

considered the matter, the Court hereby grants in part and denies in part plaintiff's motion for reconsideration.

I.

The plaintiff has helpfully summarized the Court's December 18 Order by designating the rulings contained therein as parts "A," "B," "C" and "D." The Court's rulings in parts B and D are at issue in the motion for reconsideration. The Court ruled in part B that if a deponent was not a state employee, she may be asked whether she ever applied for a state job, ever discussed employment with defendant Clinton and whether she had reason to believe that defendant Clinton knew of her interest in such employment. Plaintiff asserts, and the Court agrees, that the Court's ruling in part B should further provide that if the answer to any of these questions is in the affirmative, the plaintiff may ask the "sexual activities" question. Therefore, the motion to reconsider with respect to part B is granted.

The Court denies, however, plaintiff's motion for reconsideration with respect to part D. The Court's ruling in part D states that with respect to Jane Doe #'s 1 and 3, the state trooper nexus is insufficient alone to permit the sexual activities question because the depositions, as they now read, do not support plaintiff's allegations of a pattern or practice of sexual harassment. Plaintiff seeks reconsideration of this ruling on grounds that it would preclude plaintiff from establishing her claim for sex discrimination (as opposed to her separate claim for sexual harassment) as stated in her amended complaint. Plaintiff argues that this claim would stand whether or not she was a state employee at the time of the alleged incident on May 8, 1991, and that she should therefore be allowed to show "Defendants'

established custom, usage, habit, pattern, and practice of utilizing state troopers, payroll, time, vehicles, property, personnel, and resources to solicit sexual favors from individuals based on the fact that they are women." The President argues, however, that the plaintiff is attempting to resurrect that part of her complaint that alleged a due process claim by reincarnating that claim under the guise of the Equal Protection Clause, and that the Court should not permit the plaintiff to revamp her complaint at this date.

In allowing plaintiff to amend her complaint, the Court provided in its Order of November 24, 1997, that the amendments would not be construed as new causes of action. *See Order*, at 4-6. In this regard, the Court, by Memorandum Opinion and Order dated August 22, 1997, had previously dismissed plaintiff's claim that the defendants had violated her due process rights, reasoning in pertinent part that plaintiff's allegations (as stated in the original complaint) did not state a constitutional violation for invasion of bodily integrity. *See Opinion*, at 22-24 (citing cases). The Court reiterated this conclusion in its Order allowing plaintiff to amend her complaint, stating that any previously dismissed claims, including her due process claims, would remain that way and would not be recognized as pending causes of action. *See Order*, at 6

Plaintiff's amended complaint is essentially an assertion that defendant Clinton sexually harassed her and that he and defendant Ferguson engaged in a conspiracy to violate her constitutional right to be free from sexual harassment. The gist of this cause of action, and the theory under which all parties have been proceeding for nearly four years now, is alleged sexual harassment of a state employee by state actors under color of state law. The Court explained in its August 22 Memorandum Opinion and Order that a claim of sexual harassment

under 42 U.S.C. § 1983 generally must follow the contours of a sexual harassment claim under Title VII. *See* Opinion, at 16. This means, as correctly noted by the President, workplace harassment in the form of *quid pro quo* and/or hostile environment harassment. *See id.*

Certainly, the allegation that troopers and other state resources were used presents a particularly problematic situation with respect to discovery in this case, because the troopers were used by defendant Clinton for many purposes throughout a 24-hour day. Presumably the Governor of Arkansas is expected to use the troopers assigned to his security detail for personal as well as official purposes. Therefore, the alleged use of troopers to protect or conceal consensual sexual liaisons of the Governor and females who had no employment nexus whatsoever with the state would not be admissible to show a pattern or practice of wrongful sexual activity that would be relevant to this case unless the sexual contact was unwelcome. The Court finds that alleged unwelcome sexual contact, procured through some "trooper nexus," would be relevant and likely to lead to admissible evidence, because the situation would be arguably similar to that allegedly experienced by plaintiff.

II.

The Court stated in its December 18 Order that it would take responsibility for any confusion that may have existed with respect to this Court's previous oral rulings and, accordingly, would not sanction the defendants for any alleged violation of Fed.R.Civ.P. 30(d)(1). The Court expressed hope that its clarification would allow the depositions to proceed smoothly and in a manner consistent with the Federal Rules of Civil Procedure. The

Court hereby instructs all parties to strictly follow Fed.R.Civ.P. 30(d)(1) in the depositions that remain. This means that any objection to evidence during a deposition "shall be stated concisely and in a non-argumentative and non-suggestive manner," and without any coaching of the witness as to what previous discovery may or may not have disclosed. The parties may attempt to contact the Court to resolve a dispute if they so desire, and this Court will be perfectly willing to rule on any such objection. If, however, the Court is for some reason not available, the party objecting to the questioning may do no more than object in a manner provided by Fed.R.Civ.P. 30 and allow the questioning to proceed. If the party objecting feels the questioning is in bad faith, their recourse is to later move for sanctions. The Court will hold in abeyance any request for an extension of the discovery deadline that has or will be made depending on how the discovery process proceeds from here on out.

III.

For the foregoing reasons, the Court hereby grants in part and denies in part plaintiff's motion for reconsideration.

IT IS SO ORDERED this 9th day of January 1998.


UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON DOCKET SHEET IN
COMPLIANCE WITH RULE 58 AND/OR 79(a) FRCP
ON 1/9/98 BY VA

UNITED STATES DISTRICT COURT
Eastern District of Arkansas
U.S. Post Office & Court House
600 West Capitol, Suite 402
Little Rock, Arkansas 72201-3325

January 9, 1998

* * MAILING CERTIFICATE OF CLERK * *

Re: 4:94-cv-00290.

True and correct copies of the attached were mailed by the clerk to the following:

Robert Batton, Esq.
Attorney at Law
1414 West Main
Jacksonville, AR 72076

Bill W. Bristow, Esq.
Seay & Bristow
216 East Washington Avenue
Jonesboro, AR 72401-3185

Stephen C. Engstrom, Esq.
Wilson, Engstrom, Corum & Coulter
809 West Third Street
Post Office Box 71
Little Rock, AR 72203-0071

Kathlyn Graves, Esq.
Wright, Lindsey & Jennings
200 West Capitol Avenue
Suite 2200
Little Rock, AR 72201-3699

Robert S. Bennett, Esq.
Skadden, Arps, Slate, Meaghen & Flom
1440 New York Avenue N.W.
Washington, DC 20005

Thomas Wesley Holmes, Esq.
Rader, Campbell, Fisher & Pyke
Stemmons Place
2777 Stemmons Freeway
Suite 1080
Dallas, TX 75207

Donovan Campbell Jr., Esq.

Rader, Campbell, Fisher & Pyke
Stemmons Place
2777 Stemmons Freeway
Suite 1080
Dallas, TX 75207

James Austin Fisher, Esq.
Rader, Campbell, Fisher & Pyke
Stemmons Place
2777 Stemmons Freeway
Suite 1080
Dallas, TX 75207

David M. Pyke, Esq.
Rader, Campbell, Fisher & Pyke
Stemmons Place
2777 Stemmons Freeway
Suite 1080
Dallas, TX 75207

James McCord Wilson, Esq.
Rader, Campbell, Fisher & Pyke
Stemmons Place
2777 Stemmons Freeway
Suite 1080
Dallas, TX 75207

Robert E. Rader Jr., Esq.
Rader, Campbell, Fisher & Pyke
Stemmons Place
2777 Stemmons Freeway
Suite 1080
Dallas, TX 75207

James W. McCormack, Clerk

Date: 11/9/98

BY: Vicki Turner