Religion in the Public Workplace

Regulation and Accommodation

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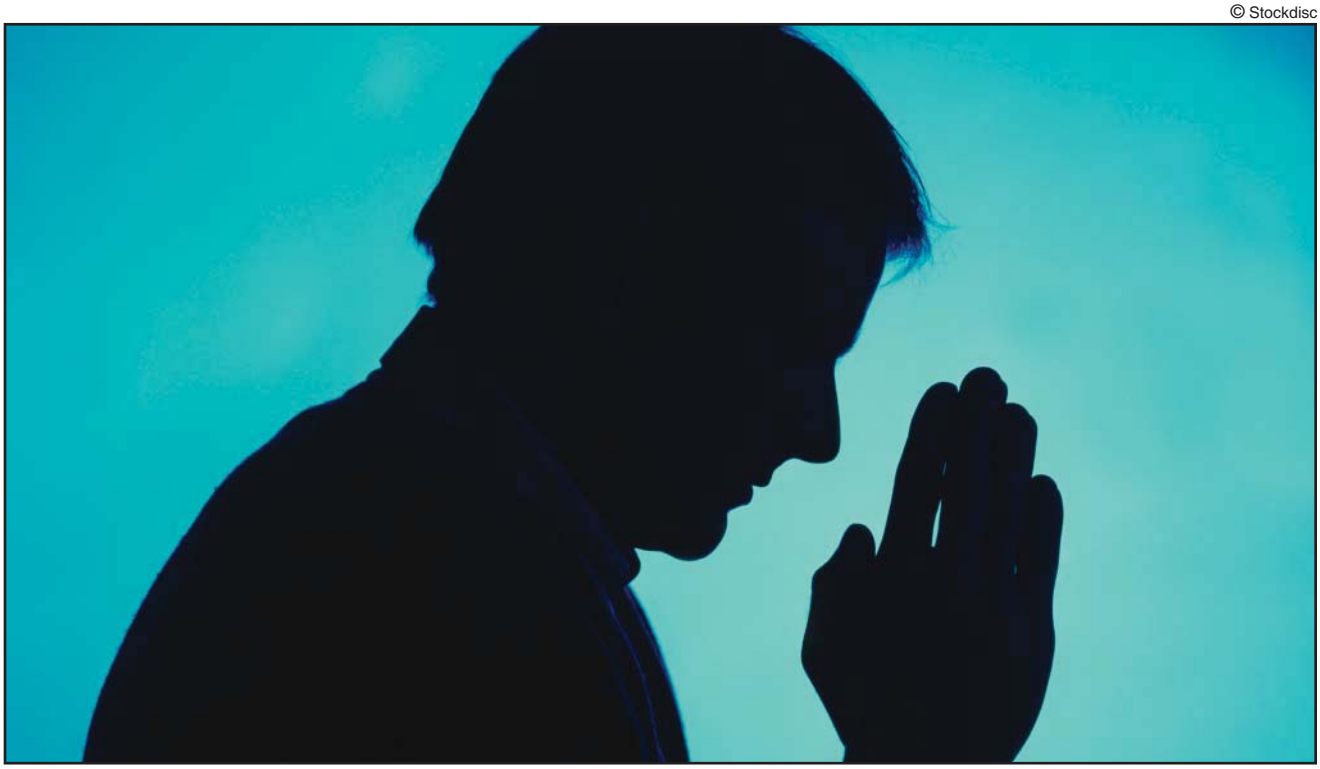

Law enforcement is a unique occupation in many ways. The majority of law enforcement officers wear a uniform while working; many have grooming standards and conduct regulations to which they must adhere; some have sworn to uphold laws with which they do not necessarily agree. For example, the federal Free Access to Clinic Entrance, or FACE, law criminalizes attempts to interfere with a woman's access to an abortion clinic. Enforcing the laws also is, by its very nature, a job requiring continuous staffing—24 hours a day, 7 days a week, 365 days a year. These unique aspects of the profession sometimes cause personal conflicts with individual employees' religious beliefs. For example, what happens when a uniformed patrol officer feels it is a religious duty to violate the department's ban on lapel pins by wearing a Christian cross lapel pin or when a group of Muslim male officers violate a department's "no facial hair" policy by growing beards as required by their religion? What about the captain who refuses to assign officers to maintain order at the sight of an abortion clinic protest because his Catholic faith frowns upon abortion? Finally, how should a department handle a potential scheduling nightmare when its officers raise objections to shift assignments conflicting with their Sabbaths or days of worship? This article addresses

these issues and raises awareness of the myriad legal provisions that should govern handling them.

FIRST AMENDMENT: FREEDOM OF RELIGION

Because law enforcement entities necessarily are part of federal, state, or local governments, they must adhere to constitutional limits and mandates, as well as to relevant legislation relating to religion. In a recent First Amendment freedom of speech case involving an assistant district attorney, the U.S. Supreme Court pointed out that the First Amendment invests *public* employees with certain rights.[1] Therefore, law enforcement executives must be mindful of the First Amendment's freedom of religion[2] provision when dealing with employees of different faiths.

Uniforms/Grooming Standards

Uniforms are almost as much a part of the law enforcement culture as they are a part of the military culture. As such, policies and restrictions regarding the wearing of them are almost universally upheld. When a department has strict rules concerning the adornment of its uniform, an individual's ability to display a religious item on it may be curtailed. While the assertion of a First Amendment-protected religious right raises the legal bar for law enforcement departments in these cases,[3] courts typically find little sympathy for those individuals who find themselves in this predicament. In *Daniels v. City of Arlington, Texas*,[4] George Daniels, a 13-year veteran of the police department challenged his department's refusal to allow him to wear a small, gold cross pin on his uniform. Daniels wore the pin "as a symbol of his evangelical Christianity"[5] while working in a plainclothes position with the department, and he continued to wear it after reassignment to a uniformed position. The police department in Arlington, as part of its general orders, had a uniform policy that read "No button, badge, medal, or similar symbol or item not listed in this general order will be worn on the uniform shirt unless approved by the police chief in writing on an individual basis."[6] Daniels requested specific allowance, pursuant to this general order, to wear the cross pin on his uniform from the police chief at that time. The chief refused permission but offered several possible accommodations to resolve the situation, including 1) wearing a cross ring or bracelet instead of the pin; 2) wearing the pin under his uniform shirt or collar; or 3) transferring to a nonuniformed position where he would be allowed to wear the pin on his shirt.[7] Daniels declined all of the possible solutions and was fired for insubordination. In upholding his dismissal for violating the

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uniform policy, the Fifth Circuit Court of Appeals confirmed the district court's determination that "[a] police officer's uniform is not a forum for fostering public discourse or expressing one's personal beliefs."[8] Rather, the appellate court concluded that "[a] police department does not violate the First Amendment when it bars officers from adorning their uniforms with individual adornments, even when those decorations include symbols with religious significance."[9] In reaching this conclusion, the court pointed out that the "no-pins policy serve[d] a legitimate governmental purpose in the context of uniformed law enforcement personnel, and Daniels undoubtedly ha[d] myriad alternative ways to manifest this tenet of his religion."[10]

While law enforcement agencies may not receive the almost unbridled deference from courts that the military gets when restricting uniform adornments,[11] the Supreme Court typically has afforded a great deal of deference and latitude when it comes to the internal administration, including grooming policies, of law enforcement departments. In a 1976 case before the Supreme Court,[12] a law enforcement agency's regulation of hair styles worn by its male members was at issue. Though not challenged on religious grounds, the Court's reasoning for upholding the restriction against the Fourteenth Amendment[13] liberty challenge often is cited in First Amendment cases.[14] Namely, the Court recognized that "[t]he promotion of safety of persons and property is unquestionably at the core of the state's police power, and virtually all state and local governments employ a uniform police force to aid in the accomplishment of that purpose. Choice of organization, dress, and equipment for law enforcement personnel is a decision entitled to the same sort of presumption of legislative validity as are state choices designed to promote other aims within the cognizance of the state's police power."[15] The Court went on to say that the choices regarding uniform issues, grooming standards, and equipment issuance "may be based on a desire to make police officers readily identifiable to the public, or a desire for the esprit de corps which such similarity is felt to inculcate within the police force itself,"[16] and that either of those justifications is sufficient to withstand Fourteenth Amendment scrutiny.

> ***...the First Amendment will not allow a law enforcement officer to refuse a lawful order to carry out an assignment because it conflicts with his religion.***

While recognizing that courts generally afford wide latitude to law enforcement executives in running their departments, there is no proverbial rubber stamp when it comes to internal policies. Several police departments have or have had policies restricting male officers from wearing facial hair of any kind. Because certain religious faiths expect or require males to grow beards, these restrictions have been challenged based on First Amendment grounds. Because of religious principles involved, restrictions must withstand exacting scrutiny.[17] Some policies have not stood up to the exacting scrutiny.

In *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*,[18] two devout Sunni Muslim police officers challenged the Newark, New Jersey, Police Department's requirement, in place since 1971, that male officers shave their beards. The officers challenged the restriction on a First Amendment basis because "[t]he refusal by a Sunni Muslim male who can grow a beard...is a major sin."[19] In their challenge to the beard ban, the officers pointed out that the department

made exemptions for medical reasons, typically because of a skin condition called folliculitis barbae, but refused to make exemptions based on religious beliefs.[20] The department attempted to withstand the challenge to its no-beard policy, even in light of the medical exemptions, by contending that it wanted to "convey the image of a 'monolithic, highly disciplined force' and that '[u]niformity [of appearance] not only benefit[ted] the men and women who risk their lives on a daily basis, but offer[ed] the public a sense of security in having readily identifiable and trusted public servants.'"[21] The department also asserted that "permitting officers to wear beards for religious reasons would undermine the force's morale and esprit de corps."[22] The Third Circuit Court of Appeals rejected the department's arguments and struck down the no-beards provision as applied to the Muslim officers. The Third Circuit determined that because the department granted exemptions for nonreligious reasons but would not grant an exemption based on religious grounds, heightened scrutiny of the denials was triggered. The court concluded that the policy simply could not withstand that scrutiny. It is worth noting that the court only applied the heightened scrutiny standard because the exemption had been made based on secular (medical) reasons. The department's stated reasons for denying the religious exemption request did not satisfy heightened scrutiny. It is arguable that safety concerns—for example, the need for achieving a snug fit when wearing a gas mask—would satisfy the heightened scrutiny applied in this situation. However, these same safety concerns may dictate against *any* exemptions being made to the facial hair restriction, and it was only because of the previous exemption that heightened scrutiny was applied to the denial of the subsequent, religion-based exemption request.

> ***When scheduling issues arise, what certain employees want (or think is required) is examined on a case-by-case basis.***

Job Performance/ Assignments/Scheduling

Challenges to certain assignments based on those assignments conflicting with religious ideals rarely are successful. When a challenge does succeed, it is typically because of statutory provisions, such as those found in Title VII of the Civil Rights Act of 1964, and not because of any obligation imposed upon employers by the Constitution. When an FBI agent lost his job because of his refusal to fulfill an assignment that conflicted with his religious beliefs, the Seventh Circuit Court of Appeals pointed out that "[a]fter *Employment Division v. Smith*,[23] any argument that failure to accommodate [the agent's] religiously motivated acts violates the free exercise clause of the *First Amendment* is untenable."[24] The appellate court then went on to address the challenge from a statutory standpoint.

The Supreme Court's *Employment Division v. Smith*[25] decision concerned the denial of state unemployment benefits to individuals who lost their jobs because of their ingestion of peyote for sacramental purposes at a ceremony of their church.[26] The use of peyote was in violation of Oregon state law,[27] which led to job termination and the subsequent denial by the state of unemployment benefits. The affected church members argued that the denial was in violation of their First Amendment rights. In its holding against the challengers, the Supreme Court pointed out that the "free exercise of religion means, first and foremost, the right to believe and profess

whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all 'governmental regulation of religious *beliefs* as such.'"[28] However, the court went on to point out that its decisions "have consistently held that the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).'"[29] Likewise, the First Amendment will not allow a law enforcement officer to refuse a lawful order to carry out an assignment because it conflicts with his religion.[30]

Denials of employee requests to have certain days off or to work particular shifts based on religious faith also are frequently challenged. These requests do not have to be honored based on any constitutional obligation for the same reasons employers are not required to allow employees to refuse certain assignments. The employee may be more successful making this request based on certain statutory language contained in Title VII, rather than on any affirmative obligation imposed by the First Amendment.[31]

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's religion.[32] This antidiscrimination statute also contains a reasonable accommodation provision, placing an affirmative duty on employers to reasonably accommodate an employee's or prospective

employee's religious observance or practice as long as doing so does not create any undue hardship for the employer.[33] It is from this standpoint that many employment practices are challenged as unlawful discrimination.

Uniforms/Grooming Standards

In the *Daniels v. City of Arlington, Texas* case,[34] the uniform policy challenged by Daniels prohibited the adornment of the police uniform with any button, badge, medal, or similar symbol or item unless approved by the police chief in writing on an individual basis. It is easy to envision how this policy could be applied in a discriminatory manner. For example, if the chief allowed an officer of one religious sect to wear an emblem of his faith but flatly refused to allow an officer of another faith to display his faith's emblem, there would appear to be discrimination based on religion in violation of Title VII. In *Booth v. Maryland,*[35] for example, a facially neutral grooming policy was challenged under both the First Amendment and under federal statutes.[36] At issue in the case was the Maryland Department of Public Safety and Correctional Services' grooming policy and its application to certain correctional officers. The challenger was a uniformed correctional officer who wanted to wear his hair in dreadlocks, in violation of the challenged regulation, to conform with his Rastafarian religious beliefs.[37] After ruling out his First Amendment argument, the Fourth Circuit Court of Appeals addressed the statutory challenge to the regulation prohibiting the dreadlock hairstyle. The appellate court remanded the case, acknowledging that if the department applied its facially neutral grooming policies in an uneven manner, a statutory violation may have occurred.[38]

Specifically, the plaintiff alleged that a Jewish employee and a Sikh employee both had been granted religious exemptions to the questioned grooming policy in the past but that his request for exemption had been denied because of his particular religion.[39] If, unlike the preceding situation, a department made no exception for any religious symbol, it would be difficult to attack the policy as being applied in a discriminatory manner; and, therefore, the same arguments used to support the policy from constitutional attack should withstand the discrimination attack under Title VII. For this reason, courts entertain more reasonable accommodation challenges to grooming and uniform standards than they do straightforward discrimination challenges. For example, the reasonable accommodation provision was used as one basis of challenge in *Daniels*.[40] The Fifth Circuit ruled against Daniels, finding that "Daniels failed to respond to the police chief's *reasonable* offers of accommodation"[41] and that the only accommodation proposed by Daniels was *unreasonable* and an undue hardship for the city.[42]

Job Performance/ Assignments/Scheduling

Title VII, particularly its reasonable accommodation aspect, also has been used by law enforcement employees to argue that they are entitled to refuse certain assignments or to receive preference when scheduling issues arise. In *Endres v. Indiana State Police*,[43] Benjamin Endres, Jr., an Indiana State Police employee, refused to report for a new duty assignment at a gambling casino. The assignment occurred because the state police designated some of its officers as Indiana Gaming Commission agents. Those agents' duties included certifying gambling revenue, investigating complaints from the public about the gaming system, and conducting licensing investigations for the casinos and their employees.[44] Upon being assigned to a particular casino, Endres notified the state police that he was willing to enforce general vice laws at casinos but that providing the aforementioned specific duties required of the gaming commission agent position would violate his religious beliefs because he would be facilitating gambling itself.[45] As an accommodation to his religious beliefs, he asked for a different assignment and was denied. He was subsequently fired for insubordination when he failed to report for work. After first acknowledging that "assignment to this position *because of* (rather than in spite of or with indifference to) [Endres'] religious beliefs would violate the Constitution,"[46] the Seventh Circuit Court of Appeals addressed the reasonable accommodation aspect of Title VII.

> ***…the inquiry ends when an employer shows that a reasonable accommodation was afforded the employee, regardless of whether that accommodation is one that the employee suggested.***

In ruling that the state police was not required to afford its employee such an accommodation, the court went to great lengths in explaining its decision.

> Endres contends that [title VII] gives law enforcement personnel a right to choose which laws they will enforce, and whom they will protect from crime. Many officers have religious scruples about particular activities: to give just a few examples, Baptists oppose liquor, as well as gambling; Roman Catholics oppose abortion; Jews and Muslims oppose the consumption of pork; and a few faiths (such as the one at issue in *Smith)* include hallucinogenic

> drugs in their worship and, thus, oppose legal prohibitions of those drugs. If Endres is right, all of these faiths, and more, must be accommodated by assigning believers to duties compatible with their principles. Does [Title VII] require the state police to assign Unitarians to guard the abortion clinic, Catholics to prevent thefts from liquor stores, and Baptists to investigate claims that supermarkets misweigh bacon and shellfish? Must prostitutes be left exposed to slavery or murder at the hands of pimps because protecting them from crime would encourage them to ply their trade and, thus, offend almost every religious faith?[47]

The court's answer, of course, was a resounding no for logical reasons. First, "[j]uggling assignments to make each compatible with the varying religious beliefs of a heterogenous police force would be daunting to managers and difficult for other officers who would be called on to fill in for the objectors."[48] Second, the court recognized that "[i]t is difficult for any organization to accommodate employees who are choosy about assignments; for a paramilitary organization the tension is even greater."[49] Finally, "agencies such as police and fire departments, designed to protect the public from danger may insist that *all* of their personnel protect *all* members of the public—that they leave their religious (and other) views behind so that they may serve all without favor on religious grounds."[50] Based on these reasons, the Seventh Circuit concluded that "Endres ha[d] made a demand that it would be unreasonable to require any police or fire department to tolerate,"[51] and, thus, his firing was lawful.

When scheduling issues arise, what certain employees want (or think is required) is examined on a case-by-case basis. One instructive case for law enforcement agencies is *Beadle v. Hillsborough County Sheriff's Department*.[52] Aston Beadle was a member of the Seventh Day Adventist Church who became a member of the Hillsborough County, Florida, Sheriff's Detention Department after completing the required 11-week training period at the Corrections Recruit Academy. Beadle, as a Seventh Day Adventist, did not engage in secular labor during his Sabbath—a period lasting from sundown Friday to sundown Saturday.[53] Beadle did not notify his employer of this restriction until he had completed the academy and was scheduled to work during the time frame that conflicted with his religious beliefs. Responsible for securing the safety of the Hillsborough County prison, the Detention Department naturally operated 7 days a week, 24 hours a day, year round. To satisfy this staffing need, the department employed a "neutral, rotating shift system."[54] Beadle requested permanent days off in deviation of the department's scheduling system. The department rejected this request but did notify Beadle that he was free to arrange for voluntary shift swaps with other employees. To assist in this effort, the department provided Beadle with a roster sheet and allowed him to advertise his need for swaps during daily roll calls and on the department's bulletin board. Further, the department allowed Beadle to request the use of sick days, vacation time, and compensation time if he was not able to arrange for shift swaps.[55] On one occasion when Beadle was unable to swap shifts and his request for leave was denied,[56] he simply failed

to report to work. On another occasion, "Beadle abandoned his post during the middle of his shift, leaving two other deputies alone to supervise an area of dangerous inmates."[57] Ultimately, Beadle was fired over this attendance/performance issue. When Beadle challenged his termination as a violation of Title VII, the Eleventh Circuit Court of Appeals had to decide whether the sheriff's department had satisfied its obligation to reasonably accommodate Beadle.

The appellate court first noted that the phrases *reasonably accommodate* and *undue hardship*[58] are not defined in the language of Title VII, and, "[t]hus, the precise reach of the employer's obligation to its employee is unclear under the statute and must be determined on a case-by-case basis."[59] Next, the court pointed out that the "Supreme Court has provided some guidance by generally defining 'undue hardship' as any act that would require an employer to bear greater than a 'de minimus cost' in accommodating an employee's religious beliefs."[60] Additionally, the Supreme Court has "stated that compliance with Title VII does not require an employer to give an employee a choice among several accommodations nor is the employer required to demonstrate that alternative accommodations proposed by the employee constitute undue hardship. Rather, the inquiry ends when an employer shows that a reasonable accommodation was afforded the employee, regardless of whether that accommodation is one that the employee suggested."[61] Applying these guidelines to the matter before it, the Eleventh Circuit found that the sheriff's department had done all it was required to do under Title VII.

Various courts have analyzed different factors when determining whether certain accommodations are reasonable or, conversely, when they impose an undue hardship on the employer.

As stated in the *Beadle* opinion, an employer's obligation to reasonably accommodate an employee must be determined on a case-by-case basis.[62] Various courts have analyzed different factors when determining whether certain accommodations are reasonable or, conversely, when they impose an undue hardship on the employer. Among those factors have been the length of time involved in the desired accommodation;[63] the availability of replacements, depending on the amount of advance notice given by the employee seeking the accommodation;[64] the cost of hiring additional employees;[65] the cost of paying premium wages for overtime;[66] the difficulty in securing qualified replacements for specialized skills;[67] the effect on workforce morale of anticipated or actual complaints of favoritism from other employees;[68] and the number of employees requiring religious accommodations at one time.[69] It is obvious from a review of the various factors that courts must look to the nature and size of individual employers (or departments) to determine whether a possible accommodation is reasonable or poses an undue hardship.

CONCLUSION

Often, people say that religion and politics are delicate subjects. The situation truly can become volatile when the workplace is added into the mix. The First Amendment gives people the freedom to engage in religious expression in this country. Title VII prohibits religious discrimination and requires employers to provide reasonable accommodations for religious reasons. Because governmental employers are required to abide by both the Constitution and the

Civil Rights Act of 1964 (and, therefore, Title VII contained in that legislation), law enforcement agencies need to be familiar with the provisions of each. This article has illuminated some of the contentious issues disputed between employers and their individual employees, all in the name of religion.✦

Endnotes

[1] *Garcetti v. Ceballos*, 126 S. Ct. 1951, 1959 (2206) (emphasis added.)

[2] U.S. Const. amend. I, in pertinent part, states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof."

[3] For a broader discussion of uniform issues and the various legal challenges asserted and standards applied to tattoos, grooming standards, and other forms of body art (such as piercings), see L. Baker, "Regulating Matters of Appearance," *FBI Law Enforcement Bulletin*, February 2007, 25-32.

[4] 246 F.3d 500 (5th Cir. 2001), *cert. denied*, 122 S. Ct. 347 (2001).

[5] *Id.* at 501.

[6] *Id.*

[7] *Id.* at 501-502.

[8] *Id.* at 502-503, quoting Judge Terry R. Means, U.S. District Court for the Northern District of Texas (unpublished opinion).

[9] *Id.* at 507.

[10] *Id.* at 505.

[11] In *Goldman v. Weinberger*, 106 S. Ct. 1310 (1986), a commissioned officer in the U.S. Air Force who was an Orthodox Jew and ordained rabbi, contended that the Air Force's restriction on his wearing a yarmulke while in uniform violated his First Amendment right to religious expression. In upholding the Air Force's ban on the yarmulke, the Supreme Court acknowledged that its review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society.

[12] *Kelley v. Johnson*, 96 S. Ct. 1440 (1976).

[13] U.S. Const. amend. XIV, § 1, in pertinent part, states "nor shall any State deprive any person of life, liberty, or property, without due process of law.

[14] *See, e.g., Daniels v. City of Arlington, Texas*, *supra* note 4; *U.S. Department of Justice, I.N.S., Border Patrol, El Paso, Texas v. Federal Labor Relations Authority*, 955 F.2d 998 (5th Cir. 1992); *INS v. FLRA*, 855 F.2d 1454 (9th Cir. 1988).

[15] *Supra* note 12, at 1445-1446.

[16] *Id.* at 1446.

[17] *Supra* note 3.

[18] 170 F.3d 359 (3rd Cir. 1999), *cert. denied*, 120 S. Ct. 56 (1999).

[19] *Id.* at 360.

[20] *Id.*

[21] *Id.* at 366 (quoting from appellant's brief).

[22] *Id.* at 366.

[23] 110 S. Ct. 1595 (1990).

[24] *Ryan v. U.S. Department of Justice*, 950 F.2d 458, 461 (7th Cir. 1991) (emphasis added).

[25] *Supra* note 23.

[26] *Id.* at 1597.

[27] *Id.*, referring to Ore.Rev.Stat. § 475.992(4) (1987).

[28] *Id.* at 1599 (emphasis in original) (quoting *Sherbert v. Verner*, 83 S. Ct. 1790, 1793 (1963).

[29] *Id.* at 1600 (quoting United States v. Lee, 102 S. Ct. 1051, 1058, n. 3 (1982) (J. Stevens, concurring in judgment).

[30] *Ryan*, *supra*, note 24.

[31] *See, e.g., Beadle v. Hillsborough County Sheriff's Department*, 29 F.3d 589 (11th Cir. 1994).

[32] 42 U.S.C.A. § 2000e-2.

[33] 42 U.S.C.A. § 2000e(j).

[34] *Supra* note 4.

[35] 327 F.3d 377 (4th Cir. 2003).

[36] 42 U.S.C.A. §§ 1981 and 1983.

[37] *Supra* note 35, at 379.

[38] While the statutory challenge in Booth was not based on a Title VII violation, the appellate court allowed the case to continue while recognizing that the challenge could have been brought under Title VII.

[39] *Supra* note 35, at 380-381.

[40] *Supra* note 4, at 506.

[41] *Id.* (emphasis added).

[42] *Id.*

[43] 349 F.3d 922 (7th Cir. 2003), *cert. denied*, 124 S. Ct. 2032 (2004).

[44] *Id.* at 924.

[45] *Id.*

[46] *Id.* (citing *Personnel Administrator of Massachusetts v. Feeney*, 99 S. Ct. 2282 (1979)).

[47] *Id.* at 925.

[48] *Id.*

[49] *Id.* at 926 (quoting *Ryan v. U.S. Department of Justice*, 950 F.2d 458, 462 (7th Cir. 1998)).

[50] *Id.* (emphasis in original) (citing *Rodriguez v. Chicago*, 156 F.3d 771 (7th Cir. 1998) (C.J. Posner, concurring in judgment).

[51] *Id.* at 927.

[52] 29 F.3d 589 (11th Cir. 1994), *rehearing en banc denied*, 40 F.3d 391 (11th Cir. 1994), *cert. denied*, 115 S. Ct. 2001 (1995).

[53] *Id.* at 590.

[54] *Id.* at 591. The system, as explained in FN 2 of the opinion, assigned employees to work one of three overlapping

9.6-hour shifts each day. The day shift was from 7:00 a.m. until 4:36 p.m.; the evening shift was from 3:00 p.m. until 12:36 a.m.; and the midnight shift was from 11:00 p.m. until 8:36 a.m. Each deputy received 2 consecutive days off during the week. Work assignments rotated forward (i.e., day to evening; evening to midnight) every 2 months, while days off rotated backward (i.e., Friday-Saturday to Thursday-Friday; Thursday-Friday to Wednesday-Thursday) every 28 days.

[55] *Id.*

[56] *Id.* The department acknowledged that it did not always approve Beadle's requests for use of leave because the jail was understaffed and the granting of some of these requests could have jeopardized jail security.

[57] *Id.*

[58] *Supra* note 33.

[59] *Supra* note 52, at 592 (citing *United States v. City of Albuquerque*, 542 F.2d 110, 114 (10th Cir. 1976), *cert. denied*, 97 S. Ct. 2974 (1977)).

[60] *Id.* (citing *Trans World Airlines, Inc. v. Hardison*, 97 S. Ct. 2264 (1977)).

[61] *Id.* (citing *Ansonia Board of Education v. Philbrook*, 107 S. Ct. 367, 371 (1986).

[62] *Supra* note 59.

[63] *See, e.g., Padon v. White*, 465 F.Supp. 602 (S.D. Tex. 1979).

[64] *See, e.g., Willey v. Maben Mfg., Inc.*, 479 F.Supp. 634 (N.D. Miss. 1979), *Wangsness v. Watertown School District No. 14-4 of Codington County, S.D.*, 541 F. Supp. 332 (D.S.D. 1982).

[65] *See, e.g., Brener v. Diagnostic Center Hospital*, 671 F.2d 141 (5th Cir. 1982).

[66] *See, e.g., Trans World Airlines, Inc. v. Hardison*, 97 S. Ct. 2264 (1977).

[67] *See, e.g., Reid v. Memphis Pub. Co.*, 521 F.2d 512 (6th Cir. 1975).

[68] *See, e.g., Draper v. U.S. Pipe & Foundry Co.*, 527 F.2d 515 (6th Cir. 1975), *Murphy v. Edge Memorial Hospital*, 550 F. Supp. 1185 (M.D. Ala. 1982).

[69] *See, e.g., E.E.O.C. v. Blue Bell, Inc.*, 14 Fair Empl. Prac. Cas. (BNA) 1013, 1976 WL 13383 (W.D. Tex. 1976).