

UPDATE

Marshals Service Appeal Challenges Federal Awards Cap

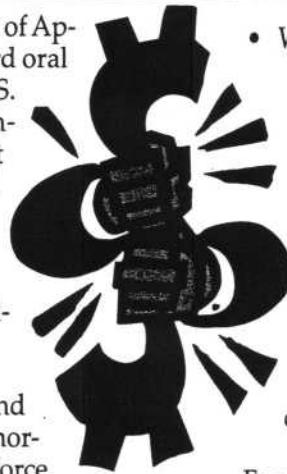
By David Hornestay

In March, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments in the appeal of former Deputy U.S. Marshal Matthew Fogg. Fogg, an African-American, won a 1998 federal jury judgement for \$4 million based on violation of his civil rights by his employer, the Department of Justice. Now he is appealing the reduction of his award by the trial judge, Thomas Penfield Jackson, who ruled that \$300,000 is the maximum allowed in Federal sector cases.

Fogg, with the Marshals Service since 1978 and holder of its highest honor, the Director's Honorary Award for his work on the fugitive task force, claimed that when he had complained of being denied promotions, he was assigned to a "dead-end" desk job and threatened with further retaliation if he didn't drop his complaint. After gaining a favorable workers' compensation ruling for a resulting stress-related disorder, he was prematurely ordered back to work and then dismissed for insubordination when his physician stated that he was not ready to resume his duties.

At the trial, a series of black and white deputy marshals presented testimony of discriminatory and racially harassing actions by white supervisors and colleagues. Incidents described included:

- A white supervisor locking a black deputy in a cell with prison riot ringleaders and leaving;



- White deputies failing to provide backup for black deputies, including Fogg, who were making dangerous arrests;
- White deputies using Martin Luther King's picture for target practice during an annual firearms qualification test;
- A white deputy running through the office in a white sheet menacing black female deputies; and
- A white deputy being called a "nigger lover" and being beaten by a white colleague after supporting his black partner's discrimination complaints.

Fogg's counsel also presented evidence of discrimination in hiring and promotion practices, suggesting that they were so pervasive that they encouraged the type of bigoted acts described above. On appeal, the attorneys are arguing that Judge Jackson should have applied the dollar cap to each count of discrimination sustained by the jury rather than as an aggregate limit.

The Marshals Service currently has a staff of just under 4,000, approximately 79 per cent white. A spokesman for the Service declined to comment on the Fogg appeal but noted that since Eduardo Gonzalez was appointed to head the Service in 1993, discrimination and sexual harassment complaints had dropped by half. He stated that other steps were being taken to alleviate staff imbalances.

INSIDE

- Once again the *Faragher* affirmative defense standard is called upon to settle a sexual harassment suit. See the results on page 3.
- This particular dismissal case just keeps coming up again and again and again...However, the end is in sight — the Supreme Court will have final say. See page 5.
- This Department of Agriculture employee received consequential damages for sustained charges of whistleblower retaliation. But what about her damage awards? See "We'll Compensate You, But Only So Far" on page 6.
- For years it has been published that men are compensated better than women for certain jobs? Is that still true? A new report may surprise you. See page 8.