

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THURGOOD MATTHEWS,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE DEFENDER ASSOCIATION OF PHILADELPHIA,	:	
	:	
Defendant.	:	No. 94-CV-2442
	:	

**FINAL ADJUDICATION INCLUDING
FINDINGS OF FACT AND CONCLUSIONS OF LAW, VERDICT AND JUDGMENT**

AND NOW, this 1st day of August, 1997, after a non-jury civil trial in which counsel for plaintiff Thurgood Matthews ("Matthews" or "plaintiff") and defendant The Defender Association of Philadelphia ("Defender Association") participated and based upon the pleadings, the evidence presented at trial, and the declarations of counsel, I make the following findings of fact and conclusions of law:

Findings of Fact

1. Plaintiff is an African American male currently employed by the Defender Association. Testimony of Matthews.
2. The Defender Association is a private, nonprofit corporation that contracts with the City of Philadelphia and the Administrative Office of the United States Courts to provide legal representation to indigent persons who are charged with state and federal crimes. Testimony of Benjamin Lerner ("Lerner").
3. Matthews commenced employment at the Defender Association after graduation from Howard University School of Law in 1981. Stipulation of Uncontested Facts ("Stipulation") ¶ 1; testimony of Matthews.
4. Matthews rotated through different units at the Defender Association from 1981 through 1985. Testimony of Matthews.
5. In 1985 plaintiff was assigned to the Special Defense Unit, a specialized unit of the

Defender Association that handles complex and high profile cases, including capital cases, in state court. Testimony of Matthews.

6. From July 1, 1986 until October 5, 1987, plaintiff worked as an Assistant Federal Defender in the Federal Division of the Defender Association, which operates as a semi-autonomous unit funded through the federal court system. Testimony of Matthews.

7. Plaintiff received positive performance evaluations during his tenure in the Federal Division and earned salary increases. Testimony of Matthews.

8. In October, 1987, Matthews received a promotion and transferred back to the Special Defense Unit as the Assistant Chief, a newly created position specifically designed to provide a supervisory position and experience for a member of a racial minority. Testimony of Lerner. At the time of the promotion, Matthews did not have knowledge that Lerner, the Chief Defender, had created the position to provide minority opportunities in supervisory positions. Testimony of Matthews.

9. The Special Defense Unit has approximately seven attorneys, two investigators, two social workers, and two clerical staff. As Assistant Chief Matthews helped to administer the unit. Testimony of Matthews.

10. Plaintiff currently holds the position of Assistant Chief of the Special Defense Unit. Testimony of Matthews.

11. Lerner served as Chief Defender of the Defender Association from January, 1975 through July, 1990. Testimony of Lerner.

12. At the time Lerner became Chief Defender he was unhappy with the racial makeup of the Defender Association and attempted to increase the recruitment of minorities. Testimony of Lerner. In 1975 only 6 attorneys in a staff of 89 were minorities. Exhibit D-38. In May, 1989, at the time of the non-selection of plaintiff, approximately 28 of the 127 attorneys were African Americans. Exhibit D-38. The dramatic increase in minority attorneys from 7% to 23% is attributable to Lerner's policies and practices to recruit minorities. Testimony of Lerner;

testimony of Ellen Greenlee ("Greenlee").

13. In 1984 and 1985, in response to complaints that few minorities occupied supervisory positions in the Defender Association, Lerner created the positions of rotating supervisors to provide temporary opportunities for minorities, allowing approximately three to four months for attorneys to act as supervisors in various units. Testimony of Lerner. Lerner and Greenlee agreed to fill the positions with qualified minorities. Testimony of Greenlee.

14. In 1987 Lerner created two positions specifically designed to provide supervisory opportunities to minorities. Matthews filled one of these positions as Assistant Chief of the Special Defense Unit. Harvey Booker ("Booker"), an African American, filled the other position as Assistant Chief of Major Trials Unit. Stipulation ¶ 10; testimony of Lerner.

15. In his testimony, which I credit, Lerner could not recall the exact number of African Americans he promoted to supervisory positions or whose promotions to supervisory positions that he approved, including attorneys and non-attorneys, during his tenure as Chief Defender and prior to May, 1989, but gave approximately 10 names when asked upon direct examination. Testimony of Lerner. Between September 1, 1987 and May 1, 1989, there were ten supervisory promotions and hiring of which two were to black attorneys, Matthews and Booker. Stipulation ¶ 9.

16. On March 30, 1989, the Defender Association announced that Edward H. Weis ("Weis"), the Chief of the Federal Division,¹ planned to resign and that a selection committee consisting of two members of the Federal Division's Board of Trustees, Greenlee, and Lerner would review candidates and select the new Chief of the Federal Division. Exhibit P-17; testimony of Lerner. In the announcement Lerner stated that he intended to choose a successor for Weis having significant federal court experience and from within the Defender Association.

1. In March, 1989 the position was titled Attorney-in-Charge of the Federal Division. Since that time the title designation has changed to Chief of the Federal Division.

The announcement requested that candidates seeking to fill the position submit their resumes because the two board members did not have the same familiarity with each candidate's background and qualifications based upon personal knowledge as did Lerner and Greenlee. Exhibit P-17.

17. Because the Federal Division is a semi-autonomous unit, the position of Chief of the Federal Division is most analogous to the position of Chief Defender. The Chief of the Federal Division must administer and manage the personnel working within the Federal Division; coordinate a budget, submit financial proposals to, and negotiate finances with the Administrative Office of the United States Courts; and represent the office externally with federal judges, members of the office of the United States Attorney (prosecutors), federal probation and pre-sentencing offices, other federal defender offices across the country, and the legal community. Testimony of Lerner; Exhibit P-29.

18. Lerner encouraged plaintiff, as well as Jeffrey Staniels ("Staniels") and Maureen Rowley ("Rowley") to apply for the position in order to have a good pool of qualified candidates. Testimony of Lerner. The fourth candidate was Claire Rauscher ("Rauscher"). Stipulation ¶ 5. All four candidates submitted letters of application and accompanying resumes in April, 1989. Exhibits P-19, P-20; P-21; Exhibit D-5.

19. As Chief Defender, Lerner had final authority to promote individuals to positions in the various units within the Defender Association. Lerner decided to utilize a panel of four persons, including himself, to interview candidates applying for the position of Chief of the Federal Division because the Federal Division is a semi-autonomous unit. Lerner intended the panel members to provide recommendations for his ultimate decision. The final decisionmaking authority rested with Lerner. Testimony of Lerner.

20. Lerner scheduled four candidates for interviews with a panel consisting of two members of the Federal Division's Board of Trustees, Steven Madva, Esquire ("Madva") and

Donald Goldberg, Esquire ("Goldberg"); the First Assistant to the Chief Defender, Greenlee;² and the Chief Defender, Lerner. Stipulation ¶ 6; testimony of Lerner.

21. Prior to the interviews, the panel discussed the kind of information to be elicited from the candidates but did not devise a particular list of questions. Testimony of Lerner; testimony of Madva.

22. The panel members did not take notes during the interviews and did not prepare written documentation regarding each candidate's performance contemporaneously with each interview. Testimony of Lerner; testimony of Greenlee; testimony of Madva. The only writing concerning the selection process is the affidavit of Lerner dated March 16, 1992, prepared almost three years after the non-selection of plaintiff. Exhibit P-29.

23. The panel interviewed Rauscher, a white female; Staniels, a white male; Rowley, a white female; and plaintiff consecutively on April 21, 1989. Testimony of Lerner; testimony of Greenlee; testimony of Madva.

24. Rauscher had the least amount of experience with the Defender Association but performed better than expected. All other candidates had lengthier experience with the Defender Association, which made them more desirable for the position at issue. Testimony of Lerner; testimony of Greenlee.

25. In Staniels favor were his length of service with the Defender Association and his administrative experience. Lerner considered Staniels' reputation of rigidity and inflexibility, as well as his abrasive and confrontational style that he had displayed at times during his tenure at the Defender Association. Testimony of Lerner; Exhibit P-29.

26. Lerner and Greenlee testified credibly that at her interview Rowley clearly demonstrated an understanding of the changing nature of the criminal justice system and expressed a vision for the future of the Federal Division, including specific proposals as to how

2. Greenlee currently holds the position of Chief Defender.

the Federal Division should adapt to the institutional changes in the criminal justice system. Rowley exhibited knowledge about the finances, budgeting process, and operating the budget of the Federal Division and demonstrated ability to develop financial projections. Testimony of Lerner; testimony of Greenlee.

27. Rowley had acted as the supervisor of clinical students at the Defender Association, worked as an adjunct professor developing the litigation skills of students at Temple University School of Law, and served as a supervisor of certified law students at Women Against Abuse, Domestic Abuse Clinic. Testimony of Greenlee; Exhibit P-21. Rowley served on a board at La Salle University, involving her in budget and finance issues. Testimony of Greenlee.

28. Rowley had a reputation as a polished negotiator with excellent interpersonal skills. Exhibit P-29; testimony of Lerner. Greenlee had worked with Rowley for several years and considered her impressions of Rowley as a "people person," with the ability to maneuver within the system when making her recommendation. Testimony of Greenlee.

29. Matthews is a well-experienced, excellent trial lawyer and trial strategist. Testimony of Lerner; testimony of Greenlee.

30. At the interview Matthews showed no real interest in the integral administrative issues confronted by the Chief of the Federal Division. Plaintiff appeared annoyed and impatient when asked about the managerial aspects of the position, giving short abrupt answers and sighs. Testimony of Lerner; testimony of Greenlee.

31. When asked how he would change the Federal Division, Matthews proposed that the Federal Division adopt a more adversarial and confrontational position within the federal criminal justice system. Given the institutional changes occurring with the implementation of the federal sentencing guidelines and the important and profound roles of the United States Attorney, the probation, and the pre-sentencing offices, Lerner and Greenlee believed that Matthews' notions for change were antithetical to the best interest of the Federal Division. Testimony of Lerner; testimony of Greenlee.

32. The panel members considered the resumes, interviews, and personal knowledge of the candidates in order to make their recommendations. After the interviews, the panel members informally ranked their preferences of the candidates for the position of Chief of the Federal Division as follows:

Lerner: Rowley, Staniels, Matthews, Rauscher

Greenlee: Rowley, Staniels, Rauscher, Matthews

Madva: Staniels, Rowley, Rauscher, Matthews

Goldberg: Staniels, Rowley, Rauscher, Matthews

Testimony of Lerner; testimony of Greenlee; testimony of Madva.

33. Although Rowley had less trial experience than Matthews and Staniels, Lerner considered factors in addition to trial experience: knowledge of the budget and finances, ability to relate to persons inside and outside the Defender Association, a vision for the future of the Federal Division. Testimony of Lerner. Based upon these criteria utilized by the panel members and the Chief Defender in their decisionmaking process, I find as a fact that Rowley possessed the qualifications to perform the job of Chief of the Federal Division.

34. Madva and Greenlee testified credibly that race did not play a role in their decisionmaking and their recommendations to Lerner, and Lerner testified credibly that race did not play a role in his ultimate selection of the person to become Chief of the Federal Division. Testimony of Madva; testimony of Greenlee; testimony of Lerner.

35. Lerner selected Rowley for the position of Chief of the Federal Division on May 1, 1989. Stipulation ¶¶ 7 & 8; testimony of Lerner.

36. Lerner called plaintiff to inform him of his non-selection. Lerner provided no reasons to plaintiff as to why he was not selected. Testimony of Matthews.

37. Having heard the credible testimony of three of the panel members that tremendous skill as a trial lawyer, which Matthews' indisputably possessed, was not the only basis for comparison among the candidates and that Matthews did not meet the expectations of the

position with regard to administrative and managerial adeptness, knowledge of the budget and finances, and foresight as to the future course for the Federal Division, and having found that Lerner made his decision upon consideration of these legitimate factors and without regard to the minority race of plaintiff, I find as a fact that plaintiff has failed to prove by a preponderance of the evidence that his minority race played a role in the decisionmaking process for the selection of Chief of the Federal Division on May 1, 1989.

38. As well, I find as a fact that plaintiff has failed to prove by a preponderance of the evidence that the defendant determined to not select plaintiff for the position of Chief of the Federal Division because of race based animus or discriminatory intent.

Conclusions of law³

21. Plaintiff brought this suit against the Defender Association for discriminatory conduct based upon race in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"). Having found that plaintiff Matthews has properly brought his claims of race discrimination under Title VII, this Court has jurisdiction over the matter. 28 U.S.C. § 1331.

22. Having found that plaintiff is an African American, that plaintiff was qualified for the position of Chief of the Federal Division but did not receive the promotion, and that Lerner selected for promotion a white individual, Matthews has satisfied the prima facie case of race discrimination under Title VII. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Josey v. John R. Hollingsworth Corp., 996 F.2d 632 (3d Cir. 1993).

23. Having found that the Defender Association utilized a panel to consider each applicant's qualifications based on paper documents and an interview of each applicant and having found that the members of the panel considered several legitimate nondiscriminatory

3. To the extent that these conclusions of law include findings of fact or mixed findings of fact and conclusions of law, those findings and conclusions are hereby adopted by this Court.

factors and based on those factors three panel members informally ranked plaintiff as number four and one panel member informally ranked plaintiff as number three out of four total applicants prior to the ultimate selection for promotion, and having further found that the ultimate decisionmaker participated on the panel during the interviews and considered several legitimate nondiscriminatory criteria, defendant has articulated a legitimate nondiscriminatory explanation for the non-promotion of Matthews.

24. Having found that the defendant, acting through members of the panel and Chief Defender Lerner, did not consider race during the selection process for the position of Chief of the Federal Division in May, 1989 and did not act with discriminatory intent in its decisionmaking process, plaintiff has failed to show that the legitimate factors considered in the promotion selection were a pretext for race discrimination and that the non-selection of plaintiff was based on illegal discriminatory animus. See St. Mary's Honor Ctr. v. Hicks, 113 S. Ct. 2742, 2747 (1993); Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994).

Verdict

Having found that the panel members who provided recommendations for the selection of candidates to the position of Chief of the Federal Division in May, 1989 did not consider race in making their recommendations and that the ultimate decisionmaker, Benjamin Lerner, did not consider race in the decisionmaking process or act with discriminatory intent against plaintiff, I conclude that the claim of race discrimination by Matthews against the Defender Association must fail. Accordingly, my verdict is in favor of the Defender Association.

An appropriate Judgement follows.

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THURGOOD MATTHEWS,	:	CIVIL ACTION
	:	
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v.	:	
	:	
THE DEFENDER ASSOCIATION OF	:	
PHILADELPHIA,	:	
	:	No. 94-CV-2442
Defendant.	:	

FINAL JUDGMENT

AND NOW, this 1st day of August, 1997, after a non-jury civil trial and based upon the foregoing findings of fact, conclusions of law, and verdict, **JUDGMENT IS HEREBY ENTERED** in favor of defendant The Defender Association of Philadelphia and against plaintiff Thurgood Matthews.

LOWELL A. REED, JR., J.