

1990

Tina McCourt v. Lee Semken, Guido Rachiele, William Krompel, Carbon County, Norman Prichard : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

900578

IN THE SUPREME COURT OF THE STATE OF UTAH

TINA MCCOURT,	:	
	:	
Respondent,	:	Case No. 900578
	:	
vs.	:	
	:	
LEE SEMKEN, GUIDO RACHIELE,	:	
and WILLIAM KROMPEL, individu-	:	
ally, and in their official	:	
capacity as the Board of Com-	:	
missioners of Carbon County,	:	Category 12
CARBON COUNTY, and NORMAN	:	
PRICHARD, in his official	:	
capacity as Clerk of Carbon	:	
County,	:	
	:	
Petitioners.	:	

BRIEF OF RESPONDENT

ON CERTIFIED QUESTION FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
THE HONORABLE BRUCE S. JENKINS, UNITED STATES DISTRICT JUDGE

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FILED

JUN 6 1991

CLERK SUPREME COURT
UTAH

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IN THE SUPREME COURT OF THE STATE OF UTAH

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	:	
Respondent,	:	
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STATEMENT OF JURISDICTION

This Court has jurisdiction to decide the question certified by the Federal District Court pursuant to the provisions of Utah Code Ann. § 78-2-2(1)(Supp. 1990).

STATEMENT OF ISSUE PRESENTED AND STANDARD OF REVIEW

The issue presented by the certified question is whether the Board of County Commissioners of Carbon County has the authority to discharge an assistant of the County Sheriff who was appointed by the Sheriff with the approval of the Commissioner. As this is an original proceeding in this Court, there is no prior decision of which review is sought.

STATUTORY PROVISIONS

Utah Code Ann. § 17-16-7 (Rep.Vol. 2B 1987), is the only statute which requires interpretation to determine the question certified. That statute, as it existed during the time at issue in this matter, provided as follows:

Every county, precinct or district officer, except a county commissioner or a judicial officer, may, by and with the consent of the board of county commissioners, appoint as many deputies and assistants as may be necessary for the prompt and faithful discharge of the duties of his office; but the board shall allow the clerk of the district court and circuit court in those counties where the county clerk serves both courts, such deputies and assistants to transact the business pertaining to the district courts and circuit courts as may be deemed necessary and advisable by the judge

or judges of the district and circuit court. The appointment of a deputy must be made in writing and filed in the office of the county clerk. Until such appointment is so made and filed and until such deputy shall have taken the oath of office, no one shall be or act as such deputy. Any officer appointing any deputy shall be liable for all official acts of such deputy.

STATEMENT OF THE CASE

The certified question arises in the context of a civil rights action filed by Tina McCourt pursuant to 42 U.S.C. § 1983, wherein she has alleged her constructive discharge from employment with the Carbon County Sheriff's Office, effected by the County's Board of Commissioners, constituted a deprivation of property without due process. In considering the issues raised by that claim, Judge Jenkins has sought the guidance of this Court in determining whether, as a matter of state law, the Board of County Commissions has the authority to dismiss an assistant of another elected county officer.

STATEMENT OF FACTS

The only facts necessary to this Court's response to the certified question are as follows:

1. Tina McCourt was hired by Carbon County Sheriff Barry Bryner, with the approval of the Board of County Commissioners, in June of 1987 to serve as a dispatcher in the Sheriff's Office. (R. Vol. I, Tab 55, p. 8.)

2. On November 23, 1987, the Board of Commissioners purported to terminate Ms. McCourt's employment with the Sheriff. (R. at Vol. I, Tab 1, p. 2.)

The additional factual assertions contained in petitioner's brief are irrelevant to the question presented, which involves only a determination of the statutory powers of the County Commissioners, not the factual background against which those powers are exercised.

SUMMARY OF ARGUMENT

This Court has repeatedly held that the Board of County Commissioners has no authority to suspend or dismiss an employee appointed by the duly elected County Sheriff with the approval of the Commissioners. The right to dismiss flows from the right to appoint and can only be exercised by the officer empowered by statute to appoint assistants. As the statute which authorized county officers to employ deputies and assistants expressly denies such power to county commissioners, it is manifest that the absence of the power to appoint equates to the absence of the power to dismiss.

ARGUMENT

ONLY THE SHERIFF CAN DISMISS INDIVIDUALS APPOINTED BY THE SHERIFF WITH THE APPROVAL OF THE BOARD OF COUNTY COMMISSIONERS

The question certified by the United States District

Court has, in fact, been previously answered by this Court on three separate occasions. In Sheriff of Salt Lake County v. Board of Commissioners, 71 Utah 593, 268 p. 783 (1928), this Court noted that the office of county sheriff is an elective office, like that of county commissioner, and that in the discharge of his duties the sheriff acts independently of the commissioners, and not under their control, except as otherwise specified by state statute. As the law authorizes a sheriff to appoint deputies or assistants, with approval of the commissioners,

whatever summary power of suspension or removal of a deputy may be exercised is to be exercised by the sheriff and not by the board of county commissioners . . .

268 p. at 785.

This Court went on to note that the Board of Commissioners can reduce the number of positions the sheriff can fill by appointment, but cannot designate which individual will be removed as a result of a reduction in the size of the sheriff's approved staff. If the number of approved appointments is reduced

then we think it would be within the province of the sheriff to indicate which of his deputies were to be retained and which dismissed . . .

268 P. at 785. Without deciding what the exact range of options may be for removing an officer or his appointees, this Court indicated that it

is enough to now decide, as we do, that the board of county commissioners have no power to summarily suspend or remove the [sheriff's] deputies . . .

268 P. at 786.

This holding was reaffirmed in Fowler v. Gillman, 76 Utah 414, 290 P. 358 (1930), and Hutchinson v. Cartwright, 692 P.2d 772 (Utah 1984).

The petitioner's suggestion that "Carbon County" has specific authority to appoint personnel (Brief of Petitioner at p. 14), is, while accurate, wholly unresponsive to the issue presented by the certified question. It presumes, inaccurately, that the power of the County and its Board of Commissioners are equivalent. The presumption is not only erroneous, in the context of the County's employment practices it is directly contrary to the very statute which authorizes the County to hire employees other than officers. It is somewhat disingenuous to argue, as petitioner's do, that the Commissioners have an "implied" right to hire, and therefore fire, any county employee when the very statute they cite as support for such implicit authority says that all county officers except commissioners and judicial officers can appoint

deputies and assistants. Utah Code Ann. § 17-16-7 permits the County to hire employees appointed by its officers other than the commissioners. The commissioners cannot appoint assistants for themselves or any other officer. Accordingly, they cannot fire the assistants of other officers. As expressly noted by this Court in Hutchinson v. Cartwright, 692 P.2d 772, 773 (Utah 1984), "the power to suspend or dismiss is appurtenant to the power to appoint."

As the Commissioners are expressly exempted from the class of county officers who have the power to appoint assistants, no great powers of deduction are required to conclude they also lack the power to dismiss such assistants.

In an effort to avoid this Court's precise holding in Sheriff of Salt Lake County, supra, the petitioners suggest that it was somehow modified by Fowler v. Gillman, supra. The argument advanced is that although Fowler explicitly holds that the Board of County Commissioners cannot "dismiss" individuals appointed by the sheriff by taking actions to see to it that they are not paid (which is precisely what was done in this case), there is "dicta" in the opinion implying that the Commissioners can do so if they are convinced the appointed individual is a "bad" employee. To support this argument petitioners draw attention to language in the opinion which

says that an individual appointed in conformity with the statute, Utah Code Ann. § 17-16-7, is appointed for the term of the appointing officer unless his earlier dismissal is warranted for good cause. (See Brief of Petitioner at p. 18.) The petitioners then make a leap of faith and assert that such language means that the Commissioners can dismiss an appointee for cause prior to the expiration of the sheriff's term. This leap is illogical. It is obviously the appointing officer who has the authority to effect such a dismissal for cause prior to the expiration of his term of office. Not surprisingly, that is exactly what this Court indicated in Hutchinson, supra, when it noted that the very language in Fowler quoted by the petitioners in this case meant that the "sheriff may dismiss a deputy where the deputy 'has been guilty of misconduct . . .'" 692 P.2d at 773 (emphasis added).

In short, there is no statutory authority empowering the Board of Commissioners to dismiss an assistant appointed by the County Sheriff and this Court has held on three separate occasions that it is the Sheriff, and the Sheriff alone, who has such authority to act on behalf of the County.

Just as the Sheriff, an elected officer of the County, could not fire an assistant appointed by the County Clerk or Treasurer, no matter how convinced he was of that person's

incompetence or immoral behavior, so too the Commissioners cannot exercise authority in excess of their delegated powers. A sheriff cannot lawfully interfere with the commissioners in the discharge of their duties even if the sheriff knows for a fact of their incompetence. The same is true of the commissioners in relation to the sheriff. Disputes about the quality of service of elected county officials are resolved at the ballot box or through the statutorily prescribed removal procedures. They cannot be resolved by Commission fiat, no matter how sincerely the Commissioners believe that their cause is just.

The petitioners repeatedly stress that Ms. McCourt was an "unsworn" appointee of the Sheriff. This is of no significance. The same statute governs the appointment of deputies and assistants and petitioners cite no authority suggesting any basis for differentiating between these types of employees when determining who has the authority to suspend or discipline appointees.

The entire basis for the petitioner's actions in this matter was their personal belief that the Sheriff of Carbon County was doing a bad job and conducting himself improperly. There is no question that county commissioners lack the authority to "fire" the duly elected Sheriff. See Argyle v.

Wright, 63 Utah 184, 224 P. 649 (1924). The procedure for involuntary removal of a county officer is statutory. See Utah Code Ann. § 77-6-1 et seq. (Rep.Vol. 8B 1990.)

If the Commissioners deemed the Sheriff's malfeasance to warrant his removal, they should have followed this procedure. Having failed to do so, they lacked any authority to interfere with the Sheriff's discharge of his duties.

While petitioners have asserted that one of the sources of their "implied" power to discharge a Sheriff's office employee stems from their statutory right to supervise other county officers, as set forth in Utah Code Ann. § 17-5-19 (Rep.Vol. 2B 1987), this section has been held not to grant the Commissioners any responsibility over assistants or deputies of other county officers. In Smith v. Hill, 510 F.Supp. 767 (D. Utah 1981), it was held that this section gives the Commissioners

discretion to supervise the conduct of a county [officer], but not his deputy. Apparently, the person solely responsible for the supervision of a deputy is the [county officer] himself.

510 F.Supp. at 776.

Since the time of statehood, it has been recognized that county commissioners "can exercise such powers only as are expressly or by necessary implication conferred upon them by

the statutes . . ." Carbon County v. Hamilton, 48 Utah 503, 160 P. 765, 768 (1916). Petitioner's argument of "necessary implication" is that if they did not act to supervise the Sheriff's assistants the County would be without power to do so. This argument ignores the obvious. The County has the power to supervise the Sheriff's employees. It exercises that power through the Sheriff, and the Sheriff alone. Accordingly, the Board of Commissioner's attempt to usurp this authority is unlawful and the question certified should be answered in the negative.

CONCLUSION

Stripped of its unnecessary factual baggage, the simple question presented in this matter is whether the Board of County Commissioners of Carbon County can fire an employee of the Sheriff's Office if they firmly believe such action should be taken and the Sheriff disagrees. The answer is simple: no. Both the Commissioners and the Sheriff are elected county officers, who function largely independently of each other, with powers and duties set forth by statute. A Sheriff is authorized to hire assistants, with the approval of the Commissioners, and having so hired an employee only the Sheriff can fire that employee. This Court has so held on three separate occasions.

The answer does not change because the Sheriff is felt to be "incompetent" or is thought to be having, or is having, a romantic relationship with his assistant. The powers and duties of county officers do not vary depending upon the quality of performance or "moral" character of the office holder. If an officer's conduct warrants removal, there is a statutory procedure to achieve that end. If his performance is thought to be adverse to the interests of good government, then the electorate will have its say. These are the recognized means for resolving disputes about who is, or is not, doing a good job in county government. Such disputes cannot be properly resolved by having one group of officers usurp the authority properly exercised by another.

The certified question should be answered in the negative and the matter referred back to Federal District Court.

DATED this 5th day of JUNE, 1991.

PRINCE, YEATES & GELDZAHLER

By M. David Eckersley
M. David Eckersley
Attorneys for Tina McCourt

MAILING CERTIFICATE

I hereby certify that, on the 6th day of June, 1991,
I caused to be mailed, postage prepaid, four true and correct
copies of the foregoing BRIEF OF RESPONDENT to the following:

Daniel M. Allred
Thomas R. Grisley
PARSONS, BEHLE & LATIMER
185 South State Street, Suite 700
P. O. Box 11898
Salt Lake City, Utah 84147-9898

A handwritten signature in cursive script, reading "M. David Eckelby", is written over a horizontal line.

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ADDENDUM

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 DISTRICT OF UTAH
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 BRUCE S. JENKINS
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U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF UTAH, CENTRAL DIVISION

* * * * *

TINA McCOURT,)
)
 Plaintiff,)
)
 vs.)
)
 LEE SEMKEN, GUIDO RACHIELE,)
 and WILLIAM KROMPEL, individu-)
 ally, and in their official)
 capacity as the Board of Com-)
 missioners of Carbon County,)
 CARBON COUNTY, and NORMAN)
 PRICHARD, in his official)
 capacity as Clerk of Carbon)
 County,)
)
 Defendant.)

CERTIFICATION ORDER
 Civil No. 87C-1052J

* * * * *

TO THE SUPREME COURT OF THE STATE OF UTAH:

The Honorable Bruce S. Jenkins, Chief Judge of the United States District Court for the District of Utah, pursuant to Rule 41 of the Rules of the Utah Supreme Court, hereby certifies the following question of law to be answered by the Utah Supreme Court:

Do Utah Boards of County Commissioners have authority to discharge a probationary non-deputy (non-sworn) subordinate employee working in the County Sheriff's office, when:

(1) The subordinate performed dispatching services in support of the County Sheriff's law enforcement duties and in support of various services offered by the County and certain municipalities over which the County Sheriff had no responsibility.

(2) The County Sheriff stated that he was satisfied with the subordinate's work performance.

(3) The subordinate nevertheless was not competent to discharge her duties, and her actions and omissions constituted a threat to the safety of the citizens of the county and the Commission believed her actions created risks of liability to the county.

(4) The County Sheriff (a) generally was not competent to discharge his duties, (b) had a romantic and sexual relationship with the subordinate though he was married to another woman, (c) was not honest with County and State officials regarding his personal relationship with the subordinate, and (d) refused to take action to terminate the employment of the subordinate or otherwise take action to remove the risks created by her acts and omissions.

Pursuant to Rule 41(c)(1)(i)(ii) and (iii), the undersigned represents that the certified question is a controlling issue of law in a proceeding pending before this Court and there appears to be no controlling Utah law.

STATEMENT OF UNCONTROVERTED FACTS

1. Plaintiff Tina McCourt, a probationary employee of Carbon County who was working as a dispatcher/secretary in the Carbon County Sheriff's office, was terminated in the latter part of 1987 by the defendant Board of Commissioners of Carbon County for failure to competently discharge her duties as dispatcher. The Commission did so because her acts and omissions created risks to the safety of the citizens of Carbon County and created attendant risks of liability to the County. (Affidavit of Lee Semken, ¶¶ 6,7.)

2. The County Sheriff stated that he was satisfied with her work performance and refused to discharge her. (Affidavit of Barry Bryner, ¶ 4).

3. The Carbon County Commission discharged plaintiff because of the Sheriff's refusal to do so. (Complaint herein, ¶ 9).

4. During the period that Tina McCourt was employed, roughly June to December, 1988, dispatchers located in the Carbon County Sheriff's office provided dispatching services for Carbon County as a whole and for a number of municipalities over which the Sheriff of Carbon County had no jurisdiction. In addition to providing dispatching services for the Sheriff's vehicles, dispatchers provided dispatching services for the Carbon County ambulance which was under the jurisdiction of the County

Commission, the East Carbon ambulance, the Carbon County communications (audio) and TV trucks, both of which were under the jurisdiction of the County Commission, a rescue unit called Rescue 1 which was owned at the time by Carbon County and which was under the jurisdiction of the County Commission (although it may have been disbanded before plaintiff was employed), a rescue unit called Rescue 3 which was under the jurisdiction of Helper City, the Carbon County Mental Health Department which was not under the jurisdiction of the County Sheriff, the City of East Carbon, the Price City Police Department, the Wellington City Police Department, the Price City Fire Department, the Wellington City Fire Department, and the Helper City Fire Department. (Depo. of Jerry Cowan, the Chief Deputy Sheriff of Carbon County, pp. 19-26). The dispatcher also provided dispatching services for the County's animal control service which was not under the control of the County Sheriff (Deposition of Barbara Kelly, p. 13).

5. The uncontroverted facts in the record relating to plaintiff's job performance are the following:

(a) Deputy Sheriff Jerry Cowan, Tina McCourt's superior, worked with her daily on the same shift during the five or six months McCourt was employed in the Sheriff's office and observed her daily in the discharge of her duties as dispatcher (Cowan Depo., pp. 27-28). He was asked the questions:

Q. Over that time [June to December 1987] did you form an opinion based in your capacity as her supervisor as chief deputy of the sheriff of Carbon County whether she was discharging her duties in a competent fashion?

A. Yes.

Q. What's your opinion?

A. She did not. She had a longer training period than any other dispatcher. By that I mean as she was sitting at a dispatch console, another back-up dispatcher was there to help or advise on what to do as far as paging the computer, that type of thing. She didn't seem to grasp it quickly enough, nor did she seem to have the desire for the job. She is the only dispatcher that I ever watched get up and leave that console, leave the dispatch room and mosey up and down the hallway.

Q. And leave the dispatching phone unattended?

A. Open, yeah.

(Cowan depo., p. 28).

(b) A call came in to plaintiff when she was on duty reporting vandalism and it took Tina McCourt two hours to dispatch a vehicle. This lapse of time was unacceptable according to both McCourt's immediate dispatching supervisor, Barbara Kelly, and her more senior superior, Chief Deputy Cowan. (Depo. of Barbara Kelly, pp. 22-23, and Cowan Depo., p. 36 and Cowan Ex. 2).

(c) She took ten minutes to dispatch a fire truck when she was required to dispatch it in seconds. The fire unit is prepared to leave within one and one-half to two minutes after receiving a call from the dispatcher. In this instance the fire unit arrived in about 14 minutes after the call was placed to Tina from the complainant. It took McCourt two and one-half times longer to place the call to the fire unit than it did for the fire unit to receive the call, leave its facility and arrive on the scene. (Depo. of Barbara Kelly, p. 19, Cowan Depo., pp. 37-38 and Cowan Ex. 3).

(d) Tina McCourt received a teletype from an out-of-state police department requesting assistance in locating an overdue motorist due in the City of Wellington in Carbon County. A vehicle description, the driver's name and a passenger's name were given. McCourt did nothing at all and the teletype was not noticed until the next dispatcher came on duty. According to Chief Deputy Cowan, she should have given this information to the Wellington City officer as well as to all County units in an attempt to locate the vehicle and individuals. The dispatcher who arrived following McCourt's shift took the appropriate action. (Cowan Depo., pp. 39-40 and Cowan Ex. 4).

(e) Tina McCourt received a call of a personal injury near East Carbon County. East Carbon is 30 miles away from Price. Rather than dispatching the East Carbon ambulance,

she incorrectly dispatched the ambulance from the City of Price. (Cowan Depo., pp. 41-42 and Cowan Ex. 5).

(f) If the four specific incidents referred to above had not occurred, Chief Deputy Cowan's opinion of her poor job performance would not have changed. (Cowan Depo., p. 42).

(g) Tina McCourt's immediate supervisor, Barbara M. Kelly, who was in charge of all dispatchers, was never consulted by the Sheriff when McCourt was hired (Kelly Depo., pp. 15-16). Following McCourt's employment, Mrs. Kelly believed that Tina McCourt did not discharge her duties properly. Patrolmen complained to Mrs. Kelly that Tina McCourt would not do security checks on them after they had been out of their vehicle five or six minutes. (Kelly Depo., p. 30).

6. After Mrs. Kelly wrote out a poor evaluation of McCourt's work performance (Exhibit 1 to Cowan's deposition) Kelly was demoted by the Sheriff from her supervisory position (Kelly Depo., p. 25); the Sheriff put her on three different shifts a week (two graveyards, two afternoons and one day) with the shifts rotated all the time (Id. at 33); she received phone calls in which she was told she would lose her job if she testified against McCourt [in a January, 1988 state court proceeding]; and a vehicle attempted to run her off the road (Kelly Depo., pp. 33-34).

7. Tina McCourt, who was 19 years old (McCourt Depo., p. 3), had a romantic and sexual relationship with the Sheriff of Carbon County (a married man of 40), during the period she was employed in the dispatcher's office. She became pregnant with the Sheriff's child. (Depo. of Informant No. 4, pp. 24-25). As early as July, 1987, one month after she was hired as dispatcher, she was fearful that she was pregnant with the Sheriff's child. (Informant No. 4 Depo., p. 36).

8. She traveled overnight with the Sheriff to Kane County, Salt Lake City, Park City, and Vernal. She went to some of these places with the Sheriff more than once. (Depo. of Informant No. 4, pp. 11-28). She spent two or three nights in the same bedroom with Sheriff Bryner at the home of Sheriff Gonzales of Kane County. (Depo. of Joseph T. Gonzales, pp. 7-8).

9. After she was employed as dispatcher, Sheriff Bryner unilaterally designated her as his personal secretary. (Although the Carbon County Commission had only approved her as dispatcher. See Memorandum in Support of Plaintiff's Motion for Summary Judgment, Statement of Undisputed Facts, ¶ 2). She would frequently spend long periods locked up with the Sheriff in his office over the period of her five or six months employment. The Chief Deputy never saw any evidence that she had performed any secretarial duties during the time she spent alone with the Sheriff. (Cowan Depo., pp. 44-45). Over the five to six month

period she typed perhaps a total of four letters for the Sheriff and she opened his mail. These were the only duties she performed of a secretarial nature for the Sheriff. (Cowan Depo., p. 45).

10. The dispatcher provides the public's access to emergency services. Tina McCourt's conduct raised the risk in the minds of the Commission and the Deputy Sheriff that those emergency services would be denied to the public when needed and Sheriff Bryner would not do anything to correct these risks even though he received complaints about Tina McCourt's performance. (Cowan Depo., pp. 31-32; Affidavit of Lee Semken).

11. Plaintiff was discharged by the Carbon County Commission on November 23, 1987. (Affidavit of Lee Semken, ¶ 7).

12. On January 5, 1988, Judge Boyd Bunnell, District Court Judge for the Seventh Judicial District Court of Carbon County, State of Utah, granted an ex parte temporary restraining order against plaintiff, restraining her from entering the Sheriff's dispatch center and operating or otherwise handling the dispatch equipment of the Carbon County Sheriff's office in Price, Utah. (A certified copy of the temporary restraining order is attached to Notice of Filing of Certain Pleadings from Related State Court Action).

13. On February 1, 1988, Chief Judge Bruce S. Jenkins of the United States District Court for the District of Utah denied plaintiff McCourt's motion for preliminary injunction.

14. From March 8 to March 11, 1988, a special audit team created by the Commissioner of the Utah State Department of Public Safety conducted an investigation of 14 separate allegations made by the Carbon County Commission against the Sheriff of Carbon County and also investigated the Sheriff's allegation that the Carbon County Commission was interfering with the discharge of his duties. The audit team was composed of Clyde Palmer, Director, Utah Peace Officers Standards and Training which acted as the Chairman of the audit team, Sheriff Bob Limb, Box Elder County Sheriff's Office, representative from the Utah Sheriff's Association, and Sharon Esplin, a special investigator, Utah Attorney General's Office. The audit team interviewed some 30 witnesses in Carbon County and later issued a written report entitled "Final Report Fact Finding Audit", a copy of which is attached as Exhibit B to the Affidavit of Sharon Esplin. On its last page, the report concludes, second to last paragraph:

To put it simply and succinctly the Sheriff does not have the present capability to manage his operation and those deficiencies have been exacerbated by Commission actions which have, with some justification, intruded upon the traditional prerogatives of an independently elected official.

The audit team also concluded on the seventh unnumbered page of its report, under FINDINGS, that the Carbon County Sheriff was not truthful about certain out-of-office contacts he had with plaintiff Tina McCourt.

* * * *

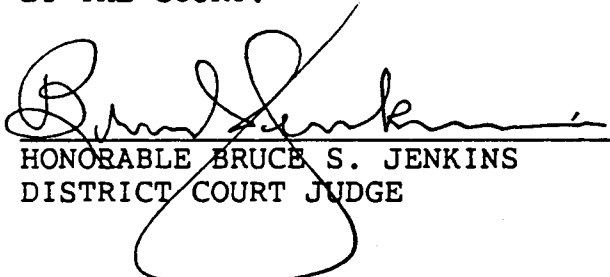
This Certified Order is accompanied by a copy of the docketing sheet in this case.

ENTERED this 13 day of November, 1989.

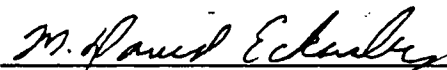
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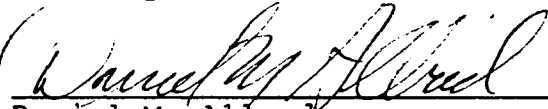
BY THE COURT:

M. David Eckersley, Esq.
Daniel M. Allred, Esq.


HONORABLE BRUCE S. JENKINS
DISTRICT COURT JUDGE

The parties by their respective counsel approve the foregoing order as to form and content.


M. David Eckersley
PRINCE, YEATES & GELDZAHLER
Attorneys for Plaintiff


Daniel M. Allred
PARSONS, BEHLE & LATIMER
Attorneys for Defendant
Carbon County

220:101389A

CAUSE: TITLE 42 SEC. 1983 - OTHER CIVIL RIGHTS

PLAINTIFFS

TINA McCOURT

DEFENDANTS

LEE SEMKEN, GUIDO RACHIELE, and WILLIAM KROMPEL, individually, and in their official capacity as the Board of Commissioners of Carbon County, CARBON COUNTY, and NORMAN PRICHAR, in his capacity as Clerk of Carbon County,

ATTORNEYS

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<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL REPORTS PROCESSED
	DATE	RECEIPT NUMBER	C.D. NUMBER	Filing <u>12/10/87</u>
				Termination _____
				Change _____

1/87	1	tb COMPLAINT filed, assigned to the Honorable Judge Bruce Jenkins.
/87mw	2	PLTF's Mot/Prelim Inj
	3	PLTF's Memo In Suppt of Mot/Prelim Inj
/87mw	4	NOTICE of Hrg on Mot/Prelim Inj set for 2/1/88 at 8:30 A.M. cc: attys
8 lc	5	Came Before Crt for Mot for Pre/Inj. Arguments of cnsl heard re who is authorized to terminate employee. The Crt DENIED the mot, suggesting that cnsl, if interested, formulate the question relative to "power" for the State Supreme Court's consideration, and this Crt will then review the matter. Cnsl have one week in which to do it.
88mw	6	DEFS' Memo In Suppt of Mot/Dism
	7	DEFS' Memo In Oppos to Pltf's Mot/Prelim Inj
	8	DEFS' Cert of Svc of Doc #6-7
'88mw	9	NOTICE OF Hrg on settlemt of from of Order of Reference to State Supreme Court set for 5/20/88 @10:30 A.M. cc: attys
1/88mw	10	STIP MOT/for continuance of Hrg on Certification of issue to Utah Supreme Crt
	11	ORDER BSJ 5/20/88 continuing hrg on Mot/to Certify to 6/8/88 at 1:30 P.M. cc: attys
1/88mw	12	NOTICE of Appear by Daniel M. Allred, Esq. for defs
/88mw	13	NOTICE of W/drawal of csl by Paul A. Kirk, Esq. as csl for defs
'88mw	14	PLTF's Mot/Partial Summ. Judgmt.
	15	PLTF's Memo In Suppt of Doc #14
	16	AFF of Barry Bryner
88mw	17	DEF's Notice of filing of certain pleadings from related state court action
	18	AFF of Sharon Esplin
	19	DEF's Notice of w/drawal of Memo In suppt of Mot/to Dism
	20	AFF of Paul M. Warner
	21	DEFS' Memo re: Amd. Certification Order
	22	DEFS' Answer
38cn	23	Came before the court on mot/consider form of order. Def's cnsl states he wants this action disp w/prej, however, cnsl also requests sch conf, the filing of findings of fact & conclusions of law and resolving the issue as to whether this matter should be certified to the Utah Supreme Court. Pltfs filed mot/summ jdgmt & feels there is no need for disc. Court states pltfs mot/summ jdgmt will be set to be heard in due course. Defs cnsl represents to court that they are not interested at this time in certifying this matter to the Utah State Supreme Court. Court set disc cut-off date - 9-9-88; post disc motions to be filed by 9-26-88 & motions to be heard by 10-21-88. Final pretrial conf set for 10-28-88 at 1:30 p.m. Sch order to be prepared by Mr. Eckersley

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. C-87- 1052
TINA McCOURT		LEE SEMKEN, et al	PAGE 2 OF ___ PAGES
DATE	NR.	PROCEEDINGS	
6/10/88mw	24	NOTICE of Hrg on Pltf's Mot/Parial Summ Judgmt set for 7/15/88 at 8:30 A.M. cc: attys	
6/10/88mw	25	DEF's Amd. Answer	
6/15/88mw	26	STIP/for continuance of Hrg on Pltf's Mot/SJ from 7/15/88 to 8/10/88 @8:30 A.M. SO ORDERED BSJ 6/17/88 cc: attys	
7/14/88mw	27	DEFS' Mot/Summ. Judgmt.	
	28	DEFS' Memo In Oppos to Pltf's Mot/Partial SJ & in Suppt of Their Mot/SJ	
	29	AFF of Lee Semken	
	30	AFF of Daniel M. Allred	
	31	DEFS' Cert of Svc of 1st Req/Prod	
7/20/88mw	32	NOTICE OF Hrg on Defs' Mot/SJ set for 8/10/88 at 8:30 A.M. cc; attys	
8/4/88mw	33	PLTF's Reply Memo in Suppt of Pltf's Mot/for Summ. Judgmt. & in Oppos to Defs' Mot/for SJ	
	34	NOTICE of change of Address of M. David Eckersley, Esq.	
8/8/88mw	35	STIP/ORDER BSJ 8/3/88 allowing defs to 7/15/88 to file Memo In Oppo to Pltf's Mot/SJ & Pltfs have to 8/3/88 to file Reply cc: attys	
8/9/88mw	36	STIP/ORDER BSJ 8/8/88 continuing hrg on Mots/SJ to 8/30/88 at 8:30 A.M. cc: attys	
8/15/88mw	37	DEFS' Reply Memo In Suppt of Mot/for Partial SJ	
3/19/88mw	38	PLTF's Mot/for Protective Order & Supptg Memo	
3/19/88mw	39	DEF's Mot/to Compel Disc & Supptg Memo	
	40	DEF's Notice of Depo of Bill Flink, 8/19/88	
3/22/88mw	41	DEF's Notice of Depo of Barry Bryner, 8/25/88; Tina McCourt, 8/25/88; Jeral Cowan 8/25/88; Barbara Kelly, 8/25/88	
3/22/88mw	42	RETN/subp on Bill Flink, 8/19/88	
8/24/88mw	43	DEF's Notice of Depo of Lyla Grogan, 8/26/88; Sheriff Joe Gonzales, 8/26/88	
3/30/88 lc	44	Came Before Crt for Def's Motion for Sum/Jdgmt; Pltf's Mot for Sum/Jdgmt and Def's Mot to Compel. Arguments heard. The Court, with reference to qualified immunity, GRANTED the motion as far as the Commissioners are concerned. The Court RESERVED on remaining motions.	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. _____
		PAGE ____ OF ____ PAGES

DATE	NR.	PROCEEDINGS
1/88	45	DEFS' Addl Statement of Facts In Oppos to Pltf's Mot/for Partial Summ. Judgmt.
	46	STIP/regarding Depositions, ORDERED BSJ 9/2/88 Court may rely on unsigned copies of depositions re: Mots/Partial SJ & sealing identity of Informant #4 cc: attys
	47	DEF's Amd. Mot/to Compel Disc
1/88	48	RETN/subp on Barbara Kelly, 8/23/88; Barry Bryner, 8/23/88; Jeral Cowen, 8/23/88
8/88		DEPOSITION OF KATHY ANN ANDERSON, 8/25/88
		DEPOSITION OF JERRY COWAN 8/25/88
		DEPOSITION OF JOSEPH T. GONZALES, 8/25/88
		DEPOSITION OF BARBARA M. KELLEY, 8/25/88
		DEPOSITION OF WM. L. FLINK, 8/19/88
1/88	49	Came before the court on 8/22/88 on a mot/compel disc. Args of counsel were hrd & a discussion was held. Court indicated to counsel that it cannot make a premature ruling at this point. Counsel may proceed with the taking of the depositions. If the matters cannot be resolved, Court will hear approp mots of counsel.
1/89	50	STIP/MOT/ORDER BSJ 9/2/88 extending disc cutoff to 10/21/88, Post Disc Mots due 9/26/88 to be hrd by 10/21/88, Final PT set for 10/28/88 @ 1:30 P.M. cc: Attys
1-89	51	NOTICE Re: Status & Sched Conf set for 8/10/89 @ 1:30 PM cc: cnsl
1/89	52	Stat rpt hld. Cross mots/SJ pendg. S & S conf set for 9/20, 1:30 P.M. (RF, CR)
8/89	53	S & S conf hld. Cnsl to sbmt cert of ques for Supreme Crt. Hrg set for 10/17/89, 1:30 P.M. (RF, CR)
7/89		DEPOSITION OF INFORMANT NO. 4 - SEALED
1/89	54	Stat rpt hld. Cnsl to sbmt by Fri a final doc, signed by all cnsl, containing the ques to be certified. (RF, CR)