

United States District Court
Western District of Arkansas

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Lori Schmidt and Stephanie Guenther

Plaintiffs,

-against-

Tim Helder, personally, Rick Hoyt, personally,
Randy Osburn, personally, and the
Washington County Sheriff's Department,

Defendants.
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Complaint

Jury Trial Demanded

File No. 09-5250

Plaintiff, through their undersigned counsel, hereby complain:

Parties, Jurisdiction, Venue and Administrative Exhaustion

1. Plaintiff Sergeant Lori Schmidt is a Sergeant in the Washington County Sheriff's Department.
2. Plaintiff Corporal Stephanie Guenther is a Corporal in the Washington County Sheriff's Department.
3. Sheriff Tim Helder is the Sheriff of Washington County, Arkansas. He is an elected official and the senior officer of the Washington County Sheriff's Department. He is being sued in his individual capacity.
4. Rick Hoyt is a Major in the Washington County Sheriff's Office. He is being sued in his individual capacity.
5. Randy Osburn is formerly a Captain in the Washington County Sheriff's Department. He is being sued in his individual capacity.

6. This is a sexual harassment hostile work environment case brought pursuant to 42 USC § 1983, the Arkansas Civil Rights Act of 1993 (“ACRA”), Ark. Code Ann. § 16-123-101 (Michie Supp. 1999), and Arkansas common law.

7. On or about September 7, 2009, plaintiffs filed charges of discrimination with the Little Rock office of the Equal Employment Opportunity Commission (“EEOC”). Sergeant Schmidt was assigned charge number 493-2009-01429 and Corporal Guenther was assigned charge number 493-2009-01428.

8. Once plaintiffs have exhausted their administrative remedies they intend to bring claims under Title VII of the Civil Rights Act of 1964, as amended in 1991, 42 U.S.C. §2000e, et seq. (“Title VII”), or if the EEOC brings such claims, to intervene as intervenors.

9. This Court has jurisdiction of plaintiffs’ federal civil rights claims pursuant to 28 U.S.C. §1343.

10. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. §1367.

11. Venue is proper for plaintiffs in this District based on the general venue statute, 28 U.S.C. Sec. 1391(b).

Introduction

12. Plaintiffs Sergeant Schmidt and Corporal Guenther worked in the Detention Center, a part of Sheriff Helder’s Office. Captain Osburn was a very senior supervisor at the Detention Center, to whom plaintiffs reported, although there were other officers between them and Captain Osburn.

13. Captain Osburn sexual harassed plaintiffs. Sergeant Schmidt made a written complaint. Sheriff Helder, Major Rick Hoyt and others conducted interviews which were taped and transcribed. The witnesses corroborated the sexual harassment allegations.

14. Instead of finding that the allegations were corroborated Sheriff Helder and Major Hoyt found just the opposite, in a written report, which amounted to a whitewash and a cover up.

15. Sheriff Helder went on to exact retaliation against both plaintiffs after learning they planned to bring suit.

16. There is evidence that Sheriff Helder's Office is tolerant of sexual misconduct. Sergeant Schmidt is aware that direct eye witnesses have been interviewed who corroborated that her harasser Captain Osburn and a male Lieutenant spied on female inmates being strip searched. Plaintiffs are unaware of any disciplinary action having been taken against the male Lieutenant, or of a referral to the appropriate criminal authorities. Moreover, the interviews of these corroborating witnesses have been withheld from Sergeant Schmidt.

17. In addition, Sheriff Helder tolerated Captain Osburn holding so called wife swapping parties among his officers at his home, including officers junior to the harasser. This became disruptive. A fistfight nearly broke out at the Sheriff's Office over infidelity issues. This is not an environment in which female employees, deputies and officers feel comfortable complaining about sexual harassment.

Plaintiffs Sexual Harassment Complaint

18. On or about March 30, 2009 Sergeant Lori Schmidt filed a written sexual harassment complaint against her Captain, Randy Osburn.

19. The complaint alleged that Captain Osburn had inappropriately made remarks about intimate details of Sergeant Schmidt's living arrangements with her former husband that were unrelated to work, and five other specific allegations:

- Capt. Osburn asked me how that was going to work. I explained that I stay in an upstairs bedroom and he stays in his room downstairs, and that it is in the best interest of our child and financially. Capt. Osburn told me that Gary (ex-husband) slept around on me when we were married so why would I think things be different now. Capt. Osburn then asked me how it was going to work, was I going to have men upstairs and he have women downstairs and we would just turn the music up loud.
- About two weeks ago I was in the lieutenants office with Capt. Osburn and Lt. Sabrina Mason. Deputy Mandy Ruth and Sgt. Kathy Stanton (Mandy's mother) were scheduled to have breast augmentation the following day. Capt. Osburn started discussing the number of cc's Mandy and Kathy were getting in each breast. Kathy's was like 720 and slightly more in the other one, and Mandy's was about 760. Capt. Osburn then asked Lt. Mason how many cc's she had put in hers when she had hers done. Capt. Osburn then called his secretary Stacy Beam in the lieutenants office and asked how many cc's she had gotten when she had her boobs done. Capt. Osburn went on to state that sometimes bigger women need more cc's to increase the size of their boobs.
- A couple of months ago, in January I believe, Capt. Osburn was telling me about a rumor going around that Deputy Tina Donahue and Deputy Jennifer McKnight were having a "thing". Capt. Osburn made several comments regarding the sexual preferences of each female. Capt. Osburn then started acting like he was playing an air guitar, singing for lack of better words, "I'm a "coochy" licker song."
- Capt. Osburn tells a story in the Lieutenants office that when Mark Thorns (former Washington County Deputy now a Greenland Police Officer) was a virgin he hooked up with this old girl. That one night he hooked up with this old girl and had intercourse with her all night. After that he put chocolate syrup in her "pussy" and drank it out like chocolate milk. Thomas then put peanut butter on

her and ate it like a Reeses Peanut Butter cup. Capt. Osburn has made several references since telling the story to Lt. Mason in my presence about if she wanted a Reeses or some chocolate milk. [He also] told this story in January or February. Lt. Sabrina Mason and Lt. Chris Reeser were witnesses. Lt. Mason and I left the office and spoke of how disgusting it was.

- “Sex Tree”, Capt. Osburn drew Sgt. Misty Charles a tree with branches of who she could and could not have sex with at the county. She told me of the incident after it happened because she was upset.
- When Gary (ex-husband) called the Sheriff’s Office to have deputies come out to his house for a domestic. Capt. Osburn the next day came into the Lieutenants Office and asked if I had heard about the incident. Capt. Osburn stated in a high pitched female voice, “Oh my wife beat me up, my wife beat me up.” He then stated who does that, what an idiot (referring to Gary). Sgt. Misty Charles was a witness.

The Washington County Sheriff Is Tolerant of an Openly Sexually Hostile Work Environment

20. Sheriff Helder’s Office was tolerant of sexual conduct involving officers and their subordinates, which resulted in an excessively permissive work environment.

21. It was common knowledge among the Sheriff’s employees that Captain (then Sergeant) Randy Osburn hosted so called wife swapping parties at his home attended by junior officers and deputies of the Sheriff’s Office. In one instance one of the attendees became infatuated with another attendee’s wife and sent her flowers, which provoked a confrontation at the Sheriff’s Office.

22. It was common knowledge at Sheriff Helder’s Office that the confrontation was about infidelity resulting from a swapping party.

23. Allowing this environment to exist sent the message to employees that even outrageous sexual conduct would be tolerated.

24. Sherrif Helder tolerated abusive workplace sexual conduct in other ways. On information and belief, Captain Osburn and Lt. Chris Reeser were caught by Sergeant Donna Smith spying on females prisoners being strip searched. The basis for this allegation is that this is what Sergeant Donna Smith told Sergeant Schmidt she personally witnessed.

25. Sergeant Smith witnessed Captain Osburn watching a video screen in his office area. It is a small area and Lt. Chris Reeser was in it was well situated where he had a view of the screen.

26. On the screen were female prisoners being strip searched. The video camera they were watching is located in a hallway.

27. Prisoners are ordinarily strip searched in the showers where there are no cameras.

28. Sherif Helder learned about this because Sergeant Schmidt reported it when she was interviewed in connection with her sexual harassment complaint. Although on information and belief Sergeant Schmidt's allegations have been corroborated, Lt. Chris Reeser is still employed by Sheriff Helder.

29. The basis for this allegation is that the report and conclusions of the investigation, discussed below, apparently conclude that Captain Osburn admitted this conduct, and Sergeant Smith told Sergeant Schmidt that she witnessed it personally.

30. Such spying could constitute the D felony of Voyeurism under Arkansas law, which as a sex crime can carry mandatory registration as a sex offender. Plaintiffs are unaware that either Lt. Reeser or Captain Osburn has been referred for prosecution.

31. Plaintiffs are also unaware of any Office of Professional Conduct investigation of Lt. Reeser.

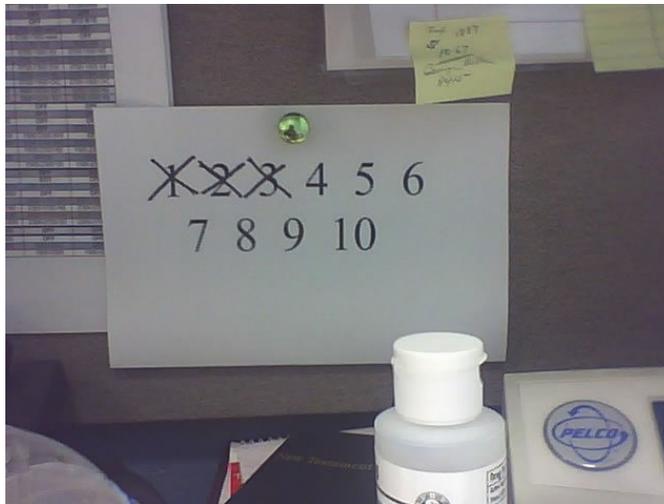
32. Sheriff Helder's apparent failure to act on such sexually abusive conduct sends the message that such conduct is acceptable at work.

33. Also indicative of an abusive environment at Sheriff Helder's Office is the fact that senior officers in the Sheriff's Office, including defendant Rick Hoyt—who, ironically, was assigned to investigate plaintiffs' claims—have seen a photo of plaintiff Corporal Guenther's breast, which Captain Osburn obtained without her knowledge, and shared with other officers.

34. It was common knowledge among Sheriff's employees that Captain Osburn used vulgar sexual speech and engaged in inappropriate conversations of a sexual nature openly in the Sheriff's Office. At the time of Schmidt's complaint it had become common practice for Sheriff's employees to engage in sexually inappropriate speech which was knowingly tolerated and practiced by officers.

35. Since all of this sexual misconduct took place in the presence of senior officers or was carried out by senior officers more junior officers understood that it was acceptable conduct at the Office and complaining about it could end their careers.

36. Also, Captain Osburn had made it clear that he was looking for reasons to fire employees who reported to him, including Sergeant Schmidt. On his desk, he kept a list on a Kleenex box of numbers who represented employees he had targeted; and he crossed off the three he had already fired. He also kept the following sign on his bulletin board which conveyed the same message:



37. Captain Osburn repeatedly threatened Sergeant Schmidt with termination even though she had a 13-year history with Sheriff Helder and his predecessor of above-average performance reviews.

38. Although Sergeant Schmidt understood that complaining about Captain Osburn's sexual harassment would destroy her career, make her a pariah and subject her to retaliation, she was so offended by the accumulation of horrific sexual harassment that she made a formal written complaint on March 30, 2009.

The Investigation Produces Incontrovertible Evidence of a Sexually Hostile Work Environment

39. Sheriff Helder began the investigation of Sergeant Schmidt's complaint personally. He searched Captain Osburn's office and called and questioned him. He also assigned Major Rick Hoyt and Lt. Scott Young to interview witnesses to the incidents, including interviewing Captain Osburn.

40. The interviews were recorded and transcribed. The witness interview transcripts were provided to plaintiff, as was the report and conclusions. The actual

witness interview transcripts, report and findings are available for download at:
www.sexualharassmentlawyerblawg.com/WitnessInterviewsAndReport.zip

41. The relevant portions of the interview transcripts are set forth below. The following are direct quotes.

42. The interviews substantiated virtually all of the sexual harassment allegations made by Sergeant Schmidt.

43. The evidence established unequivocally that just as Sergeant Schmidt said in her complaint, Captain Osburn spoke to plaintiff in front of her supervisors, Lt. Dan Livermore and Lt. Chris Reeser, about problems he imagined could arise if Sergeant Schmidt and her former husband Gary became intimately involved with other partners while living in the same home. Captain Osburn conceded to Major Hoyt that he might have mentioned the radio but denied it was to cover the sounds of sexual activity:

Osburn: she says, well we're just room mates; I'm living upstairs and he's living downstairs. . . . And I said, well what if Gary gets a girlfriend and she comes to the house, is she going to be comfortable with you being upstairs? You know, or if you fall in love and get a boyfriend, is he going to be happy you're living with Gary? . . . if I did say something about [turning up the] radio, I never was talking about them and their sex life or them having sex or anything else.

44. In Lt. Livermore's interview he recalled Captain Osburn saying:

Livermore: is that going to work...how's that going to work, you know, if he brings people over to date or something like that.

45. Lt. Reeser recalled:

Reeser: the Captain said I don't understand...explain what your reasoning is for that...how's that going to work, you know? What if you meet somebody or he meets somebody how's that going to work with you living upstairs

46. Sergeant Schmidt alleged in her complaint that there were open discussions in the office about how many CCs of breast augmentation material women

were receiving in surgery, Captain Osburn asked that question of Lt. Sabrina Mason, and Captain Osburn asked his secretary Stacy Beam how many CCs she received and commented that bigger women need more.

47. Ms Beam remembered the conversation with Captain Osburn just as Sergeant Schmidt described it:

Young: Captain Osburn started discussing the number of cc's that Mandy and Kathy were getting in each breast.

Beam: Yeah, I remember that.

Young: Kathy's was like 720 maybe slightly more in the other...Mandy's was about 760. So Captain then asked Lt. Mason how many cc's she had put in hers when she had hers done. Do you remember him asking her that?

Beam: Uh huh.

Young: Ok. Then did he call you in and ask you how many cc's you had?

Beam: Yeah.

48. Captain Osburn made it clear there were graphic discussion in the office concerning the details of six breast augmentation surgeries in the presence of supervisors, some of which got "out of hand:"

Osburn: It's just that you'll walk into a situation where there's...it's being discussed between two people who...I mean we've had about six people?

But it's back in the administration offices and the only really people back there are supervisors.

because of the way the offices are set up, they're talking all the way across one end to the other and it's normally, it might get out of hand sometimes

49. During his interview of Captain Osburn Major Hoyt took note of the fact that Captain Osburn's behavior plainly constituted sexual harassment. He asked Captain Osburn: "Do you think it's a prudent idea for supervisors, male and female, and the other people around the office to be even talking about these things in retrospect?"

50. Lt Mason also recalled inappropriate comments regarding the sexual preferences of Deputies Tina Donahue and Jennifer McKnight, as Schmidt had alleged:

Young: Osburn made several comments regarding sexual preferences of each female. . . . Do you remember talk like that or anything?

Mason: McKnight and Donahue.

Young: Yeah. Do you remember any kind of...him discussing them?

Mason: Yeah. I think I do.

51. Captain Osburn acknowledged telling Lt. Mason he had evidence that he thought showed that the female deputies were lovers:

I did tell them that they needed to keep an on them because I was seeing them hanging out at the smoke shack a lot together, and then, it was rumored...umm...somebody came and told me, I don't even remember who, it might have been Sgt. Stanton that uhh...they were lovers. And I says, well we need to keep an eye on that because they are spending an awful lot of time at the smoke shack. They're spending a lot of time on break together. Umm...and that was pretty much...I was telling the lieutenant that.

52. The investigation revealed evidence that Captain Osburn and other officers had talked graphically about a disgusting perverse sexual escapade involving a former employee to and among numerous employees and officers of the Sheriff's department, although it clearly caused some female officers distress.

53. The interview of Lt. Mason began by the investigator, Lt. Scott Young, telling her *he had heard the story* about a sheriff's department employee, and *he* found it offensive:

Young: there is another here that's pretty bad about...uh...Osburn telling the story about Mark Thomas and a girlfriend of his and come chocolate milk? I mean, I've heard this story.

54. Lt. Mason's testimony made it plain that Captain Osburn thought nothing of discussing his own sexual encounters and for years had engaged in intentionally offensive sexual speech before groups of officers, and that his comments were repeated around the office frequently:

Mason: I don't know how we got on the subject of that...but...umm...he started talking about how...umm...*people he had hooked up I think is*

what it got started from and uh...he brought up Mark Thomas' name and, of course, I heard that story years ago, and...uh...they started...Foster was there, actually...they started talking about that and uh...Mark Thomas' name come up...well, I reached over and got my MP3 player IPOD and put it in my ear because I knew it was coming...well, it was fixing too, and I was like I know you're not going to go there...that's disgusting...I know you're not going to do that. Well, they started talking...well, I just put them in and you know, and when I too my... but I'm going to smoke and out the door I went and so, it's been an ongoing joke, since then they'll say stuff about chocolate milk and peanut butter and I'm like...ughh...ughh... because that's really gross. And I remember hearing that from years ago.

55. Lt. Mason recalled repeating the offensive sexual story to Sergeant Schmidt herself:

Mason: I was like, they're so disgusting and I was telling her about the story and so, that's how she's getting tied into that. . . . And it was nothing...it's just cop talk is all it is, you know. I was like that's just...ughh. And so, I...I told her that story.

56. Lt. Mason also stated that she believed that she was told the explicit sexual story in order to cause her to be nauseated:

Mason: you have to understand...the four men and me. They like to gross me out and that's what it was. No, I did not feel uncomfortable I was just like...that's disgusting...because I knew where that...because I'd heard that story before and that really is and you have to admit that's really gross.

57. Captain Osburn stated explicitly that he and others had been discussing the details of the incident in the office for dozens of years:

Osburn: It was well known. . . .

Hoyt: And how long has this story been making the rounds?

Osburn: Circulating? Oh, lord, for years...since he worked for the County.

Hoyt: And how many years has that been?

Osburn: I don't know, '94, '95 probably?

58. Captain Osburn acknowledged the "sex tree" conversation took place as Sergeant Schmidt claimed, however, when asked whether he drew an actual tree to show

with whom Sergeant Charles was permitted to have sex, he stated “I don’t recall...I’m always doodling on something but I don’t recall”

59. Sergeant Charles, however, confirmed Schmidt’s allegation, recalling: “he wrote...drew out a tree and said, you know, everybody above I couldn’t have sex and everybody below I couldn’t have sex with”

60. Captain Osburn expressly acknowledged another of Schmidt’s assertions, reporting that “I used a high-pitched female voice and says oh, my wife beat me up...my wife beat me up...and...uhh...there’s a possibility I said that [“pussy”] because I thought that was pretty funny.” Another witness who was interviewed by Major Hoyt heard Captain Osburn say “that sounds like a pussy to me.”

61. The investigation also revealed that Captain Osburn had in effect been sexually stalking plaintiff Corporal Guenther through her friend, Jerah Kern, and that he had somehow obtained a photo—of a tattoo on her breast, about which he apparently developed an obsession—which she had shared only with Ms Kern.

62. Major Hoyt, who conducted the investigation with Lt. Young, told Corporal Guenther’s husband Justin that he had seen the photo, and described the tattoo accurately to him.

63. When interviewed about Sergeant Schmidt’s allegations, Corporal Guenther told Lt. Young that during a conversation with Captain Osburn about why she had not received a promotion, Captain Osburn enquired whether she was having lesbian sex with a former deputy and where on her body she had tattoos. Corporal Guenther informed Lt. Young that Captain Osburn had made a comment about her breasts that

made her uncomfortable, and had asked a former deputy with whom Corporal Guenther is friends, Jerah Kern, about Corporal Guenther's "boobs."

64. The Sheriff's Office also learned that Corporal Guenther had told Sergeant Charles about the comments Captain Osburn had made about her breasts "being large and if they were natural or not."

65. Corporal Guenther shared an incident with Lt. Young that had recently happened with Captain Osburn's wife, Corporal Kayle Osburn. Corporal Guenther and Corporal Osburn had been discussing coloring their hair together. Corporal Osburn informed Corporal Guenther that the only way the two of them could have their hair colored was if they did it topless together.

66. When interviewed by Major Hoyt, Captain Osburn recalled:

Osburn: The only thing that I spoke to Stephanie [Corporal Guenther] about it was...umm...Stephanie and I and Justin were walking across the deal and she said hey, did your wife...anyway, it got brought up about...and we were coming across by ODR, all three of us, were coming through the doors together and she says, uh...I told her we could just all do it in bikinis and I laughed and said something about umm...that'd be something or something and I turned and come this way and they turned and went that way. But I didn't up to that point even know what our conversation went any where but...

67. Major Hoyt plainly recognized this constituted sexual harassment:

Hoyt: Ok. Well, in retrospect when you hear this stuff now does it make you kind of question yourself as to what conversations at work are appropriate and what or not? I understand what you're saying but my point is that doesn't Stephanie Guenther work for you?

Osburn: Yes.

Hoyt: Further down the chain?

Osburn: Yes, further down the chain, yes.

Hoyt: Ok, so, I mean is that a prudent thing for a person in your position to be talking to a subordinate about her being in a bikini...

Osburn: But there really wasn't a conversation, it was a comment and another comment made in a parting of the ways, I mean, if we had stopped

in the hallway and made plans to do to this or something...I guess I just didn't think about it.

Hoyt: I'm just trying to figure out where the boundaries are.

68. Corporal Guenther also informed Lt. Young that Ms Kern had emails and information which would implicate Captain Osburn in workplace sexual misconduct.

69. In fact, after the investigation began, Corporal Guenther learned that Captain Osburn had somehow obtained pictures of a tattoo on one of her breasts and showed it to other officers within the Sheriff's Office, and that Major Hoyt had seen the photo.

70. Major Hoyt called Corporal Guenther's husband Justin's personal phone from his official phone and informed him that he had seen a picture of Guenther's breast. Major Hoyt then described the tattoo design and color in detail.

**The Cover up: Defendants Conclude the Charges are “Not Sustained,” and
Withhold Evidence**

71. Having received testimony from senior officers, including the harasser, which established that Sergeant Schmidt's allegations were true—and merely the tip of the iceberg—it was Sheriff Helder's and Major Hoyt's duty to issue a report concluding that sexual harassment at the Sheriff's Office was carried out openly and notoriously for years by Captain Osburn and others.

72. That Major Hoyt had already concluded that Captain Osburn had engaged in sexual harassment was clear from his questioning of Captain Osburn, when he asked, “Do you think it's a prudent idea for supervisors, male and female, and the other people around the office to be even talking about these things in retrospect,” [concerning Captain Osburn asking women about their “boob jobs” in an open office setting in front of supervisors], and “is that a prudent thing for a person in your position to be talking to a

subordinate about her being in a bikini...” The other investigator, Lieutenant Young, had conceded to Lieutenant Mason that he had heard the gross sexual story Captain Osburn told and that it was offensive.

73. Incredibly, rather than concluding that the allegations had been proved, the opposite happened. The report, issued under Major Hoyt’s name, but on information an belief approved by Sheriff Helder, concluded that the following allegations:

That Captain Osburn:

- inappropriately made remarks about intimate details of Sergeant Schmidt’s living arrangements with her former husband that were unrelated to work
- had graphic discussions in his office about breast augmentation surgery
- openly speculated with his colleagues whether two female deputies were having sex and ridiculed them
- frequently and over a period of dozens of years talked graphically about a disgusting perverse sexual escapade involving a former officer
- drew a sex tree that showed who a female officer was and was not permitted to have sex with in the department
- and ridiculed Sergeant Schmidt’s former husband as a “pussy.”

74. **were “not sustained.”**

75. Major Hoyt’s report stated that:

Many of Schmidt’s allegations were unable to be substantiated and others, when looked into, showed some things were taken out of context and some were unfounded.

76. If anything, Sergeant Schmidt’s allegations were modest compared to the sexually charged environment uncovered by the investigation.

77. Although it was Sergeant Schmidt who brought to Major Hoyt’s attention the allegation that Captain Osburn and Lt. Reeser spied on female inmates being strip searched, his report states that:

During the investigation, an allegation came in about misconduct on Osburn's part from *someone not connected to the original complaint*. An examination of their complaint showed the information was credible and believable.

78. The source of the allegation was Sergeant Schmidt. It appears that the report claims the source was "*someone not connected to the original complaint*" in order to avoid having to provide Sergeant Schmidt with a copy of Sergeant Smith's interview transcript, and Captain Osburn's second interview transcript, in which he apparently admitted Sergeant Schmidt's allegations.

79. If defendants had acknowledged Sergeant Schmidt was the source, then they would have had to provide her with the interview transcripts which corroborate male officers spied on female inmates while they were being strip searched. This in turn could have led to this information becoming public.

80. Voyeurism, A.C.A. § 5-16-102 can be charged as a class D felony, is considered a sex offenses under Arkansas law, and conviction may require registration as a sex offender.

81. Sheriff Helder has selectively withheld the interviews of Donna Smith and Kathy Stanton's second interview which would corroborate Sergeant Schmidt's allegations that Captain Osburn and Lieutenant Chris Reeser spied on naked female inmates. Sheriff Helder has not provided Sergeant Schmidt with a report and conclusions concerning this allegation either.

82. In other words, not providing the interview transcripts is a way of concealing from the public the evidence that male officers spied on female inmates while they were being strip searched.

83. Sergeant Schmidt was very plainly the source of the allegation. During her interview she reported the following:

Schmidt: may have one more incident out here that I've heard rumor of...instead of having the female trusties searched...you know how...three tiers ...female are on Y block upstairs...

Hoyt: Uh huh.

Schmidt: Having them strip searched in front of the camera. You may want to talk to Donna Smith about that.

Hoyt: To who? Donna Smith?

Schmidt: Donna Smith. Umm...where you hear things...

Hoyt: So you're saying Osburn has requested...

Schmidt: This is what I hear, I don't know for sure. That females be strip searched in front the camera in the hallway outside of Y block.

Hoyt: And if...if he did that you think the reason is so he can watch it because he has that camera in his office, is that why?

Schmidt: If he...

Hoyt: Or what?

Schmidt: If he ordered that, that would be...yes.

Hoyt: I mean that'd be why you'd think that right?

Schmidt: Uh huh.

Hoyt: If he didn't have that capability you wouldn't think that?

Schmidt: Why else would he have them strip searched in the hall which is totally against policy. Which I don't...I mean...I had never heard that...I wouldn't...I've never seen it done. This is just what I've heard.

Hoyt: So...so you don't know if they're searching them on camera or strip searching them on camera.

Schmidt: I know that...

Hoyt: Do we strip search people back there all the time?

Schmidt: Not in back, it's always in the shower room.

Hoyt: That's what I thought.

Schmidt: I mean, I think...we have strip searched people if we're doing shake downs or whatever but it's back in the bathroom area.

Hoyt: In a private area?

Schmidt: In a private area. We never do it in public areas.

84. Major Hoyt's report is silent on the allegation that female prisoners were being spied on nude:

At the end of the interview Lori was asked if there was anyone else that could offer any information. She mentioned that . . . *Donna Smith in Detention could have some information.*

85. Major Hoyt's report continued:

A further re-examination of Osburn's actions in a prior incident showed misconduct by Osburn.

86. Plaintiffs are uncertain what this refers to. It could be a result of Corporal Guenther telling Lt. Young to speak to Ms Kern. The interview of Ms Kern has been withheld as has the report and conclusions concerning Corporal Guenther's allegations of sexual misconduct by Captain Osburn and others, which plaintiffs believe was corroborated by Ms Kern.

87. Major Hoyt's report conceded that: "A second interview of Osburn confirmed the misconduct on both issues" which Sergeant Schmidt had brought to his attention, which would include his spying on female inmates being strip searched.

Punishing the Victims

88. Just as Sergeant Schmidt feared, because she complained about sexual harassment, she, and Corporal Guenther, have become Sheriff Helder's target for retaliation.

89. Before Sergeant Schmidt complained she was working in Detention three days a week 6:00 am to 6:00 pm, Sunday through Tuesday, plus every other Wednesday. Working days is based on seniority.

90. The complaint form she filled out asked what relief she was seeking. She stated she no longer wanted to report to Captain Osburn or Lieutenant Dan Livermore.

91. Lieutenant Livermore and Captain Osburn have been friends since 6th Grade. They worked at a number of law enforcement departments together before they worked at Washington County for Sheriff Helder. They have dinner once a week together.

92. She was given administrative leave for 5 weeks while Sheriff Helder conducted the investigation.

93. When the investigation was complete she was called to the Courthouse where she met with County Attorney George Butler. He said she would keep her seniority which allowed her to work days.

94. When she returned to work, in or about May 2009 she was again assigned to report to Lieutenant Livermore, who was extremely rude and hostile towards her.

95. She wrote an email to Major Hoyt telling him she was working in a hostile environment due to the way Lieutenant Livermore was treating her.

96. She was moved to Work Release and put on the night shift four days a week, Wednesday thru Saturday from 10pm to 8am. She was reporting to Lieutenant Boaz who reported to Captain Bell.

97. Work Release is a career dead end. It is called the “retirement home.” The work consists of checking prisoners in and out so can work for various agencies. Promotions are less common at Work Release than at other departments.

98. On or about August 6, 2009, Sheriff Helder called Sergeant Schmidt in for meeting. At the meeting he gave her a Letter of Reprimand (“LOR”). During the meeting he asked her how things were going. Sergeant Schmidt told Sheriff Helder working

nights was difficult. Sheriff Helder told her that he needed her to work nights because the other senior supervisor he had at Work Release was very ill.

99. On August 13, 2009, Joshua Friedman, counsel to plaintiffs, sent Sheriff Helder a letter advising him that plaintiffs were going to bring suit against him and his office for sexual harassment, and advising him of his legal duty to preserve evidence.

100. On or about August 17, 2009, her daughters' first day of school, Sergeant Schmidt was ordered to the evening shift at Work Release, Wednesday thru Saturday from 1:00 pm to 11:00 pm. The evening shift is the most difficult for single parents because it makes it impossible for them to see their children. Sergeant Schmidt is a single parent.

101. When Sergeant Schmidt told Lieutenant Boaz she would never see her kids on this schedule and reminded him that she had been promised she would keep her seniority, he told her this came from Captain Bell and there was nothing he could do.

102. The LOR cited alleged misconduct which occurred in March 2009 and earlier.

103. The LOR states that "[a]ny further violations of this nature will result in further disciplinary action up to and including demotion or termination of employment."

104. Plaintiffs are unaware of any other LOR being issued five months after the conduct in question.

105. The other senior supervisor at Work Release is still very ill. The reason given to Sergeant Schmidt for forcing her to work nights was pretextual. Sheriff Helder's motive for assigning her to night shift was retaliatory.

106. Sheriff Helder authorized the LOR for retaliatory reasons as well. The LOR is directly contradicted by Sergeant Schmidt's annual review dated September 21, 2009, which covers her performance for the prior calendar year. The LOR cites events which allegedly occurred during this same period. Her review states that she exceeded or met expectations in all categories of performance, and the Performance Areas Needing Improvement section was left blank.

107. If the conduct cited in the LOR was so serious that a repeat warranted termination Sheriff Helder would not have waited five months to issue it.

108. Corporal Guenther is also experiencing retaliation relating to her shift. She continues to work in Detention on a night shift. Lieutenant Livermore has been promoted to Captain Osburn's prior position as Captain in Detention.

109. Day assignments are given according to seniority among female officers. Corporal Guenther has more seniority than officers Jamie Guthary, Tiffanie Scott, and Kathy Hill who have all recently been moved from night to day shift.

110. Since participating in the investigation of Sergeant Schmidt's complaint, Corporal Guenther has repeatedly asked Captain Livermore, and Lieutenants Sabrina Mason and Anthony Foster who report to Captain Livermore, when she will be taken off of night shift and given a day assignment. They say they are working on it but have provided no explanation why less senior female officers have been given day shifts.

111. On or about August 20, 2009 Sheriff Helder gave several speeches to his officers, staff and employees which made plain his retaliatory motives. Corporal Guenther was present for one speech and Sergeant Schmidt was present for the second. The words and messages of both speeches were extremely similar. These speeches

constituted adverse action undertaken because Sheriff Helder had learned just days before that he was being sued for sexual harassment.

112. Sheriff Helder stated, with plaintiffs present, words to the effect “that there were some negative people in the organization who have not had the courage to realize this is not for them,” that they need to go somewhere else, and warned the employees to be careful of with whom they associate.

113. He further stated that he had received a letter from Joshua Friedman naming him and his office in a hostile work environment sexual harassment suit. He stated that “when we are attacked it is my job is to protect the sanctity of this office and I will defend you in a court of law or anywhere necessary,” or words to that effect.

114. He added that the employees may be getting calls from attorneys, but that he would vigorously defend them.

115. The speech had the effect of suggesting to plaintiffs’ supervisors, coworkers and subordinates that plaintiffs should leave the Sheriff’s Office, that they were attacking the Sheriff’s Office and were therefore the enemy, and that by cooperating with plaintiffs other Sheriff’s Office employees and officers would be aiding the enemy.

116. The speeches made it more difficult for plaintiffs to do their jobs. The speeches exposed plaintiffs to ridicule, undermined them and made it more difficult for them to work with their supervisors, peers and reports.

Count I

All Defendants

42 USC 1983 – Violation of Equal Protection of Laws

117. Plaintiffs hereby allege and incorporate by reference the preceding paragraphs.

118. Defendants, all, acting under color of state law, deprived Plaintiffs with reckless and/or callous indifference to federally protected rights secured by the 14th Amendment of the U.S. Constitution, as well as rights secured by 42 USCA Sec. 2000e, et seq., and in doing so were motivated by evil intent.

119. Defendants' conduct proximately caused Plaintiffs' injuries.

Count II

All Defendants

Sexual Harassment in Violation of ACRA

120. Plaintiffs hereby allege and incorporate by reference the preceding paragraphs.

121. Defendants are liable for the sexual harassment of plaintiff carried out by Captain Osburn and other officers as set forth above.

Count III

Defendants Tim Helder and Washington County Sheriff's Office

Retaliation in Violation of ACRA

122. Plaintiffs hereby allege and incorporate by reference the preceding paragraphs.

123. Defendants are liable for retaliation in violation of ACRA.

Count IV

All Defendants

Intentional Infliction of Extreme Emotional Distress

124. Plaintiffs hereby allege and incorporate by reference the preceding paragraphs.

125. Defendants' knowing toleration of sexual harassment, coverup of the sexual harassment, and retaliation against the victims, constitutes extreme and outrageous behavior which has caused plaintiffs severe emotional distress.

Count V

Defendants Tim Helder and Washington County Sheriff's Office

Negligent Retention and Supervision

126. Plaintiffs hereby allege and incorporate by reference the preceding paragraphs.

127. Defendants were aware that Captain Osburn engaged in inappropriate sexual behavior towards subordinates yet continued to employ him, causing plaintiffs' injuries.

JURY DEMAND

Plaintiffs demand a trial by a jury on all issues triable to a jury.

WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- A. Declare Defendant's conduct complained of herein to be in violation of the Plaintiffs' rights as secured by federal law and the law of the State of Arkansas;
- B. Enjoin Defendant from committing any further violations of Plaintiffs' rights as secured by federal and State law;

- C. Award Plaintiffs compensatory damages to be determined by the jury at the time of trial;
- D. Award Plaintiffs punitive damages to be determined by the jury at the time of trial;
- E. Award Plaintiffs reasonable attorneys' fees and costs, including the fees and costs of experts, incurred in prosecuting this action; and
- F. Grant such further relief as the Court deems necessary and proper.

Dated: November 10, 2009

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