

NATIONAL CRIME VICTIM'S BAR ASSOCIATION AMICUS COMMITTEE
REQUEST FOR AMICUS BRIEF

I. ELIGIBILITY:

- a. Are you, or a member of your firm, a member of the NCVBA? Yes
- b. If you are not the member, who is the firm member who belongs to the Association? _____
- c. If neither you, nor a member of your firm, are a member of the NCVBA, you must apply for membership.

II. STATUS OF UNDERLYING CASE:

- a. Are you, or your law firm, either trial counsel or co-counsel? (Specify) Yes
- b. Are you, or your law firm, sole appellate counsel or co-counsel? Lead Counsel
(Specify) yes
- c. If someone else is sole trial counsel, trial co-counsel, sole appellate counsel, or appellate co-counsel, specify their name and contact information, and specify if they also request the committee to file an amicus brief. Tahira Heritt
- d. If you are requesting we file an amicus brief on a case that you are not involved in, specify the name and contact information of the other counsel, both trial and appellate. Specify if they, or anyone in their firm, is a member and specify if they also request the committee to file an amicus brief. na

III. REQUEST:

- a. What Court do you wish us to file an amicus brief in? 5th Circuit
- b. What is the status of the case?
 Notice of Appeal filed, amicus brief requested at Court of Appeals level
 amicus brief requested for rehearing
 amicus brief requested for petition for certiorari
 amicus brief requested for case for which certiorari has been granted
 Other (explain):

IV. TIME:

When is the amicus brief due? 9/30/19 10/30/19

V. WHAT PLEADINGS HAVE BEEN FILED RELATIVE TO THE ISSUE?

- Trial Memorandum
 Appellate brief
 Supreme Court Brief
- District Court Pleading
see attached

VI. IS THE TRANSCRIPT AVAILABLE TO SEND TO US ELECTRONICALLY? n/a

VII. WHAT ISSUES DO YOU WISH US TO ADDRESS IN OUR AMICUS BRIEF?

The extent of a 1983 claim for failure
to train/supervise under *Clinton v. City of Ohio*.

PLEASE SUBMIT YOUR REQUEST TO:

Edward Schwartz
Gerson & Schwartz, P.A.
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Miami, Florida 33145
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eschwartz@gslawusa.com

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 21, 2019

Mr. Martin J. Cirkiel
Cirkiel & Associates, P.C.
1901 E. Palm Valley Boulevard
Round Rock, TX 78664-0000

No. 19-10917 H.P., et al v. City of Eastland, Texas, et
al
USDC No. 1:19-CV-12

Dear Mr. Cirkiel,

We have docketed the appeal as shown above, and ask you to use the case number for future inquiries. You can obtain a copy of our briefing checklist on the Fifth Circuit's website "<http://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/rules/brchecklist>".

Briefing Notice: The record is complete for purposes of the appeal, see FED. R. APP. P. 12. Appellant's brief and record excerpts are due within 40 days of the date shown above, see FED. R. APP. P. & 5TH CIR. R. 28, 30, and 31. See also 5TH CIR. R. 30.1.2 and 5TH CIR. R. 31.1 to determine if you have to file electronic copies of the brief and record excerpts. [If required, electronic copies MUST be in Portable Document Format (PDF).]

Record Excerpts: 5TH CIR. R. 30.1.7(c) provides that the electronic PDF version of the record excerpts should contain pages representing the "tabs" identified in the index of the document. However, we remind attorneys that the actual paper copies of record excerpts filed with the court must contain actual physical tabs that extend beyond the edge of the document, to facilitate easy identification and review of tabbed documents.

Brief Covers: THE CASE CAPTION(S) ON BRIEF COVERS MUST BE EXACTLY THE SAME AS THE CASE CAPTION(S) ON THE ENCLOSED TITLE CAPTION SHEET(S). YOU WILL HAVE TO CORRECT ANY MODIFICATIONS YOU MAKE TO THE CAPTION(S) BEFORE WE SUBMIT YOUR BRIEF TO THE COURT.

Policy on Extensions: The court grants extensions sparingly and under the criteria of 5TH CIR. R. 31.4. If you request an extension, you must contact opposing counsel and tell us if the extension is opposed or not. 5TH CIR. R. 31.4 and the Internal Operating Procedures following rules 27 and 31 state that except in the most

extraordinary circumstances, the maximum extension for filing briefs is 30 days in criminal cases and 40 days in civil cases.

Reply Brief: We do not send cases to the court until all briefs are filed, except in criminal appeals. Reply briefs must be filed within the 21 day period of FED. R. APP. P. 31(a)(1). See 5TH CIR. R. 31.1 to determine if you have to file electronic copies of the brief, and the format.

Dismissal of Appeals: The clerk may dismiss appeals without notice if you do not file a brief on time, or otherwise fail to comply with the rules.

Appearance Form: If you have not electronically filed a "Form for Appearance of Counsel," you must do so within 14 days of this date. You must name each party you represent, See FED. R. APP. P. and 5TH CIR. R. 12. The form is available from the Fifth Circuit's website, www.ca5.uscourts.gov.

ATTENTION ATTORNEYS: Direct access to the electronic record on appeal (EROA) for pending appeals will be enabled by the U S District Court on a per case basis. Counsel can expect to receive notice once access to the EROA is available. Counsel must be approved for electronic filing and must be listed in the case as attorney of record before access will be authorized. Instructions for accessing and downloading the EROA can be found on our website at <http://www.ca5.uscourts.gov/docs/default-source/forms/instructions-for-electronic-record-download-feature-of-cm>. Additionally, a link to the instructions will be included in the notice you receive from the district court.

Sealed documents, except for the presentence investigation report in criminal appeals, will not be included in the EROA. Access to sealed documents will continue to be provided by the district court only upon the filing and granting of a motion to view same in this court.

The clerk's office offers brief templates and the ability to check the brief for potential deficiencies prior to docketing to assist in the preparation of the brief. To access these options, log in to CM/ECF and from the Utilities menu, select 'Brief Template' (Counsel Only) or 'PDF Check Document'.

Guidance Regarding Citations in Pleadings.

5TH CIR. R. 28.2.2 grants the Clerk the authority to create a standard format for citation to the electronic record on appeal. You must use the proper citation format when citing to the electronic record on appeal.

- A. In single record cases, use the short citation form, "ROA" followed by a period, followed by the page number. For example, "ROA.123."
- B. For multiple record cases, cite "ROA" followed by a period, followed by the Fifth Circuit appellate case number of the record referenced, followed by a period, followed by the page of the record. For example, "ROA.13-12345.123."

Reminder as to Sealing Documents on Appeal: Our court has a strong presumption of public access to our court's records, and the court scrutinizes any request by a party to seal pleadings, record excerpts, or other documents on our court docket. Counsel moving to seal matters must explain in particularity the necessity for sealing in our court. Counsel do not satisfy this burden by simply stating that the originating court sealed the matter, as the circumstances that justified sealing in the originating court may have changed or may not apply in an appellate proceeding. It is the obligation of counsel to justify a request to file under seal, just as it is their obligation to notify the court whenever sealing is no longer necessary. An unopposed motion to seal does not obviate a counsel's obligation to justify the motion to seal.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Connie Brown, Deputy Clerk
504-310-7671

Enclosure(s)

cc w/encl:

Mr. Jon Mark Hogg
Mr. James Thomas Jeffrey Jr.

Case No. 19-10917

H.P.; JULIE JACKSON, Individually and as next friend of H.P.,
Plaintiffs - Appellants

v.

CITY OF EASTLAND, TEXAS; SERGEANT FRANK SAYLORS,
Defendants - Appellees

CIVIL ACTION NO.: 1:19-cv-12-C

**JULIE JACKSON, individually, and
a/n/f H.P.,
Plaintiffs,**

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UNITED STATES DISTRICT COURT

v.

NORTHERN DISTRICT OF TEXAS

**THE CITY OF EASTLAND,
BILLY R. MYRICK, CHIEF OF THE
POLICE DEPARTMENT, AND
SERGEANT FRANK SAYLORS,
Defendants.**

ABILENE DIVISION

FIRST AMENDED COMPLAINT

NOW COMES Julie Jackson, Individually as next friend (a/n/f) for her daughter, H.P. (hereinafter collectively referred to as Plaintiffs), and brings this their *First Amended Complaint*, alleging that the City of Eastland (Police Department), The Honorable Billy R. Myrick, Chief of the Eastland Police Department and Sergeant Frank Saylor, also of the Eastland Police Department, collectively termed “the Eastland Defendants,” herein, violated the various rights of H.P., all as more specifically pleaded herein. Plaintiffs reserve the right to re-plead this *First Original Complaint* if new claims and issues arise upon further development of the facts and as permitted by law. In support thereof, Plaintiffs would respectfully show the following:

I. INTRODUCTION AND BRIEF REVIEW OF THE CASE

1. The Eastland Police Department’s motto is “Honored to Serve, Dedicated to Protect.” The officers that serve the Eastland community live up to this motto most every day. Unfortunately, on one occasion they failed to do so, with disastrous and horrific results.

Specifically, Sergeant Saylor was put in charge of a sexual assault investigation but failed to do his job correctly, leaving the rapist free to rape again, which he did. This time his victim was a little girl: H.P.

2. The Eastland P.D. had both policy and procedure on how to process sexual abuse cases. However, Saylor did not follow either because he was never trained about how to execute them, a failure on the part of Chief Myrick and the City of Eastland. To make a bad situation worse, he never was properly supervised either, a further failure on the part of Chief Myrick and the City of Eastland. Most importantly, perhaps, and certainly most egregious, the City of Eastland failed to have a Quality Assurance policy and procedure in place to assure that sexual assault cases, and the policies and procedures related to sexual assault cases, were duly adhered to.
3. For the issues noted above and the reasons more fully enumerated below, Julie Jackson, a/n/f of H.P., brings forth this complaint for claims related to the *Due Process Clause* of the 14th Amendment to the United States Constitution, the *Equal Protection Clause* also of the 14th Amendment, both pursuant to the Civil Rights Acts, 42 U.S.C. § 1983 and Title IX of the Education Amendments of 1972, passed through Congress as Public Law No. 92-318, 86 Stat. 235 (June 23, 1972) and codified at 20 U.S.C. sections 1681 through 1688.

II. JURISDICTION

4. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C.A. §1331 and §1343 because the matters in controversy arise under the laws and rules of the United States as noted above.

III. VENUE.

5. Under 28 U.S.C. §1391, venue is proper before this Court because the events and omissions giving rise to the Plaintiffs' claims occurred in the Northern District of Texas, Abilene Division.

IV. PARTIES

6. H.P., is a female, and a citizen of the State of Texas and Eastland County, who resides with her guardian, Julie Jackson, during the time of the incidents giving rise to this Complaint.
7. Julie Jackson, likewise a citizen of the State of Texas and a resident of Eastland County, brings forward this complaint accordingly, not only as next friend, but in her own Individual Capacity for out-of-pocket expenses incurred as a result of Defendant's actions and inactions.
8. Defendant, the City of Eastland, is organized under the laws of the State of Texas and, at all relevant times relative to this proceeding, was responsible for the implementation of relevant federal laws and the rules promulgated thereunder, as well as other statutory and constitutional mandates, including, but not limited to, the care, management and control of the Eastland Police Department and all related business within its jurisdiction, so that citizens, like H.P., are treated commensurate with the law. They have been served and have answered by and through their Counsel, the Honorable Jon Mark Hogg, with the Law Firm of Jackson Walker, 135 W. Twohig Ave., Suite C, San Angelo, Texas 76903.
9. Defendant Billy R. Myrick is the Former chief of Police for the City of Eastland Police Department. He may be served personally or, in the alternative, he may be served by and through the City Secretary, at City Hall, 113 E. Commerce Street, Eastland, Texas 76448.

10. Defendant Sergeant Frank Saylor is a Police Officer with the City of Eastland Police Department. He has been served and has answered by and through their Counsel, the Honorable James T. Jeffrey, Jr., with the Law Offices of Jim Jeffrey, 3200 W. Arkansas Lane, Arlington, Texas 76016.

V. STATEMENT OF FACTS

A. UNITED STATES DEPARTMENT OF JUSTICE

11. Under Executive Order 12250 (EO 12250), the United States Department of Justice ("DOJ") is charged with ensuring the consistent and effective implementation of civil rights laws "prohibiting discriminatory practices in Federal programs and programs receiving federal financial assistance." Exec. Order No. 12250, *Leadership and Coordination of Nondiscrimination Laws*, reprinted at 45 Fed. Reg. 72,995 (Nov. 4, 1980).¹
12. The DOJ Office of Juvenile Justice, has promulgated a number of documents regarding the *Law Enforcement Response To Child Abuse*. (1997). It underscores, among many issues, the duty of law enforcement officials across the country to have a consistent approach to addressing the problem of child abuse. The DOJ produced this *Guide* to help those in law enforcement understand the importance of developing policies and procedures so that the various professionals involved in such investigations could work together in a cohesive manner.

¹. Under Executive Order 12250, DOJ is charged with coordinating the implementation and enforcement by Executive agencies of various provisions of the following laws: (a) Title VI of the Civil Rights Act of 1964 [prohibiting race, color, and national origin discrimination, which includes language access for limited English proficient individuals, in federally funded programs and activities]; 42 U.S.C. §2000d *et seq.*; (b) Title IX of the Education Amendments of 1972 [prohibiting sex discrimination in education programs and activities of recipients of federal funds], 20 U.S.C. § 1681 *et seq.*; (c) Section 504 of the Rehabilitation Act of 1973 [prohibiting disability discrimination in both federally conducted and federally funded programs and activities], 29 U.S.C. §794; and (d) "any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Exec. Order 12250 at §1-201.

13. First and foremost, it noted that the unique characteristics of child abuse make these cases different from other types of injury cases so that they require additional training and supervision for relevant law enforcement personnel.
14. The DOJ also wrote about the importance of a *Multi-Disciplinary Approach* and the roles that law enforcement, as well as the roles the medical community, schools, social workers, prosecutors, and courts have in the process of addressing issues of child abuse.
15. For law enforcement itself, there is the necessity of developing relevant protocols and procedures which, once again, first requires specific training. One part of that training is to assure the correct administrative protocols are developed. The second, yet again, is to assure that the police officer is given necessary training. By working together the Police Department can avoid failing to respond correctly to a complaint, which otherwise could result in a case being dismissed from court or, in some cases, innocent people being falsely accused or, in other cases, the failure to fully investigate a complaint at all, thereby allowing perpetrators to continue in their abusive ways, which occurred in this case.
16. The Police Department must have an intake/referral process in place that addresses, among other considerations, referral to local medical professionals for necessary testing, referring to the local Child Protective Services and/or “Child’s Advocacy Center” to help arrange for interviews, securing and preserving evidence, taking pictures or videos as available, and also preserving the crime scene.
17. There also must be a policy and procedure in place to assure all necessary follow-up inquiries are adhered to. Importantly, the family of the child, not just the child, should be provided linkages to community support services.

18. The Department of Justice also maintains the *Automated Child Abuse System* (“ACAS”). It is the centralized system for collecting reports of suspected child abuse and severe neglect. The ACAS is maintained by DOJ as a statewide reference file.

B. ABOUT THE CITY OF EASTLAND POLICE DEPARTMENT

19. The Eastland Police Department employs nine full-time certified Police Officers that work around the clock to protect the citizens of Eastland, Texas. Their motto is “Honored to Serve, Dedicated to Protect.” In order to live up to this motto, the Eastland Police Department has various policies and procedures to address community concerns, including criminal investigations.
20. The Eastland Police Department uses a service called CopSync. CopSync is a service provided by the company Kologik. The service gives police officer access and the ability to share data. According to their website, “with a single click, you can source real-time information essential to your job effectiveness and personal safety”.² CopSync gives the Eastland Police Department the ability to collaborate with other law enforcement agencies in and around Eastland County, a further assurance that Eastland PD Officers can meet the needs of the Eastland, Texas community.
21. Upon reason and belief Plaintiffs reasonably believe that the Eastland Police Department receives federal funding in a number of manners and particulars including but not limited the receipt of a Community Development Block Grant Texas Department of Agriculture which requires the City to comply with the Civil Rights requirements of Title I of the Housing and Community Development Act and the Fair Housing Law, *see* Title VIII of

². <http://www.kologik.com/products/copsync-mobile>

the Civil Rights Act of 1968. In response, the City has established policies, plans and resolutions to ensure that equal opportunities are afforded to all persons and that no person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, or age.

22. In addition, upon reason and belief Plaintiffs reasonably believe that the Police Department receives a grant from the United States Department of Agriculture so as to receive a number of vehicles, whether it be for fire command, public works or otherwise.
23. Moreover, upon reason and belief Plaintiffs reasonably believe that the City and Police Department also receives federal funds directly and directly, for training and other educational matters for police officers, from the Department of Homeland Security; the Federal Bureau of Investigation; the Bureau of Alcohol, Tobacco and Firearms and Community Oriented Policing Services (“COPS”).
24. Additionally, and also upon reason and belief, Plaintiffs reasonably believe that the City and Police Department also receives federal funds directly and directly, for training and other educational matters for police staff from the Office of Juvenile Justice and the U.S. Department of Health and Human Services Administration for Children and Families, the Administration on Children, Youth and Families and the National Center on Child Abuse and Neglect

C. CLAYTON LEE FOUGHT SEXUALLY ASSAULTED TWO CHILDREN

25. In 2010, Clayton Lee Fought sexually assaulted two girls, then five (5) and seven (7). Their last name was Dove. Their father reported the abuse to the Eastland Police Department on June 17, 2013 at approximately 6:15 p.m. Sergeant Saylor took the

information required and initiated an investigation. At approximately 6:30 p.m., he logged in a case number: 13-0251, initially entitled “Indecency with a Child.”

26. The next time the report was accessed was 10:04 p.m. on June 17, 2013, and logged out at 10:59 p.m. The report was accessed again that same day from 11:06 p.m. to 11:15 p.m.
27. Up and until July 1, 2013, the report was accessed sporadically, which shows that Sergeant Saylor was working on the report. An interview was set for June 26, 2013, at the Harmony Home Children’s Advocacy Center in Odessa, Texas. Sergeant Saylor drove to that interview in Odessa where he would witness the interviews of each of the Dove daughters as they were conducted by Rebecca O’Rear.
28. After the interviews, Sergeant Saylor was given at least one DVD, which contained the forensic interviews of the children. Saylor also took a witness statement from Mr. Dove. Saylor returned to Eastland that same day. When he returned to the Eastland P.D., Saylor should have handled the forensic DVD(s) as evidence and secured them in a locker, but he did not. Saylor put this statement in a folder and placed it on his desk in Eastland. It was not recovered until an investigation by Chief Myrick turned it up in 2014. As a result, the original DVD for case #13-0251 was misplaced.
29. In his report, Sergeant Saylor wrote that a witness statement would be taken from Mr. Dove. However, Saylor also misplaced this statement. Saylor never questioned Fought. Because Sergeant Saylor failed to take proper care of material evidence in the Dove case, Clayton Fought remained free to rape another child.

D. CLAYTON FOUGHT, SEXUALLY ASSAULTED & ATTEMPTED TO KILL H.P.

30. On Sunday afternoon, January 5, 2014, Clayton Lee Fought was spending the night at the home of his friend, H.P.’s father, the day before her twelfth birthday. Fought took her

father's truck and drove H.P. to a wooded area by Lake Cisco. Once they got out of the truck, Fought put his hands around her neck and told her he was going to rape her. He attempted to make her smoke marijuana by blowing marijuana smoke into her mouth. Fought told H.P. to pull her pants down. She said "no." Fought forcefully pulled her pants down and put his finger in her "private" parts. He savagely and viciously raped her. H.P. reported Fought put his "thing" into her butt and stopped only after he "peed" in her butt. While raping her, he was also punching her with his fist. He put his "private" into her mouth and "peed." He bit her on the right shoulder. Fought then attempted to kill her. He beat H.P. in the face with his fists and a rock. He also stabbed her in the leg. First, he attempted to break her neck. Then he choked her and slit her throat. Fought left her for dead by the lake. H.P. was barely alive when she was found.

31 She was taken to the Intensive Care Unit of the local hospital. She spent nearly a week in the hospital with the following injuries; Sexual assault with nonspecific superficial anal tear; Traumatic intercranial subarachnoid hemorrhage; Stab injury to neck; Closed head injury; Right cerebral hemisphere subarachnoid hemorrhage; Right lateral ventricles with intraventricular hemorrhage; Cerebral edema; Concussion with loss of consciousness; Neck tenderness; Cervicalgia; Significant brain injury including subdural Hematoma to the right tentorium; Right parietal scalp extracranial soft tissue hematoma; Human bite marks to right shoulder; Neck abrasions; Numerous contusions and abrasions to trunk, extremities, scalp, ears, shoulders, back, buttocks, hips and thighs; Scalp swelling on right occipital region; Head pain; Upper back pain; and Post-Traumatic Stress Disorder.

E. H.P. WAS RELEASED FROM THE HOSPITAL

32. Approximately ten days after Fought's attack on H.P., she was released from the hospital. A Texas Ranger, Shane Morrow, interviewed her. Her left eye was still swollen when she went in for the interview. Within two weeks of this attack, she began weekly counseling sessions, which she continues. She still suffers from short term memory, inattention, headaches, and post-traumatic stress disorder. H.P. has harmed herself. H.P. has never fully recovered from this attack. It is possible that never will.

F. CLAYTON FOUGHT WAS ARRESTED

33. Fought was arrested in 2014 for his crimes against H.P. He later admitted to the attack. He was charged with aggravated kidnaping, aggravated sexual assault of a child, and attempted capital murder. After all this was put on the news, Mr. and Mrs. Dove came forward and told the local press about how Fought had abused their children in 2010. This information spurred an internal investigation.

G. THE INVESTIGATION OF THE DOVE FAMILY CASE

34. On or about January 6, 2014, the failures of Saylor and the Police Department in regard to the Dove case were brought to the attention of Billy R. Myrick, Chief of Police in Eastland. Chief Myrick made an inquiry to his administrative assistant, Roma Holley, as to whether the Dove case had been completed and sent to the District Attorney for prosecution. Holley said that it had not. Holley also informed Chief Myrick that she printed and filed the case in the department records.
35. Holley retrieved the file for Chief Myrick, who noted the file was fairly complete, minus any type of witness statement which should have been in the file. Chief Myrick called Sergeant Saylor into his office and asked him about the status of the investigation. Sergeant Saylor responded that he had done his part and turned the investigation over to

another officer, Sergeant Ray Darden, for follow up. Chief Myrick asked Sergeant Saylor about the DVD, which was missing. Saylor answered the same way. When asked about the missing witness statement, Sergeant Saylor admitted that he did not remember whether he had taken the witness statement or not. He added that if he did, it would be in the pile on his desk.

36 Chief Myrick dismissed Sergeant Saylor with explicit verbal instruction to return to his office, conduct a thorough check of the area for both the DVD, as well as any witness statements he may have taken from Mr. Dove or others. He also stated that the matter had to be cleared up immediately. Chief Myrick gave Sergeant Saylor a direct order to go contact the Harmony Home Children's Advocacy Center ("CAC") in Odessa to see if they might still have available a copy of the interview and DVD. Sergeant Saylor responded that CAC does not keep copies of the DVD's made. Later, Sergeant Saylor told the Chief that he had found the witness statement in a folder on his desk. He had taken the statement on June 26, 2013, from Mr. Dove in Odessa.

37 On Tuesday, January 7, 2014, Ron Duncan, the City [of Eastland] Manager, directed Chief Myrick to conduct an internal investigation into the improper handling of the first criminal investigation against Fought concerning the Dove family. During the course of this investigation, Chief Myrick discovered all of the information mentioned in the first two sections of this Statement of Facts. Also on that day, Chief Myrick was informed by Ms. Holley that Mrs. Dove had called the department the previous day and asked to talk with Sergeant Saylor. Saylor took the call with Mrs. Dove. In an audio recording from the department's internal security system, Sergeant Saylor can clearly be heard having

this conversation and stating that the case had been turned over to “Ray,” a reference to Sergeant Ray Darden. He also stated that the “DVD” was somewhere on his desk.

38. A few days later, on or about the 8th, Chief Myrick had not heard back from Sergeant Saylor about the DVD, so he, himself, called Rebecca O’Rear, the interviewer who had conducted the forensic interviews of the two Dove children. He found out that they could, in fact, get another copy of the DVD, that Sergeant Saylor had not called as he was instructed to do, and that he had lied to the Chief when stating the CAC did not keep copies of the interview.

39. On the next day, Chief Myrick summoned Sergeant Saylor. The interview started at approximately 7:05 a.m. and was recorded. Corporal Dan Wilson attended so there be a non-involved, non-biased witness to the proceedings. Chief Myrick read Sergeant Saylor the Eastland P.D. Administrative/Investigative Warning followed by a Letter of Complaint. After reading each form, Chief Myrick asked Sergeant Saylor if he understood. Saylor said that he understood. He signed each document, and Cpl. Wilson signed as a witness to each reading.

40. During the interview, Saylor kept referencing a departmental policy which supposedly directed that the detective handle all sexual assault investigations. When asked, Saylor said that he had never seen this policy in writing. Chief Myrick asked Saylor when the last time was that he had contact with members of the Dove family. Saylor said it was 3-4 months ago. This response was also untruthful. There is evidence that Saylor spoke with the Dove family on January 6, 2014. Saylor was then asked whether he had told the Dove family that Sergeant Ray Darden left the case laying on his desk untouched for some eight months. Sergeant Saylor said no.

- 41 This statement was likewise untruthful. There is evidence that Saylor directed the Dove family to Sergeant Ray in his conversation with them on January 6, 2014. Saylor was then asked if he had made any type of unsubstantial allegations about another member of this department mishandling their case or related evidence as he had done here. Sergeant Saylor responded, "The only time they asked, I saw Mr. Dove one time, and he wanted to know what was going on with the case and I told him to call the police department and talk to Ray Darden. Whether or not he ever did, I don't know." Chief Myrick further believes this response to be untruthful. Chief Myrick had his own conversation with the Dove family on January 13, 2014, and discovered and confirmed that Sergeant Saylor spoke to both Mr. and Mrs. Dove on January 6, 2014.
- 42 While returning from an out of town trip that same day, January 13, 2014, Chief Myrick instructed Holley to look in Saylor's office to see if she could find the missing DVD or case file anywhere. Holley found a working file of the Dove case which contained a copy of the offense report, the original statement from Mr. Dove and Saylor's investigative notes.
- 43 On Wednesday, January 15, 2014, Chief Myrick conducted an interview with Sergeant Ray Darden wherein he asked him very specific questions about his knowledge of the case. Sergeant Darden replied, both verbally and in writing, that he had never been involved with the case and that Saylor had not told him anything.
44. On January 17, 2014, the DVDs which contained the interviews of the Dove daughters at Harmony Home, which Sergeant Saylor did not appropriately handle as evidence, were found on Sergeant Saylor's desk, mixed in a pile of unrelated paperwork. I t i s

obvious that the Dove case was never passed on to Ray Darden, as Saylor repeated continually.

H. RESULTS OF THE INTERNAL INVESTIGATION

45. The conclusion of this investigation was and is that the Dove girls' sexual abuse case was mishandled by the Eastland Police Department in the person of Sergeant Saylor which allowed Fought to remain free and sexually assault H.P. and otherwise physically injure H.P. within an inch of her life. Specifically, Saylor failed to follow already existing policy regarding the investigation of cases.

46. Moreover Saylor failed to follow already existing policies and procedures regarding the handling of evidence. In addition, the Eastland Defendant failed to correctly supervise Saylor in regard to both. Further, the Eastland Department failed to follow current policies and procedures, already in place, called CopSync, to track the progress of an investigation. Moreover, the Eastland Department failed to apply any policies and procedures in place to track the progress of a child abuse investigation. Last, the Eastland Department failed to implement and/or devise and/or employ any policies and procedures in place to track evidence in a child abuse case, including and especially the video interview conducted by the Children's Advocacy Center.

I. POST-SCRIPT

47. At the May 2015 trial of these cases, Fought was sentenced to 60 years incarceration for crimes against H.P., and also another 20 years incarceration for each of the other two sexual assaults of the Dove daughters. The Eastland Police Department fired the two employees involved for their failures after the fact, but this does not excuse the failures of the Department or of the City. In addition, the City failed to provide H.P. and post-

incident services to address her post-traumatic stress disorder. The City has also failed to provide Ms. Jackson reimbursement for any out-of-pocket expenses incurred.

VI. STATE ACTION

48. Plaintiffs incorporate by reference all the above-related paragraphs, as well as those below, with the same force and effect as if herein set forth.
49. The Eastland Defendants, in any Official and Individual Capacities and in all matters, were acting under color of state law when they subjected H.P. to the wrongs and injuries set forth herein.

VII. UNCONSTITUTIONAL POLICIES, PROCEDURES, PRACTICES & CUSTOMS

50. Plaintiffs incorporate by reference all the above related paragraphs, as well as those below, with the same force and effect as if herein set forth.
51. Plaintiffs contend that the City of Eastland had actual policies and procedures in place regarding the investigation of sexual abuses cases of children, but that Saylor failed and refused to follow them. In fact, Sergeant Saylor was reportedly their most experienced investigator. His failures, in light of his position, evidences and creates an inference that the City of Eastland and its Police Department did not properly train staff.
52. Moreover, Saylor's failures also evidence and infer that he was not correctly supervised by the City of Eastland nor its Police Department.
53. Such failures, individually by Myrick and Saylor, and the City of Eastland collectively, rise to the level of deliberate indifference and thus constitute a violation of the *Due Process Clause* of the Fourteenth Amendment of the Constitution of the United States, for which H.P. seeks recovery pursuant to 42 U.S.C. § 1983.

54. In addition, and in the alternative to the above, the City of Eastland failed to have available policies and procedures in place to track the investigatory process and progress of child abuse and child sexual assault cases, which also rises to the level of deliberate indifference and constitutes a violation of the *Due Process Clause* of the Fourteenth Amendment of the Constitution of the United States, for which H.P. seeks recovery pursuant to 42 U.S.C. § 1983.
55. Moreover, these failures also evidence and create inferences that Police Department Staff were not correctly supervised by the City of Eastland, which also rises to the level of deliberate indifference and constitutes a violation of the *Due Process Clause* of the Fourteenth Amendment of the Constitution of the United States, for which H.P. seeks recovery pursuant to 42 U.S.C. § 1983.
56. Plaintiffs bring a claim pursuant to the *Due Process Clause* of the 14th Amendment to the United States Constitution against Billy R. Myrick, Chief of the Eastland Police Department, in his Individual Capacity for supervisory liability.

**VIII. CLAIMS PURSUANT TO THE EQUAL PROTECTION CLAUSE OF THE
14TH AMENDMENT TO THE UNITED STATES CONSTITUTION**

57. Plaintiffs incorporate by reference all the above related paragraphs, as well as those below, with the same force and effect as if herein set forth.
58. The acts and omissions of the Eastland Police department singularly discriminated against H.P., when treating H.P. in a disparate manner as compared to other citizens similarly situated, thereby violating her rights pursuant to the *Equal Protection Clause* of the Fourteenth Amendment, for which H.P. seeks recovery pursuant to 42 U.S.C. §1983 and §1988.

59. Plaintiffs bring a claim pursuant to the *Equal Protection Clause* of the 14th Amendment to the United States Constitution against Billy R. Myrick, Chief of the Eastland Police Department and Sergeant Frank Saylor, both in their Individual Capacities.

IX. TITLE IX OF THE EDUCATIONS AMENDMENTS OF 1972

60. Title IX of the Education Amendments of 1972 (Title IX), 86 Stat. 373, as amended, 20 U.S.C. § 1681 *et seq.*, (“Title IX”) specifically notes that a public entity may be liable under Title IX for discrimination based upon gender or gender stereotypes.
61. Title IX is a portion of the United States Education Amendments of 1972, Public Law No. 92-318, 86 Stat. 235 (June 23, 1972), codified at 20 U.S.C. sections 1681 through 1688, which was co-authored and introduced by Senator Birch Bayh and later renamed the Patsy Mink Equal Opportunity in Education Act in 2002, after its House co-author and sponsor. It states (in part) that:

“No person in the United States shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

It is uncontroverted that the City of Eastland, including the Police Department, receives federal funding. As such, the City of Eastland, including the Police Department, has to follow the requisites of Title IX.

62. One such requisite is to have policies, procedures and practices in place to assure that a female child like H.P., who has been a victim of sexual assault has her case addressed commensurate with the Police Department’s legal duty to do so.
63. The City has failed to assure such policies, procedures and practices were in place to protect H.P. would be protected from a known perpetrator of child abuse. Such failures created an environment that was hostile to rights of female children who were victims of

abuse, and those who foreseeably would be victims of child abuse by the same perpetrator, in the future.

X. RATIFICATION AND VICARIOUS LIABILITY

- 64.. Plaintiffs incorporate by reference all the above-related paragraphs, as well as those below, with the same force and effect as if herein set forth.
- 65.. The City of Eastland ratified the acts, omissions, and customs of Police Department personnel and staff.
- 66.. The Eastland Police Department ratified the acts, omissions, and customs of their personnel and staff.
- 67.. As a result the Eastland Defendants are responsible for the acts and omissions of staff who were otherwise responsible for the safety of H.P.

XI. PROXIMATE CAUSE

- 68.. Plaintiffs incorporate by reference all the above related paragraphs, as well as those below, with the same force and effect as if herein set forth.
- 69.. Each and every, all and singular of the foregoing acts and omissions on the part of the Eastland Defendants, taken separately and/or collectively, jointly and severally, whether in any official or individual capacity, constitute a direct and proximate cause of the injuries and damages set forth herein.

XII. DAMAGES

- 70.. Plaintiffs incorporate by reference all the above-related paragraphs with the same force and effect as if herein set forth.
- 71.. As a direct and proximate result of all the Defendants' conduct, H.P. and her guardian have suffered injuries and damages for which she is entitled to recover within the

jurisdictional limits of this court, including but not limited to Mental anguish in the past; Mental anguish in the future; Costs related to past, current and future mental health costs; Physical injuries in the past; Physical injuries in the future; Costs related to past, current and future medical costs; and Deprivation of educational opportunities; Various out-of-pocket expenses incurred by her guardian but for the acts and omissions of the Eastland Defendants. :

XIII. PUNITIVE DAMAGES

- 72.. Plaintiffs incorporate by reference all the above-related paragraphs, as well as those below, with the same force and effect as if herein set forth.
- 73.. Plaintiffs reasonably believe the acts and omissions of Defendant Eastland Police Department satisfy criteria for violations of civil rights and discrimination because the facts of the case regarding both Fought and Saylor shock the conscience—are in fact unconscionable—and thus satisfy criteria for punitive damages, as contemplated by Section 1983.

XIV. ATTORNEY FEES

- 74.. Plaintiffs incorporate by reference all the above related paragraphs as if fully set forth herein.
- 75.. It was necessary for Plaintiffs to retain the undersigned attorneys to file this lawsuit. Upon judgment, Plaintiffs are entitled to an award of attorney fees and costs pursuant under 42 U.S.C. § 1983, 1988(b) and 42 U.S.C. § 2000d et seq.

XV. DEMAND FOR JURY TRIAL

- 76.. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a jury trial for all issues in this matter.

XVI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for judgment against all Defendants, jointly and severally, in the manner and particulars noted above, and in an amount sufficient to fully compensate them for the elements of damages enumerated above, judgment for damages, recovery of attorneys' fees and costs for the preparation and trial of this cause of action, and for its appeal if required, pursuant to 42 U.S.C. § 1983 and 1988 and 42 U.S.C. § 2000d et seq.; together with pre- and post-judgment interest, and court costs expended herein, as well as the equitable issues noted above, and for such other relief as this Court in equity, deems just and proper and for such other relief as the Court deems just and proper in law or in equity.

Respectfully submitted,

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ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of May, 2019, I electronically filed the foregoing documents with the Clerk of Court using the CM/ECF system and notice was electronically provided to the following CM/ECF system participant:

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