F.2d at 236 (Title VII rejects romantic paternalism and vests individual woman with power to decide for herself whether to take on unromantic tasks); Rosenfeld v. Southern Pacific Co., 444 F.2d at 1225 (Title VII meant to eliminate subjective assumptions and traditional stereotypes about the physical ability of women to do particular work); United States v. City of Philadelphia, 19 FEP Cases 849 (E.D. Pa. 1979), (opinion attached), (City failed to demonstrate that female officers could not meet the physical requirements of police work).

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 has discriminated against women on the basis of their sex in violation of Title VII.

To establish a prima facie case of unlawful discrimination in the denial of a job under the McDonnell Douglas formula, the plaintiff must show, in this case with respect to an individual woman:

- (1) that she belongs to a protected group;^{32/}
- (2) that she applied for and was qualified for a job for which the Sheriff was seeking applicants;
- (3) that, despite her qualifications, she was rejected; and
- (4) that following such rejection, the position remained open, and the Sheriff continued to seek applicants from persons of that woman's qualifications.

McDonnell Douglas, 411 U.S. at 802 (footnote omitted). This formula is not inflexible, but must be applied in light of the facts in the specific case under adjudication. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253-54 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.

The evidence of the United States clearly establishes a prima facie case of unlawful discrimination by the Sheriff against Stephanie Gregory Ressel, Doris Scales and Wanda Hylton. The evidence clearly demonstrates that the Sheriff unlawfully refused to hire Stephanie Gregory Ressel, Doris Scales and Wanda Hylton as deputies on the basis of sex; that the Sheriff unlawfully refused to assign Ms. Hylton to deputy after her hire on

^{32/} Women have been recognized to be members of a protected group under Title VII. See, e.g., Thorne v. City of El Segundo, supra (copy attached); EEOC v. Ford Motor Co., 645 F.2d 183 (4th Cir. 1981), vacated in part on other grounds, 458 U.S. 219 (1982).

the basis of her sex; and that the Sheriff unlawfully refused to hire Ms. Scales as a dispatcher on the basis of her sex, and because of and in retaliation for her efforts to be hired as a deputy.

As demonstrated, supra, Part III, each of these three women sought employment in the PCSD as a deputy (i.e. road deputy, courtroom security officer, or corrections officer); and Ms. Scales also sought employment as a dispatcher. Each of these 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 has testified that he rejected Ms. Ressel for employment was that she was overqualified. Lastly, each of these three women was denied employment by the Sheriff in these jobs, and the Sheriff thereafter continued to take applications for and hire persons into those jobs.

Under McDonnell Douglas and Burdine, once a prima facie case is established, the Sheriff has the burden of articulating a legitimate and nondiscriminatory reason for not hiring Stephanie Ressel, Doris Scales and Wanda Hylton in the jobs each of them sought. 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. See Burdine, 450 U.S. at 253; McDonnell Douglas, 411 U.S. at 802.

To date, the Sheriff has 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 he does not recall Ms. Hylton having asked him to be considered for a deputy job.

Further, 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 had "family ties with the County". However, not only does Ms. Ressel also have family ties with the County, but the record reflects that the Sheriff has offered deputy jobs to males who at the times of their applications lived outside of the County.

Lastly, Sheriff Williams has 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 after she apparently had subleased 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."

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. In that regard, the Sheriff testified that the 1979 civil judgment against Ms. Scales was alone a sufficient basis for rejecting her for employment.

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. Further, the Sheriff conceded in his deposition 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, page 31, the treatment accorded Doris Scales by Sheriff Williams is in stark contrast to that accorded David L. 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 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 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 has 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 which he had obtained from the bank for the purchase of a car, and that the bank subsequently repossessed the car.

The evidence before this Court demonstrates that 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.^{33/}

^{33/} As the evidence demonstrates, these are just a few of the instances of discrimination that have been visited against women because of their sex. In point of fact, there has never been a woman deputy in the PCSD. Although Sheriff Williams promoted one woman to a process server position in 1982 following notification of the Justice Department's investigation of the PCSD, that job does not entail the duties or compensation of the rank of deputy. Ironically, the new Sheriff, Jay Gregory, has eliminated the civil process server position and has terminated Ms. Sheppard.

Thus, the Sheriff's stated reasons for not hiring Ms. Scales, as with his stated reasons for not hiring Ms. Ressel, are clearly pretextual; and the evidence clearly demonstrates that the Sheriff's refusal to hire them was because of their sex and, thus, unlawful.

B. Relief

As relief, the United States seeks an injunction prohibiting unlawful employment discrimination against women in the PCSD on the basis of their sex. We also ask that the Sheriff be directed to implement a program to recruit women for employment as sworn officers in the PCSD; provide remedial relief for the victims of past unlawful discrimination; and take any other action that may be necessary to overcome the present effects of past discriminatory practices. In terms of individuals, the United States is seeking monetary relief, including back pay with interest, for Stephanie Ressel and Doris Scales. We are also seeking for Doris Scales a job offer with retroactive seniority and all pension and health benefits to which she is entitled.^{34/}

When a court finds that sex discrimination in employment has occurred in violation of Title VII, it has broad remedial powers both to grant injunctive relief and to order such affirmative

^{34/} Although the United States contends that Wanda Hylton was also a victim of unlawful discrimination by the Sheriff, Ms. Hylton does not desire any individual relief; therefore, we are not seeking individual relief for her.

action as may be appropriate. Patterson v. Greenwood School District 50, 696 F.2d 293, 295 (4th Cir. 1982); EEOC v. Ford Motor Co., 645 F.2d 183, 200 (4th Cir. 1981), vacated in part on other grounds, 458 U.S. 219 (1982). As stated by the Supreme Court:

The provisions of [706(g)] are intended to give the courts wide discretion in exercising their equitable powers to fashion the most complete relief possible... [T]he Act is intended to make the victims of unlawful discrimination whole, and...the attainment of this objective...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 if it were not for unlawful discrimination (citation omitted).

Franks v. Bowman Transportation Co., 424 U.S. 747 (1976). See also, Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-23 (1975).

A central purpose of Title VII is "to make persons whole for injuries suffered on account of unlawful employment discrimination." Albemarle, 422 U.S. at 418. Title VII contemplates that individuals who have suffered economic loss as a result of violations of the Act should, insofar as possible, be made whole through the granting of compensation for lost earnings and 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.

Id. at 421. Interest on lost earnings is a proper component of monetary relief under Title VII, EEOC v. Pacific Press Publishing Association, 482 F.Supp. 1291 (M.D.Cal. 1979), aff'd 676 F.2d 1272 (9th Cir. 1982), as are fringe benefits such as pension and

health benefits. Pettway v. American Cast Iron Pipe Co., 494 F.2d 211, 263 (5th Cir. 1974). The "make whole" objective of the Act also provides for the granting of retroactive seniority to persons discriminatorily denied employment or promotion. Franks, 424 U.S. 747.

An individual such as Stephanie 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 backpay relief. Bowe v. Colgate-Palmolive Co., 489 F.2d 896, 903 (7th Cir. 1973).

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). It is the defendant Sheriff's burden to show that an individual discriminatee has not exercised reasonable diligence in mitigating her back pay loss. United States 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).

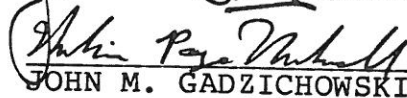
In calculating backpay awards, absolute precision is not required. Ostropowicz v. Johnson Bronze Co., 541 F.2d 394 (3rd Cir. 1976); and uncertainties are to be resolved against the employer, rather than against the person who suffered discrimination through the employer's acts. United States v. Lee Way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

The Sheriff should also be directed to maintain adequate records regarding his compliance with the relief ordered and to furnish the plaintiff periodic reports showing his compliance. United States v. City of Philadelphia, 499 F.Supp. 1196, 1220 (E.D. Pa. 1980). Finally, the United States should be awarded its costs and disbursements in this action. Id. at 1221.

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 as alleged by the United States; and this Court should enter judgment for the United States, granting the relief sought.

Respectfully submitted,



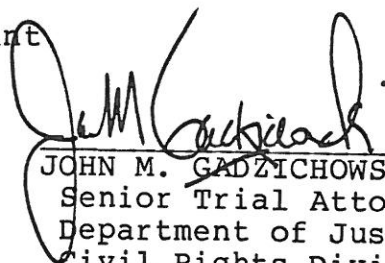
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Pre-Trial Brief of Plaintiff United States was this 10th day of January 1984 served by hand upon:

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