No. 24965 State of West Virginia ex rel. Stan Farley, Sheriff of Putnam County, v. Honorable O. C. Spaulding, Judge of the Circuit Court of Putnam County, and the County Commission of Putnam County

Starcher, Justice, concurring:

I fully concur with the majority opinion and with Justice Workman's concurrence. I write separately to address several practical matters.

First, under the majority opinion, there is no prohibition against court security personnel being non-deputy sheriff employees of the sheriff's department, instead of being direct county commission employees. This arrangement has worked successfully in a number of counties, including for many years in my home county of Monongalia.

Second, it is up to circuit judges, county commissions, county sheriffs, and the Legislature if necessary, to work together to implement practical and efficient systems to deliver efficient courtroom and courthouse security and bailiff services. If conflicts arise, circuit courts and this Court should not be tolerant of parties who have not shown a willingness to compromise and work cooperatively.

Third, to do our part to facilitate this cooperation, I think this Court needs to consider modifying or eliminating *Trial Court Rule* V's requirement that "deputies" be present while court is in session. This frequently works a hardship on already over-worked sheriffs' offices -- particularly in light of the need for "road deputies." Modification or elimination of Rule V would allow increased flexibility for appropriate

services to be provided by both deputy and non-deputy personnel, whether employees of the sheriff or the county commission.

Fourth, I note that in addition to the authorities cited in the majority opinion, a sheriff's duty to provide bailiff services is established in *W.Va. Code*, 50-1-14(a) [1992] (magistrate courts); *W.Va. Code*, 48-4-10(d) [1993] (family law masters); *Adm. R. Mag. Ct.* 3(a) (magistrate courts); and *R. Pract. & Proc. Fam. L.* 17 (family law masters).

But I question whether the sheriff's power and duty to provide true "bailiff" services necessarily translates into a requirement that -- if the sheriff in fact does not provide those services -- they cannot be otherwise provided.

In the instant case, of course, the sheriff apparently asserts a willingness and ability to provide bailiff services. But that is probably not the case everywhere. If the sheriff does not provide such services, one alternative to legally compelling the sheriff to do so is to employ others to provide the services. I do not see this route as being foreclosed by the majority opinion. (Another alternative, of course, is to do nothing. But the majority opinion, Justice Workman's concurrence, and the dissent all ably point out why "doing nothing," in the court security area, is something that this Court will not tolerate.)

Finally, I note that the dissent raises several points that I understand to be legitimate concerns -- but I ultimately think that these concerns are not legally persuasive. For example, I do not think that the giving of arrest, firearms, and use of force powers to non-deputy county employees working as security personnel would be seen by the

dissenters as a violation of the separation of powers or as an unconstitutional private "police force," if the security personnel were guarding a county garage or office building.

As Justice Workman's concurrence notes, ultimately this case turns on its facts. An excellent system of court marshals in Putnam County has been put into place, filling a vacuum created by a longstanding failure to meet court security needs by the sheriff's office. This is a statewide problem. Despite the dissent's arguments, the existing law is certainly not *clear* that this new system is, in its entirety, impermissible. Therefore, this Court has taken the least intrusive approach and permitted the new system to operate within what the majority sees to be as the clear constraints of the law. I join in this approach.