

## Excerpts from Jones v. Clinton, 990 F. Supp. 657 (E.D. Ark. 1998)

### I.

This lawsuit is based on an incident that is said to have taken place on the afternoon of \*663 May 8, 1991, in a suite at the Excelsior Hotel in Little Rock, Arkansas. President Clinton was Governor of the State of Arkansas at the time, and plaintiff was a State employee with the Arkansas Industrial Development Commission ("AIDC"), having begun her State employment on March 11, 1991. Ferguson was an Arkansas State Police officer assigned to the Governor's security detail.

According to the record, then-Governor Clinton was at the Excelsior Hotel on the day in question delivering a speech at an official conference being sponsored by the AIDC. Am. Compl. ¶ 7. [\[FN3\]](#) Plaintiff states that she and another AIDC employee, Pamela Blackard, were working at a registration desk for the AIDC when a man approached the desk and informed her and Blackard that he was Trooper Danny Ferguson, the Governor's bodyguard. Pl.'s Statement of Mat. Facts, ¶¶ 1-2. She states that Ferguson made small talk with her and Blackard and that they asked him if he had a gun as he was in street clothes and they "wanted to know." Pl.'s Depo. at 101. Ferguson acknowledged that he did and, after being asked to show the gun to them, left the registration desk to return to the Governor. *Id.*; Pl.'s Statement of Mat. Facts, ¶ 2. The conversation between plaintiff, Blackard, and Ferguson lasted approximately five minutes and consisted of light, friendly banter; there was nothing intimidating, threatening, or coercive about it. Pl.'s Depo. at 226-27.

[FN3](#). In addressing the issues in this case, the Court has viewed the record in the light most favorable to plaintiff and given her the benefit of all reasonable factual inferences, which is required at this stage of the proceedings. See [Christopher v. Adam's Mark Hotels, 137 F.3d 1069, 1070 \(8th Cir.1998\)](#). The Court has, however, deemed admitted those facts set forth by the President in his statement of material facts that plaintiff has not specifically controverted in her statement of material facts. See Rule 56.1(c) of the Rules of the United States District Court for the Eastern and Western Districts of Arkansas, which provides that "[a]ll material facts set forth in the statement filed by the moving party ... shall be deemed admitted unless controverted by the statement filed by the non-moving party...."

Upon leaving the registration desk, Ferguson apparently had a conversation with the Governor about the possibility of meeting with plaintiff, during which Ferguson states the Governor remarked that plaintiff had "that come-hither look," *i.e.* "a sort of [sexually] suggestive appearance from the look or dress." Ferguson Depo. at 50; Pl.'s Statement of Mat. Facts, ¶ 3; President's Depo. at 109. [\[FN4\]](#) He states that "some time later" the Governor asked him to "get him a room, that he was expecting a call from the White House and ... had several phone calls that he needed to make," and asked him to go to the car and get his briefcase containing the phone messages. Ferguson Depo. at 50, 67. Ferguson states that upon obtaining the room, the Governor told him that if plaintiff wanted to meet him, she could "come up." *Id.* at 50.

[FN4](#). Ferguson states that plaintiff informed him that she would like to meet the Governor, remarking that she thought the Governor "was good- looking [and] had sexy hair," Ferguson Depo. at 50, while plaintiff states that Ferguson asked her if she would like to meet the Governor and that she was "excited" about the possibility, Pl.'s Depo. at 101.

Plaintiff states that Ferguson later reappeared at the registration desk, delivered a piece of paper to her with a four-digit number written on it, and said that the Governor would like to meet with her in this suite number. Pl.'s Statement of Mat. Facts, ¶ 6. She states that she, Blackard, and Ferguson talked about what the Governor could want and that Ferguson stated, among other things, "We do this all the time." *Id.* Thinking that it was an honor to be asked to meet the Governor and that it might lead to an enhanced employment opportunity, plaintiff states that she agreed to the meeting and that Ferguson escorted her to the floor of the hotel upon which the Governor's suite was located. Am. Compl. ¶¶ 11-13.

Plaintiff states that upon arriving at the suite and announcing herself, the Governor shook her hand, invited her in, and closed the door. Pl.'s Statement of Mat. Facts, ¶¶ 7-8. She states that a few minutes of small talk ensued, which included the Governor asking her about her job and him mentioning that Dave Harrington, plaintiff's ultimate superior within the AIDC and a Clinton appointee, was his "good friend." *Id.* ¶ 8; Am. Compl. \*664 ¶ 17. Plaintiff states that the Governor then "unexpectedly reached over to [her], took her hand, and pulled her toward him, so that their bodies were close to each other." Pl.'s Statement of Mat. Facts, ¶ 9. She states she removed her hand from his and retreated several feet, but that the Governor approached her again and, while saying, "I love the way your hair flows down your back" and "I love your curves," put his hand on her leg, started sliding it toward her pelvic area, and bent down to attempt to kiss her on the neck, all without her consent. *Id.* ¶¶ 9-10; Pl.'s Depo. at 237-38. [\[FN5\]](#) Plaintiff states that she exclaimed, "What are you doing?," told the Governor that she was "not that kind of girl," and "escaped" from the Governor's reach "by walking away from him." Pl.'s Statement of Mat. Facts, ¶ 11; Pl.'s Depo. at 237. She states she was extremely upset and confused and, not knowing what to do, attempted to distract the Governor by chatting about his wife. Pl.'s Statement of Mat. Facts, ¶ 11. Plaintiff states that she sat down at the end of the sofa nearest the door, but that the Governor approached the sofa where she had taken a seat and, as he sat down, "lowered his trousers and underwear, exposed his penis (which was erect) and told [her] to 'kiss it.'" *Id.* [\[FN6\]](#) She states that she was "horrified" by this and that she "jumped up from the couch" and told the Governor that she had to go, saying something to the effect that she had to get back to the registration desk. *Id.* ¶ 12. Plaintiff states that the Governor, "while fondling his penis," said, "Well, I don't want to make you do anything you don't want to do," and then pulled up his pants and said, "If you get in trouble for leaving work, have Dave call me immediately and I'll take care of it." *Id.* She states that as she left the room (the door of which was not locked), the Governor "detained" her momentarily, "looked sternly" at her, and said, "You are smart. Let's keep this between ourselves." *Id.*; Pl.'s Depo. at 94, 96-97. [\[FN7\]](#)

1. [FN5](#). In her amended complaint, plaintiff states that the Governor "put his hand on

[her] leg and started sliding it toward the hem of [her] culottes, apparently attempting to reach [her] pelvic area." Am. Compl. ¶ 20. In her original complaint, plaintiff states that the Governor "put his hand on [her] leg and started sliding it toward the hem of [her] culottes," with no reference to her "pelvic area." Compl. ¶ 20.

[FN6](#). Plaintiff states in her amended complaint that the Governor "asked" her to "kiss it" rather than telling her to do so. Am. Compl. ¶ 21. She states in her deposition that the Governor's specific words to her were, "Would you kiss it for me?" Pl.'s Depo. at 108.

[FN7](#). Plaintiff's allegation that the Governor momentarily "detained" her was not included in either her original or amended complaint.

Plaintiff states that the Governor's advances to her were unwelcome, that she never said or did anything to suggest to the Governor that she was willing to have sex with him, and that during the time they were together in the hotel suite, she resisted his advances although she was "stunned by them and intimidated by who he was." Pl.'s Statement of Mat. Facts, ¶ 14. She states that when the Governor referred to Dave Harrington, she "understood that he was telling her that he had control over Mr. Harrington and over her job, and that he was willing to use that power." *Id.* ¶ 13. She states that from that point on, she was "very fearful" that her refusal to submit to the Governor's advances could damage her career and even jeopardize her employment. *Id.* Plaintiff states that when she left the hotel suite, she was in shock and upset but tried to maintain her composure. *Id.* ¶ 15. She states she saw Ferguson waiting outside the suite but that he did not escort her back to the registration desk and nothing was said between them. *Id.* Ferguson states that five or ten minutes after plaintiff exited the suite he joined the Governor for their return to the Governor's Mansion and that the Governor, who was working on some papers that he had spread out on the desk, said, "She came up here, and nothing happened." *Id.* ¶ 16; Ferguson Depo. at 63.

Plaintiff states she returned to the registration desk and told Blackard some of what had happened. Blackard Depo. at 68. Blackard states that plaintiff was shaking and embarrassed. *Id.* Following the Conference, plaintiff states she went to the workplace of a friend, Debra Ballentine, and told her of the incident as well. Pl.'s Statement of Mat. Facts, ¶ 18. Ballentine states that \*665 plaintiff was upset and crying. Ballentine Depo. at 48. Later that same day, plaintiff states she told her sister, Charlotte Corbin Brown, what had happened and, within the next two days, also told her other sister, Lydia Corbin Cathey, of the incident. *Id.* ¶ 20. Brown's observations of plaintiff's demeanor apparently are not included in the record. Cathey, however, states that plaintiff was "bawling" and "squalling," and that she appeared scared, embarrassed, and ashamed. Cathey Depo. at 52.

Ballentine states that she encouraged plaintiff to report the incident to her boss or to the police, but that plaintiff declined, pointing out that her boss was friends with the Governor and that the police were the ones who took her to the hotel suite. Ballentine Depo. at 50. Ballentine

further states that plaintiff stated she did not want her fiance to know of the incident and that she "just want[ed] this thing to go away." *Id.* Plaintiff states that what the Governor and Ferguson had said and done made her "afraid" to file charges. Pl.'s Statement of Mat. Facts, ¶ 19. Plaintiff continued to work at AIDC following the alleged incident in the hotel suite. *Id.* ¶ 22. One of her duties was to deliver documents to and from the Office of the Governor, as well as other offices around the Arkansas State Capitol. *Id.* She states that in June 1991, while performing these duties for the AIDC, she encountered Ferguson who told her that Mrs. Clinton was out of town often and that the Governor wanted her phone number and wanted to see her. *Id.* Plaintiff states she refused to provide her phone number to Ferguson. *Id.* She states that Ferguson also asked her how her fiance, Steve, was doing, even though she had never told Ferguson or the Governor his name, and that this "frightened" her. *Id.* ¶ 23. Plaintiff states that she again encountered Ferguson following her return to work from maternity leave and that he said he had "told Bill how good looking you are since you've had the baby." *Id.* ¶ 25. She also states that she was "accosted" by the Governor in the Rotunda of the Arkansas State Capitol when he "draped his arm over her, pulled her close to him and held her tightly to his body," and said to his bodyguard, "Don't we make a beautiful couple: Beauty and the Beast?" *Id.* ¶ 24. Plaintiff additionally states that on an unspecified date, she was waiting in the Governor's outer office on a delivery run when the Governor entered the office, patted her on the shoulder, and in a "friendly fashion" said, "How are you doing, Paula?" Pl.'s Depo. at 244-45.

Plaintiff states that she continued to work at AIDC "even though she was in constant fear that [the Governor] would retaliate against her because she had refused to have sex with him." *Id.* ¶ 27. She states this fear prevented her from enjoying her job. *Id.* Plaintiff states that she was treated "very rudely" by certain superiors in AIDC, including her direct supervisor, Clydine Pennington, and that this "rude treatment" had not happened prior to her encounter with the Governor. *Id.* She states that after her maternity leave, she was transferred to a position which had much less responsibility and that much of the time she had nothing to do. *Id.* ¶ 28; Pl.'s Depo. at 53. Plaintiff states that she was not learning anything, that her work could not be fairly evaluated, and that as a result, she could not be fairly considered for advancement and other opportunities. Pl.'s Statement of Mat. Facts, ¶ 28. She states that Pennington told her the reason for the transfer was that her prior position had been eliminated, but that she later learned this was untrue, as her former position was being occupied by another employee. *Id.* Plaintiff states that she repeatedly expressed to Pennington an interest in transferring to particular positions at a higher "grade" which involved more challenging duties, more potential for advancement, and more compensation, but that Pennington always discouraged her from doing so and told her she should not bother to apply for those positions. *Id.* ¶ 29. She goes on to state that her superiors exhibited hostility toward her by moving her work location, refusing to give her meaningful work, watching her constantly, and failing to give her flowers on Secretary's Day in 1992, even though all the other women in the office received flowers. *Id.* ¶ 30.

\*666 Plaintiff voluntarily terminated her employment with AIDC on February 20, 1993, in order to move to California with her husband, who had been transferred. Am. Compl. ¶ 40; Pl.'s Depo. at 48. She states that in January 1994, while visiting family and friends in Arkansas, she was informed of an article in *The American Spectator* magazine that she claims referred to her alleged encounter with the Governor at the Excelsior Hotel and incorrectly suggested that she

had engaged in sexual relations with the Governor. Pl.'s Statement of Mat. Facts, ¶ 33. Plaintiff states that she also encountered Ferguson in a restaurant during this same time and that he indicated he was the source for the article and that he knew she had refused the Governor's alleged advances because, he said, "Clinton told me you wouldn't do anything anyway, Paula." *Id.* ¶ 35.

On February 11, 1994, at an event attended by the media, plaintiff states that she publicly asked President Clinton to acknowledge the incident mentioned in the article in *The American Spectator*, to state that she had rejected his advances, and to apologize to her, but that the President responded to her request for an apology by having his press spokespersons deliver a statement on his behalf that the incident never happened and that he never met plaintiff. Am. Compl. ¶¶ 47-48. Thereafter, on May 6, 1994, plaintiff filed this lawsuit.

Plaintiff's amended complaint contains several claims, three of which remain at issue. *See Jones, 974 F.Supp. 712*; Order of November 24, 1997. The first is a claim under [42 U.S.C. § 1983](#) in which plaintiff alleges that Governor Clinton, acting under color of state law, deprived her of her constitutional right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution by sexually harassing her. The second is a claim under [42 U.S.C. § 1985\(3\)](#) in which plaintiff alleges that Governor Clinton and Ferguson conspired to deprive her of her rights to equal protection of the laws and of equal privileges and immunities under the laws. The third is a state law claim in which plaintiff asserts a claim of intentional infliction of emotional distress or outrage against Governor Clinton, based primarily on the alleged incident at the hotel but also encompassing subsequent alleged acts.

\* \* \*

3.

[25] Finally, the Court addresses plaintiff's state law claim of intentional infliction of emotional distress or outrage. [FN20] Arkansas recognizes a claim of intentional infliction of emotional distress based on sexual harassment. *Davis v. Tri-State Mack Distribs., Inc.*, 981 F.2d 340, 342 (8th Cir.1992) (citing *Hale v. Ladd*, 308 Ark. 567, 826 S.W.2d 244 (1992)). To establish a claim of intentional infliction of emotional distress, a plaintiff must prove that: (1) the defendant intended to inflict emotional distress or knew or should have known that emotional distress was the likely result of his conduct; (2) the conduct was extreme and outrageous and utterly intolerable in a civilized community; (3) the defendant's conduct was the cause of the plaintiff's distress; and (4) the plaintiff's emotional distress was so severe in nature that no reasonable person could be expected to endure it. *Milam v. Bank of Cabot*, 327 Ark. 256, 264-66, 937 S.W.2d 653, 658 (1997); *Hollomon v. Keadle*, 326 Ark. 168, 170-71, \*677 931 S.W.2d 413, 415 (1996); *Cherepski v. Walker*, 323 Ark. 43, 913 S.W.2d 761, 767 (1996); *Croom v. Younts*, 323 Ark. 95, 913 S.W.2d 283, 286 (1996).

FN20. Under Arkansas law, the tort of intentional infliction of emotional distress and the tort of outrage are essentially the same causes of action and are governed by the same standards. *See, e.g., Hamaker v. Ivy*, 51 F.3d 108, 110 n. 2 (8th Cir.1995), *Ross v. Patterson*, 307 Ark. 68, 70-71, 817 S.W.2d 418, 420 (1991).

[26] The President argues that the alleged conduct of which plaintiff complains was brief and isolated; did not result in any physical harm or objective symptoms of the requisite severe distress; did not result in distress so severe that no reasonable person could be expected to endure it; and he had no knowledge of any special condition of plaintiff that would render her particularly susceptible to distress. He argues that plaintiff has failed to identify the kind of clear cut proof that Arkansas courts require for a claim of outrage and that he is therefore entitled to summary judgment. The Court agrees. [FN21]

FN21. In denying the President's motion for judgment on the pleadings on this claim, the Court noted that the totality of the alleged conduct on which plaintiff based her lawsuit, including her claim that her rejection of the President's alleged advances caused her to suffer adverse employment action, could, if true, be regarded as sufficient to state a claim of intentional infliction of emotional distress. See *Jones*, 974 F.Supp. at 730. For the reasons previously stated, however, it is now apparent that plaintiff's claims have not borne fruit. The record upon which this Court is now addressing plaintiff's claim of outrage--indeed, all her claims--is far different from the record that was before the Court last August.

[27][28][29][30] One is subject to liability for the tort of outrage or intentional infliction of emotional distress if he or she wilfully or wantonly causes severe emotional distress to another by extreme and outrageous conduct. *Sterling Drug Inc. v. Oxford*, 294 Ark. 239, 243-44, 743 S.W.2d 380, 382 (1988). See also *Ingram v. Pirelli Cable Corp.*, 295 Ark. 154, 157-59, 747 S.W.2d 103, 105 (1988). In *M.B.M. Co. v. Counce*, 268 Ark. 269, 280, 596 S.W.2d 681, 687 (1980), the Arkansas Supreme Court stated that "[b]y extreme and outrageous conduct, we mean conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society." Whether conduct is "extreme and outrageous" is determined by looking at "the conduct at issue; the period of time over which the conduct took place; the relation between plaintiff and defendant; and defendant's knowledge that plaintiff is particularly susceptible to emotional distress by reason of some physical or mental peculiarity." *Doe v. Wright*, 82 F.3d 265, 269 (8th Cir.1996) (citing *Hamaker*, 51 F.3d at 111). The tort is clearly not intended to provide legal redress for every slight insult or indignity that one must endure. *Manning*, 127 F.3d at 690 (citing *Hamaker*, 51 F.3d at 110). The Arkansas courts take a strict approach and give a narrow view to claims of outrage, see *id.*, and merely describing conduct as outrageous does not make it so. *Ross*, 817 S.W.2d at 420.

[31] Plaintiff seems to base her claim of outrage on her erroneous belief that the allegations she has presented are sufficient to constitute criminal sexual assault. She states that "Mr. Clinton's outrageous conduct includes offensive language, an offensive proposition, offensive touching (constituting sexual assault under both federal and state definitions), and actual exposure of an intimate private body part," and that "[t]here are few more outrageous acts than a criminal sexual assault followed by unwanted exposure, coupled with a demand for oral sex by the most powerful man in the state against a very young, low-level employee." Pl.'s Opp'n to Def. Clinton's Mot. for Summ. J. at 66 (emphasis in original).

While the Court will certainly agree that plaintiff's allegations describe offensive

conduct, the Court, as previously noted, has found that the Governor's alleged conduct does not constitute sexual assault. Rather, the conduct as alleged by plaintiff describes a mere sexual proposition or encounter, albeit an odious one, that was relatively brief in duration, did not involve any coercion or threats of reprisal, and was abandoned as soon as plaintiff made clear that the advance was not welcome. The Court is not aware of any authority holding that such a sexual encounter or proposition of the type alleged in this case, without more, gives rise to a claim of outrage. Cf. Croom, 913 S.W.2d at 287 (use of wine and medication by a vastly older relative to foist sex on a minor cousin went \*678 "beyond a mere sexual encounter" and offended all sense of decency).

[32] Moreover, notwithstanding the offensive nature of the Governor's alleged conduct, plaintiff admits that she never missed a day of work following the alleged incident, she continued to work at AIDC another nineteen months (leaving only because of her husband's job transfer), she continued to go on a daily basis to the Governor's Office to deliver items and never asked to be relieved of that duty, she never filed a formal complaint or told her supervisors of the incident while at AIDC, she never consulted a psychiatrist, psychologist, or incurred medical bills as a result of the alleged incident, and she acknowledges that her two subsequent contacts with the Governor involved comments made "in a light vein" and nonsexual contact that was done in a "friendly fashion." Further, despite earlier claiming that she suffered marital discord and humiliation, plaintiff stated in her deposition that she was not claiming damages to her marriage as a result of the Governor's alleged conduct, see Pl.'s Depo. at 122, and she acknowledged the request to drop her claim of injury to reputation by stating, "I didn't really care if it was dropped or not personally." Id. at 261-62. Plaintiff's actions and statements in this case do not portray someone who experienced emotional distress so severe in nature that no reasonable person could be expected to endure it. Cf. Hamaker, 51 F.3d 108 (no claim of outrage where plaintiff, who had a speech impediment and an I.Q. of between 75 and 100, was "red-faced and angry," had an "increased heart rate and blood pressure," and had trouble sleeping four days after incident involving "rather nasty" practical joke).

[33] Nevertheless, plaintiff submits a declaration from a purported expert with a Ph.D. in education and counseling, Patrick J. Carnes, who, after a 3.5 hour meeting with plaintiff and her husband a mere four days prior to the filing of President Clinton's motion for summary judgment, opines that her alleged encounter with Governor Clinton in 1991, "and the ensuing events," have caused plaintiff to suffer severe emotional distress and "consequent sexual aversion." The Court does not credit this declaration.

In *Angle v. Alexander*, 328 Ark. 714, 945 S.W.2d 933 (1997), the Arkansas Supreme Court noted that absent physical harm, courts look for more in the way of extreme outrage as an assurance that the mental disturbance claimed is not fictitious. Id. at 936-37. In that case, the plaintiffs offered their own testimony that they had experienced emotional distress, thoughts of death, fear, anger, and worry, but little else. Id. In concluding that there was no evidence of extreme emotional distress required to prevail on an outrage claim, the Court found it significant that none had seen a physician or mental health professional for these concerns. Id. The Court did not allow the fact that one plaintiff "on the advice of her attorney, spoke to a psychologist," to overcome her failure of proof on this point. Id. at 937 n. 3.

Aside from other deficiencies with the Carnes' declaration (including the fact that the

substance of this declaration apparently was not disclosed in accordance with rules governing pre-trial discovery), the opinions stated therein are vague and conclusory and, as in *Angle*, do not suffice to overcome plaintiff's failure of proof on her claim of outrage. Cf. *Crenshaw v. Georgia-Pacific Corp.*, 915 F.Supp. 93, 99 (W.D.Ark.1995) (affidavit prepared after opposing motion for summary judgment filed detailing symptoms of weight loss, lack of sleep, headache, worry, and nausea, failed to present sufficient evidence of emotional distress).

In sum, plaintiff's allegations fall far short of the rigorous standards for establishing a claim of outrage under Arkansas law and the Court therefore grants the President's motion for summary judgment on this claim.

### III.

[34] One final matter concerns alleged suppression of pattern and practice evidence. Whatever relevance such evidence may have to prove other elements of plaintiff's case, it does not have anything to do with the issues presented by the President's and Ferguson's motions for summary judgment, i.e., whether plaintiff herself was the victim of alleged quid pro quo or hostile work environment sexual harassment, whether the President \*679 and Ferguson conspired to deprive her of her civil rights, or whether she suffered emotional distress so severe in nature that no reasonable person could be expected to endure it. Whether other women may have been subjected to workplace harassment, and whether such evidence has allegedly been suppressed, does not change the fact that plaintiff has failed to demonstrate that she has a case worthy of submitting to a jury. Reduced to its essence, the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party and the Court therefore finds that there are no genuine issues for trial in this case.

### IV.

For the foregoing reasons, the Court finds that the President's and Ferguson's motions for summary judgment should both be and hereby are granted. There being no remaining issues, the Court will enter judgment dismissing this case.

E.D.Ark., 1998.

*Jones v. Clinton*

990 F.Supp. 657, 76 Fair Empl.Prac.Cas. (BNA) 589, 75 Empl. Prac. Dec. P 45,760

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