In the

United States Court of Appeals

For the Seventh Circuit

No. 17-3378

JEFFREY D. LEISER,

Plaintiff-Appellee,

v.

KAREN KLOTH, Correctional Sergeant, et al.,

Defendants-Appellants.

Appeal from the United States District Court for the
Western District of Wisconsin.
No. 3:15-cv-00768-slc — **Stephen L. Crocker**, *Magistrate Judge.*

ARGUED SEPTEMBER 5, 2018 — DECIDED AUGUST 1, 2019

Before EASTERBROOK, HAMILTON, and SCUDDER, *Circuit Judges.*

HAMILTON, *Circuit Judge.* Jeffrey Leiser was an inmate at the Wisconsin Stanley Correctional Institution where Sergeant Karen Kloth was employed. Leiser, who was later diagnosed with Post Traumatic Stress Disorder while at Stanley, alleged that beginning in 2013 he self-reported his disorder to Kloth and "informed" her not to stand directly behind him because doing so triggered his mental health symptoms. He

claims Kloth did not comply with his request but instead increased the amount of time she stood behind him while patrolling common areas. Leiser filed this suit against Kloth, her supervisor, and the warden, claiming that Kloth's behavior violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court denied the defendants' motion for summary judgment after determining they were not entitled to qualified immunity because Leiser had a well-established right to be free from intentionally inflicted psychological harm. The defendants filed this interlocutory appeal, asking us to resolve the legal question of whether they were, in fact, entitled to qualified immunity. We reverse. Defendants are entitled to qualified immunity. At the relevant times, it did not violate clearly established constitutional law for non-medical correctional staff to refuse to provide a prisoner with what amounts to a medical accommodation that had not been ordered by medical staff and the need for which was not obvious to a layperson.

I. *Facts*

We construe the evidence in the light most favorable to Leiser as the non-moving party. See *Lovett v. Herbert*, 907 F.3d 986, 990 (7th Cir. 2018). At all times relevant, Jeffrey Leiser was an inmate in the custody of the Wisconsin Department of Corrections, housed at the Stanley Correctional Institution. Sergeant Karen Kloth was a correctional officer who worked in Leiser's unit. Kloth reported to Unit Manager Paula Stoudt and in turn to Warden Reed Richardson.

Leiser was housed in Stanley's mental health unit. He struggled with numerous mental health issues, including at times suicidal tendencies. Especially relevant to this case, the psychological services staff eventually diagnosed Leiser with

Post Traumatic Stress Disorder ("PTSD") stemming from a sexual attack he suffered as a child. Leiser alleges that because of this attack, when someone stands directly behind him, he experiences flashbacks and may become angry, knock his head against a wall, break out in a sweat, yell, scream, and want to hurt whoever triggered the episode. Leiser told staff in the Psychological Services Unit he was experiencing PTSD symptoms as early as October 2014, but he was not diagnosed with the disorder until some time in the spring of 2015.

While at Stanley, Leiser met regularly with staff from the Psychological Services Unit. On March 30, 2015, he told his treating clinician that he could not tolerate people standing directly behind him and that his anxiety spiked when he was waiting in line for medications in the Health Services Unit. His psychiatrist then arranged for him to receive his medications directly from nursing staff, rather than after waiting in line, to avoid this discomfort. Leiser did not receive any other accommodation for his PTSD from the psychological staff. Stanley's Psychological Services Unit does not inform correctional officers of an inmate's clinical diagnosis if no accommodation is required.

At some point in 2013, well before his diagnosis, Leiser noticed that Sergeant Karen Kloth began standing behind him in common areas, close enough, he says, to trigger his PTSD. Leiser told Kloth that he suffered from PTSD and that he could not tolerate anyone standing so close behind him. Kloth responded by telling Leiser he would just have to "deal with it" because she could stand where she wanted.

After this exchange, Leiser claims, Kloth increased the amount of time she stood directly behind him. Leiser submitted declarations from three other inmates who testified that

Kloth stood directly behind Leiser "every time" she worked and that she would stand behind him until he started shaking and sweating. Another inmate, Loren Leiser (Leiser's brother) told Kloth that she should not stand behind Leiser because of his PTSD, explained his symptoms, and that it would be her fault if he "snapped on her." Leiser's witnesses testified that after Kloth stood behind Leiser, he would dump his tray and retreat to his cell where he would shake, sweat, and talk to himself. Leiser indicated he began skipping meals when Kloth was on duty to avoid the risk of experiencing his PTSD symptoms.

Notes from treating clinicians say that Leiser was having problems with unit staff standing behind him, but they do not indicate he ever identified it was Kloth. Leiser eventually complained in writing about Kloth's behavior to her supervisors, Stoudt and Richardson. Though the written complaints to Stoudt did not indicate Kloth was engaging in conduct which triggered his PTSD, the letter he wrote to Warden Richardson specifically requested that Kloth be prohibited from standing behind him for that reason. Neither Stoudt nor Richardson acted on these complaints.

Leiser sued under 42 U.S.C. § 1983 on November 30, 2015. Among other claims, Leiser alleged that Kloth was intentionally causing him psychological harm by repeatedly attempting to trigger his PTSD, which he said violated the Eighth Amendment's prohibition against cruel and unusual punishments. He also sued Stoudt and Richardson for failing to protect him from Kloth's behavior.

Following a mandatory screening of the in forma pauperis complaint under 28 U.S.C. § 1915A, the district court permitted Leiser to proceed on the Eighth Amendment claim against

Kloth and failure-to-protect claims against Stoudt and Richardson. The defendants later moved for summary judgment. They argued that Kloth's behavior did not rise to the level of cruel and unusual punishment, and even if it did, the evidence did not establish that the defendants knew that Leiser's PTSD was triggered when Kloth stood behind him. Regardless, they argued, defendants were entitled to qualified immunity because if there was a constitutional violation, the legal rule was not clearly established at the time of Kloth's alleged conduct.

The court denied the defendants' motion for summary judgment, despite acknowledging it was not persuaded that Leiser met the requirements discussed in *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003), that is, evidence that Kloth's actions were not done for a legitimate penological reason and were instead intended to humiliate and inflict psychological pain. The court held that a jury could find Kloth violated the Eighth Amendment when she increased the amount of time she spent standing behind Leiser after she learned of his PTSD. Regarding qualified immunity, the district court found that Leiser had a clearly established right to be free from intentionally inflicted psychological harm at the time of these events, making the defendants ineligible for qualified immunity. This interlocutory appeal followed.

II. *Analysis*

A. *Appellate Jurisdiction*

We have jurisdiction to hear this appeal because "a district court's denial of a claim of qualified immunity, to the extent that it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the

absence of a final judgment." *Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985); see also, e.g., *Johnson v. Jones*, 515 U.S. 304, 319–20 (1995). We review the denial *de novo*, considering whether the defendants were entitled to qualified immunity when viewing the facts in the light most favorable to Leiser as the nonmoving party. *Howell v. Smith*, 853 F.3d 892, 897 (7th Cir. 2017), citing *Estate of Escobedo v. Bender*, 600 F.3d 770, 778 (7th Cir. 2010).

Leiser contends we do not have jurisdiction because this appeal is really a "back-door effort" to contest facts, rather than to resolve an issue of law. "[A]n appellant challenging a district court's denial of qualified immunity effectively pleads himself out of court by interposing disputed factual issues in his argument." *Gutierrez v. Kermon*, 722 F.3d 1003, 1010 (7th Cir. 2013); see also *Gant v. Hartman*, 924 F.3d 445, 451 (7th Cir. 2019) (dismissing officer's appeal of denial of qualified immunity because his argument depended on disputed facts). For purposes of this appeal, however, appellants acknowledge that all issues of material fact must be resolved in Leiser's favor and reviewed in a light most favorable to him. See *Knox v. Smith*, 342 F.3d 651, 657 (7th Cir. 2003) (defendant is not generally permitted to appeal denial of a summary judgment that involves mixed question of law and fact, "but where, as here, one side concedes the other's facts as to what happened, it is a question of law").

Leiser argues that the appeal focuses on the disputed fact of Kloth's intent, not a legal question, because the operative questions are whether Kloth stood behind Leiser *knowing* that this could trigger his PTSD and if so, whether this rose to the level of injury cognizable by the Eighth Amendment. Even framing the questions this way, we have jurisdiction.

Appellants concede—and we assume—for purposes of summary judgment that Kloth did know her conduct could cause Leiser psychological discomfort related to his PTSD. Whether an injury rises to a level "cognizable by the Eighth Amendment" is an issue of law that we have jurisdiction to decide. This appeal does not depend on disputed facts, so we have jurisdiction to hear this appeal. We now move on to whether the defendants were entitled to qualified immunity.

B. *Qualified Immunity*

Qualified immunity is a doctrine that "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009), quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). In other words, qualified immunity does not shield a government official if the alleged conduct violates a right that was clearly established at the time. *Thayer v. Chiczewski*, 705 F.3d 237, 253 (7th Cir. 2012).

To defeat a defense of qualified immunity, the plaintiff must show two elements: first, that the facts show "a violation of a constitutional right," and second, that the "constitutional right was clearly established at the time of the alleged violation." *Gill v. City of Milwaukee*, 850 F.3d 335, 340 (7th Cir. 2017). We have discretion to choose which of these elements to address first. *Pearson*, 555 U.S. at 236. Because the second prong is dispositive here, we will address only whether the right at issue was clearly established under the circumstances the defendant faced. *Lovett v. Herbert*, 907 F.3d 986, 991–92 (7th Cir. 2018), quoting *Mason-Funk v. City of Neenah*, 895 F.3d 504, 507–08 (7th Cir. 2018).

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While qualified immunity is an affirmative defense, once raised, the burden shifts to the plaintiff to defeat it. *Purvis v. Oest*, 614 F.3d 713, 717 (7th Cir. 2010). To meet his burden on this prong, Leiser needed to "show either a reasonably analogous case that has both articulated the right at issue and applied it to a factual circumstance similar to the one at hand or that the violation was so obvious that a reasonable person necessarily would have recognized it as a violation of the law." *Howell*, 853 F.3d at 897, quoting *Chan v. Wodnicki*, 123 F.3d 1005, 1008 (7th Cir. 1997). This requirement does not mean Leiser had to find a case "on all fours" with the facts here. *Howell*, 853 F.3d at 897, citing *Hope v. Pelzer*, 536 U.S. 730, 741 (2002). He did, however, need to show some settled authority that would have shown a reasonable officer in Kloth's position that her alleged actions violated the Constitution. *Mullenix v. Luna*, 136 S. Ct. 305, 308 (2015).

"To be clearly established, a right must be sufficiently clear that every reasonable official would have understood that what he is doing violates that right" meaning that "existing precedent must have placed the statutory or constitutional question beyond debate." *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (cleaned up). That is, the right must be clearly established to a degree of specificity such that a reasonable government official would be able to identify the violation with a specific set of facts.

In deciding a question of qualified immunity, the level of specificity at which the legal question is asked is often decisive, and it is possible to be too general and too specific. See, e.g., *Thompson v. Cope*, 900 F.3d 414, 421–22 (7th Cir. 2018). We must determine whether a right is clearly established "in light of the specific context of the case, not as a broad general

proposition." *Lovett*, 907 F.3d at 992, quoting *Mullenix*, 136 S. Ct. at 308. This requires us to consider "whether the violative nature of *particular* conduct is clearly established." *Mullenix*, 136 S. Ct. at 308, quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011). The Supreme Court has "repeatedly told courts ... not to define clearly established law at a high level of generality." *Mullenix*, 136 S. Ct. at 308, see also *al-Kidd*, 563 U.S. at 742 ("The general proposition, for example, that an unreasonable search or seizure violates the Fourth Amendment is of little help in determining whether the violative nature of particular conduct is clearly established.").

We first look to whether the Supreme Court or this circuit has previously held that conduct analogous to the present case violates the right at issue. *Lovett*, 907 F.3d at 992. The lack of specific precedent is not necessarily fatal to a qualified immunity defense because the Supreme Court has recognized that "officials can still be on notice that their conduct violates established law ... in novel factual circumstances." *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 377–78 (2009), quoting *Hope*, 536 U.S. at 741–42 (no qualified immunity when prison guards handcuffed inmate to hitching post for seven hours without regular water or bathroom breaks for his disruptive behavior, despite his having already been subdued). If no existing precedent puts the conduct beyond debate, we next consider if this is one of the rare cases, like *Hope*, where the state official's alleged conduct is so egregious that it is an obvious violation of a constitutional right. *Abbott v. Sangamon County*, 705 F.3d 706, 723–24 (7th Cir. 2013) (no qualified immunity for police officer for excessive force claims where officer tased nonviolent misdemeanant who did not respond to instructions to turn over after being tased a first time).

The district court determined that Leiser had "a clearly established right to be free from intentionally inflicted psychological harm." Leiser frames the question differently, as "whether Kloth subjected Leiser to calculated harassment unrelated to prison needs." Both of these statements are at too high a level of generality. See *Brosseau v. Haugen*, 543 U.S. 194, 199–200 (2004) (remanding denial of summary judgment on qualified immunity because court of appeals found fair warning in general tests regarding prohibition of shooting fleeing suspects rather than the more "particularized" fact of shooting fleeing suspects "when persons in the immediate area are at risk from that flight").

As we see the case, the issue is whether it was clearly established that Kloth was constitutionally required to accommodate Leiser's specific and unique mental health need based solely on his self-reporting and demands of other inmates, absent instructions from the medical staff.

"The Eighth Amendment prohibits unnecessary and wanton infliction of pain, thus forbidding punishment that is 'so totally without penological justification that it results in the gratuitous infliction of suffering.'" *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003), quoting *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). This prohibition against cruel and unusual punishment of inmates includes both physical and psychological harm. See *Beal v. Foster*, 803 F.3d 356, 357–58 (7th Cir. 2015) (reversing dismissal of § 1983 claim against prison guard who allegedly made remarks labelling a male inmate as homosexual, allegedly causing inmate severe psychological harm due to worry of increased likelihood of sexual assaults, thus making it more than "simple verbal harassment"), quoting *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012).

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Inmates have long had a clearly established right to be free from intentionally inflicted psychological torment and humiliation unrelated to penological interests. *Hudson v. Palmer*, 468 U.S. 517, 530 (1984) (mentioning the Eighth Amendment protects against "calculated harassment unrelated to prison needs"); *King v. McCarty*, 781 F.3d 889, 892 (7th Cir. 2015) (reversing dismissal; inmate plausibly alleged see-through jumpsuit that exposed his genitals during transfer to new prison had no penological purpose and only intended to humiliate and inflict psychological pain in violation of Eighth Amendment); *Beal*, 803 F.3d at 359 (jury could find correctional officer's verbal and nonverbal harassment was cruel and unusual because it "may have made him a pariah to his fellow inmates and inflicted significant psychological harm"); *Mays v. Springborn*, 575 F.3d 643, 649 (7th Cir. 2009) (reversing summary judgment for prison guards in light of inmates' allegations of strip searches publicly conducted in cold room with guards who did not change their latex gloves and made demeaning comments to inmates; genuine dispute over whether searches "were conducted in a harassing manner intended to humiliate and cause psychological pain"). However, "not every psychological discomfort a prisoner endures amounts to a constitutional violation." *Calhoun*, 319 F.3d at 939.

Leiser argues that Kloth had a constitutional obligation to modify her movements around the common area to avoid standing directly behind Leiser after he informed her that this proximity to him exacerbated his self-reported PTSD. However, none of the cases from this circuit he relies upon have facts closely analogous to those here. Se *Davis v. Wessel*, 792 F.3d 793, 796 (7th Cir. 2015) (body restraints); *Mays*, 575 F.3d

at 649 (strip searches); *Delaney v. DeTella*, 256 F.3d 679, 681–82 (7th Cir. 2001) (conditions of confinement).

The cases Leiser cites from other circuits also fail to show this right was clearly established. The only authority he points to that deals with psychological harm rather than physical harm or threats is *O'Connor v. Huard*, 117 F.3d 12, 17 (1st Cir. 1997), where the First Circuit considered the denial of qualified immunity under a plain error standard because the defendant had failed to preserve the affirmative defense. There, a jury found for the former pretrial detainee who had claimed that a correctional officer deprived him of mental health medication and intentionally triggered his anxiety attacks. *Id.* at 15. The district judge denied the officer's motion for judgment notwithstanding the verdict, where she asserted for the first time that she was entitled to qualified immunity. The First Circuit affirmed the verdict for the plaintiff because the officer "never brought forward any evidence suggesting that her actions were objectively reasonable in light of [plaintiff's] clearly established due process right." *Id.* at 17. Though *O'Connor* presents closer facts than the other cases Leiser cites, it involved the denial of access to prescribed medications, which would clearly interfere with prescribed medical treatment. In addition, the differences in procedural posture and standard of review undermine his argument that the right at issue here was clearly established at the time of Kloth's conduct.

Because he does not provide an analogous case, we now consider whether Leiser established that Kloth's conduct was so outrageous that no reasonable correctional officer would have believed the conduct was legal. He did not meet this burden. As noted above, in some "rare cases," such as *Hope v. Pelzer*, where the constitutional violation is "patently

obvious," the plaintiffs may not need to cite closely analogous cases because "widespread compliance with a clearly apparent law may have prevented the issue from previously being litigated." *Jacobs v. City of Chicago*, 215 F.3d 758, 767 (7th Cir. 2000). For example, in *Abbott v. Sangamon County*, qualified immunity did not apply despite the lack of analogous cases because it was clearly "unlawful to deploy a taser in dart mode against a nonviolent misdemeanant who had just been tased in dart mode and made no movement when, after the first tasing, the officer instructed her to turn over." 705 F.3d 706, 732 (7th Cir. 2013); cf. *Lovett*, 907 F.3d at 993 (not "egregiously" or "obviously unreasonable" to assign a severely intoxicated pre-trial detainee a top bunk from which he fell and died); *Kemp v. Liebel*, 877 F.3d 346, 353–54 (7th Cir. 2017) (qualified immunity applies on Free Exercise claim where no analogous case identified and it was not egregious or unreasonable for Jewish prisoners to be unintentionally denied religious services for several months after transfer to a new prison).

At the time of Kloth's conduct here, it was not clearly established that she was constitutionally required to avoid standing behind Leiser as a result of his self-reporting of a pending (albeit eventual) diagnosis. Such conduct, if intended to provoke a negative response from Leiser, may have been unprofessional and unjustified, but the law did not make clear that it amounted to cruel and unusual punishment. Leiser's claim here implies that prison staff have a constitutional obligation to modify the way they do their jobs based solely on an inmate's assertion that their actions elicit extreme psychological responses. We must recognize the risk that such a rule of law, which would apply without orders from prison medical staff, could create a real danger of inmates manipulating

correctional officers for purposes unrelated to their mental health.

This would be an entirely different case if Leiser had been diagnosed with PTSD and the medical staff had ordered correctional staff to provide an accommodation for Leiser that Kloth ignored. Generally, non-medical staff of jails and prisons must comply with medical directives, which includes mental health accommodations. *Mitchell v. Kallas*, 895 F.3d 492, 499 (7th Cir. 2018) ("An absence of treatment is equally actionable whether the inmate's suffering is physical or psychological."); *Arnett v. Webster*, 658 F.3d 742, 752–53 (7th Cir. 2011) (refusal to provide inmate with prescribed medication or to follow advice of specialists can violate the Eighth Amendment); *Ralston v. McGovern*, 167 F.3d 1160, 1161–62 (7th Cir. 1999) (reversing summary judgment because non-medical prison guard's refusal to comply with physician's therapy decision could be cruel and unusual).

While the lack of an accommodation directive from a psychiatrist should not be treated as permission to harass inmates in any manner, it is not unreasonable for a non-medical prison staff member to assume that a treating physician would have ordered an accommodation if one was necessary. See *Arnett*, 658 F.3d at 755 (recognizing non-medical prison staff "will generally be justified in believing that the prisoner is in capable hands" when relying on expertise of medical personnel); *Berry v. Peterman*, 604 F.3d 435, 440 (7th Cir. 2010) ("As a practical matter, it would be unwise to require more of a nonmedical staff member" than reliance on prison medical staff, as "the law encourages non-medical security and administrative personnel at jails and prisons to defer to the professional medical judgments").

Kloth is entitled to summary judgment because Leiser did not establish that he had a clearly established constitutional right to an accommodation of a self-reported mental diagnosis without confirmation from medical staff or existence of a treatment plan. This conclusion means that defendants Stoudt and Richardson are also entitled to summary judgment. See, e.g., *Gill v. City of Milwaukee*, 850 F.3d 335, 342 (7th Cir. 2017) (failure-to-intervene claims failed where plaintiff's right to be free from certain interrogation tactics was not clearly established at the time).

With high numbers of inmates suffering from mental illnesses, the scope of prison medical and non-medical staffs' duties toward mentally ill prisoners is an issue we can expect to face often. We understand that the relationships between inmates and prison staff are not always the model of civility, but it is essential that correctional staff comply with orders from medical staff. Here there were no such orders, so Leiser has not established that Kloth's alleged conduct rose to an Eighth Amendment violation beyond reasonable debate at the time of her alleged conduct.

We REVERSE the district court's denial of summary judgment and REMAND with instructions to grant summary judgment in favor of the appellants.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 24, 2019

Before

FRANK H. EASTERBROOK, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 17-3378

JEFFREY D. LEISER,
Plaintiff-Appellee,

v.

KAREN KLOTH, Correctional Sergeant, et al.,
Defendants-Appellants.

Appeal from the United States District Court for the Western District of Wisconsin.

No. 3:15-CV-00768-SLC

Stephen L. Crocker
Magistrate Judge.

ORDER

On consideration of plaintiff Jeffrey D. Leiser's petition for rehearing or rehearing en banc, filed September 9, 2019, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for rehearing.*

Accordingly, the petition for rehearing or rehearing en banc filed by plaintiff Jeffrey D. Leiser is **DENIED**.

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* Judge Michael B. Brennan took no part in the consideration of the petition for rehearing en banc.

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEFFREY D. LEISER

Plaintiff,

v.

KAREN KLOTH, et al.,

Defendants.

OPINION and ORDER

Case No. 15-cv-768-slc

Pro se plaintiff Jeffrey D. Leiser is proceeding in this lawsuit on Eighth Amendment claims against defendants Karen Kloth, Paula Stoudt, and Reed Richardson, related to Kloth's alleged harassment and Stoudt and Richardson's failure to protect him from harassment. Defendants filed a Motion for Summary Judgment (dkt. 21), which I am denying, and Leiser filed a Motion to Strike (dkt. 38) which I also am denying. Also, the parties have two pending motions related to Leiser's discovery requests (dkts. 17-18), which I am denying in part. Finally, I am striking the upcoming trial date and scheduling this matter for a telephonic scheduling conference.

UNDISPUTED FACTS

I. Parties

Leiser is a DOC inmate who was housed at the Stanley Correctional Institution at all times relevant to his claims in this lawsuit. During his time at Stanley, Leiser was diagnosed with post-traumatic stress disorder (PTSD) related to a sexual assault when he was a child. One trigger for Leiser's PTSD is when someone stands directly behind him. According to Leiser, when his PTSD is triggered, he experiences flashbacks and becomes angry, starts sweating, knocks his head

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against the wall, yells and screams, and wants to attack or hurt the people who trigger his PTSD. (Leiser decl., dkt. 31, ¶ 18.)

Defendant Karen Kloth was employed at Stanley as a sergeant during the relevant time period. Defendant Paula Stoudt was a Unit Manager at Stanley, and her responsibilities included supervising the security, treatment, and general living conditions of the inmates. Defendant Reed Richardson was the warden at Stanley during the relevant period, and he was responsible for the overall administration and operation there.

II. Stanley's Psychological Services Unit (PSU) Approach to Inmate Diagnoses

During the relevant time period, non-defendant Dr. Jesse Frey was the psychological supervisor at Stanley, and his responsibilities included overseeing inmate mental health treatment there. Dr. Frey explains that PSU staff do not inform security staff about inmates' clinical diagnoses. An exception to this general rule arises when an inmate needs a special accommodation to address an inmate-specific psychological condition. In such a case, psychological services staff informs unit security staff of the particular symptoms, behavioral or emotional responses of the inmate, and the special accommodations needed to address that inmate's issues. Dr. Frey states that:

> It is my opinion, to a reasonable degree of clinical certainty based on my review of Leiser's clinical records and my interactions with him that Leiser did not need an accommodation directive precluding Stanley security staff from standing or moving behind him.

(Frey May 9, 2017 Declaration, dkt. 27, ¶ 16.)

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III. Leiser's PTSD Diagnosis and Treatment by PSU

Leiser worked consistently with PSU staff on a variety of psychological issues. During the relevant time period, Leiser's treating clinician was Nichole Kaeppler. It appears that she had her first session with Leiser on October 2, 2014, at which point she noted that Leiser made "mention of psychotherapeutic treatment as an adolescent while in foster care." (Ex. 1005, dkt. 27-1, at 1.) According to Leiser, he told Kaeppler that he suffers from PTSD as a result of a childhood trauma in which he was knocked out while talking to a blond female. (Leiser decl., dkt. 31, ¶ 10.) Leiser also claims that during that session he told Kaeppler specifically that Kloth stands behind him to trigger his PTSD, but Kaeppler's notes do not include that detail.

On December 18, 2014, Kaeppler noted that Leiser told her more about his childhood trauma, this time revealing that the trauma included sexual assault. Leiser also told her that he related the trauma to his refusal to trust others as well as his discomfort having people stand behind him. (Ex. 1005, dkt. 27-1, at 4.) At that point, Kaeppler made a plan to clinically monitor him to rule out PTSD. On January 8, 2015, Kaeppler met with Leiser again; she noted that Leiser did not want to discuss his childhood sexual abuse and again, and noted her plan to monitor him to rule out PTSD. On February 5, 2015, Kaeppler noted that Leiser talked more about his childhood sexual assault. Kaeppler also noted that the themes he presented seemed "to root from symptoms of PTSD." (*Id.* at 7.) As such, she ordered a follow up in three weeks, and planned with consult with Dr. Frey about Leiser's symptoms to determine if an official PTSD diagnosis was appropriate. She also ordered that Leiser receive PTSD workbook materials. They met again on March 12, 2015, but the focus of that session was Leiser's loss of a friend.

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On March 30, 2015, Kaeppler met with Leiser, and they again discussed his fear of having people stand behind him. She noted that Leiser specifically said that his anxiety spiked when he was waiting in line for medications in the Health Services Unit (HSU). Kaeppler noted that she planned to assign him a PTSD diagnosis after consulting with Dr. Frey, and Dr. Frey signed that treatment note on April 13, 2015.

Kaeppler and Dr. Frey continued to see Leiser. At times, the treatment notes indicate that Leiser reported that he was having problems with unit staff standing behind him, but the notes did not indicate that Leiser specifically reported that Kloth was harassing him or deliberately triggering his PTSD. (*See* dkts. 31-2, 31-7, 31-8.) Neither Dr. Frey nor Kaeppler initiated a treatment plan that would accommodate Leiser's needs related to his PTSD. Additionally, neither Kaeppler, nor anyone else from Stanley's PSU informed Stanley's other employees of Leiser's PTSD diagnosis or that his PTSD was triggered when people stood behind him. Dr. Frey explains that PSU did *not* create or implement an accommodation prohibiting Stanley staff from standing behind him because (1) psychological staff focus on internal, not external, changes, and (2) Stanley is too closely populated to ensure that no one would stand behind Leiser, so any such accommodation could not be implemented.

Leiser does not dispute that there was no official accommodation for him at Stanley. Instead, he contends that he told his psychiatrist, Dr. Luxford, about the problem he had waiting for his medications, and that afterwards, Dr. Luxford arranged for Leiser to receive his medications inside the HSU rather than waiting in line. (Leiser decl., dkt. 31, ¶ 19.)

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IV. Sergeant Kloth

At some point in 2014 and 2015, Leiser was housed in the unit where Kloth was sergeant. The parties dispute whether Leiser told Kloth that he suffered from PTSD and that his PTSD was triggered when someone stands directly behind him. Leiser submitted his own declaration, stating that when he told Kloth about his PTSD, Kloth responded that she can stand where she wants and he would have to learn to deal with it. (Leiser decl., dkt. 31, ¶ 10.) Beyond his declaration, Leiser submits declarations from three other inmates, recounting what they saw when Kloth and Leiser interacted. Specifically, Leiser's brother, Loren Leiser (Loren), states that he (Loren) told Kloth that she should not stand behind Leiser because it would trigger his PTSD, warning her that it would be her fault if Leiser "snapped on her" and hurt her. (Loren Leiser decl, dkt. 37, ¶¶ 16-18.) Loren also states that he saw Leiser tell Kloth not to stand behind him as well. (*Id.* ¶ 19.) Loren describes what happens to Leiser when his PTSD is triggered, explaining that he has two levels of PTSD: "level-one" involves fidgeting, sweating, and/or darting eye movements, sometimes causing him to yell and walk away; "level-two" involves level-one symptoms, plus shaky hands, twitchy leg movements, and increased heart rate. (*Id.* ¶ 15.) While Loren states that he warned Kloth that he might "snap on her," Loren does not state that Kloth saw Leiser experience these symptoms when Leiser interacted with her.

Two other inmates, Robert Sekola and Terry Gorichs, state that they saw Leiser tell Kloth not to stand behind him in the cafeteria but she responded that she would stand where she wanted and thereafter continued to stand behind him. (Gorichs decl., dkt. 35, ¶¶ 2-3; Sekola decl., dkt. 36.) Sekola also states that when he saw Kloth stand behind Leiser, Leiser got angry and started shaking and sweating. (Sekola decl, dkt. 36 ¶ 4.) Gorichs also explained that he was

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Leiser's cellmate, and that he saw Leiser respond to Kloth standing behind him by dumping his tray and going back to his cell, where he would be shaking, sweating, and talking to himself, saying things like "She is not worth it" and "don't hurt her, she's not the one!" (Gorichs decl., dkt. 35, ¶¶ 4-6.) Gorichs states that Kloth would stand behind Leiser "every time" she worked in Leiser's unit as sergeant.

For her part, Kloth claims that, prior to Leiser bringing this lawsuit, she did not know that Leiser had PTSD or that standing behind Leiser triggered his PTSD. Kloth admits that in both the day room and cafeteria, she stood behind inmates, including Leiser, while she was monitoring them. Yet she states that she never had any conversations with Leiser about his PTSD, nor did Leiser complain to her that standing behind him would trigger his PTSD. Furthermore, Kloth states that PSU staff never informed her that Leiser had PTSD, and she was unaware of any accommodation issued to Leiser for staff not to stand behind him to avoid triggering his PTSD.

V. Leiser's Complaints to Stoudt and Richardson about Kloth

Stoudt worked at the unit manager where Leiser was housed. Leiser often complained to Stoudt about Kloth, and Stoudt knew that Leiser did not like Kloth. According to Stoudt, however, Leiser did not make any complaints – either orally or in writing – in which he specifically told her that Kloth was attempting to trigger his PTSD by standing behind him.

More specifically, on May of 2015, Stout reviewed the a conduct report Kloth issued Leiser for disobeying orders. Stoudt was responsible for reviewing the conduct report and Leiser's statement in his defense. Although Leiser repeatedly stated that Kloth was harassing him by

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issuing the conduct report, Leiser did not report that Kloth stood behind him in an attempt to trigger his PTSD. (Ex. 1001, dkt. 24-1, at 3.) Stoudt explains that after reviewing the conduct report and Leiser's statement, Stoudt gave Leiser a disposition of a reprimand. Stoudt further states that she did not believe that the statements in the conduct report indicated that Kloth was harassing Leiser.

As to Richardson, Leiser claims that on October 14, 2014, he sent Richardson a letter in which Leiser reports that he suffers from PTSD and requested that Kloth be prohibited from standing behind him. (Dkt. 31-12.) Leiser also claims that when Richardson was doing rounds through Stanley, Leiser talked to him about Kloth, but Richardson failed to take any action.

Richardson disputes that he ever received Leiser's October 14 letter, and similarly states that he never had conversations with Leiser about this issue. Rather, according to Richardson, when he reviewed acted as the Reviewing Authority for inmate complaints filed at Stanley, he never saw any complaints from Leiser alleging that Kloth was harassing him by standing behind him to trigger his PTSD. Richardson explains that he did review one complaint Leiser filed related to Kloth, SCI-2015-10912, but in that complaint Leiser challenged only Kloth's decision to give him a conduct report, he did not claim that Kloth deliberately would stand behind him in order to trigger Leiser's PTSD. (*See* dkt. 26-2.)

OPINION

Leiser is proceeding on an Eighth Amendment claim against defendant Kloth for her alleged harassment, and a related Eighth Amendment claim against defendants Paula Stoudt and Reed Richardson for their failure to take action to stop Kloth's harassment. Defendants moved

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for summary judgment on the ground that Kloth's behavior did not rise to the level of cruel and unusual punishment, and that the evidence does not establish that any of them knew that he suffered from PTSD that was triggered when people stand behind him. In addition, defendants argue that qualified immunity shields them for money damages here. Although Leiser faces a steep uphill battle at trial, I am constrained to deny defendants' motion.

As an initial matter, Leiser asks that I strike Dr. Frey's declaration from the record because Frey was not Leiser's clinician and Frey does not have first-hand knowledge of Leiser's discussion with his clinician. (Dkt. 38.) However, Dr. Frey's declaration includes only statements related to Stanley's approach to special accommodations as well as his review of Kaeppler's notes and his personal interactions with Leiser. Additionally, Leiser's treatment records show that Dr. Frey consistently reviewed and signed off on Kaeppler's session notes, and that Dr. Frey met with Leiser personally. (*See generally* Ex. 1005, dkt. 27-1.) Accordingly, Leiser has not established that Dr. Frey's statements in his declaration were not based on his personal knowledge or involvement in Leiser's care. I am denying Leiser's motion to strike.

I. Eighth Amendment Harassment Claim

The standard for assessing Eighth Amendment claims of cruel an unusual punishment includes objective and subjective components. *Fillmore v. Page*, 358 F.3d 496, 509 (7th Cir. 2004). As to the objective component, the test is "not the actual fear of the victim, but what a 'reasonable' victim would fear." *Dobbey v. Illinois Dept. of Corr.*, 574 F.3d 443, 445 (7th Cir. 2009) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1970)). The subjective component evaluates

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whether the state actor intended to inflict physical or psychological pain. *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003).

With respect to harassment claims specifically, the court also has noted that "[t]he line between 'mere' harassment and 'cruel and unusual punishment' is fuzzy, but requires "a credible threat to kill, or to inflict any other physical injury" for harassment to rise to the level of a constitutional violation. *Dobbey*, 574 F.3d at 445; *see also Hughes v. Farris*, 809 F.3d 330, 334 (7th Cir. 2015) ("Threats of grave violence can constitute cruel and unusual punishment under the Eighth Amendment."). More specifically, the Seventh Circuit has stated, "most verbal harassment by jail or prison guards does not rise to the level of cruel and unusual punishment." *Beal v. Foster*, 803 F.3d 356, 358 (7th Cir. 2015) (citing *DeWalt v. Carter*, 224 F.3d, 607, 612 (7th Cir. 2002)). However, in *Beal*, the court nevertheless concluded that harassment in the form calling an inmate names such as "punk, fag, sissy, and queer" was sufficient to state an Eighth Amendment claim because the allegations supported the finding of psychological harm and an increased the likelihood of sexual assaults on the inmate, thus stating a claim for cruel and unusual punishment. *Id.* at 358.

In this case, the objective prong of the analysis is subsumed within the subjective prong–at least initially–because the fact that Kloth stood behind Leiser in the cafeteria is objectively innocuous. The operative questions are: did Kloth stand behind Leiser knowing that this could trigger Leiser's PTSD; and, even if she did, did this rise to the level of an injury cognizable by the Eighth Amendment?

At the Rule 56 stage, the court must accept as true the nonmovant's version of events. According to Leiser and his brother, they both told Kloth that Leiser had PTSD and that if she

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stood behind him, this could trigger the condition. Both men claim that Kloth responded that she did not care, she was going to stand where she wanted to. Kloth denies all this, and other evidence cited above (for instance, Leiser's failure to make this claim in response to the conduct report and the failure of the PSU notes to reflect Leiser's claim) calls into question Leiser's averments to the court. Kloth may well be telling the truth and the Leisers not, but this does not help Kloth at the summary judgment stage. The court must assume that Kloth knew that Leiser had PTSD, that she knew standing behind him was a trigger, and that she continued to stand behind Leiser anyway. This could be viewed as "the very definition of deliberate indifference." *Rowe v. Gibson*, 798 F.3d 622, 635 (7th Cir. 2015) (Rovner, J., concurring) (citing *Green v. Daley*, 414 F.3d 645, 653 (7th Cir. 2005)).

A corollary to this observation is that, even accepting Leiser's version of the facts as true, there is no direct evidence that Kloth would stand behind Leiser for the purpose of provoking a PTSD attack. Rather, this is the inference that Leiser wants the court to draw from his supporting affidavits, and since I have to accept Leiser's version of events at true, and since it is not an unreasonable inference to draw if I have to accept this version of events, then, for the purposes of summary judgment, I am constrained to draw this inference in Leiser's favor.

As to the second question, to survive summary judgment, Leiser must present evidence that Kloth "intended to humiliate and inflict psychological pain." *Calhoun*, 319 F.3d at 939. I am not persuaded that Leiser has done this. Kaeppler and Dr. Frey were aware that Leiser *would* have people standing behind him while he was incarcerated because Leiser "resided in a densely populated correctional facility"; *a fortiori*, Kaeppler and Frey knew that Leiser's PTSD likely would be triggered in this environment. Even so, Dr. Frey in PSU has opined to a reasonable

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degree of medical certainty that Leiser did not need an accommodation for his PTSD. Therefore, PSU staff did not share Leiser's diagnosis with any correctional officers (including Kloth), and they did not provide any information to any correctional officers (including Kloth) about the symptoms of PTSD. The implicit but logical and reasonable conclusion is that even if Leiser's PTSD was triggered by someone standing behind him, there was no substantial risk that Leiser would suffer serious psychological harm.

Leiser's own evidence corroborates this conclusion. His brother Loren reports that Leiser's "level-one" symptoms are fidgeting, sweating, and/or darting eye movements, and sometimes yelling and walking away; Leiser's "level-two" symptoms add to this shaky hands, twitchy leg movements, and increased heart rate. Leiser's cellmate reported essentially the same symptoms. However unpleasant these symptoms may have been to Leiser, they do not amount to the level of "serious harm" that would state a constitutional violation. This list of symptoms is no more severe than what many hot-tempered people exhibit when they get angry.[1]

Suppose, *arguendo*, that Kloth knew only that Leiser had a short fuse and could be easily provoked to yell, wave his arms, and turn red in the face with bulging eyes, and then, knowing these things, Kloth would try to press Leiser's buttons to get a rise out of him. Howsoever unprofessional and blameworthy this would be, would such conduct rise to the level of a constitutional violation? If it does not, would putting a DSM-5 label on Leiser's condition

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[1] Leiser avers that when his PTSD is triggered, he also knocks his head against the wall and wants to attack or hurt the people who trigger his PTSD. While Leiser and Loren state that they told Kloth that Leiser might hurt her, there is no evidence that Leiser ever actually attacked anyone. Nor is there evidence suggesting that anyone else – not Kloth, not Leiser's cellmate, not anyone in PSU – knew that Leiser would knock his head against the wall.

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change the outcome? "Not every psychological discomfort a prisoner endures amounts to a constitutional violation." *Calhoun*, 319 F.3d at 939.

But the court in *Calhoun* continues:

> Instead, the Eighth Amendment prohibits unnecessary and wanton infliction of pain, thus forbidding punishment that is so totally without penological justification that it results in the gratuitous infliction of suffering. Such gratuitous infliction of pain always violates contemporary standards of decency and need not produce serious injury in order to violate the Eighth Amendment. Moreover, physical injury need not result for the punishment to state a cause of action, for the wanton infliction of psychological pain is also prohibited.

Id. at 939 (citations omitted).

In this case, Leiser and his witnesses claim that they told Kloth that Leiser had PTSD, that one of his triggers was people standing behind him, that this caused Leiser psychological and physical distress, and that after knowing these things, Kloth increased the amount of time she spent standing behind Leiser in the cafeteria, implicitly for the purpose of provoking a PTSD response. Kloth disputes all of this, but summary judgment is not available to Kloth on this record.

One could logically ask: in the absence of any information and direction from PSU regarding Leiser's PTSD, why should Kloth take Leiser's word for it? After all, if this really was a serious psychological issue, wouldn't PSU staff have flagged it for the correctional officers who had to deal with Leiser? This position has traction up to a point. If Leiser's version of events had stopped with Kloth simply continuing to behave toward Leiser as she always had behaved, then this court would be comfortable granting summary judgment in favor of Kloth. Leiser could not prevail on a constitutional claim based essentially on him (and his brother) directing Kloth how

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to do her job in a way that did not upset Leiser. But in Leiser's version of events, Kloth intentionally exploited her new knowledge of Leiser's psychological vulnerability. Even *then*, it would not necessarily be a problem of constitutional dimension for her to have behaved in a manner intended to press Leiser's buttons if it turned out that there were no buttons to be pressed. But the buttons were there. PSU staff could have advised Kloth, if she had asked, that it was aware of Leiser's PTSD, it was working to de-condition him, and would Kloth please not make it harder for him by standing behind him more often than her normal duties required her to? Before changing her behavior to test Leiser's claim, Kloth would have had an obligation to confirm that her testing would not constitute deliberate indifference to Leiser's known psychological condition.

As already noted, from Kloth's perspective this entire discussion is counterfactual conjecture. How could she have consulted with PSU about a condition about which she had no knowledge and that she was not exacerbating, intentionally or otherwise? Point taken. But at summary judgment, the court cannot choose between competing material facts. It will be up to a jury to determine who is telling the truth.

II. Eighth Amendment Failure to Protect Claim

I am denying defendants' motion as to Stoudt and Richardson for the same reason. Plaintiff claims that Stoudt's inaction after he told Stoudt that Kloth's conduct report was false, and Richardson's inaction after he filed an inmate complaint about Kloth, both constitute cruel and unusual punishment. As these claims focus on the failure to act, it is better to characterize them as claims that the defendants failed to protect him from harassment. *See Farmer v. Brennan*,

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511 U.S. 825, 837 (1994). To state an Eighth Amendment failure to protect claim, a prisoner must allege that (1) he faced a "substantial risk of serious harm" and (2) the prison officials identified acted with "deliberate indifference" to that risk. *Id.* at 834. Deliberate indifference has two components: (1) a defendant must have actually known that the inmate was at risk; and (2) the defendant must have disregarded that risk by failing to take reasonable measures in response. *Brown v. Budz*, 398 F.3d 904, 909 (7th Cir. 2005).

Here, because Leiser's factual submissions have allowed him to survive Kloth's summary judgment motion regarding Leiser's claim of cruel and unusual punishment, Leiser's claims that Stoudt and Richardson failed to take any action to protect him from Kloth likewise must be put to trial. Indeed, while Stoudt and Richardson dispute this, Leiser claims that he informed both of them that Kloth was purposefully triggering his PTSD. Then, claims Leiser, neither Stoudt nor Richardson took any action to investigate Kloth's behavior or to prevent it. If a jury were to believe Leiser's version of events, then it could conclude that Stoudt's and Richardson's inaction constituted deliberate indifference to the risk that Leiser would suffer severe psychological harm. I am denying defendants' motion for summary judgment as to Stoudt and Richardson as well.

III. Qualified Immunity

Finally, because the record contains a version of events that would allow a jury to conclude that Kloth intentionally caused Leiser psychological harm, qualified immunity does not shield any defendant from liability. Qualified immunity protects government employees from

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liability for civil damages for actions taken within the scope of their employment unless their conduct violates "clearly established . . . constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). *See also Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). "In determining whether a constitutional right has been clearly established, it is unnecessary for the particular violation in question to have been previously held unlawful." *Lewis v. McLean*, 864 F.3d 556, 563 (7th Cir. 2017) (citing *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). Instead, the question is whether the "contours of the right [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson*, 483 U.S. at 640.

Leiser has submitted evidence that would allow a finding that all of the defendants knew that Leiser suffered psychological harm when his PTSD is triggered. While defendants dispute it, Leiser likewise submitted evidence that (1) Kloth intentionally triggered that harm, and (2) Stoudt and Richardson knew that she triggered his PTSD but did nothing to stop her. Because Leiser has a clearly established right to be free from intentionally inflicted psychological harm, qualified immunity does not shield defendants from liability at this stage.

Pending Discovery Motions

Finally, I will resolve the two remaining discovery motions, which, for the most part, are mirror images of one another. Leiser requests an order compelling defendants' to respond to his discovery requests related to (1) Kloth's termination from the Stanley and New Lisbon Correctional Institutions, (2) inmate complaints filed against Kloth since 2016, (3) mental health examination requirements for DOC employees, and (4) a log book entry that defendants

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represent does not exist. Leiser seeks this information to support his theory that Kloth intended to harass him and in fact had a habit of harassing inmates. Defendants opposed the motion and, seek an *in camera* review of Kloth's disciplinary history and the complaints filed against her before turning those documents over.

The parties do not argue the details of the mental health examination and log book, so I'll resolve them quickly. As to the mental health examination, despite defendants' objection that the request was overly broad, Leiser argues only that the examination would provide evidence of Kloth's state of mind, but he has not suggested that he has any reason to believe that such an examination exists. As to the log book entry, defendants represented that it does not exist, and Leiser has not submitted any facts that suggest otherwise. Accordingly, I'm denying Leiser's requests related to those documents.

Leiser's requests related to Kloth's termination and the grievances filed against her since 2016 require a bit more discussion. Leiser argues that this information is relevant to proving that Kloth had a habit of harassing inmates, and thus carried out this habit against Leiser. Thus, he will seek to admit such evidence against Kloth pursuant to Fed. R. Evid. 406, which permits evidence of a "person's habit" to prove that "on a particular occasion the person ... acted in accordance with the habit or routine practice." I doubt that Leiser will be able to make a sufficient showing to actually admit evidence that Kloth had a "habit" of harassing inmates. *Nelson v. City of Chicago*, 810 F.3d 1061, 1073 (7th Cir. 2016) ("Before a court may admit evidence of habit, the offering party must establish the degree of specificity and frequency of uniform response that ensures more than a mere 'tendency" to act in a given manner, but rather, conduct that is semiautomatic in nature.") (citations omitted). However, the question of this

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information's admissibility isn't before me, it's whether he is entitled to discovery of it. If Leiser's theory of the case is that Kloth habitually harassed inmates, I agree that such information could lead to admissible evidence.

For their part, defendants argue that the disciplinary and complaint information Leiser requested are not related to his lawsuit's narrow time frame, and thus that such information constitutes inadmissible "other acts" under Fed. R. Evid. 404(b), which permits character evidence for other purposes, which as "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." While that's true, Leiser acknowledges that the only purpose of this evidence would be to prove that Kloth acted in accordance with her character trait (or habit, as he labels it) of harassing inmates. Defendants also oppose on security grounds, arguing that giving Leiser this type of information creates a security risk because the inmate might be able to use that information improperly against that employee. This argument is puzzling because Kloth is no longer employed at Stanley, so it is unclear why Leiser would be able to this information against her. However, I'll clear up this confusion by directing defendants to submit those documents to me under seal for my *in camera* review. Once I've reviewed them, I'll issue a follow up order resolving whether defendants must produce this information. As such, Leiser's and defendants' motions are denied in part, and I'm deferring my ruling as to Kloth's disciplinary history and the internal and external complaints filed against her.

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Amending the Schedule

Trial currently is set for November 13, 2017, with motions and limine and Rule 26 disclosures due by October 23. To give the parties time to resolve the outstanding discovery dispute and to provide some breathing room before trial, I am striking the trial date. Because of the holidays, my plan is to reset the jury selection and trial for one of these dates: January 16, 22, or 29. Other dates would be reset to match the trial date. Not later than November 3, 2017, the parties should report to the court which of these date(s) they prefer and which date(s) will not work.

In Leiser's other pending case, *Leiser v. Hannula*, Case No. 15-cv-328-slc, the court is in the process of recruiting counsel on Leiser's behalf. I am not planning to recruit counsel for Leiser in this case because the disputed facts that require a trial are remarkably straightforward and Leiser has more than adequately represented himself in this matter. That said, once the court recruits counsel for Leiser in 15-cv-328-slc, if there is a mutual interest in global mediation, the court will assist the parties with this if they ask.

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ORDER

IT IS ORDERED that:

(1) Defendants' Motion for Summary Judgment (dkt. 21) is DENIED.

(2) Plaintiff Jeffrey Leiser's Motion to Strike (dkt. 38) is DENIED.

(3) The parties's discovery motions (dkts. 17, 18) are DENIED in part as provided above. Defendants are DIRECTED to submit Kloth's disciplinary history and internal and external complaints filed against her, to the court under seal for the court's *in camera* review by **November 3, 2017.**

(4) All deadlines and the trial date in this matter are hereby STRICKEN, to be re-set after allowing the parties until November 3, 2017, to provide input on the new trial date.

Entered this 19th day of October, 2017.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Jeffrey D. Leiser,
Plaintiff,

Vs. Case No. 15CV768

Karen Kloth, et al.,
Defendants.

PLAINTIFF'S PROPOSED FINDING OF FACT IN PLAINTIFF'S FAVOR.

I Jeffrey D. Leiser Plaintiff in this case hereby present his Proposed finding of fact in support of granting Plaintiff summary judgment.

1. Fact, I Jeffrey D. Leiser am the plaintiff in this case, and at all times relevant to this case was housed at Stanley Correctional Institution. (SCI)

2. Fact, Sgt. Kloth harassed Leiser, by standing behind him in Unit 1-A dayroom during meals and while Leiser was seated in the dayroom, causing Leiser severe mental issue's by triggering Leiser's PTSD.(Plaint Decl ¶ 5 , Leiser's Decl,¶ 15, Gorichs Aff ¶ 3 , Sekola Aff ¶ 2 .)

3. Fact, When Leiser was 8 years old, we was standing talking to a blond female neighbor in her garage when I was hit from behind and knocked out cold. I was brutality rapped and beaten and left for dead in the park. (Plaint Decl ¶ 6)

4. Fact, ever since then Leiser has suffered severe night mirror, sweats, flashbacks, traumatic thoughts of hurting others. (Plaint Decl, ¶ 7)

5. Fact, Ever sinse that day(s) plaintiff cannot handle people standing behind him for fear of flaskbacks, and thoughts of harm. (Plaint Decl, ¶ 7)

6. Fact Leiser has worked hard not to allow people stand directly behind him, either by altaring or doing things differently. (Example instead of shopping during the day, I would shop after midnight.) (Plaint Decl ¶ 6)

7. Fact, Plaintiff would work at night, and by himself to keep others from standing behind him(Directly behind me) (Plaint Decl, ¶ 6)

8. Fact, Plaintiff informed Karen Kloth (Defendant) to please not stand directly behind me. That I suffer from PTSD and for your own safety.(Plaint Decl, ¶ 8 , Loren Leiser's Decl,¶ 19 , Gorichs Aff ¶ 3 , Sekola Aff ¶ 2)

9. Fact, Kloth stated after Leiser informed her "I can stand were ever I want too, you nor anyone else will not tell me were to stand learn to deal with it. (Plaint Decl ¶ 9)_

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10. Fact, Plaintiff informed Psychologist Kaeppeler in SCI on 10/2/14 of "why does it always have to be about feelings" and that Kloth likes to trigger my PTSD by standing behind me. Kaeppeler asked what does that mean, Plaintiff informed her that he was knocked out and severely rapped. (Plaint Decl, ¶ 10 Ex 1)

11. Fact, Kaeppeler only took short hand notes in our meetings. Making her clinical notes incomplete, and ineffective. (Plaint Decl, ¶ 11 ,DPFOF ¶11)

12. Fact, Plaintiff nexted informed Kaeppeler on 12/18/14 of more detailed account of his childhood trauma. "he related his trauma to his discomfort in having people at his back. (Plaint Decl, ¶ 13 Ex 2) (Defendants Ex 1005-0004)

13. Fact, Kaeppeler's Psychological Services Clinical Contact note DOC 3773 states on 2/05/15 under "TREATMENT PLAIN/FOLLOW UP" "Consult with Dr. Frey about PTSD symptoms and determine if diagnosis appropriate to assign, dropping the R/O. Sent Inmate PTSD workbook materials, and begin working on first few chapters." (Plaint Decl, ¶ 14 Ex 3) Signed by Dr Frey 2/19/15(Defendant Ex 1005-0007)

14. Fact, Dr Frey's Statement is a lie in DPFOF ¶ 12, Frey Decl ¶11, "... a diagnosis of PTSD and this diagnosis was assigned on March 30 2015. Plaint Decl, ¶ 15 , Plaint Ex 5)

15. Fact, Kaeppeler's Psychological Serives Clinical Contact 3/12/15 Treatment Plan. "Work on dealing with flashbacks, ferencing PTSD manual." Plaint Decl, ¶ 16 Ex 4)(Defendants Ex 1005 -0009)

16. Fact, Dr. Frey had only 2 or 4 visits with Leiser, and non of them dealt with Leiser's PTSD or his childhood trauma, nor was there any discussion pertaining PTSD. Plaint Decl, ¶ 17 DPFOF ¶21)

17. Fact, Plaintiff explained to Kaeppeler what happened when his PTSD is trigger. First he goes to his room, punches the walls, knocks his head against the walls, and had to tell himself it's not them, I'm ok. Plaintiff see blood, and wants to severely hurt the person that triggered it, and anyone around him. Plaintiff explained that he cannot control it once he loses it. Plaintiff see's and feels the pain inflicted and the torture he indoored. (Plaint Decl, ¶ 18 , DPFOF ¶14)

18. Fact, Dr. Luxford head psychiatrist at SCI ordered that Leiser be given his psych medication & pain medication.(DPFOF ¶ 15, Plaint Decl, ¶ 19)

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19. Fact, Dr. Frey's statement that psychologist fucus on internal changes not enternal changes is because people cannot change how other acts or behaves is false. Kloth is a State Employee who are bound by DOC/DAI policies & procedures, all it would take to change Kloths behavor is warden Richardson, UM Stoudt doing their jobs and tell her to stop harassing Leiser or discipline her for doing so. (Pl Dec20)

20. Fact, all it would have taken is a simple converation with Kloth by either Richardson or Stoudt or Dr. Luxford, or Kaeppeler and Leiser would not have been mentall abused & tortured by Kloth

21. Fact neither Richardson, Stoudt, Kaeppeler intervened to protect Leiser from Kloths Mental abuse. (Plaint Decl, 22 ¶, Ex 11)

22. Fact, Leiser informed first & second shift staff in Unit one (regulars) that he had PTSD, and asked them not to stand behind him because it triggers/sets off his PTSD. (Plaint Decl, ¶ 23; DPFOF ¶ 16)

23. Fact, to accommodate Leiser's PTSD, all staff had to do was not stand behind Leiser, keep Leiser out of the medication line as Dr. Luxford already set-up for Leiser. As well as keep Kloth from perposely triggering his PTSD.(Plaint Decl ¶24)

24. Fact, Kloth wilfully and perposely triggered Leiser's PTSD for her own sickness of seeing others suffer, to get a kick out of torturing inmates with mental illness. (Plaint Decl, ¶25)

25. Fact, Dr Freys "OPINION TO A REASONABLE DEGREE OF CLINICAL CERTAINTY" is not based on a complete or accurrent clinical record by Kaeppeler. They are paraphrased of what was said in the meetings.(Plaint Decl, ¶25A)

26. Fact, Stanley's Unit have open dayroom were inmate eat and play card. All staff can see every part of the dayroom from the Officers Desk in the front of the dayroom. There is no need for staff to stand behind someone at any time unless they do it willingly. (Plaint Decl,¶26)

27. Fact, Kloth was told by Plaintiff to please not stand behind him because it triggers his PTSD. Plaintiff's brother Loren Leiser #353252 also informed Kloth that it was in her best interest not to stand behind him. This was also done in-front of Inmates Garichs, and Sokola, and Leiser. Kloths response was I'll stand were ever I want too. (Plaint Decl,¶27)

28. Fact if PSU did there job and informed Kloth of this problem and to stop doing it. Plaintiff would not have complained about it to Kaeppeler on(10/2/14, Ex 1 , 12/18/14, Ex 2 ; 2/5/15 Ex 3 ; 3/30/15, Ex 5 ; 4/28/15, Ex 6,; 8/ 27/15 Ex 7 ; 11/18/15 Ex 8 ; 6/16/16 Ex 10),;3/12/15 Ex 4; 4/8/16 Ex 9) (Plaint Decl ¶ 12)

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29. Fact, Plaintiff was house in unit 1-A as a special accommodation. Leiser was told by numorous staff that Leiser was staffed in 1-A and could not be moved. First shift Officer Adrian, Sgt. Szymanski.(Plaint Decl, 28)

30. Fact Plaintiff informed Stoudt that Kloth was harassing him and triggering his PTSD while Leiser was in Social Worker C. Anderson's office on 1-B.(Plaint Decl¶29)

31. Fact, Unit Manager Stoudt took all of Leiser's complaints about Kloth's harassment of him & his PTSD as complaints of Kloths enforcement of the rules and clearly did not take Leiser's complaints seriously. (Plaint Decl ¶ 30)

32. Fact, Leiser wrote Warden Richardson about Kloths Harassing him and triggering his PTSD.(Plaint Decl,¶ 31 , Ex 11)

33, Fact, Leiser did talk directly to Richardson while he made his round in the institution in the court yard, as other inmates also complained about Kloth. Plaint Decl¶ 32)

34. Fact, Richardson knew what Kloth was doing and failed to intervene or discipline Kloth for her misconduct. Leiser told him Kloth was doing this and Richardson refused to do anything. Plaint Ex 11, Plaint Decl, 33)

35. Fact, no staff member would stand up to Kloths Misconduct. All staff members told inmates and Leiser just to let it go, she nuts! Unit Managers refused to intervene on behalf of inmates & Leiser. (Plaint Decl ¶34)

36. Fact Stoudt told Leiser that she has to side with her staff, as she is their boss and if she don't they wont respect her. (Plaint Decl, 35)

37. Fact, Kloth told Leiser that she will do what ever she wants to and if he don't like it to sue her, nothing will happen anyways! (Plaint Decl, 36)

38. FACT, DO TO STOUDT REFUSING TO GIVE ME A COPY OF MY WARNING CARD IT WAS DESTROYED WHEN LEISER LEFT SCI! (Plaint Decl, 37)

39. Fact, Leiser's warning card would PROVE Kloth gave Leiser a warning for giving Inmate Lord a "Man Hug" as well as given Leiser a ticket for the same thing!(¶38)

40. Fact, Stoudt is a liar, she found Leiser guilty based on Kloths Conduct report regardless of Leiser Witness. See Ex 12 , (Defendant Stoudts Response to Admissions Page 2 ¶¶ 4 & 5) (Plaint Decl, ¶ 39)

41. Fact Leiser asked in Stoudts admission ¶4 Pg. 2, "Do you admit that Leiser presented evidence in the form of an affidait by inmate Holzmer, that Sgt Kloth lied, in the conduct report #2638089? That she did not speak to me or warn me about walking through the courtyard? Response: upon reasonable inquiry,

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defendant lacks suffient knowledge or information to be able to ADMIT OR DENY this request; Stoudt does not recall and was unable to find documentation to support plaintiff's assertion to know the truth of this allegation.(Plaint Ex 12,Plain Decl¶40)

42. Fact,Stoudt's admission ¶5 "do you admit that Kloth wrote Leiser a warning for hugging Inmate Wilson Lord #538574 on 5/28/15?" RESPONSE, Upon reasonable inquiry, defendant lacks sufficient knowledge or information to be able to ADMIT OR DENY this request; Stoudt does not recall and was unable to find documentation to support plaintiffs assertion to know the truth of this allegation. Plaint Ex 12,Plaint Decl,¶41)

43. Fact, Stoudts refusal to give Leiser a copy of his warning card is the reason she cannot find this information.(Plaint Ex 13) Stoudt destroyed it(Plaint decl¶42)

44. Fact, Kloths Conduct report states :"...I observed inmate Leiser Jeffrey 330229 exit housing unit 1 go to the track and then walk over to the courtyard fence. Inmate Leiser hugged Inmate Wilson Lord 538574 ." (Plaint Ex 14)

45. Fact Plaintiff's "inmates statement for contested minors DOC -9B States: "... Ms Stoudt walked right past me and didn't say a ward to me. How can I be disobaying an order if you don't hear them, also Stoudt never said a ward to me." (Plaint Ex 15) If I was disobaying an order one wouldthink UM Stoudt would have told Leiser he was disobaying an order. Yet Stoudt did not. (Plaint Decl,43)

46. Fact, Kloth wrote her conduct report saying I walked through the courtyard, and disobayed her direct order. SCI has no Rule in the SCI handbook provided by defendant Ex 1003 , nowere do it state an inmate cannot walk through the court yard. Yet Stoudt found Leiser Guilt of disobaying orders. If there is no rule, they cannot just make them up as they go! (Plaint Ex 14 Conduct report dated 6/1/15 Plaint Decl,44)

47. Fact, Stoudt's admission ¶¶ 4-5 is a lie, she states she does not recall nor was able to find documentation to support plaintiffs assertation about giving Leiser a warning for hugging Lord. Stoudt sent Officer Adrian an Email asking about Kloth following inmate Leiser into A-wing? Any conversation about wearing sunglasses in the building? Adrian responed "yes I remember her following him in. She didn't say anything about sunglasses inside, just about standing up in the courtyard and giving him a warning. Then apparently later (within an hour) she gave him the cr but I thought it was for cutting through the courtyard on has way into the unit, Nothing as far as I know about sunglasses. (Plaint Ex 16 , Plaint Decl,¶45- ¶46)

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48. Fact Kloth has over 100 inmate complaints against her from inmate. about 68 of them inmate complaints are of Kloths Habit of harassing inmates. (Plaint Decl, ¶ 47 , Plaint Ex 17)

49. Fact, as reviewer of inmate complaints Warden reed Richardson knew that Kloth harassed inmates and failed to do anything about it. Richardson continued to allow Kloth the Harass inmates & staff. (Plaint Decl. 48)

50. Stoudt knew that Kloth was a safety risk to herself & inmates. She knew that Kloth caused choas in the units and allowed it to happen. (Plaint Decl¶ 49)

51. Fact, Stoudt did not liston to inmates and their concerns about Kloth's harassment of mentally ill inmates. She blow Leiser off as always complaining about Kloths. (Stoudts Decl,¶9, Plaint Decl¶ 50) Stoudt states "While I was aware that Leiser did not like Kloth. I did not believe that Kloth was harassing Leiser or any other inmate."

52. Fact, Stoudts Admission Page 1 ¶ 3, "Leiser asked "Do you admit that Kloth only wrote Leiser up for walking through the courtyard on his way back from B-Building? Response by Stoudt "DENY"" (See Plaint Ex 12 , Plaint Decl ¶ 51)

53. Fact, Kloth did only write Leiser up for walking through the courtyard from his way back from B-Building. Leiser was walking behind Inmate Holzmer #160550. Inmate Holzmer did not receive a conduct report from Kloth only Leiser did. (See Stoudts Admission dated Nov 30 2016 ¶3, Plaint Decl ¶ 51 Plaint Ex 12)

54. Fact, Kloths Declaration is false. In ¶16 Kloth writes "...I did not treat Leiser differently than other inmates in similar circumstances." Inmate Holemer was infront of Leiser walking through the court yard. If Kloth didn't treat Leiser any different than other inmates, why is he the only inmate to get a conduct report? Holzemer was infront of Leiser. Kloth did not write him a conduct report. Seems as Kloth's false declaration is perjurie to Leiser!. (See Plaint Decl,¶ 52 , Defendant Kloths Declaration¶16 page 4, Plaint Ex 18)

55. Fact, Kloth was walked out of New Libson Correctional Institution for starting a fight with staff & harassing inmates. (Plaint Decl ¶ 53)

56. Fact, Kloth was fired from the department of corrections do to her wilfully deleting another inmates visitors off his visiting list, for no other reason then to harass and cause that inmate mental & emotional harm. (Plaint Decl, ¶54)

57. Fact, Defendants failed to act upon complaints of mental abuse, harassment done to cause Leiser mental & emotional pain for the sole purpose of Kloths enjoyment. (Plaint Decl,55)

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58. Fact, Stoudts declaration ¶5 pg 2, is false "The first time I became aware Leiser's complaint that he had PTSD and that Kloth was harassing him by standing behind him in attemp to trigger his PTSD was in my review of Leiser's civil complaint filed withthe court in this case." (Plaint Ex 20; Ex 11)

59. Fact, Stoudt's Declaration ¶6 pg 2, is false. "I do not recall Leiser making any allegations that Kloth attemped to trigger his PTSD by standing behind him prior to this lawsuit. While Leiser would often make complaints about Kloth to me. I do not recall any conversation with Leiser regarding this issue...." (Plaint Ex 20; Ex 11) You knew I was complaining about Klot, you should have acted on them.

60. Fact, Stoudt's declaration ¶9 pg 3, "While I was aware that Leier did not like Kloth. I did not believe that Kloth was harassing Leiser or any other inmate. Leiser would often complain to me about Kloth ...These complaints usually involved Leiser complaining about Kloth's enforcement of the rules of the institution...." Is false, Leiser complained to Stoudt about Kloth harassing him and triggering his PTSD severeal times. Once in the dayroom, and again in her office, and again in Social Worker C. Andersons Officer on 1B. (See Plaint Decl ¶ 50-56, Ex 11)

61. Fact, Stoudts declaration ¶15, "There was nothing in the description of the incident in the conduct report that concerned me or made me believe that Kloth was harassing Leiser or falsifying information. (Plaint Ex 20, also see Ex 14 Mr. Holzemer affidavit)(Plaint. Decl, 57)

62. Fact, Stoudts Decl ¶19, "At no time did I knowingly disregard an excessive risk to Leiser's health and safety, or knowingly subject him to pain and physical injury." (Plaint Ex 20)

By Stoudts failure to act/intervene on Leiser behalf she willingly allowed Kloth to continue to harass Leiser causing his pshycholoical/mental harm, as well as physical pain. Leiser was forced to hurt himself, so that he would not hurt staff & inmates due to Kloth's actions of triggering his PTSD. (Plaint Decl ¶58)

63, Fact, Kloth's response to Leiser's Admission is false, She clearly lied within her admissions. (See Plaintiff Ex 21 & Conduct report Ex 14) Leiser asked the following questions & answers ¶1, "Do you admit that you wrote Leiser a warning for hugging inmate Wilson Lord #538574 in the courtyard on May 28 2015. **RESPONSE:** DENY. According to plaintiff Ex 14 conduct report #2638089 Kloth dated the conduct report 5/28/15. Making her admissions false. (Plain Ex 14 & 21; Plaint Decl ¶ 59)

64. Fact Kloths admission is false, ¶5 "Do you admit that Leiser asked you not to stand behind him during meals in the dayroom?" Response Deny. (Plaint Ex 21, Aff Gorichs ¶3, Ex 26; Sekole Aff ¶2, Ex 27; Leiser's Decl,¶15) states that Leiser asked Kloth not to stand behind him. (Plaint Decl, ¶ 60) (Leiser Decl Ex 28)

65. Fact, Koth's response to Leiser's admission ¶6 "Do you admit that you told Leiser and the other inmates sitting with Leiser that you can stand anywhere you want to and won't be told where to stand? Response Deny"(See Plaint Ex's26,27,28,)

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66. Fact Richardson's Admissions is false ¶3 "Do you admit that you denied Leiser's inmate complaint pertaining to Kloth falsifying conduct report number #2638089? Response Deny." (See Plaint Ex 22) Leiser filed inmate complaint 2015SCI10912 Richardson stated "This complaint was appropriately rejected by the ICE in a accordance with DOC 310.11(5) dated 8/17/15 Signed by Richardson. (Plaint Ex 25) If Richardson did his job and investigated Leiser complaint Kloth would have been disciplined for her mental torture of Leiser. (Plaint Decl ¶ 61)

67. Fact, Richardson's admission ¶9 "Do you admit that SGT Kloth's harassment of inmates violated DOC and SCI policies on how to treat inmates? Response Counsel for the defendants object to the form of this question as it assumes facts that are inaccurate. Subject to the objections. Deny harassment; Deny violating of work rules. (Plaint Ex 22) Leiser submits DOC employee work rules 2016 ¶14 (Ex 23) "Intimidating,interfering with, harassing, demeaning, treating discouryeously, or bullying; or using profane or abusive language in dealing with others.

68, Fact, Leiser asked Richardson in ¶11 of his admissions "do you admit that SCI staff members are not trained on how to deal with inmates that suffer from PTSD (post-traumatice stress disorder). Response Counsel for defendants OBJECTS to this request on the grounds that it is overly broad, unspecific and this information is not relevant proportional to the needs of the case. (Plaint Ex 22 ¶11) By the defendants Objection to this question shows that SCI staff are not trained on how to treat PTSD patients. Making it more likely then not that Kloth, Stoudt, Richardson contributed to Leiser's PTSD because Stoudt & Richardson does not know how to deal with it. Instead just blow Leiser off and complaining about Kloth's "HABIT" of harassing inmates. (Plaint Decl, ¶ 63)

69, Fact Richardson did not investigate Leiser's ICE 2015SCI10912 pursuant to DAI Policy 310.00.01 Staff misconduct. Had he, Kloth would have been disciplined for Harassing Leiser and triggering his PTSD. However, Richardson's Admission ¶18 denys this. Yet presents nothing to dispute this fact. (Plaint Decl ¶ 64)

70. Fact, Richardson's Declaration is false. Richardson states in ¶6."That he had no knowledge of Leiser's allegations that Kloth attempted to trigger Leiser's PTSD by standing behind him or have any conversations with Leiser regarding this issue, nor received any correspondence or complaints from Leiser ...." (Plaint Ex 24; Plaint Decl, ¶ 65 ; Plaint Ex 11)

71, Fact ¶22 Richardson states I had no knowledge nor did I have any reason to believe that Kloth was harassing Leiser by attemping to trigger his alleged PTSD by standing behind him." Fact, Richardson falsified his Declaration. Leiser's Ex 11; Plaint Decl ¶ 66)

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72. Fact, defendant Stoudt refuses to assist inmates when they complain about staff members violating DOC/DAI policies & procedures. Stoudt's belief that all staff has no reason to lie or falsify conduct reports because they are "SO CALLED" law enforement and always adhear to the rules. (Plaint Decl. 67)

73. Fact, defendant Richardson does rounds within the institution from time to time. Leiser and other inmates would speak with him in the court yards to ask questions or complain about the misconduct by staff or Health Services Staff. Richardson would always agreed to look into it, however, as seen by his declaration he denies everything to keep himself from being reasponsible for his staff's misconduct. (Plaint Decl, 68)

74. Fact, had Richardson taken action upon all the complaints filed against Kloth, Leiser would not have suffered mental torture/abuse, or sore hands from punching the wall, or knocking his head against the wall to keep from hurting staff & inmates. Or the after effect of the night mirrors of being rapped as a 8 year old child.(Plaint Decl, 68)

75. Fact, Kloth has a "HABIT" for harassing inmates either mental or emotionally Kloths "Habit" has gotton her fired from her job, fired from New Lisbon, and let go from any other prison in the WDOC. Kloth willing with intent to cause Leiser mental anguish for her sick and evil intent of punishing all male inmates.(Pl. Decl 69)

I Jeffrey D. Leiser, hereby swear that everything contained within this proposed Finding of Fact is true and correct under the penalty of perjury 28 U.S.C. §1746, that Kloth wilfully triggered my PTSD by standing behind me on purpose. Warden Richardson refused to intervene as his job discription mandates. UM Stoudt punished Leiser for disobaying orders, were no rule existed, and allowed Kloth to trigger my PTSD by standing behind me. Stoudt's failure to liston and investigate Leiser's claims of harassment by Kloth shows her incompetence as Unit Manager.

Leiser respectfully request this court to grant Leiser summary judgment and to proceed to jury trial were a jury of his pears can determine the defendants misconduct.

Dated this 10 day of June 2017.

Jeffrey D.Leiser
Pro se Plaintiff.

C: File

Subscribed and sworn to before me
this 10 day of June 2017

NOTARY PUBLIC, STATE OF WISCONSIN
My Commission Expires 02-10-18

APP-D

IN THE UNITE DSTATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Jeffrey D. Leiser,
Plaintiff,

Vs. Case No. 15CV768

Karen Kloth, et al.,
Defendants.

DECLARATION OF JEFFREY D. LEISER IN SUPPORT OF
HIS SUMMARY JUDGMENT & PROPOSED FINDING OF FACTS.

State of Wisocnsin)
)ss.
County of Juneau)

I Jeffrey D. Leiser, being duly sworn does say and depose, the following facts, as I know them to be true & correct to the best of my ability and knowledge.

1. I Jeffrey D. Leiser am the plaintiff in the suit above titled case and state that Defendant Karen Kloth was a Sergeant Correctional Officer that worked at Stanley Correctional Institution 100 Corrections Drive, Stanley, WI 54768-6500.

2. That Puala Stoudt is Unit Manager at Stanley Correctioanl Institution and is responsible for the Special Housing Unit 1 (Mental Health Unit) As such Stoudt is responsible for the sefety and well being of inmates in that unit.

3. That Reed Richardson is the Warden of Stanley Correctional Institution and is responsible for all inmates & staff within the institution. Richardson is directly responsible for for the deliberate indifference, miaconduct of his staff at Stanley Correctional Institution (SCI).

4. That Leiser strongly OBJECTS TO ANYTHING DR. FREY OFFERS ON BEHALF OF THE DEFENDANTS. Dr. Frey has no firsthand kwonledge of what was said during Leiser's meetings with Psychologist Kaeppeler(PPFOF ¶16, ¶25)

5. That Sgt Kloth harassed Leiser by standing behind him in Unit 1-A during dayroom meals and while Leiser was seated int he dayroom, causing Leiser severe mental issue's by triggering his PTSD.(PPFOF ¶2)

6. That Leiser's PTSD stems from a childhood truama of being knocked out from behind while talking ot a blound female by two of her male adult friends or family. That Leiser was brutally rapped and beaten and left for dead in a park. (PPFOF ¶13 ¶16)

7. That ever since Leisers childhood trauma he has suffered severe night mirrors, sweats, flashbacks, traumatic thoughts of hurting other. (PPFOF ¶4)

8. That Leiser informed Karen Kloth not to stand behind him because it set off his PTSD. That for her own safety and safety of others not to stand behind me. (PPFOF ¶8)

9. That Kloth stated to Me and other inmates sitting at the same table "I can stand were ever I want too, you nor anyone else will not tell me were to stand learn to deal with it. (PPFOF ¶9)

10. That Leiser informed Psychologist Kaeppeler at SCI on 10/2/14 "...that Kloth likes to trigger my PTSD by standing behind me. Kaeppeler asked what does that mean? Leiser informed her that he was knocked out and severely rapped. (PPFOF ¶ 10)

11. That at all of Leiser meetings with Kaeppeler she took short hand notice of that Leiser talked about, making her clinical notes incomplete & inaccurate as to what was said. (PPFOF ¶11)

12. That Leiser told Kaeppeler more details of his childhood trauma on the following dates found in his (Exhibit's) 10-2-14 Ex 1; 12/18/14 Ex 2; 2/5/15 Ex 3; 3/22/15 Ex 4; 3/30/15 Ex 5; 4/28/15 Ex 6; 8/27/15 Ex 7; 11/18/15 Ex 8; 6/16/16 Ex 10; 4/8/16 Ex 9)

13. That Leiser told Kaeppeler on 12/18/14 (Ex 2) more detailed account of his childhood trauma. "he relates his trauma to his discomfort in having people at his back. (PPFOF ¶12; Defendant Ex 1005-0004)

14. That accourding to Keappelers Clinical note dated 2/5/15 "TREATMENT PLAIN FOLLOW UP" "Consult with Dr. Frey about PTSD sumptoms and determine if diagnosis appropriate to assign, dropping R/O. Sent inmate PTSD workbook materials, and begin working on first few chapters.(PPFOF ¶13)

15. That according to Kaeppeler Cinical Contact of 2/5/15 Dr. Frey signed and agreed to assign PTSD to Leiser on 2/19/15. (See Plaint Ex 3) Making his (FREYS) declaration ¶11, false.(Also See DPFOF ¶12; PPFOF ¶14)

16. That on 3/12/15 Kaeppeler did state treatment plain "Work on dealing with Flashbacks, refencing PTSD manual." (PPFOF ¶15; Plaint Ex 4)

17. That Leiser only had between 2 & 4 meeting with Dr. Frey and non of them discussed his PTSD or trauma. (PPFOF ¶16)

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18. That Leiser informed Kaeppeler what happens when his PTSD is triggered. First he goes to his room (If Possible) punches the wall, knocks his head against the wall, yells & screems, tells himself its not them I'm ok. That Leiser sees blood/red, and wants to attack/hurt the people that triggered my PTSD. Leiser also explained that once he loses it he cannot control. (PPFOF ¶17; DPFOF ¶14)

19. That Dr. Luxford is the head Psychiatrist at SCI and after Leiser informed her of all the mental issues with having to stand in line at HSU for medication Luxford ordered that the Nurses give Leiser all his medications.(PPFOF ¶ 18; DPFOF ¶15)

20. That Dr. Frey's statement that Psychologist focus on internal changes not external changes in claiming that Leiser's PTSD issue's are mainly external issues, not internal. Dr. Frey's belief that Leiser's PTSD and having people deliberately stand behind Leiser to trigger his PTSD is external.

21, That as Leiser understands it, internal issues is how "YOU" feel about a certain action effects you. If Leiser's issue is "Kloth wilfully standing behind him triggers his PTSD due to what happened to him as a child is completely internal its what happens to his mind internally.

22. That neither warden Richardson, nor Unit Manager Stoudt nor Kaeppeler intervened to protect Leiser from Kloths mental torture/abuse.

23. That Leiser spoke directly to first & second & third shift Unit 1-A staff that Leiser suffers from PTSD and asked them not to stand behind me because it triggers my PTSD. All three staff understood and had no problem not standing behind Leiser. Leiser explained that he did not want to hurt anyone because of his issues.

24. That all SCI staff had to do to accommodate Leiser's PTSD was not stand behing him. Keep Leiser out of the medication line as Dr. Luxford already set-up that Leiser obtain his controled medication inside HSU by a Nurse. (PPFOF ¶23)

25. That Kloth wilfully and perposely went out of her way to trigger Leiser's PTSD once she learned that it caused Leiser severe mental stress & torture.(PPFOF ¶24)

25A. That Dr. Freys opinion to a reasonable degree of cliniacl certainty is based on paraphrased clinical records written by Kaeppeler. Dr. Frey does not have first hand knowledge within the meaning of F.R.E 802. dr Frey was never at any of Leiser & Kaeppelers clinical meetings. (PPFOF ¶25)

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26 That when you walk into unit 1-A you can stand by the unit officers station you can see the entire dayroom without having to leave the desk. There is no need for any staff member to stand behind you unless it's intentionally done by staff.

27. That Plaintiff and his Brother Loren Leiser told/informed Kloth not to stand behind him. That it is for her safety not to stand behind him do to his PTSD. (PPFOF ¶6; Loren Leiser's Declaration¶15,16, Ex 25;Gorichs Aff¶3, Ex26, Sokola Aff¶2 Ex27)Kloth's response was I can stand were ever I want too.

28. That plaintiff was housed on Unit 1-A as a special accommodation inmate, Leiser was told by numorous staff that Leiser was staffed in 1-A and could not be moved. By officer Adrian & Sgt Szymanski. (PPFOF ¶29)

29. That Leiser informed Stoudt in Social Worker C. Anderson on Unit 1-B in her office that Kloth was harassing him and triggering his PTSD. (PPFOF ¶30)

30. That Unit Manager Stoudt took all Leiser's complaints about Kloth harassment of him & his PTSD as complaining of Kloth Enforcement of rules and clearly did not take Leiser's complaint seriously. (PPFOF ¶31)

31. That Leiser wrote to Warden Richardson about Kloths harassing him and triggering his PTSD. However as normal Richardson did not respond. (PPFOF ¶32; Plaint Ex 11)

32. That on a number of occations while Warden Richardson was walking on his rounds through-out the institution Leiser talked to him about Kloth and her misconduct of setting off my PTSD. (PPFOF ¶33)

33. That Richardson knew what Kloth was doing and did nothing about it. Ricahrdson failed to intervene as he is required to by law and as Warden to protect the safety of his inmates. (PPFOF ¶34)

34. That all SCI staff members would not stand up to Kloth's Misconduct. Staff did tell all us inmates just to let it go, Kloth is nuts. Even unit managers refused to intervene on behalf of inmates & Leiser. (PPFOF ¶35)

35. That Stoudt told Leiser she had to side with her staff, as she is their boss and if she don't they wouldn't respect her (PPFOF ¶36)

36. That Kloth told Leiser that she will do what ever she wants to and if he don't like it to sue her, nothing will happen to me anyways, she don't have to pay for it. (PPFOF ¶37)

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37. That Leiser requested a copy of Leiser's warning card from U.M. Stoudt. Stoudt denied Leiser's request stating" Your request for a copy of your unit file warning card has been denied. You may ask permission to review the warning card that is contained in your unit file; however, it has been determined that you will not be provide with acopy of it. Signed CUS Stoudt. (PPFOF ¶38; Plaint Ex 13)

38. That Leiser's unit warning card would have proved that Kloth gave Leiser a warning for hugging inmate Lord as well as a ticket for the same thing.(PPFOF ¶39)

39. That Stoudt lied in her admissions request(¶4 & ¶5 Page 2) that she found Leiser guilty based on Kloths conduct report, regardless of the eye witness and affidavit provided to Stoudt. (Plaint Ex 12; PPFOF ¶40)

40. That Leiser asked Stoudt the following question in a rule 36 motion of admission "Do you admit that Leiser presented evidence inthe form of an affidavit by inmate Holzemer that Sgt Kloth lied in the conduct report #2638089? That she did not speak to me or warn me about walking through the courtyard? Response : Upon reasonable inquiry, defendant lacks sufficient knowledge or information to be able to admit or deny this request; Stoudt does not recall and was unable to find documentation to support plaintiff's assertion to know the truth of this alegation. (PPFOF ¶41; Plaint Ex 12 also see Ex 14)

41. That I submitted a Rule 36 admission request to Stoudt (See plaint Ex 12 ¶5) asking the following questions: "Do you admit that Kloth wrote Leiser a warning for hugging inmate Lord #538574 on 5/28/15?" Response, Upon reasonable inquiry, defendant lacks sufficient knowledge or information to be able to admit or deny this request; Stoudt does not recall and was unable to find documentation to support assertaion to know the truth of this allegation. By stoudt refusing to give Leiser a copy of his warning card (Plaint Ex 13) Stoudt destroyed it so she cannot find it.

42. Do to Stoudt's refusal to give Leiser a copy of his warning card while at SCI, it has been destroyed and cannot be found do to Stoudts actions.(PPFOF ¶43)

43. That if Leiser was violating any rules as Kloth states in her conduct report, why didn't U.M. Stoudt say anything to Leiser? She walked right past him when Kloth said I was disobaying a direct order at the fence? Stoudt did not say anything to Leiser when she walked past him infront of unit 1 on 5/26/15. (PPFOF ¶45; Plaint Ex 15)

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44. That SCI's Handbook of Rules has no rule that an inmate cannot walk through the court yard on his way back from anywere. Yet Kloth wrote Leiser a conduct report for disobaying her orders not to cut through the court yard, track only. That Kloth made this rule up as she makes most of "KLOTHS RULES" up. That Stoudt found Leiser guilty of disobaying direct orders on this issue.(PPFOF ¶46;Defendant Ex 1003; Plaint Ex 14)

45. That Leiser submitted a motion under R36 for admissions to Stoudt however, Stoudt lies in ¶¶ 4-5. Leiser asked " Do you admit that Leiser presented evidence in the form of an affidaivt by inmate Jeffrey Halzemer #160550, that SGT Kloth lied in the conduct report #2638089? That she did not speak to me or warn me about walking through the courtyard? Response: Upon reasonable inquiry, defendant lacks sufficient knowledge or information to be able to admit or deny this request; Stoudt does not recall and was unable to find documentation to support plaintiff's assertaion to know the truth of this allegation.. Stoudt sent Officer Adrian an Email asking about Kloth following inmate Leiser into A-Wing? Any converation about wearing sunglasses in the building? Adrian responsed: "Yes I remember her following him in. She didn't say anything about sunglasses inside, just about standing in the courtyard and giving him a warning. Then apparently later (within an hour) she gave his the cr but I thought it was for cutting through the courtyard on his way into the unit,nothing as far as I know about sunglasses. (See Plaint Ex 16; PPFOF ¶47)

46. That Stoudt states she cannot find anything to admit or deny, how come Leiser has the Email about the same issue Leiser asked her about in the motion for addmission R 36 ¶4; Ex 16? The lie was giving Leiser a warning and ticket for the same thing. (PPFOF ¶47)

47. That Sgt Kloth has over 100 Inmate Complaints filed against her. 68 of them are for somesort of harassment of inmates. (PPFOF ¶48)

48. That Richardson as a inamte complaint reviewer had knowledge of Kloths harassment of Leiser. He reviewed Leiser's complaint which states Kloths conduct is harassment. (See PPOFO 34 & 49)

49. That Stoudt knew that Kloth was a security risk to inmates and staff, yet turned a blind eye to the choas Kloth cuased in the units between inmates and staff. (PPFOF ¶50)

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50. That Stoudt failed to listen to Leiser about Kloths harassment and blow Leiser off as always complaining about Kloth. Stoudt states "While I was aware that Leiser did not like Kloth. I did not believe that Kloth was harassing Leiser or any other inamtes." (See Stoudt Decl, ¶9 ; PPFOF ¶ 51) Stoudts admission that she was aware that Leiser didn't like Kloth showed a reasonable person that there must be a reason. Maybe I should listen to the complaints, instead of blowing inmates off about Kloth's harassment.

51. That Leiser asked Stoudt in her admissions page 1 ¶3 Ex 13" do you admit that Kloth only wrote Leiser up for walking through the courtyard on his way back from B-Building? Stoudts Response: "DENY." (See Plaint Ex 14; Affidavit of Halzemer PPFOF ¶52) The ticket Kloth wrote only states Leiser no one else. Holzemer would testify that he did not receive a ticket from Kloth on cutting through the court yard. (See PPFOF ¶53)

52. That Kloths declaration ¶16 is false. Kloth states that: "...I did not treat Leiser differently than other inamtes in similar cercumstances...." Inmate Holzemer was infront of Leiser walking throught the court yard. If Kloth didn't treat Leiser differently then why did Leiser only receive a conduct report (Tickert)? Kloth did not write Halzemer up for the same alleged rule violation. This shows Kloths Harassment to Leiser. (Plaint Ex 18, PPFOF ¶54)

53. That Kloth was walked out of New Lisbon Correctional Isntitution for harassing inmates and starting fights between staff & inmates. (PPFOF ¶55)

54. That Kloth was fired from SCI due to her wilfull acts of harassing other inmates and deleting inmates visitors off inmates visiting list. (PPFOF ¶56)

55. That Stoudt & Richardson failed to act on Leiser's complaints of Kloths Harassment, mental abuse, from Kloth that cause Leiser mental & emotional pain as well a physical pain to his hands and head. (PPFOF ¶ 57)

56. In Stoudts declaration ¶5 page 2 Stoudt states that the first time she became ware Leiser 's complaint that he had PTSD and that Kloth was harassing him by standing behind him in attemp to trigger his PTSD was in my review of Leiser's civil complaint. This is a false statement. Leiser informed Stoudt in Unit 1-A, Stoudts office on Unit 1-B, and in social worker C. Andersons officer on Unit 1-B. (See PPFOF ¶60; Plaint Ex's 11 & 20)

57. That accourding to Stoudts declaration ¶15 she states There was nothing in the description of the incident in the conduct report that concerned me or made

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me believe that Kloth was harassing Leiser or falsifying information. (Plaint Ex 20 & 14) Mr. Holzemers affidavit is not concerning to Stoudt, The fact that Kloth did not write Holzemer up for the same conduct, is not concerning to Stoudt. The falsifying information that she wrote Leiser a warning then a ticker for the same thing is not concerning to Stoudt. Leiser presented evidence that Kloth was harassing him is clear. (See PPFOF 61, Ex's 20 & 14)

58. That Stoudts refusal to intervene or listen to Leiser's complaint that Kloth is harassing him by standing behind him put Leiser's health & safety in serious risk of mental & physical harm. (PPFOF 62)

59. That Kloths Admission ¶1 is false"Do you admit that you wrote Leiser a warning for hugging inmate Lord #538574 in the courtyard on May 28, 2015. Response "Deny." According to plaintiff's Ex 14 conduct report #2638089 Kloth dated it 5/28/15 making her admissions false. (Plaint Ex 14, 21)

60. That in Kloths admission again she falsifies it. ¶5 "Do you admit that Leiser asked you not to stand behind him during meals in the dayroom?" Response Deny. However, Leiser has affidavits and declaration by 3 inmates that state I did tell Kloth not to stand behind me. (See Gorichs Aff ¶3 Ex 26 Sekola's Aff Ex27 ¶ 2 , Ex 28 : Leiser's Declaration ¶15, PPFOF ¶64)

61. That Richardson admission ¶3, Plaint Ex 22 is false. Richardson did deny Leiser inmate complaint about Kloths falsifying conduct report #2638089 in ICE 2015 SCI10912. (See Plaint Ex 25) If Richardson did his job pursuant to DAI 310.00.01 Staff Misconduct Leiser would not have been tortured mentally by Kloth. (PPFOF ¶66)

62. Richardson's admissions ¶9 is an objections to that question. Leiser asked, Do you admit that Sgt Kloth's harassment of inmates violates DOC/DAI policies on how to treat inmates? Leiser submits Ex 23 DOC work rules that states staff are not to harass inmates. (PPFOF ¶67 Plaint ex 23)

63. That Leiser asked Richardson in an admission request ¶11, Ex 22 "Do you admit that SCI staff member are not trained on how to deal with PTSD? Response: Counsel objects for defendnats to this request onthe ground that it is overly broad, unspecific and this information is not relevant proportional tothe needs of this case. (See Plaint Ex 22 ¶11; PPFOF ¶68) By defendants objection to this question shows SCI staff are not trained on how to deal with PTSD patients, making it more likely then not that Kloth, Richardson, Stoudt contributed to Leisers' PTSD.

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64. That Richardson did not investigate Leiser's Inmate Complaint pursuant to DAI 310.00.00 staff misconduct. Had he Richardson would have seen that Kloth was harassing Leiser, Richardson also would have had a record of such investigation. However presents no evidence of such investigation pur DOC/DAI Policys.(PPFOF ¶ 69)

65. That Richardson's declaration is false, Richardson claims he had no knowledge of Leisers claims prior to reviewingthis suit. (Plaint Ex 24; Plaint Ex 11; PPFOF ¶170) (Richardsons Admission ¶6)

66. That Richardson's Decaration ¶22 is false. Leiser wrote him and informed him that Kloth was harassing him and triggering my PTSD. (PPFOF 71; Plaint Ex 11)

67. That Stoudt's belief that all DOC staff are honest and truthful she has no clue what her staff really are like. DOC staff do not adhear to the DOC/DAI policies and procedures .(PPFOF 72)

68. That had Richardson acted upon all the complaints he receive while making his rounds in the institution from inmates about Staff & Health Serives Staff as he agree to do, Leiser would nothave been tortured by Kloth and suffer severe mental injury. (PPFOF 73 & 74)

69. That it is Clear to Leiser that Kloth has a "HABIT" of harassing inmates either mentally or emotionally. Kloths "Habit" has gotton her fired from her job, fired from New Lisbon, and let go from any other institution Kloth worked for. (PPFOF 75)

That I Jeffrey D. Leiser hereby swears to all 69 paragraphes in this Declaration and that it is true and correct to the best of my knowledge. This Declaration is based on fact known to Leiser first hand by Defendants failure to interven and allowed Kloth to harass me and trigger my PTSD. I sign this under the penalty of perjury 28 U.S.C. §1746.

Respectfully Submitted,
dated this 6 June 2017.

Jeffrey D. Leiser
Pro se Plaintiff.

Subscribed and sworn to before me
this 6 day of June 2017

NOTARY PUBLIC, STATE OF WISCONSIN
My Commission Expires 02-10-18

APP-E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEFFREY D. LEISER
Plaintiff,
Vs. Case No. 15CV768
KAREN KLOTH, et al,.
Defendants.

TERRY GORICHS AFFIDAVIT IN SUPPORT OF
Mr. JEFFREY D. LEISER'S CIVIL SUIT
AGAINST KAREN KLOTH IN THE ABOVE CASE.

Now comes Terry Gorichs #68251, hereby state the following freely & willingly upon first hand knowledge of this case and it's issue's.

True 1) That I was Leiser's celly, and I also sat at the same table as Leiser did in Unit 1-A Cell 13, then cell 24 in unit(one A).

True 2) While I was Leiser's celly and sat at the same table with him, Sgt Kloth would come and stand behind Leiser.

True 3) That Leiser told Kloth not to stand behind him and Kloth would say "I can stand were ever I want to!"

True 4) That Leiser would get up and dump his tray and go back to the cell.

True 5) That Leiser would be shaking & sweating talking to himself in the cell. Leiser would be saying "She is not worth it" "don't hurt her, she's not the one!"

True 6) That when Leiser calmed down I would ask him if he was alright or does he need to see someone. Leiser stated he needs to be left alone! That the Bitch does this on purpose to trigger my PTSD!!

True 7) I would force Leiser to go outside and walk the track withme to get away from her, and to relax.

True 8) That Kloth would do this everytime she worked unit 1 as Surgeant. Leiser would miss meals when Kloth worked to keep her from triggering his PTSD.

True 9) That when Kloth would work the Yard post, she would yell at Leiser for walking on the other side of the yellow line, even know he was passing someone on the track. Which is allowed.

True 10) That Kloth would be standing in the entryway of Unit 1-A waiting for inmates to come in and before they even get to the door she would yell to take off your glasses. Kloth would give everyone a warning if they had their sun glasses on.

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31:Ex 26 R1:31 Ex26; R1:35

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True 11) That I was with inmate Leiser on 5/26/15 at 12:50p.m. walking to B-Building at SCI when Sgt Kloth singled him out of about 100 inmates for walking on the wrong side of the yellow line. That Kloth did not say a word to me about walking on the wrong side of the yellow line only Leiser.

I don't know? 6

12) That I told Unit Manager Stoudt that I was with Leiser and how Kloth singled out. Stoudt acted as if she did not care what I told her.

That I give this affidavit freely and willingly pursuant to 28 U.S.C. §1746 and that it is true & correct to the best of my ability. I will testify to this affidavit in court on behalf of Mr. Leiser.

Respectfully Submitted,

Terry Gorichs

Terry Gorichs
Stanley Correctional Institution
100 Corrections Drive
Stanley, WI 54768-6500

C: File
CC: Mr. Leiser

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35
31 Ex 26

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Jeffrey D. Leiser,

Plaintiff,

Vs. Case No. 15CV768

Karen Kloth, et al.

Defendants.

ROBERT SEKOLA'S AFFIDAVIT IN SUPPORT OF LEISER'S CIVIL SUIT AGAINST KLOTH IN THE ABOVE TITLED CASE NUMBER.

My name is Rober Sekola #485956 I have first hand knowledge of this case and will give my testimoney to the following, under the penalty of perjury 28 U.S.C. §1746.

1) I'm housed in Stanley Correctional Institution and sat at the same table as Mr. Leiser. I was housed in the same Unit 1-A with him and observed first hand the harassment by Sgt Kloth to Leiser.

2) That I saw & heard Leiser ask Kloth not to stand behind him several times.

3) That Kloth stated to Leiser "I can stand where ever I want to" as she laughted as Leiser got up to leave the table!

4) That Leiser would get severely angre and start shaking & sweating while he tried to deal with Kloth standing behind him.

5) That Stoudt did nothing about Leiser's complaint besides say yah I'll deal with it.

7) That the next time Kloth worked she continued to stand behind Leiser on purpose.

Respectfully Submitted,
Dated this 21 Day of May 2017.

Robert Sekola
Robert Sekola

C: File
CC: Leiser

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31:12x 27 R1:31 Ex.27; R1:36 APP-G

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEFFREY D. LEISER,
Plaintiff,

v. Case no. 15CV768

KAREN KLOTH, et al.,
Defendants.

AFFIDAVIT OF LOREN L. LEISER IN SUPPORT OF PLAINTIFF JEFFREY D. LEISER IN CIVIL SUIT 42 U.S.C. § 1983

State of Wisconsin)
)ss.
County of Waushara)

I Loren L. Leiser, being duly sworn does say and depose, the following facts, as I have personal knowledge of, that said facts as true and correct to the best of my knowledge. Moreover, that I wish to appear at trial in this matter for the Plaintiff.

1. That I am a convicted felony under the custody and control of the Wisconsin Department of Corrections since 1998. Currently housed at Redgranite Correctional Institution (RGCI), 1006 County Road EE, P.O. Box 900, Redgranite, WI 54970. My inmate mailing address is, P.O. Box 925, Redgranite WI, 54970, Unit G-west, cell 18 lower.

2. That I was housed at Stanley Correctional Institution (SCI), 100 Corrections Drive, Stanley WI 54768-6500, from approximately June 26, 2004 until mid-summer 2013.

3. That there came a time that plaintiff Jeffrey D. Leiser had been transferred to Stanley Correctional Institution.

4. That plaintiff Jeffrey D. Leiser and I are brothers, and I am approximately sixteen years his senior.

5. That while housed at Stanley Correctional Institution there came a time that we were housed in the same unit; Unit 1A, cell 13, one of the units handicapped cells.

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31:Ex 28 R1:31 Ex 28; R1:37 APP-H

6. That because of our living arrangements we did many activities together. e.g. Health Service Unit special recreation, medication pill line(s), regular recreation, walking outside around the track, attend law library study periods, ate three meals a day sitting at the same table, sitting outside in the courtyard, worked at unit jobs.

7. That the plaintiff Jeffrey D. Leiser suffers a psychological injury, a.k.a. Post traumatic Stress Disorder (PTSD); and he had undergone psychological counseling for this devastating and debilitating injury.

8. That due to defendant's employment status as a correctional officer and security clearance, had privileged knowledge of plaintiff's PTSD condition.

9. That while housed at Stanley Correctional Institution I was employed as an institution law library clerk. While in the course of my employment, I had the opportunity to assist inmates in filing many, many inmate complaints, through the Inmate Complaint Review System. Often times the subject SCI personal was the defendant Karen Kloth.

10. That defendant Karen Kloth at one time worked as the segregation sergeant. It was perceived public knowledge that when defendant Karen Kloth worked in general populations she was there to work-up and inmate so she could write a major adult conduct report, thereby insuring sufficient overtime or regular time for her co-workers. There came a time that defendant Karen Kloth then segregation sergeant got into a physical altercation with another sergeant. The stimulus of the confrontation was over who was in charge on that shift, and dislike of defendant Karen Kloth's harassment of inmates, causing an unsafe working environment.

11. That Unit 1A, also housed the "transition unit," which was a step-down unit from segregation where inmates were allowed their property and only allowed out of their cells at scheduled intervals, thereby allowing inmates to reintegrate into the general population easier.

12. That during my living on Unit 1A, I observed many an occasion that when defendant Karen Kloth came to the unit, her appearance upset the community, igniting cat calls, such as "crack-pipe Barbie", "psycho-bitch", "liar", etc, and creating an unsafe working environment for other staff, and inmates, the cell doors wee not electronically locked, and the inmates ate chow in the dayroom with all other inmates at our regular times. She appeared to enjoy this behavior out of her former "seg-rats", as I heard her often times refer to them as.

13. That as I had worked for the institution in various jobs, I developed a cautionary friendship with defendant Karen Kloth. During one of those cautionary conversations, I had

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31: Ex 28

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revealed that my brother, the plaintiff, suffered from PTSD, and I would hope she would not embark on putting him in the hole.

14. That there came a time when the plaintiff Jeffery D. Leiser was placed in segregation-temporary lock-up, under investigation, on a separate matter, but not by defendant Karen Kloth, no ticket was ever written and he was returned to unit 1A within a weeks time. I believe that doing this time defendant may have had complete access to his files.

15. That on more then one occasion I advised defendant Karen Kloth that she should not stand directly behind plaintiff Jeffery D. Leiser while eating, the behavior was very-very disturbing to Jeffrey D Leiser; causing him to go into a level one situation for his PTSD. A level-one situation is when you can notice Jeffrey D. Leiser starts to become fidgety in his posture; or a sweaty brow; or darting eye movements; or all three; or completely removes himself from the aggravating situation, sometimes yelling obscenities on his departure. A level-two situation is when he gets all of the above symptoms but advances to shaky hands; or twitchy leg movements; or elevation in respiratory rate and presumed heart rate; some purse lipped breathing may be noted. Even through he understands that he is in no real danger the PTSD condition takes over.

16. That I requested defendant Karen Kloth not to do that, she just smirked, then she ignored my requests.

17. That I heard her tell everyone at the dayroom table that she will stand wherever she wants and your brother will have to deal with it. It angered me to watch her play her wicked games with him and other inmates.

18. That sometime later I attempted to explain my concerns to defendant Karen Kloth, cautioning her that if my brother snapped on her and hurts her it will be her fault.

19. That there came a time that I overheard my brother tell defendant Kloth that he will not be responsible if she gets hurt by her willfully standing behind him for the purpose of harassing him and willfully setting him off that he would have to leave the table and go to his cell to keep from hurting someone. That I was personally surprised that he did not get a ticket and sent to the hole.

20. It is/was well known that defendant Karen Kloth transferred to New Lisbon Correctional Institution (NLCI), where she didn't make it through her probationary period because of alleged conflicts with staff about her self imposition of non-sanctioned WDOC rules, and creating an unsafe work environment for other staff and inmates.

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31 BK 28

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21. There was a time that defendant Karen Kloth worked the dayroom control desk and performed a cell search on plaintiff and my cell. Normal cell searches usually take only fifteen minutes. Defendant Karen Kloth took one hour and was observed reading both our legal documents. Upon inspection of our garbage bag she had removed it was noted that several legal papers were crumbled up and in the trash bag - as if thrown away by one of us. It is common knowledge that removal of legal paper work is one of the ways she harasses inmates, and it always behooves an inmate to check the garbage bag she removes from their cells. After this cell search she attempted to confiscate my television's coaxial cable -- saying I it wasn't mine, also she removed my headphones saying I did not own them. I had to dig through old receipt to prove to property personal by way of the receipts that I indeed own both those confiscated items. Defendant Karen Kloth is always possession of SCI's master property list and was well aware that I owned said property. This type of cell inspection was just another form of harassment she was know for.

I claim under the penalty of perjury that the aforementioned statement of fact and personal experience(s) are true an correct to the best of my knowledge and memory.

Executed this 25 day of May, 2017.

Affiant

Loren L. Leiser #353252
Redgranite Correctional Institution
P.O. Box 925
Redgranite, WI 54970

State of Wisconsin
County of Waushara
Signed and Sworn before me on MAY / 25 /2017

Notary Public
My Commission ends 4 / 13 / 2021.

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31 pgs 28

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prevent excessive fatigue and bone, joint, or muscle injury.

postpontile (pōst-pŏn'tĭl) [" + *pons*, bridge] Situated behind the pons varolii.

postprandial (pōst-prăn'dē-ăl) Following a meal.

p. dumping syndrome Dumping syndrome.

postpuberty (pōst-pū'bĕr-tē) [" + *pubertas*, puberty] The period after puberty. **postpubertal** (-tăl), *adj.*

postpubescent (pōst"pū-bĕs'ĕnt) [" + *pubescens*, becoming hairy] Following puberty.

postpyramidal (pōst-pĭ-răm'ĭd-ăl) Behind a pyramidal tract.

postradiation (pōst"rā-dē-ā'shŭn) Occurring after exposure to ionizing radiation.

postsacral (pōst-sā'krăl) [" + *sacrum*, sacred] Below the sacrum.

postscapular (pōst-skăp'ū-lăr) [" + *scapula*, shoulder blade] Below or behind the scapula.

postscarlatinal (pōst"skăr-lă-tī'năl) [" + *scarlatina*, scarlet fever] Following scarlet fever.

postsphygmic (pōst-sfĭg'mĭk) [" + Gr. *sphygmos*, pulse] Following the pulse wave.

postsplenic (pōst-splĕn'ĭk) [" + Gr. *splen*, spleen] Behind the spleen.

poststenotic (pōst"stĕ-nŏt'ĭk) [" + Gr. *stenosis*, act of narrowing] Distal to a stenosed or constricted area, esp. of an artery.

postsynaptic (pōst"sĭ-năp'tĭk) [" + Gr. *synapsis*, point of contact] Located distal to a synapse.

post-tachycardia syndrome Secondary ST and T wave changes associated with decreased filling of the coronary arteries and subsequent ischemia during tachycardia.

post-tarsal (pōst-tăr'săl) [" + Gr. *tarsos*, a broad, flat surface] Behind the tarsus.

post-term pregnancy (pōst-tĕrm) Pregnancy continuing beyond the beginning of the 42nd week (294 days) of gestation, as counted from the first day of the last normal menstrual period. This occurs in an estimated 3% to 12% of pregnancies. Complications include oligohydramnios, meconium passage, macrosomatia, and dysmaturity, all of which may lead to poor pregnancy outcome. The fetus should be delivered if any sign of fetal distress is detected. SEE: *syndrome, postmaturity.*

post-tibial (pōst-tĭb'ē-ăl) [" + *tibia*, shinbone] Behind the tibia.

post-transfusion syndrome (pōst-trănz-fū-zhŭn) A condition consisting of fever, splenomegaly, atypical lymphocytes, abnormal liver function tests, and occasionally a skin rash that develops following blood transfusion or perfusion of an organ during surgery. The syndrome appears 3 to 5 weeks after transfusion or perfusion with fresh (less than 24 hr old) blood, usually in large quantities. The causative agent is thought to be cytomegalovirus.

post-traumatic (pōst"traw-măt'ĭk) [" + Gr. *traumatikos*, traumatic] Following an injury or traumatic event.

post-traumatic stress disorder ABBR. PTSD. Intense psychological distress, marked by horrifying memories, recurring fears, and feelings of helplessness that develop after a psychologically traumatic event, such as the experience of combat, criminal assault, life-threatening accidents, natural disasters, or rape. The symptoms of PTSD may include re-experiencing the traumatic event (a phenomenon called "flashback"); avoiding stimuli associated with the trauma; memory disturbances; psychological or social withdrawal; or increased aggressiveness, irritability, insomnia, startle responses, and vigilance. The symptoms may last for years after the event, but often can be managed with supportive psychotherapy or medications such as antidepressants.

post-traumatic syndrome A sustained maladaptive response to a traumatic overwhelming event. SEE: *Nursing Diagnoses Appendix.*

postulate (pŏs'tū-lāt) [L. *postulare*, to request] A supposition or view, usually self-evident, that is assumed without proof. SEE: *Koch's postulate.*

postural (pŏs'tū-răl) [L. *postura*, position] Pert. to or affected by posture.

postural drainage A passive airway clearance technique in which patients are positioned so that gravity will aid the removal of secretions from specific lobes of the lung, bronchi, or lung cavities. It can be used for patients with pneumonia, chronic bronchitis, cystic fibrosis, bronchiectasis, inhaled foreign bodies, before operation for lobectomy, or in any patient having difficulty with retained secretions. A side effect of this treatment in some patients is gastroesophageal reflux. SEE: illus.

PATIENT CARE: Physical tolerance of the procedure is evaluated. The respiratory therapist teaches and assists the patient in the procedure, as ordered, by positioning the patient for effective drainage of the affected lung region(s). The patient is encouraged to remove secretions with an effective cough. To decrease the risk of aspiration, the patient should not perform the procedure after meals. Percussion is often done at the same time to assist movement of retained secretions in the lung.

postural hypotension Orthostatic hypotension.

APP-I

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APP- I

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