

An Impact Analysis of the United States of America v. The State of Florida, Florida Department of Corrections

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Abstract

The inclusion of women as professionals on an equal basis with men in the corrections work place demands the attention of all criminal justice practitioners. This dramatic change in traditional employment practices is the direct result of major litigation based on Title VII of the Civil Rights Act of 1964, as amended. Over a decade ago, Officer Carolyn Modavi-Riggs filed a charge of discrimination by the Florida Department of Corrections that led to an investigation by the U.S. Department of Justice, and eventually resulted in the adoption of an Agreed Entry to provide relief for past discrimination and prevent discrimination in the future. The effect of implementing the provisions of the Agreed Entry continues to alter the culture of the Florida Department of Corrections.

Introduction

Perhaps the most controversial human resource management issue in the criminal justice community has been and continues to be the full utilization of women as correctional and law enforcement officers. Traditionally, women serving as officers in the criminal justice community have been assigned supporting roles which have not allowed their full exposure to the myriad of professional experiences necessary to contribute on an equal basis with their male counterparts. There has been considerable progress over the last 20 years towards the full utilization of women as correctional and law enforcement officers; however, the emerging dual-gender work force is demanding immediate action to integrate more successfully and fully utilize women in all correctional and law enforcement officer performance areas.

The few progressive steps achieved thus far have been the direct result of significant litigation based on Title VII of the Civil Rights Act of 1964, as amended. A 1977 court case, *Dothard v. Rawlinson* 433 U.S. 321, concerned women serving as correctional officers in male institutions in the Alabama Department of Corrections. The court's ruling on this case supported the Alabama Department of Correction's practice of prohibiting women from serving as correctional officers in direct contact with inmates housed in male institutions.

A current court case based on this act and pertaining to the underutilization of women employed by the Florida Department of Corrections as correctional officers in male institutions is the focal point of this research document. *The United States of America v. The State of Florida, Department of Corrections*, 86-7330-MP (1982), hereafter referred to as the U.S.A. Case, will render significant impact on traditional employment practices in the Florida Department of Corrections and perhaps criminal justice agencies throughout the nation.

The lawsuit, filed in 1986, specifically challenges the employment practices of the department pertaining to the utilization of women serving as correctional officers in institutions housing male inmates. Through significant discovery undertaken by the

United States Department of Justice (DOJ) and the state of Florida, an Agreed Entry was filed in the United States District Court for the Northern District of Florida on October 29, 1991. If the court approves, this Agreed Entry will settle the lawsuit.

The purpose of this research is to examine traditional employment practices relating to how women have participated as officers in the corrections field and how we may expect them to participate in the future. A discussion of the major legal factors instrumental in creating significant changes in this area and identification of the issues that may be of greatest importance and concern in the future are presented. This information should prove useful in the development of strategies intended to bring about positive change, increased awareness, and sensitivity to this extremely important work place phenomenon.

The paramount questions serving as the driving force for this research are: (1) How can the Florida Department of Corrections fully implement the provisions of the Agreed Entry? and, (2) What strategies should be employed to achieve and exceed compliance in order to create a work environment that encourages and values unlimited inclusion of women in the performance of all correctional officer duties?

Historical Perspective

Emergence of female correctional officers in the United States

According to Morton (1991), in 1793, Mary Weed, the wife of the warden of Philadelphia's Walnut Street Jail, was appointed to serve in her husband's position upon his death. Serving from 1793 to 1796, Warden Mary Weed distinguished herself as the first woman to serve as warden of a correctional institution in the United States. Contemporaries commented that she did not fear her responsibilities of maintaining control over 280 male and female inmates with her staff of four male officers who were without whips, chains, leg-irons, guns and canes, security items deemed indispensable in other correctional facilities. This event marked significant change in traditional employment practices relating to women serving in the male dominated corrections profession.

Further, Morton (1991) indicated that it was during the first half of the 19th Century that the correctional reform movements from England began to influence correctional practices in the United States. A movement to lobby for separate facilities for women inmates, to be run by female staff, was one of the first nontraditional practices to be attempted. Sing Sing Prison in New York was one of the first institutions to have a separate building for women offenders. In 1844, Eliza W.B. Farnham was appointed head matron at this facility. After a bitter public battle and major conflicts with other correctional administrators concerning her reformist ideas for education, attractive surroundings, and positive incentives, she left in 1868.

Throughout the latter half of the 19th century, women emerged as innovators and reformers in the corrections field, often acting outside and even in opposition to the corrections establishment. Women were becoming involved as participants and leaders of state and local governing bodies. Kate Barnard was elected in 1907 to be the first Commissioner of Charities and Corrections in Oklahoma. Katherine Davis, Ph.D., was appointed and served as superintendent of the Bedford Hills Prison in New York from 1901 to 1914. She established one of the first research centers to study female crime,

and went on to be New York City's first woman to serve as Corrections Commissioner, Cabinet member, and Chairwoman of the New York Parole Board. Mary Bell Harris, Ph.D., in the course of a long distinguished corrections career, instituted many innovations at the New York City Workhouse and the New Jersey State Home for Girls, including inmate self-government.

By the late 1930's, female corrections professionals had implemented nontraditional innovations and practices such as academic and vocational education, libraries, work release, behavioral classification systems, volunteer programs and inmate self-help programs (Morton, 1991). Notwithstanding their many valuable contributions, women remained unrecognized as professionals in the corrections field. Many of them faced internal hostility from their male colleagues, including personal character assaults, and public criticism from political enemies.

Emergence of female correctional officers in Florida

In contrast to the employment practices of women on the national level, there is little historical documentation regarding women serving in corrections professions in the early days of Florida's prison system. According to a 1992 Florida Department of Corrections publication, Women Facing the Future, the first appearance of a woman's name on an official document indicating job responsibilities was in the legislative record of 1917. That individual was actually an inmate who was performing in a matron's capacity at Raiford Prison, now Florida State Prison.

The first women to serve as correctional officers in the Florida Department of Corrections were hired at Florida Correctional Institution, a female institution in Lowell, Florida, in 1956. The first woman to serve as superintendent was also hired at Florida Correctional Institution in 1956. She was replaced a few months later, and it was not until 1971 that another woman was hired as superintendent. Florida Department of Corrections' records (1992) indicate that the first woman to serve as a correctional officer in a male facility was hired in 1973 at Apalachee Correctional Institution near Chattahoochee, Florida. It was not until 1992 that a woman serving as a correctional officer was appointed to the top rank of colonel (the highest rank in the correctional officer series) at Broward Correctional Institution, a female institution in Pembroke Pines, Florida.

The Florida Department of Corrections currently employs approximately 20,500 staff. Approximately 37% of the department's total staff are women, while 24% of correctional officers are women. A recent personnel survey of top level management revealed that none of the department's 16 senior management personnel are women. Women hold nine of 89 positions or 10.1% in the next highest level of management, and of 124 positions at the third highest level of management, 13, or 10.5% are women. These figures indicate that greater attention and positive action must be forthcoming in order to appropriately integrate women into the corrections work force.

U.S.A. Case Analysis

Carolyn Modavi-Riggs would probably agree that greater attention and positive action must be forthcoming in order to appropriately integrate women into the corrections work force. On November 1, 1982, Officer Modavi-Riggs filed a charge of discrimination with the Equal Employment Opportunity Commission and the Florida

Commission of Human Relations. Officer Modavi-Riggs was employed by the Florida Department of Corrections as a correctional officer at Marion Correctional Institution in Lowell, Florida. Officer Modavi-Riggs alleged that the department discriminated against her by violating Title VII of the Civil Rights Act of 1964, as amended, by not allowing her and other female correctional officers to perform correctional officer duties involving contact with male inmates, thus restricting her and other female officers to "noncontact" duties and post assignments.

This charge of discrimination caused the United States Department of Justice to initiate a major investigation of the employment practices of the Florida Department of Corrections. The purpose of the investigation was to determine whether the Florida Department of Corrections was affording the same employment opportunities and terms and conditions of employment to women as it afforded to men.

The United States Department of Justice, having reason to believe that the Florida Department of Corrections was engaging in discriminatory employment practices based on gender, filed suit against the Florida Department of Corrections in the United States District Court for the Northern District of Florida on December 23, 1986. The United States of America v. State of Florida, Department of Corrections case began more than a decade ago during the administration of Secretary Louie L. Wainwright, continued through the administration of past Secretary Richard Dugger, and remains an issue now during the administration of the current Secretary, Harry K. Singletary, Jr.

The original complaint (1986), in paragraphs number 7 and 8 brought forth the following allegations and required actions to ensure appropriate interim relief:

7. *The defendants have pursued and continued to pursue policies and practices with respect to employment in the Department of Corrections that discriminate against females, deprive or tend to deprive females of employment opportunities, limit employment opportunities available to females, and adversely affect the status of females as employees because of their sex. Defendants have implemented these policies and practices, among other ways as follows:*
 - a. *By traditionally following a practice of failing or refusing to recruit, hire, assign, transfer, and promote females on the same basis as males;*
 - b. *By assigning and selecting females for certain positions separately from males and hiring and promoting them only to a limited number of positions;*
 - c. *By subjecting female employees to different terms, conditions and privileges of employment because of their sex;*
 - d. *By failing or refusing to take appropriate action to correct their discriminatory employment policies and practices.*
8. *The acts, omissions, policies and practices of the Defendants described in the preceding paragraph constitute a pattern or practice of resistance to the full enjoyment by females of their rights to equal employment opportunities*

in the Department of Corrections without discrimination based upon sex. The pattern or practice is of such a nature and is intended to deny the full exercise of the rights secured by Title VII of the Civil Rights Act of 1964, as amended. Unless enjoined by order of this Court, the Defendants will continue to pursue policies and practices that are the same as or similar to those alleged in this complaint.

WHEREFORE, Plaintiff prays for an order enjoining the Defendants, their officers, agents, employees, successors, and all persons in active concert or participation with them, from engaging in discriminatory practices based on sex with respect to employment in the Department of Corrections, and specifically from:

- a. Failing or refusing to recruit, hire, assign, transfer, and promote female employees and applicants for employment on the same basis as males;*
- b. Assigning and selecting females for certain positions or locations separately from males and hiring and promoting females only to a limited number of positions or only at limited locations;*
- c. Subjecting female employees to different and less favorable terms, conditions and privileges of employment because of their sex;*
- d. Failing or refusing to eliminate all qualifications and standards for hiring, assignment or promotion that unlawfully discriminate on the basis of sex;*
- e. Failing or refusing to make compensatory payments and to award retroactive seniority and other benefits to make them whole to female applicants and prospective applicants for employment and incumbent or former female employees who have been denied equal employment opportunities because of their sex;*
- f. Failing or refusing to adopt and implement a recruitment program to inform women of equal employment opportunities available at the correctional institutions and facilities of the Department of Corrections and to attract qualified women to become correctional employees.*

Early in the discovery process, the Department of Justice filed a Request for Production of Documents (1986), which called for the department to provide materials currently available as detailed in a "Schedule of Documents" from 29 major correctional institutions for the period March, 1972 to March, 1987.

The discovery process continued with inspection and analysis of all documents provided by the department, a request by the department for production of documents

from the Department of Justice, and other actions in preparation for trial which was set to begin October 28, 1991. The nature of evidence in support of the allegations, as set forth in the original complaint and identified during the process of discovery, motivated the department to move swiftly in the formulation and implementation of strategies to settle the case. Serious settlement discussions consumed a brief six months between May, 14 and October 29, 1991, before a settlement was reached.

The Agreed Entry

The document of greatest significance to the success of the settlement is the Agreed Entry (Paul, 1991). This document is the governing authority for all activities undertaken to resolve the lawsuit. The Agreed Entry was accepted by both parties and the court as the final authority on all issues and actions deemed necessary to provide relief. It is important to note that acceptance of the Agreed Entry was not an admission of unlawful discrimination by the department which denied any unlawful discrimination.

The major provisions of the Agreed Entry, and violations of the Agreed Entry that may result in enforcement action, have been summarized by Assistant Florida Attorney General Lynda Quillen (1992):

1. Prohibits unlawful discrimination against employees, applicants, or potential applicants based upon gender.
2. Prohibits retaliation against an individual who has opposed alleged discrimination policies or practices, or has participated in or cooperated with the initiation, investigation, utilization or administration of the Agreed Entry.
3. Prohibits the unlawful discrimination against women in hiring, promotion, assignment and other employment policies and practices.
4. Requires the Department of Corrections to hire women in security positions in proportion to their interest in, and ability to qualify for such positions.
5. Requires the Department of Corrections to prevent, and take proper measures against any sexual harassment among employees.
6. Requires the Department of Corrections to continue affirmative efforts to expand career opportunities for women in the correctional field.
7. Requires the Department of Corrections to ensure that (through recruitment) the number of female applicants for promotion (in security) approximates their percentage representation in the jobs from which such promotions are made.
8. Requires that all correctional officer positions, shifts and assignments at all locations shall be open on an equal basis with men, except that under the Agreed Entry:
 - A. Correctional officers will not be assigned to conduct a strip search on an inmate of the opposite sex; and

- B. The department may designate up to 25 percent of our security positions, posts, shifts and assignments which, in our view, should be staffed only by male correctional officers.

It must be emphasized that all provisions of the Agreed Entry are extremely important to the attainment of compliance and avoidance of future litigation. The actual document should be examined for information concerning all 52 provisions. Other provisions of the Agreed Entry (Paul, 1991) require the department to:

1. Provide 30 days written notice to the Department of Justice prior to modifying the minimum qualifications for correctional officers
2. Post a summary of the Agreed Entry at each corrections facility, with copies of the entire document available for taking at no cost in all department personnel offices
3. Consider all women currently serving as correctional offices eligible for promotion to correctional officer positions regardless of their lack of experience in areas involving contact with male inmates
4. Establish a "Settlement Fund" of \$3,700,000 to satisfy all back pay claims of women entitled to these funds by virtue of their status as current or former correctional officers employed by the department who applied for employment as a correctional officer since January 1, 1983; met the minimum qualifications, however, were not hired as correctional officers based on gender; or, women who applied for a correctional officer position; met the minimum qualifications, however, were not hired based on gender; or, women currently employed by the department as correctional officers, and promoted within the correctional officer series since January 1, 1983 and met the minimum qualifications for promotion, however, were not promoted to the position applied for based on gender; or, women currently serving in the department as correctional officers who applied for promotional opportunities in the correctional officer series since January 1, 1986 who met the minimum qualifications for promotion, however were not promoted to the position applied for based on gender
5. Establish a priority hire list based on the date of application, to hire qualified women who applied for employment within the correctional officer series since January 1, 1983 who were denied employment based on gender
6. Establish a priority promotion list based on date of application, to promote not more than 150 women currently employed by the department as correctional officers who applied for promotion to positions within the correctional officer series since January 1, 1986 but were not promoted based on gender
7. Provide retirement service credit and make employer contributions to the Florida Retirement System for back pay awards

8. Provide retroactive seniority credit to women awarded priority hiring or promotion upon achievement of permanent status in that position
9. Provide written notice of the settlement and a "Claim of Employment Discrimination" form by certified mail or department mail to all women who currently or previously served the department as correctional officers and all women who applied for correctional officer positions after January 1, 1983, but were not hired
10. On a semiannual basis, provide reports to the Department of Justice detailing the number and sex of all correctional officer entry-level and promotional applicants, those hired and promoted, those found ineligible for hire or promotion, and those who were terminated or resigned
11. On a semiannual basis, provide the total number, sex, post and shift of all correctional officers at each correctional institution
12. Upon compliance with all provisions of the Agreed Entry, or after four years from the date of entry into the Agreed Entry, whichever is later, the department must file a final written report which includes certification of compliance with all provisions. The department may be entitled to dismissal of this lawsuit 60 days after filing the final report unless the United States Department of Justice demonstrates good reason why dismissal should not occur.

Compliance Strategies and Operational Impact

The department is well on its way in the implementation of compliance strategies for successful resolution of this lawsuit. The planning and implementation process began in May of 1992 even before endorsement of the Agreed Entry by the court. After reviewing the major provisions of the Agreed Entry, there was no doubt about the monumental effort required to accomplish this mission.

In the last few months since the endorsement of the Agreed Entry, the department has employed new staff, redirected the task of some existing staff, established a U.S.A. Case Project Administration Section, established a U.S.A. Case DataBase, allocated one inspector in each of five regions to investigate alleged civil rights violations including, any violations of the Agreed Entry, and began conducting a host of training programs in support of various U.S.A. Case initiatives.

The Project Administration Section is a key instrument in the coordination of all activities related to achieving compliance with provisions of the Agreed Entry. This section was created to ensure implementation of all identified actions and strategies from claimant determination to database development to providing technical assistance to personnel officers and managers. The Project Administration Section has completed the mailing of 15,000 claim forms to potential claimants and coordinated the distribution of more than 7,300 claim forms to women currently employed by the department as correctional officers who are also considered potential claimants. All valid claims for monetary relief must be paid without objection; however, regardless of the number of valid claimants for monetary relief, the total amount distributed will be \$3.7 million, plus interest earned thereon. The Project Administration Section has developed a database

designed to aid in the implementation of the provisions of the Agreed Entry by providing claimant and applicant tracking. The data collected will be essential to the preparation of semiannual reports and the final report required by the Agreed Entry.

To facilitate monitoring, tracking, and completion of all activities and coordination, the Project Administration Section has developed an action plan and PERT Chart to illustrate the time frame in which these events and actions are planned to occur. This also highlights the relationship between specific events and actions.

The development and implementation of rules governing gender specific positions, posts and assignments are a critical requirement of the Agreed Entry that received immediate attention from the department. A proposed rule addressing this area was drafted, approved and implemented by September 17, 1992. Chapter 33-4.011, Florida Administrative Code (1992), entitled "Employment Gender Policy for Security Positions."

It was created to comply with paragraph 8 of the Agreed Entry which stipulates that "all correctional officer positions, posts, shifts and assignments at all department correctional facilities shall be open to women on an equal basis with men," except there is no requirement for correctional officers to strip search opposite sex inmates; and that the department is allowed to designate not more than 25% of correctional officer positions as gender specific. Considering that only 24% of the department's correctional officer work force was female at the issuance of the Agreed Entry, compliance with this provision may be the most significant operational impact resulting from the Agreed Entry. The department has already demonstrated that this provision is achievable by currently operating with only 16% of its correctional officer positions designated as gender specific.

The rule clearly states that the department will not engage in unlawful discrimination and will attempt to employ women in correctional officer positions in proportions approximating their interest and ability to qualify for such positions. The rule provides the Secretary of the department, or his designate, the authority to designate gender specific positions. The positions currently designated by the Secretary include all correctional officer positions requiring supervision of inmates in confinement areas and supervision of inmate work squads away from institutional grounds, both of which will be gender specific to the inmates being supervised. Additionally, all correctional officer positions at Union Correctional Institution and Florida State Prison, the department's maximum security institutions, are designated gender specific.

The employment of women in correctional officer positions proportionate to their interest and ability to qualify for such positions is yet another far reaching stipulation of the Agreed Entry and the department's rule governing gender specific employment. As previously indicated, the semiannual reports required by the Agreed Entry must include information concerning the number and sex of all applicants for positions in the correctional officer series and the number and sex of those hired, promoted, found ineligible, terminated or who resigned. Also, the number and sex of all persons in each correctional officer position are required. Analysis of this information should provide the means to determine the interest of women in serving as correctional officers and their ability to qualify for all positions in the correctional officer series. Full implementation of this provision should significantly increase the number of women serving at all correctional officer levels.

In response to affirmative efforts required by the Agreed Entry, the department has

also developed and is currently providing a specialized training program entitled, "Women Facing the Future" (1992). This training program is designed to provide the opportunity for women serving the department as correctional officers to enhance their professional skills in the supervision of male inmates, as well as their ability to work with and supervise male staff. All women currently serving as correctional officers and all women hired as correctional officers are required to complete this training program.

Sexual harassment training is also a requirement for all department staff. Training programs entitled "Appreciating Racial, Cultural, and Gender Diversity" and, "Managing a Racial, Cultural, and Gender Diverse Work Force" are also in-service training requirements for all department staff. These training programs include discussions addressing diversity in the work place, with particular emphasis on the emerging role of women and minorities in the current and future work force.

In addition to the placement of \$3.7 million dollars in the Settlement Fund, the department has expended approximately \$60,000 for mail and newspaper ads to notify potential claimants, \$70,000 for computer equipment at major institutions to track required information, \$70,000 for the development of computer software, \$130,000 for salary and benefits for employees in the Project Administration section, and \$100,000 to conduct sexual harassment training and the specialized training program entitled, "Women Facing the Future." These expenses total approximately \$4.13 million; however, employer retirement contributions and social security withholdings, among other items, can not be paid from the Settlement Fund. Therefore, the total expense to the department, the state of Florida and its taxpayers is certain to grow.

Conclusion

The current status of all strategies implemented for successful resolution of the Agreed Entry and dismissal of the lawsuit are on schedule or noticeably ahead of schedule. Department Secretary, Harry K. Singletary, Jr., has demonstrated outstanding leadership by sending the forceful message that the department will appropriately address all issues outlined in the Agreed Entry. He continually relates the importance of implementing and maintaining all provisions of the Agreed Entry and has dedicated the necessary resources to focus on details of each provision and strategy to ensure that nothing is overlooked or ignored.

Nontraditional employment practices involving women are increasingly becoming standard operating procedures. In discussing the department's progress in this area with Ron Jones (personal conversation, January 7, 1993), Assistant Secretary of Operations for the department, it was my observation that he was very pleased and anxiously awaiting the announcement of even more progressive steps toward greater inclusion of women in all corrections professions. He could not wait to share with me that he had just recommended the appointment of the first woman to serve the department as Assistant Security Administrator in the Office of Operations. He was proud that the department was currently operating with only 16% of its correctional officer positions designated as gender specific; and he was supportive of further reductions of gender specific designations.

It is clear to all department employees and others interested in department activities that career opportunities are expanding for women working as correctional officers and all other positions available in the department.

The Agreed Entry is changing the traditional employment practices relating to how women will participate in the department's correctional officer work force. The Agreed Entry is changing the attitude of top managers and administrators concerning the utilization of women in all correctional officer performance areas. The Agreed Entry is changing the attitude of women in the corrections work place. The Agreed Entry is creating an environment where professional performance dictates the level of participation and ability to succeed rather than the gender of the employee. Secretary Singletary recently exclaimed:

"We will no longer measure one's performance based on the number of XX's or XY's they were born with, and that historical inequities in the use of women as corrections professionals will continue to be addressed by sharing power, vision and duties among all work force participants." (personal conversation, January 7, 1993)

One area of caution and concern that the department has acknowledged is the negative attitude of some men who feel that efforts to enhance the work place for women will adversely impact their progress and status in the work place. Continuation of training programs designed to change the attitude and behavior of workers from one of merely tolerating racial, cultural, and gender diversity to one of appreciating racial, cultural, and gender diversity should go far in ensuring that this circumstance does not adversely impact department efforts to address inequities in the use of women as corrections professionals.

As the Florida Department of Corrections prepares for the 21st century, the lessons of the past are clear, and the prospects for the future are bright. Employees of the Florida Department of Corrections know exactly what must be done to fully implement the provisions of the Agreed Entry. They are also aware of the strategies that must be employed to achieve and maintain compliance with the Agreed Entry. Current trends and conditions indicate that the creation of a work environment that encourages and values unlimited inclusion of women will be a reality in the Florida Department of Corrections.

Bernard Cohen, a Florida native, is currently the Chief of the Bureau of Staff Development at the Florida Department of Corrections in Tallahassee. His position entails responsibility for management and supervision of all training services for more than 22,000 employees. He began his corrections career in 1974 as a corrections specialist at Starke, Florida. Bernard holds a master's degree in Criminal Justice and a bachelor's degree in Psychology. He is married and has two children.

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