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United States District Court, District of Columbia.

Bessye NEAL, et al., Plaintiffs,
v.
DIRECTOR, DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS, et al., Defendants.

Civ. A. No. 93-2420 (RCL). | Aug. 9, 1995.

Opinion

MEMORANDUM OPINION I

(FINAL JUDGMENT ON JURY VERDICTS)

Attorneys and Law Firms

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Carol Burroughs, Mark D. Back, Office of Corp. Counsel, Washington, D.C., for defendants.

LAMBERTH, District Judge.

***1** The court today issues this Memorandum Opinion I and accompanying order entering Final Judgment on Jury Verdicts. Included herein are more detailed findings of fact and conclusions of law regarding the court's discovery sanction against defendants. Separately issued today are the following opinions and accompanying orders: Memorandum Opinion II covering Equitable Relief for Individual Named Plaintiffs; Memorandum Opinion III covering Class Wide Injunctive Relief; and Memorandum Opinion IV covering Procedures for Absent Class Members.

I. BACKGROUND

This action arises under §§ 703 and 704(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e*et seq.,* and the Civil Rights Act of 1871, 42 U.S.C. § 1983. The case was tried to a jury commencing March 1, 1995; and the jury returned verdicts on April 4 and April 21, 1995.

Plaintiffs are seven current and former female employees of the Department of Corrections, and a former male employee. The eight named plaintiffs represent a class, certified by the court to consist of the following two-part membership: (a) All current and former female employees who have been employed by the Department of Corrections between April 1, 1989 and date of trial, and who were adversely affected by the practices of sexual harassment. (b) All current and former male and female employees who have been employed by the Department between April 4, 1991 and date of trial, and who have suffered retaliation for opposing such unlawful employment practices.

The District of Columbia Department of Corrections ("the Department") is an agency of the District of Columbia, employing over 4000 persons, approximately 1500 of whom are female. The Department operates seven prisons in Lorton, Virginia, and two facilities in the District, in addition to several smaller community correctional centers in the District. The Lorton facilities are Maximum, Medium, Minimum, Central, Modular, Occoquan and Youth Center. The D.C. facilities are the Central Detention Facility (CDF or "the D.C. Jail") and the Correctional Treatment Facility (CTF). Each institution is headed by a Warden (formerly an Administrator). All of the facilities and their employees are under the supervision of the Director of the Department, who was Walter B. Ridley at the time this case was filed, but who has since been succeeded by Margaret A. Moore. The Director is appointed by the Mayor of the District of Columbia, is a member of the Mayor's cabinet, and reports directly to the City Administrator and the Mayor. The Director is assisted by a Deputy Director and four Associate Directors, one for each service area of the Department: Administration, Operations, Institutions and Programs. The titles of these officials were recently changed to Executive Deputy Director and four Deputy Directors.

A brief summary of the complaint follows:

Plaintiffs alleged injuries due to a pattern and practice of sexual harassment committed by the Department against its current and former female employees, and a pattern and practice of retaliation against current and former male and female employees who opposed or complained of sexual harassment. Specifically, plaintiffs contended that the Department was culpable as to four categories of unlawful behavior: (1) Quid pro quo sexual harassment. Supervisors demanded that female employees submit to sexual advances as a condition of job benefits or to avoid

adverse job actions. (2) Sexual favoritism. Supervisors favored women who acceded to sexual overtures by offering them job benefits and opportunities, to the detriment of women who rejected those overtures. (3) Hostile environment. Supervisors and co-workers regularly engaged in offensive conduct of a sexual nature and women were treated less favorably than comparably situated men. (4) Retaliation. Employees who complained about the hostile environment, or aided and abetted complaints of sexual harassment made by others, were treated less favorably than they would otherwise have been treated.

***2** As a consequence of sexual harassment and retaliation, plaintiffs claimed severe emotional distress and loss of wages and other benefits. They sought back pay, other job benefits, and compensatory damages to redress their injuries. In addition, plaintiffs sought a declaration that unlawful practices exist at the Department of Corrections, a permanent injunction prohibiting the Department and its agents from perpetuating these practices, and a mandate that the Department conform with Title VII. Lastly, plaintiffs asked for attorneys' fees and costs.

To date, the litigation has included two successive trials before the same jury, followed by a non-jury trial. The first jury trial addressed only common issues related to class liability. The second jury trial addressed legal damages (i.e., medical expenses; pain and suffering) for the named plaintiffs. The non-jury trial addressed equitable remedies (i.e., back pay; front pay; job reinstatement; promotions; injunctive relief) for the named plaintiffs. Later proceedings will address liability and remedies as to absent class members.

II. DISCOVERY SANCTION

On November 21, 1994, this court sanctioned defendants for failing to respond to an interrogatory. The interrogatory had requested names of persons with knowledge of allegations in the complaint, and a summary of the knowledge each person had. For their abuse of the discovery process, defendants were barred from calling non-party fact witnesses. After full briefing by the parties, on January 25, 1995, the court denied the defendants' motion for reconsideration. The court now sets forth its findings of fact and conclusions of law on the basis of which it issued the sanction, and subsequently denied the defendants' request for reconsideration.

A. Findings of Fact

1. This was an extraordinary case because the defendants repeatedly committed acts of retaliation against the class agents while the case was pending. It was therefore necessary to proceed promptly to trial so that plaintiffs' claims could be fully ventilated. Should their claims prove meritorious, plaintiffs could obtain permanent protection from the court. The court advised the parties repeatedly that it would bring the case to trial at the earliest possible time, and that the parties should staff the case accordingly.

2. Defendants were admonished by the court on several occasions that they could not expect to be granted unlimited extensions of time, and that they must comply with the deadlines set by the court.

> a. On March 28, 1994 the court suggested that counsel for the defendants speak to her supervisor about augmenting the staffing of this case. She was cautioned that staffing deficiencies would not be permitted to stall the progress of the litigation.
>
> b. On April 26, 1994 the court inquired whether Ms. Burroughs had spoken to her supervisor about staffing; she indicated that she had. In conference with counsel for the parties after the status conference, the court re-emphasized that Corporation Counsel must properly staff the case, which required involvement of more than the single lawyer then assigned.
>
> ***3** c. On June 30, 1994 the following exchange transpired:
>
> MS. BURROUGHS: The government is going to have another attorney enter his appearance shortly in this case, but he already has a fairly booked schedule. We have an extremely --
>
> THE COURT: Well, then, why bother?
>
> MS. BURROUGHS: Well --
>
> THE COURT: Why don't you get somebody that has a schedule that can comply with the expedited discovery that I've ordered in this case because this case is going to trial very shortly?
>
> MS. BURROUGHS: Your Honor, there has been no change in the government's resources since this case was filed.
>
> THE COURT: Well, that's why the government is going to end up losing this case, isn't it? If the government doesn't listen to one thing I tell them in this case, they're headed down a rocky road, I'll tell you, and I don't know how I can make it any plainer. I know I've made it plain to you. I don't know if your supervisors aren't listening to anything you're saying or what's happening over there. The dates he notes for deposition, you either show or don't show,

> but no protective order is going to be granted. You just note your dates, Mr. Kaplan. If they don't show, you proceed without them.

Transcript at 5.

> d. At an October 17, 1994 meeting in chambers with counsel,
>
> Ms. Burroughs again claimed insufficient time to complete depositions. The court warned: "I told your boss to take you off other cases. As long as the Department does this retaliatory conduct you have to expect to work full time on this."

3. On September 21, 1994 plaintiffs served their first set of interrogatories upon defendants, including Interrogatory 2:

> Identify all persons who have knowledge of or evidence that concerns the matters set forth in paragraphs 23 through 251 of the First Amended Complaint and, for each such person, describe the matters concerning which such person has knowledge or evidence.

4. On September 20, 1994 plaintiffs served notice to take a deposition under Rule 30(b)(6) on October 4 to inquire into a similar, though not identical area. Defendants objected to the 30(b)(6) deposition. At a status conference on October 6, 1994, in open court, defendants gave assurances that they would make a timely response to Interrogatory 2 on October 24. Plaintiffs then withdrew the notice of deposition, expressly stating their reliance on defendants' representations.

5. On October 24, 1994, the date on which the responses were due, the defendants filed a motion requesting an enlargement of time until November 7, 1994. Plaintiffs did not oppose this extension, but in a response filed October 28, 1994, requested that the court condition the grant of additional time upon a ruling that, absent good cause shown, defendants be precluded from calling at trial any witnesses not identified by November 7th. The court issued such an order on Wednesday, November 2, 1994.

6. Defendants belatedly argue, in their proposed findings on the discovery sanction, that the November 7, 1994 cutoff set by the court was unnecessarily restrictive given that trial was not to commence for nearly four months. This contention, whether or not valid, is untimely. It should of course have been raised prior to the establishment of the November 7 date, or at worst, in defendants' motion to reconsider the discovery sanction. However restrictive the November 7 deadline, defendants had more than ample notice. Moreover, they were granted two extra weeks to comply -- beyond the 30-day period for interrogatory responses specified in Fed. R. Civ. P. 33(b)(3), and beyond the October 24 date the defendants had assured the court at the October 6 status conference that they would meet.

***4** 7. Defendants also object that the November 2 order setting the cutoff was not received by defendants until November 7, the same day as the deadline. This is a spurious argument given the repeated warnings. Indeed, it was defendants' own motion of October 24, 1994, the original cutoff date, that requested an enlargement until November 7. And even if the order was not received until November 7, its content and cutoff were known by defendants in advance. It is this court's standard practice to notify the parties in person or by telephone when an order specifies an imminent deadline. The court is confident that its standard practice was followed in this instance. Defendants would have been told that the order was signed on November 2 and was available for immediate pickup at the Clerk's office if defendants did not wish to await the mail. It is quite telling that defendants do not say they didn't know about the order on November 2; they just say they didn't receive it until November 7. Indeed, they fail to acknowledge that the plaintiffs had suggested the court add the condition to the November 2 order when they filed their papers on October 28.

8. The close of fact discovery was ultimately set for December 16, 1994.[1]

9. By waiting until after discovery had been ongoing for some time and after the class representatives had been deposed, the plaintiffs could reasonably have expected defendants to have collected the information sought by the interrogatory.

10. Defendants did not request a further enlargement of time or any other relief from the November 2 order. However, their response to plaintiffs' interrogatory, even after the enlargement of time was granted, was served on November 10, not November 7 as the court ordered.

11. The defendants' response to Interrogatory No. 2, in its entirety, was as follows:

> The identities of all persons known to defendants having knowledge of or evidence that concerns the matters set forth in paragraphs 23 through 251 are contained in the complaint itself, documents produced in discovery, and the deposition testimony of the numerous witnesses given in

> deposition or scheduled for deposition. Defendants will supplement this response if individuals, not identified in discovery documents or depositions, become known to them.

12. No objection was asserted to Interrogatory No. 2. Now, in their proposed findings on the discovery sanction, defendants protest as follows: Because Interrogatory No. 2 pertained to paragraphs 23 through 251 of the Amended Complaint, it was actually 229 separate interrogatories rolled into one -- delayed for tactical reasons until just before close of discovery. The court observes that defendants may not proffer new objections under the guise of proposed findings. Moreover, as previously noted, defendants received a two-week grace period within which to respond to Interrogatory No. 2. The interrogatory was served on September 24, 1994; a response was finally due 44 days later on November 7. But for the court's dispensation, Rule 33(b)(3) would have been less generous. It states: "The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories."

***5** 13. Defendants' response did not identify a single witness. At a status conference on November 17, the court addressed the defendants' inadequate response to this and other interrogatories. Defendants insisted that their answer was fully responsive and that if they had withheld the identification of any witnesses, it was because they sought to protect work product. No objection based on work-product privilege was asserted in the response. In any event, the interrogatory did not seek work product.

14. After argument, the court ordered that, pursuant to the November 2 order, and absent a successful motion for reconsideration, defendants were barred from calling any non-party fact witnesses at trial.

15. Several weeks later, on December 12, 1995, four days prior to the close of the discovery period (other than for experts), defendants filed a motion for reconsideration, and served plaintiffs with a supplemental answer to Interrogatory 2, listing approximately 1000 names.

16. In addition to being unacceptably tardy, the supplemental response was both over-inclusive and under-inclusive of the information that was sought by the discovery request.

17. The discovery was under-inclusive because, for many of the persons identified on the list, it failed to contain important identifying information requested by the interrogatory. There were, for example, no addresses and telephone numbers supplied for any of the persons identified in the response. For approximately 60 names, the defendants failed to offer *any* identification. Even where some information was furnished, there was no indication in many cases of the part of the complaint to which the person's knowledge related.

18. The supplemental response was also inexcusably over-inclusive. The list included at least two persons who were deceased, several persons who were identified simply as "time and attendance officer," "shop steward," or "elevator operator." Former supervisors from previous employers of non-party witnesses were also included on the list.

19. In defendants' December 12, 1994 motion for reconsideration, they argued that: (a) it was not possible to have completed the work involved in compiling a list of names on time; and (b) they were unaware (although they do not state how they *could* be unaware) that they had to identify persons by name.

20. At the subsequent hearing on their motion, the District argued a completely different theory. For the first time, defendants claimed to have overlooked the court's November 2 order addressing the possible ban on witnesses. That new excuse for their failure to comply with the discovery request was inconsistent with their prior explanation, thereby casting doubt on counsel's credibility on this issue.

21. At the hearing, the District explained that the names were collected by paralegals who mechanically culled through the transcripts of depositions and other discovery documents. No judgment was exercised by counsel, despite the contrary requirement of Rule 26, in preparing the supplemental response.

***6** 22. The defendants failed to explain why they could not have furnished this information earlier, in a timely response to the discovery request. At the time the list of 1000 names was produced, four days remained in the period allotted for discovery. The defendants' ploy, if tolerated, would have required a substantial delay in the trial in this action, exposing the class agents to more months during which they could be at risk of retaliation by the defendants.

23. On January 25, 1995, in denying defendants' motion for reconsideration, the court explained:

> I repeatedly stressed to the defendants the importance of the defendants' proper staffing of this case because of the need for a prompt trial date. I want to cut off the repeated need for preliminary injunction hearings, and I want to stop the defendants' ongoing misconduct which I have repeatedly found through preliminary injunction

> hearings in this case, and it is not my intention to allow the defendants to escape the consequences of their dilatory actions in discovery by getting out from under my November 2nd very clear order that they identify those people by November 7th or suffer the pain of not being able to call fact witnesses at trial.
>
> Their action five weeks later in giving a thousand names was a perfect demonstration of how not to comply with my order ....

Transcript at 3-4.

24. In its order of February 22, 1985, in refusing to postpone the trial, the court further elaborated:

> Defendants' oral motion at the pretrial conference for a continuance of the trial is denied. The court has repeatedly advised defendants that this is a firm trial date because of ongoing retaliation against plaintiffs that has caused the court to issue various preliminary injunction and contempt orders. The court has repeatedly advised defendants that they were not staffing this case properly in terms of counsel and deadlines being ignored. All of the court's entreaties have apparently fallen on deaf ears as this court has witnessed the most shocking example of irresponsible conduct during its tenure on the bench.

25. According to defendants, any shortfall in staffing this case was not attributable to irresponsibility, but rather to limited resources and competing demands -- especially in light of the extraordinary discovery that the court permitted.[2]Defendants are critical of the penalties levied against them for not having the resources to keep pace.[3]It is, however, notable that this case was originally filed on November 24, 1993 -- more than 15 months prior to start of trial. Plaintiffs filed their motion for class certification on July 19, 1994 -- about 7-1/2 months prior to start of trial. The breadth and depth of this litigation should have been obvious to the Department from the outset. Defendants' querulous lament over the scope of discovery is at best disingenuous.

26. The court's findings today deal exhaustively with the warnings the District received and the leeway it was granted. The court has not counted how many extensions of time were granted to defendants, but ultimately a court has to have discretion to set some deadlines and enforce them. Government defendants cannot place themselves above the law and make themselves unaccountable for their conduct because they are too busy to meet judicial deadlines. Whatever priorities the District has elected to establish for dealing with this type of litigation, it will have to endure the repercussions. Plaintiffs cannot be held responsible for the city's financial plight, understaffing, mismanagement, or other assorted problems -- especially since the pace of this lawsuit was driven by defendants' recurring retaliation against class representatives.

***7** 27. There were, to be sure, burdens imposed upon defendants' counsel; but they were self-inflicted -- traceable to mis-allocation and under-allocation of legal resources. Moreover, staffing problems were exacerbated by the Department's preoccupation with opposing preliminary injunctions and rationalizing contumacious acts of its employees. Distraction by these peripheral issues, rather than full attentiveness to discovery, goes a long way toward explaining counsel's inability to meet the discovery deadlines imposed by the court in this case.

B. Conclusions of Law

Defendants were forewarned of the consequences of their failure to comply with the discovery request, but nonetheless failed to reply responsively. The defendants refused to name even a single person in response to the interrogatory and failed to interpose any objection thereto. Having opted not to identify any persons, defendants must abide by the consequences of their decision.

It is no excuse that the District of Columbia may have denied its Corporation Counsel the wherewithal to properly defend this lawsuit. The Ninth Circuit, for example, upholding a district court order precluding the government from introducing any evidence on the issue of damages, acknowledged that counsel's failure to provide timely answers to interrogatories was probably the result of serious understaffing. *United States v. Sumitomo Marine & Fire Ins. Co., Ltd.,* 617 F.2d 1365, 1370 (9th Cir. 1980). Still, the court concluded that only severe sanctions would deter flagrant disobedience and callous disregard of court orders. *Id.* Indeed, "if the cause of the government's failures to comply with court orders is understaffing, then perhaps harsh measures will encourage those charged with funding and allocating personnel among the Justice Department's various offices to take ameliorating action."*Id.*

Defendants' initial response to Interrogatory 2 was clearly inadequate, as the court found at the status conference on November 17. No witnesses were identified by name. Instead, the defendants simply referred to the more than 60 depositions taken at that time, the additional 51 or so depositions that had been noticed for deposition but not yet taken, and the six or seven file drawers full of documents produced by defendants to date.

It is well established that a party may not respond to an interrogatory seeking the identity of specific persons with a general reference to all documents produced in the case. *Monroe v. Ridley,* 135 F.R.D. 1, 3-4 (D.D.C. 1990) (referring to two-inch stack of documents without specifying which papers contained relevant information was not adequate response to interrogatory requesting that defendant identify persons who counselled plaintiff or discussed termination). Defendants' inadequate response was not merely a failure to respond to plaintiffs' request for discovery, but a clear failure to obey an explicit order of this court.

The supplemental response filed by defendants was further evidence of bad faith. As described above, the list of over 1000 names was mechanically culled from all documents and was vastly over-inclusive. At the same time, the response failed to identify the matters concerning which each person had knowledge.

***8** The sanction imposed here was appropriate to the circumstances surrounding the defendants' infraction and well within the broad discretion which Rule 37 of the Federal Rules of Civil Procedure has entrusted to this court. In fact, Rules 37 (b)(2) & 37(d) contemplate the very misconduct in which the defendants have engaged. In pertinent part, these Rules provide:

> If a party ... fails to obey an order to provide or permit discovery, ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> (A) An order that ... designated facts shall be taken to be established for purposes of the action in accordance with the claim of the party obtaining the order;
>
> (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
>
> (C) An order ... dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;
>
> ....

Fed. R. Civ. P. 37(b)(2)

> If a party ... fails ... to serve answers or objections to interrogatories submitted under Rule 33, ... the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs (A), (B), and (C) of subdivision (b)(2) of this rule.

Fed. R. Civ. P. 37(d).

Here, the defendants' infraction is twofold. First, they failed to provide an appropriate response to Interrogatory 2, in violation of Rule 37(d), for which a sanction is warranted. Second, and more troubling, defendants failed to comply with the court's order directing them to furnish a full response to the Interrogatory by November 7, 1994, thus violating Rule 37 (b)(2).Rule 37(b)(2)(B) contemplates the very sanction imposed here by explicitly authorizing the court to preclude the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence. Accordingly, the court's sanction is well within the authority granted by the Federal Rules of Civil Procedure.

The selection of a sanction, moreover, is entrusted to the broad discretion of the court. *Hull v. Eaton Corp.,* 825 F.2d 448, 452 (D.C. Cir. 1987). This court has imposed more severe sanctions for similar misconduct. *See, e.g., Monroe,* 135 F.R.D. at 4, (default judgment may be appropriate sanction for serious discovery abuses); *Center on Corporate Responsibility, Inc. v. Shultz,* 368 F. Supp. 863, 873 (D.D.C. 1973) (certain allegations of the complaint were deemed established where defendants failed to comply with discovery orders); *Hull,* 825 F.2d at 451-52 (extreme sanction of dismissal may be within the trial court's discretion).

The court here did not impose the most severe sanction. The sanction was not tantamount to the entry of a default judgment. Plaintiffs were still required to prove liability by a preponderance of the evidence, their witnesses were subject to cross-examination, and defendants were permitted to call expert witnesses. Such participation at trial cannot be equated to default judgment. Nonetheless, the factors identified in *Monroe* to support the entry of a default judgment *a fortiori* support the milder sanction in this case. The court in *Monroe,* 135 F.R.D. at 5, quoting *Bristol Petroleum Corp v. Harris,* 901 F.2d 165, 167 (D.C. Cir. 1990), established three factors to consider:

> ***9** the effect of [the party's] dilatory or contumacious conduct on the court's docket, whether the [party's] behavior has prejudiced the [opposing party], and whether deterrence is necessary to protect the integrity of the judicial system.

Defendants' delay and inadequate response required the court's attention. If the court had reconsidered the sanction, plaintiffs would have been forced to take additional discovery, thus jeopardizing the schedule of a seven-week-long trial.

The defendants' conduct, if left unpunished, would have substantially prejudiced plaintiffs. Essentially, plaintiffs would have been required to determine which of 1000 persons actually had knowledge of the allegations, then seek permission of the court to extend the discovery period in order to depose anticipated witnesses. Moreover, delay of the trial would have postponed relief for the victims of sexual harassment and retaliation, and perpetuated the underlying causal conditions. As an alternative, plaintiffs could have proceeded to trial as scheduled, unprepared to examine many of defendants' witnesses. The plaintiffs should not be made to confront this Hobson's choice as a result of the defendants' misconduct.

Finally, the sanction was justified to deter such conduct in the future -- a need that this court recognized as particularly evident when the disobedient party is a government entity. *Monroe,* 135 F.R.D. at 7.

III. JURY VERDICTS

In the liability phase of the trial, the jury found that plaintiffs had established, by a preponderance of the evidence, that defendants had engaged in a pattern and practice of quid pro quo sexual harassment, hostile environment sexual harassment, and retaliation in violation of Title VII and 42 U.S.C. § 1983. Specifically, the jury unanimously answered "yes" to the following questions: (1) Do you find that the Department of Corrections engaged in a pattern and practice of sexual harassment by creating a sexually hostile working environment for female employees? (2) Do you find that the Department of Corrections engaged in a pattern and practice of sexual harassment by making or threatening to make job benefits for women conditioned upon the granting of sexual favors? (3) Do you find that the Department of Corrections engaged in a pattern and practice of retaliation against employees who challenged or complained of sexual harassment or who assisted others in challenging sexual harassment?

In the damages phase of the trial, the same jury made determinations in favor of six individual plaintiffs on their Title VII claims. With respect to Vera Brummell, Barbara Carter, Bessye Neal, Shivawn Newsome, Tyrone Posey and Teresa Washington, the jury answered the following question in the affirmative: Do you find that defendants' pattern or practice of sexual harassment and/or retaliation[4] in violation of Title VII of the Civil Rights Act of 1964 adversely affected plaintiff [name]?[5]

In order to have answered the Title VII question affirmatively, the jury was instructed to find, for each individual, one of the following: (a) that advances of a sexual nature were made to her and were unwelcome; (b) that she found the sexually hostile environment personally offensive, and that a reasonable person would find the environment offensive; or (c) that the pattern or practice of retaliation played a role in any action or threat of action taken against him or her, or any changes in his or her job conditions.

***10** The jury's first verdict thus establishes liability of the Department of Corrections for a pattern or practice of sexual harassment and/or retaliation. The second verdict establishes that such pattern or practice had an adverse effect on six of the plaintiffs -- Brummell, Carter, Neal, Newsome, Posey and Washington. Plaintiff Essie Jones' allegations involved sexual favoritism; but the jury found, under both Title VII and section 1983, that sexual favoritism did not disadvantage Jones in the terms and conditions of her employment. The jury was not asked to render a verdict on plaintiff Sharon Bonds; her claims pre-dated the cutoff for legal remedies under either Title VII or section 1983.

Having made an express determination that there is no just reason for delay, the court, pursuant to Fed. R. Civ. P. 54(b), will enter FINAL JUDGMENT ON THE JURY VERDICTS as to defendants' liability to the plaintiff class, and as to defendants' liability for legal damages to the individual named plaintiffs. A separate order shall issue this date.

FINAL JUDGMENT AND ORDER I

(FINAL JUDGMENT ON JURY VERDICTS)

This case was tried to a jury commencing March 1, 1995; and the jury returned verdicts on April 4 and April 21, 1995. Based upon those verdicts, and for the reasons more fully set forth in accompanying Memorandum Opinion I, the court hereby enters final judgment on the issues tried to the jury.

As to defendants' liability to the plaintiff class under Title VII of the Civil Rights Act of 1964, the court hereby enters the following judgment based upon the jury's verdict: (1) The Department of Corrections engaged in a pattern and practice of sexual harassment by creating a sexually hostile working environment for female

employees. (2) The Department engaged in a pattern and practice of sexual harassment by making or threatening to make job benefits for women conditioned upon the granting of sexual favors. (3) The Department engaged in a pattern and practice of retaliation against employees who challenged or complained of sexual harassment or who assisted others in challenging sexual harassment.

As to defendants' liability to the plaintiff class under 42 U.S.C. § 1983, the court hereby enters the following judgment based upon the jury's verdict: (1) Sexual harassment of women by male supervisors and co-workers is the custom or unwritten policy of the Department. (2) The Director or other high ranking officials of the Department knew of this custom or unwritten policy of sexual harassment and went along with it by affirmatively supporting it or showing deliberate indifference in failing to take adequate measures to stop it. (3) Retaliation against employees who challenged or complained of sexual harassment or who assisted others in challenging sexual harassment was the custom or unwritten policy of the Department. (4) The Director or other high ranking officials of the Department knew of this custom or unwritten policy of retaliation and went along with it by affirmatively supporting it or showing deliberate indifference in failing to take adequate measures to stop it.

***11** As to defendants' liability for damages to the individual named plaintiffs, the court hereby enters the following judgment based upon the jury's verdict: (1) Vera Brummell was adversely affected by defendants' pattern or practice of sexual harassment and/or retaliation, and by defendants' custom or usage of sexual harassment or retaliation; she is hereby awarded $500,000.[1] (2) Barbara Carter was adversely affected by defendants' pattern or practice of sexual harassment and/or retaliation, and by defendants' custom or usage of sexual harassment or retaliation; she is hereby awarded $200,000. (3) Defendants did not engage in sexual favoritism which disadvantaged Essie Jones in the terms and conditions of her employment, and her claims are hereby dismissed. (4) Bessye Neal was adversely affected by defendants' pattern or practice of retaliation, and by defendants' custom or usage of retaliation; she is hereby awarded $500,000. (5) Shivawn Newsome was adversely affected by defendants' pattern or practice of sexual harassment and/or retaliation, and by defendants' custom or usage of sexual harassment or retaliation; she is hereby awarded $75,000. (6) Tyrone Posey was adversely affected by defendants' pattern or practice of retaliation, but not by defendants' custom or usage of retaliation; he is hereby be awarded $75,000. (7) Teresa Washington was adversely affected by defendants' pattern or practice of sexual harassment and/or retaliation, but not by defendants' custom or usage of sexual harassment or retaliation; she is hereby awarded $75,000.

Having made an express determination that there is no just reason for delay, the court, pursuant to Fed. R. Civ. P. 54(b), hereby enters FINAL JUDGMENT ON THE JURY VERDICTS as to defendants' liability to the plaintiff class, and as to defendants' liability for damages to the individual named plaintiffs as set forth herein.

SO ORDERED.

1 Discovery had been scheduled to close on October 28, 1994. It was extended to December 16. Then, due to contempt hearings held on December 15 and 16, the court allowed some depositions planned for that week to be rescheduled between January 1 and January 13, 1995. Defendants complain that their response to Interrogatory No. 2 was not due until October 24, 1994, only four days prior to the original discovery cutoff. On this timetable, there would have been insufficient time for plaintiffs to notice and conduct depositions. Considering the extension of the discovery cutoff, this grievance is not persuasive. Furthermore, defendants' alleged concern over plaintiffs' difficulty in scheduling depositions cannot justify untimely response to plaintiffs' interrogatories.

2 Local Rule 207(b) *presumptively* limits discovery to 25 interrogatories and ten depositions. In this instance, plaintiffs were authorized to seek more than the presumptive deposition limit.

3 Defendants attached to their papers on the discovery sanction, a declaration from Michael Zielinski, Assistant Deputy Corporation Counsel. It was intended to substantiate defendants' assertion of limited resources and competing demands. Plaintiffs moved to strike the declaration, and the proposed findings to which it pertains, because it was not made part of the record at the time the court considered this matter. The court has granted plaintiffs' motion in a separate order. Still, defendants' protestation of excessive burden and insufficient resources was well-known to the court. The Zielinski declaration would have added specificity, but would not have altered the court's conclusions.

4 In the cases of plaintiffs Neal and Posey, the question was limited to retaliation; neither plaintiff alleged sexual harassment.

5 The jury answered in the negative as to adverse effect under section 1983 for plaintiffs Posey and Washington.

[1] Under § 102 of the 1991 Amendments to Title VII of the Civil Rights Act of 1964, compensatory damages are capped at $300,000. No such cap exists under 42 U.S.C. § 1983. Because the jury held that Brummell and Neal were adversely affected under both statutes, there is a lawful basis upon which they can each be awarded $500,000.