

# **Forensic Assessment** ***Amicus Inquisitio***



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**Case**  
*Mary Ferguson v. City of Sitka, et al (2018)*

**Purpose**  
Forensic Assessment of the “Workplace Investigation Report” prepared for City Attorney Brian Hanson, by Kimberly Geariety, Attorney (September 24, 2018).

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<sup>1</sup> This examiner is the author of *Rape Investigation Handbook*, 2nd Ed (2011) with Det. John Savino of the NYPD (ret.); and *False Allegations: Investigative and Forensic Issues in Fraudulent Reports of Crime* (2018) with Savino and Aurelio Coronado; and has testified as a forensic expert dozens times on matters of proper investigative procedure, often as it relates to sex crimes, in both civil and criminal court.

As explained in Black's Law Dictionary (1990; p.82), *Amicus Curiae* literally means "Friend of the Court". An *Amicus Brief* involves legal or forensic experts filing briefs or reports in relation to a case before the court, when they involved have strong or relevant opinions but are not a party to it. Such briefs or reports are common in cases involving "matters of broad public interest; e.g. civil rights cases" and are filed "by private persons or the government". Such briefs and reports are generally filed after the case has gone to trial, and in the wake of harm caused by biased and negligent proceedings, unlawful activity, or scientific malfeasance.

This is an *Amicus Inquisitio* report, meaning "Friend of the Investigation". It is impartially prepared for, and to be filed directly with, the City Assembly - to assist the inquiry being conducted in the matter of Officer Mary Ferguson of the Sitka Police Department (SPD). The goal is to prevent further harm that may be caused by biased and negligent proceedings, unlawful activity, or scientific malfeasance - before this matter goes to trial. This is done in the public interest, and specifically because it involves violations of civil rights.

## **Relevant Background**

On October 31, 2018, the Institute prepared a Memo for the City Assembly regarding the EEOC complaint, and subsequent civil lawsuit, filed by Officer Mary Ferguson of the Sitka Police Department relating to: The City of Sitka, The Sitka Police Department, Lt. Walt Smith, Lt. Lance Ewers, Chief Jeff Ankerfelt, and City Administrator Keith Brady. In her lawsuit, Off. Ferguson alleges Violations of the Alaska's Human Rights Act; Violation of Title VII of the Federal Civil Right Act; Breach of The Implied Covenant of Good Faith and Fair Dealing; Violation of Alaska's Whistleblower Act; and both Intentional and Negligent Infliction of Harm.

The FCI's 2018 Memo contained a list of immediate concerns for, and recommendations to, the City Assembly. It also detailed facts, evidence, and protections denied to Off. Ferguson by the City. In specific, it recommended a criminal investigation of her allegations, specifying statutes that were relevant; an administrative assessment, separate and independent from those named in the allegations; and the release of a complete copy of a related "Workplace Investigation" report prepared at the request of City Administrator Keith Brady by Attorney Kimberly K. Gearity of Washington State - to both the City Assembly and Off. Ferguson.

As of this writing, no criminal investigation has been initiated, and no administrative assessment has been conducted. Both of these are still urgent and necessary. Further

delay is likely to cause evidence not yet collected to be lost. However, The Geariety Report has been released in full to both The City Assembly and Officer Ferguson.

## **Significant Interim Events**

Since the Institute submitted its Memo regarding Officer Ferguson's complaints to the assembly on October 31, 2018, the following related events have occurred:

1. After the FCI submitted its 2018 memo to the Assembly, and also made it public, Lt. Walt Smith apparently retired from the Sitka Police Department. His sexual harassment of his subordinate, Officer Ferguson, was described in that Memo. As was the finding by Kim Geariety that "there is a pattern with [then] Sgt. Smith" regarding his behavior towards female members of the department. These facts were first acknowledged and confirmed to the City in The Geariety Report, and then by City Administrator Keith Brady (as referenced in Admin. Keith Brady's memo to Off. Ferguson; see Brady, 2018, p.3 & Geariety, 2018, p.6, fn19).

The curiously unpublicized departure of Lt. Smith, subsequent to the Ferguson lawsuit and the FCI's initial Memo to the Assembly, should be met with obvious concern. Steps must be taken to ensure that a key witness, found to have committed serious wrongdoing by The City, is not being lost.

2. Sometime in December of 2018, subsequent to the release of The Geariety Report to both The City Assembly and Off. Ferguson, Chief Ankerfelt submitted his letter of resignation to Administrator Brady. Chief Ankerfelt submitted a signed, undated memo without letterhead announcing that he "will be retiring from the Sitka Police Department on July 1, 2019."<sup>2</sup> The memo provides no reason for his decision to resign.

Chief Ankerfelt has served only 2-1/2 years as Chief of Police. He moved his life and family from Minnesota to serve here in Sitka, and "hoped to remain chief for ten years, with plans for a new police station in place in about 7" (Woolsey, 2016). He was first hired by the SPD as a Lieutenant in 2014, giving him a complete SPD tenure of less than five years.

This curiously unpublicized decision, subsequent to the Ferguson lawsuit, the FCI's initial Memo to the Assembly, and the release of the The Geariety Report, should be met with obvious concern. Again, steps must be taken to ensure that a key witness is not being lost.

## **Executive Summary of Findings**

The following are the major findings of this Forensic Assessment:

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<sup>2</sup> Of note, The Geariety Report determined that both Chief Ankerfelt and Lt. Ewers had acted negligently, and in violation of protocols, with respect to their collective Managerial "Failure to Report Allegation of Sexual Harassment" (p.8); their lack of required training; and their professed ignorance of related policy.

1. The Gearity Report confirms the allegations of Officer Mary Ferguson that (then) Sgt. Walt Smith sexually harassed her when she was his immediate subordinate. Sexual harassment is a criminal offense under AS 18.80.220: Unlawful Employment Practices. However, no criminal or internal affairs investigation was initiated by the police department or the City, and no charges filed. This involves potential criminal misconduct that must be investigated by an external agency.
2. The Gearity Report does not demonstrate an understanding of, or competence applying, essential concepts of sexual harassment or its relationship to gender discrimination as prescribed by law.
3. The Gearity Report is both biased and negligent with respect to investigative methodology, failing to collect, document, and examine essential items of evidence related to Officer Ferguson's allegations.
4. The Gearity Report is based on witness statements that are inherently unreliable, or that have been refuted upon review by the witnesses alleged to have made them.
5. The Gearity Report engages in victim-blaming and gender stereotyping; it therefore furthers the pattern of sexual harassment and gender discrimination against Officer Ferguson.
6. The City Administrator admits that Officer Ferguson was sexually harassed by (then) Sgt. Walt Smith in his re-interpretation of The Gearity Report; but then echoes its misunderstanding of both sexual harassment and gender discrimination. This furthered the pattern of sexual harassment and gender discrimination against Officer Ferguson.
7. Having confirmed that sexual harassment occurred by (then) Sgt. Walt Smith, there is no evidence that Officer Ferguson was offered professional assistance or personal counseling. In fact the opposite has been true. And they did not report the incident to Human Resources as required. This furthered the pattern of sexual harassment and gender discrimination against her, and contributed to a culture of impunity within the SPD.
8. Having confirmed that sexual harassment occurred by (then) Sgt. Walt Smith, there is no evidence that steps have been taken to prevent this from happening again within the SPD, nor has anyone been punished. This is the definition of impunity, both demonstrating and protecting the institutional tolerance of sexual harassment and gender discrimination within the Police Department.

## **Discussion of Findings**

The following is a discussion of each the major findings of this Forensic Assessment, with supporting facts, evidence, and references:

**1. The Geariety Report confirms the allegations of Officer Mary Ferguson that (then) Sgt. Walt Smith sexually harassed her when she was his immediate subordinate. Sexual harassment is a criminal offense under AS 18.80.220: Unlawful Employment Practices. However, no criminal or internal affairs investigation was initiated by the police department or the City, and no charges filed. This involves potentially criminal misconduct that must be investigated by an external agency. This is based on the following facts and evidence:**

- A. As explained in the Sexual Harassment Poster that is required to be displayed in all places of employment by law (Alaska, 2019): “The Alaska Human Rights Law (AS 18.80.220) and Federal Law Prohibit SEXUAL HARASSMENT”. This poster describes sexual harassment as a criminal offense under AS 18.80.220, the *Unlawful Employment Practices* statute<sup>3</sup> - as well as a violation of federal civil rights. This poster is also reported to be on display in the kitchen area / break room of the police department.
- B. The Geariety Report does not mention criminal investigation, suspension, administrative leave, or related activity associated the confirmed misconduct of (then) Sgt. Walt Smith. In fact, the SPD promoted Walt Smith to the rank of Lieutenant, subsequent to Officer Ferguson’s complaint<sup>4</sup>.
- C. Both Chief Ankerfelt and Lt. Ewers work in the police department, and would necessarily have walked by this poster and others on a daily basis. The suggestion that they were unaware of it evidences ether bad faith or a lack of credibility.
- D. Both Chief Ankerfelt and Lt. Ewers knew, or should have known, that sexual harassment is a crime. The suggestion that they were unaware of this evidences ether bad faith or a lack of credibility.
- E. In The Geariety Report, both Chief Ankerfelt and Lt. Ewers reportedly acknowledge failure to report Officer Ferguson’s complain of sexual harassment to City Human Resources, in violation of policy. This assertion evidences bad faith and defies credibility.
- F. In The Geariety Report, both Chief Ankerfelt and Lt. Ewers reportedly acknowledge a failure to train or seek training in sexual harassment and gender discrimination during their tenure, in violation of policy. This admission suggests that such training was not a priority, despite the requirement to get it. It further demonstrates an ignorant and cavalier attitude toward these issues, and a lack of concern for officer safety and well-being. This evidences bad faith and defies credibility.

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<sup>3</sup> Violations carry with it the possibility of both jail time and fines.

<sup>4</sup> A promotion is a reward, and also a vote of confidence. This would indicate that the leadership supported and had confidence in Walt Smith, despite being fully aware of his sexual harassment of Officer Ferguson and prior allegations. This is untenable, and demonstrates bad faith if not a direct threat to Officer Ferguson.

G. This fact pattern demonstrates clear gender bias and a culture of impunity with respect to sexual harassment.

**2. The Gearity Report does not demonstrate an understanding of, or competence applying, essential concepts of sexual harassment or its relationship to gender discrimination as prescribed by law. This is based on the following facts and evidence:**

- A. At no point in The Gearity Report are the terms *sexual harassment* or *gender discrimination* defined. These are actually legal terms imbued with a particular duty of care, but they are commonly misunderstood by the untrained and abused by those with less than honorable agendas. Surely the author of The Gearity Report knows this. Especially given that The Gearity Report made a point of documenting the admitted ignorance of related policy, and the lack required training, by both the Chief and Lt. Ewers (p.8). These troubling circumstances demonstrate the need for clear definitions at the outset.
- B. As explained in the Sexual Harassment Poster that is required to be displayed in all places of employment by law (Alaska, 2019): “The Alaska Human Rights Law (AS 18.80.220) and Federal Law Prohibit SEXUAL HARASSMENT: UNWELCOME SEXUAL ADVANCES; REQUESTS FOR SEXUAL FAVORS; or VERBAL/PHYSICAL/VISUAL CONDUCT OF A SEXUAL NATURE; CONSTITUTES SEXUAL HARASSMENT WHEN: (1) submission to the conduct is made an explicit or implicit term or condition of employment; (2) submission to or rejection of the conduct is used as the basis for an employment decision; or, (3) the conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating or hostile work environment.” As mentioned prior, this poster is reported to be on display in the kitchen area / break room of the police department.
- C. The State of Alaska’s instructions refer to sexual harassment as a “discriminatory act” in all capital letters, asserting Alaska (2019): “IF YOU BELIEVE YOU HAVE BEEN SEXUALLY HARASSED YOU MAY CONTACT THE COMMISSION STAFF... COMPLAINTS MUST BE FILED WITH THE ALASKA HUMAN RIGHTS COMMISSION WITHIN ONE HUNDRED EIGHTY (180) DAYS OF THE ALLEGED DISCRIMINATORY ACT... COMPLAINTS MUST BE FILED WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION WITHIN 300 DAYS OF THE ALLEGED DISCRIMINATORY ACT.”
- D. The State of Alaska’s *Policy Prohibiting Sex Discrimination* incorporates sexual harassment as a sub-type of sex discrimination, stating quite clearly (Alaska, 2018; p.2): "State policy prohibits treating an applicant, employee, or member of the public unfavorably because of that person’s sex or because of his or her connection with an organization or group that is generally associated with people of a certain sex. For example, harassing a person in the workplace because of that person’s sex is a violation of state policy. Harassment can include “sexual harassment” or unwelcome sexual advances, requests for sexual favors,

and other verbal or physical harassment of a sexual nature. This type of behavior constitutes illegal sexual harassment when 1) submission to the conduct is made a term or condition of employment; 2) submission or rejection of the conduct is used as the basis for an employment decision; or 3) the conduct has the effect of unreasonably interfering with an employee's work performance or creating an intimidating or hostile work environment."

- E. The State of Alaska's *Policy Prohibiting Sex Discrimination* aligns with the published literature on the subject. As described in Paul (1990), the seminal work by MacKinnon (1979; p.1-2), provides an instructive passage that is most frequently cited in legal rulings: "Intimate violation of women by men is sufficiently pervasive in American society as to be nearly invisible. Contained by internalized and structural forms of power, it has been nearly inaudible. Conjoined with men's control over women's material survival... it has become institutionalized... In addition to being victims of the practice, working women have been subject to the social failure to recognize sexual harassment as an abuse at all... Sexual harassment, most broadly defined, refers to the unwanted imposition of sexual requirements in the context of a relationship of unequal power. Central to the concept is the use of power derived from one social sphere to lever benefits or impose deprivations in another... American society legitimizes male sexual dominance of women and employer's control of workers."
  - F. As explained succinctly in MacKinnon (1979; p.1-2): "Sexual harassment of women in employment is particularly clear when male superiors on the job coercively initiate unwanted sexual advances to women employees."
  - G. The Gearity Report concludes that Officer Ferguson was sexually harassed, but then improperly concludes "Officer Ferguson's claims of gender discrimination and retaliation... are not supported by the evidence." This compound finding is improper because sexual harassment is itself a form of Gender Discrimination, as provided by the literature and The State of Alaska's *Policy Prohibiting Sex Discrimination*. To be clear, all sexual harassment is a form of discriminatory behavior in relation to gender. The Gearity Report either does not understand this fact, or misrepresent it.
  - H. Failure to define essential terminology in this context, or cite relevant policy, obscures its relationships and liabilities. This allows for the kinds of victim-blaming and stereotyping which will be discussed shortly. It also blinds readers and decision makers to the precise nature of these terms, their contextual basis, and related legal consequences. Such negligent practice borders on deceptive.
- 3. The Gearity Report is both biased and negligent with respect to investigative methodology, failing to collect, document, and examine essential items of evidence related to Officer Ferguson's allegations. This is based on the following facts and evidence:**

- A. Page 3-5 of The Gearity Report is titled “INTERVIEWS CONDUCTED AND DOCUMENTS RECEIVED”. It should be noted that none of the subjects were allowed to record these interviews, nor is it reported that they were recorded by the interviewer. This is a negligent investigative procedure, as it relies on the selective memory of the investigator and prevents confirmation of what was said, by whom, and in what context.
- B. According to the The Gearity Report, former Sitka Chief of Police Sheldon Schmitt was not interviewed. In fact his name is conspicuously absent from the report. Given that he would be a primary source of information about the background of those accused and their service records, as well as department policy, there is no legitimate reason for this omission.
- C. According to The Gearity Report, Officer Ryan Silva was not interviewed. This is a glaring omission, as Officer Silva has also filed a civil action against the City of Sitka which is connected to Officer Ferguson’s. Moreover, he is mentioned repeatedly in the report. Specifically, he is romantically involved with Officer Ferguson, and claims retaliation by the department’s leadership because (among other things) he supported her complaints. Not interviewing Officer Silva would seem a deliberate omission intended to blind the investigation to potentially negative information.
- D. According to The Gearity Report, former SPD Officer Dave Johnson was not interviewed. He resigned from the SPD after many years of service to work across the street at the Fire Department. He was mentioned to Keith Brady multiple times as a source or corroborating information. Not interviewing former Officer Johnson would seem a deliberate omission intended to blind the investigation to potentially negative information.
- E. According to The Gearity Report, administrative assistants of accused city supervisors (the Chief and the City Administrator) were not interviewed. These individuals are in key positions to verify cultural and contextual information, as well as to confirm schedules, meetings, and the existence of relevant files or documents. Failure to conduct these interviews is both negligent and indefensible.
- F. According to The Gearity Report, the Human Resources Director for the City of Sitka was not interviewed. This individual is in a key position to verify cultural and contextual information, as well as to verify the existence and outcome of prior investigations into allegations of misconduct by city personnel. Failure to conduct this interview is both negligent and indefensible.
- G. According to The Gearity Report, no attempt was made to seek out, collect, or examine personnel records relating to accused city employees. Such efforts are fundamental to the collection of collateral material in a sexual harassment / gender discrimination case, as they tend to corroborate or refute allegations. Specifically, patterns of related behavior, or the lack thereof, were not investigated or mentioned apart from (then) Sgt. Smith. While his “pattern” of behavior towards female employees is noted, there is no mention of pulling and reviewing anyone’s personnel files to look at prior incidents or allegations. Failure to

conduct a first hand review of the personnel files of accused employees evidences a bias against Officer Ferguson. Such biased practice is both negligent and indefensible.

- H. According to The Gearity Report (p.7) “there was apparently an Administrative Investigation done several years ago within the department regarding an earlier allegation involving Sgt. Smith, but it was determined to be unfounded. fn22 Chief Ankerfelt and Sgt. Smith explained this in their interviews.” This is a red flag, directly indicating the need to go beyond the interviews and corroborate what actually happened by reading the reports prepared in the administrative investigation mentioned. It also indicates that The Gearity Report accepted these statements without corroboration, despite the fact that both of these individuals were confirmed to be acting in bad faith with respect to Officer Ferguson’s allegations. Such biased practice is both negligent and indefensible.
- I. The Gearity Report focused on making a detailed account of the work history of Officer Ferguson. It did not review the work or employment history of the accused City employees in any manner. Failure conduct a parallel review of the work history of the accused employees evidences a bias against Officer Ferguson, making it clear that eroding her credibility was the focus. Such biased practice is both negligent and indefensible.
- J. Apart from the text messages provided by Officer Ferguson, The Gearity Report does not mention seeking out, collecting, or examining essential digital evidence (e.g., work phones, work computers, work logs, etc.) from accused city employees that might tend to corroborate or refute her allegations. This is basic investigative procedure, and particularly important since text messages are what ultimately confirmed Officer Ferguson’s allegations of sexual harassment. Her text messages were the only ones of documented concern, evidencing a bias against Officer Ferguson, and again making it clear that eroding her credibility was the focus. At the very least, the work phones and emails of the Chief, Lt. Ewers, and (then) Sgt. Smith should have been collected and independently examined. Such biased practice is both negligent and indefensible.

**4. The Gearity Report is based on witness statements that are inherently unreliable, or that have been refuted upon review by the witnesses alleged to have made them. This is based on the following facts and evidence:**

- A. The Gearity Report repeatedly asserts that “Both the Chiefs and Lt. Ewer’s explanation[s] for” action that Officer Ferguson described sexual discrimination “are credible and business related” defies credibility. This given that (p.8):

*...once Chief Ankerfelt knew about the alleged incident in the car in the spring of 2016 he did not report it to anyone. Although he said he talked with Sgt. Smith, and Sgt. Smith acknowledged the conversation, there was no reporting to HR of the incident. Likewise, Lt. Ewers was made aware of the incident some time later, and he too did not report anything to HR. Both told me there were unaware of this requirement under the Employer's policies.*

This conclusion in The Gearity Report demonstrates bad faith by the entire supervisory

staff of the police department, meaning that they were acting in a state of continued negligence with respect to sexual harassment and gender discrimination. It also suggests a credibility problem at the outset, as either they are completely ignorant of these concepts and in a continuous state of bad faith throughout Officer Ferguson's complaints; or not being honest about their knowledge of policies and procedures despite the information being readily available in large posters in the Department. Either way, their failure to report properly and investigate properly across the board removes all credibility from their statements or explanations.

This include City Administrator Brady, as he imposed himself into an investigation of his own conduct, and rendered conclusions about himself, in an astonishing conflict of interest. This strains the credibility of these individuals such that collateral information should be required.

- B. The Gearity Report asserts (p.2): "March 5, 2015 - Resigned from Alaska State Trooper Academy in Sitka - fn2 There were no documents produced to explain why Officer Ferguson quit the Alaska State Trooper Academy, and Officer Ferguson offered no explanation. However, Chief Ankerfelt said that she told him it was too hard. Chief Ankerfelt explained that the Trooper Academy is run like a military style boot camp. Also, Lt. Ewers was her corporal at the Academy and Chief Ankerfelt believed that her complaints about Lt. Ewers could be traced back to their time at the Trooper Academy." However, Officer Ferguson alleges that she did not resign from the Alaska State Trooper Academy in Sitka; rather that she had a medical issue requiring deferment which was explained<sup>5</sup>. The Gearity Report does not mention this, and takes great pains to highlight the issue as a point of either unfitness or dishonesty on the part of Officer Ferguson. This further evidences a bias against Officer Ferguson, making it clear that eroding her credibility was the focus. It also raises serious credibility issues for the other undocumented and uncorroborated witness statements provided and relied upon in the report.
- C. The Gearity Report asserts (p.3): "Chief Ankerfelt said during his interview he considered Officer Ferguson a "rising star" in the department until early 2018 when something changed. Specifically, Officer Ferguson's initial willingness to work with her supervisors and superior officers, especially the Chief began to deteriorate." However, as reported in Woolsey (2018), in the City's response to Officer Ryan Silva's lawsuit and his "assertion that he "has received only positive written job evaluations":

*The city argues that Silva may have been checked in other ways, stating that the "Plaintiff received constructive criticism, direction, and training from his direct supervisors...regarding improvement in performance of his job duties." The city goes on to assert, "many of these directives may not be reflected in any written job evaluations that may exist."*

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<sup>5</sup> Officer Ferguson provided medical records when she left the academy regarding a heart issue fro which she was sent to Swedish Hospital. She reports providing a a memo from former Sitka Chief of Police Sheldon Schmitt confirming this medical issue was beyond her control.

In other words, the City has taken the position that the Police Department routinely creates positive performance evaluations while not documenting areas where improvement is needed. This makes clear that Sitka Police Department performance evaluations document a version of performance that the department needs or desires, and not the entire truth, and therefore they cannot be trusted. This is the essence of the City's position.

- D. The Gearity Report provides as evidence the following (p.16-17): "Ms. Blankenship also said that Lt. Ewers does not invite the SPD women to his home or parties, but only the men; Lt. Ewers explained that he invites those at SPO he likes regardless of gender." Lyn Blankenship is a Dispatcher and Records Supervisor at the SPD. She has worked there for many years, and through multiple administrations. Upon reviewing The Gearity Report, she provided a signed memo to Officer Ferguson dated December 26, 2018. She stated in her memo that, after reading The Gearity Report, she "became concerned at the end about the truthfulness of the whole thing"; specifically, she reports that: "I did not say this, as I have no idea who he [Lt. Ewers] invites to his home and/or parties."

**5. The Gearity Report engages in victim-blaming and gender stereotyping; it therefore furthers the pattern of sexual harassment and gender discrimination against Officer Ferguson. This is based on the following facts and evidence:**

- A. The Gearity Report implies that Officer Ferguson's allegations are lessened by the possibility that she and (then) Sgt. Smith knew each other prior, and personally, because Sitka is a small town. This is among the most common stereotypes, resulting in deeply ignorant assumptions about whether a victim is less credible or somehow less injured. It is also a classic form of gender discrimination (See DOJ, 2015).
- B. The Gearity Report repeatedly implies that Officer Ferguson's allegations are lessened by the fact that she did not immediately report each instance of harassment or discrimination in a proper fashion and through the proper channels. Delayed reporting is common in such cases, for a variety of reasons (Savino & Turvey, 2011). More importantly it was the responsibility of her supervisors to ensure that she had the information and support necessary to report her allegations. Given the contextual findings in the prior sections, including the failure of the Chief and Lt. Ewers to report her allegations properly and initiate a criminal investigation, her delays are not a surprise.
- C. The Gearity Report attempts to characterize the initial text exchanges between Officer Ferguson and Sgt. Smith as "consensual", "personal", "flirtatious" and even containing "sexual innuendo". It concludes (p.6): "A review of the text messages provided by Officer Ferguson demonstrates a friendly, if not flirtatious tone between Officer Ferguson and Sgt. Smith. The text messages provided by Officer Ferguson show that they were clearly reciprocal and consensual, at least in the beginning. The back and forth sharing of personal information between them was very familiar. A few of the comments could be interpreted as sexual innuendos. Neither Officer Ferguson nor Sgt. Smith denies the texts or exchange of personal information between them during this time period." This conclusion does not mention or consider the extreme power imbalance between a supervisor and an employee,

let alone one in a law enforcement context. It assumes that Officer Ferguson had the ability to turn her supervisor away right from the beginning, without fear of consequence or reprisal, and on equal footing. Obviously this was not the case given the power dynamic of this or any similarly imbalanced relationship. Sgt. Smith controlled her future as a law enforcement officer, and her economic security. He exploited it knowing that she could not refuse without consequence, in a culture of ignorance and impunity. He did so gradually, attempting to groom her, until his conduct reached a line that she would not cross.

- D. The Gearity Report, in colloquial language<sup>6</sup>, concludes that some of Off. Ferguson's allegations are unfounded, reporting (p.8): "Given this is a "she said, he said" situation, there is no clear answer. The texts were clearly personal and at times flirtatious with sexual innuendo. Officer Ferguson provided a straightforward, but specific account of what happened in the patrol car that night, even though Sgt. Smith denied it. Given these factors, I have concluded that it is more likely than not, something was said in the patrol car between Officer Ferguson and Sgt. Smith of more personal nature, possibly of a sexual nature. There is no claim that there was any physical contact."

First, any texts which confirm Sgt. Smith's sexual intent serve only as corroboration of sexual harassment via the exploitation of a subordinate officer. This, regardless of Officer Ferguson's so-called "consent", which is negated by the context. Consequently, the existence of corroborating text messages demonstrate that this is not a "he-said-she-said" situation (stereotypical language used to dismiss allegations without serious investigation).

Second, nothing that happens in a patrol car between two officers is contextually personal, especially in this particular context. It is literally steeped in, and heavy with, the context of a rank based subordinate relationship.

- E. The Gearity Report states: "On the next day, June 27, after reviewing Officer Clark's memorandum and discussing the situation with Lt. Ewers, Chief Ankerfelt decided to reassign Officer Ferguson from full-time detective duties back to full-time patrol duties. It was his sole decision. When asked during his interview why he decided to reassign Officer Ferguson, the Chief credibly explained it was obvious to him that following the meetings on June 26 with Lt. Ewers and Officer Clark that she was refusing to communicate or work with Lt. Ewers and the Chief, unless a union representative was present. Chief Ankerfelt said "he had no one else who could supervise her as a detective." His only option was to return Officer Ferguson to patrol duties where she could be supervised by one of the sergeants. Chief Ankerfelt explained that Officer Ferguson's reassignment of work was not a demotion, as her assignment to work as the full-time detective had not been a promotion." The report further acknowledges that she lost pay and status. The explanation provided by the Chief in The Gearity Report both blamed and punished the victim, in lieu of terminating or reassigning those responsible for her sexual harassment, and in lieu of her supervisors having proper training and conducting themselves professionally. His argument

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<sup>6</sup> One should not use this kind of colloquial language in a professional report, especially when dismissing an allegation that is clearly proved by the evidence provided.

seems to be that despite the fact that he and Lt. Ewers had acted in bad faith with respect to tolerating sexual harassment, his immediate penalty towards Officer Ferguson was based solely on logistical concerns. Additionally he claims to place no value on assigning the rank of detective, which is troubling. This line of reasoning defies credibility, is emblematic of a discriminatory attitude, amounts to retaliation, and further sent a clear message to Officer Ferguson about her value with respect to sexual harassment complaints.

- F. The Gearity Report addresses Officer Ferguson's complaint to Lt. Ewers about her co-work Officer Means, and Lt. Ewers response: "Lt. Ewers admitted he made the comment that women multitask better than men and referred to the book *Men are from Mars, Women are from Venus*. He said he meant it as a compliment and not a demeaning gender comment. Lt. Ewers said he was trying to encourage Officer Ferguson and motivate her with regard to her case load. Although there would have been a more professional and gender neutral way to say the same thing, Lt. Ewers comment and reference to the book does not support her claim of gender bias" (p.11). This book was written by a former celibate monk, John Gray. Any read of the book, and many reviews, identify it as painfully sexist, promoting traditional religious based gender roles and deeply ignorant female stereotypes. The essential message of the book is that men are different from women, and should be able to do as they please without emotional consequence, and that women need to adapt to it<sup>7</sup>. There can be no question that if Lt. Ewers subscribes to the philosophies in this book, to the point of referencing it in a professional context with a subordinate, that it suggest an underlying sexist point of view. This highlights the need for the sexual harassment and gender discrimination training that Lt. Ewers admitted to lacking.
- G. Earlier in this report we referenced MacKinnon (1979; p.1-2): "Sexual harassment of women in employment is particularly clear when male superiors on the job coercively initiate unwanted sexual advances to women employees." And "In addition to being victims of the practice, working women have been subject to the social failure to recognize sexual harassment as an abuse at all." The Gearity Report continues this tradition, by failing to understand and identify the basic contextual realities of sexual harassment, and falling prey to cultural stereo-typing and related biases.
- 6. The City Administrator admits that Officer Ferguson was sexually harassed by (then) Sgt. Walt Smith in his re-interpretation of The Gearity Report; but then echoes its misunderstanding of both sexual harassment and gender discrimination. This furthered the pattern of sexual harassment and gender discrimination against Officer Ferguson. This is based on the following facts and evidence:**
- A. City Administrator Keith Brady was one of the accused parties in this case, and therefore should have been a direct subject of The Gearity Report. With zero involvement, input, or

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<sup>7</sup> Examples from the book *Men are from Mars, Women are from Venus*: women should go shopping when their men need time alone; men should be able to leave without explanation whenever they want; women unfairly punish men by acting hurt when they have been hurt.

influence. However, he failed to recuse himself, and then inserted himself in a supervisory role to help declare himself blameless before the City Assembly. This is a violation of basic ethics with respect to it being a conflict of interest, and essentially negates any findings that might reflect positively on his office.

- B. City Administrator Keith Brady interceded in the workplace investigation and then re-worded yet essentially repeated adventitious findings in The Gearity Report to Officer Ferguson. This includes all of the bias, stereotyping, and negligence detailed herein. This act necessarily had the effect of serving to demonstrate to Officer Ferguson that his office was in complete charge, despite her allegations against him and fears of continued reprisal from the City. He then ordered her back to work under those supervisors she had lawfully reported, none of whom were going to be punished, including himself. This unnecessarily extended the harassment of Officer Ferguson, and can only be viewed as an attempt to intimidation a subordinate employee despite confirming that they have been wronged. It is difficult to convey the fundamental wrongness of such an act.
  - C. It is clear after reading Administrator Keith Brady's re-imagining of The Gearity Report that he has no understanding of the legal concepts of sexual harassment and gender discrimination; no concern for professional ethics; and no knowledge of, nor concern for, the harm his negligent actions have inflicted on Officer Ferguson and the Sitka PD as a whole.
7. **Having confirmed that sexual harassment occurred by (then) Sgt. Walt Smith, there is no evidence that Officer Ferguson was offered professional assistance or personal counseling. In fact the opposite has been true. This furthered the pattern of sexual harassment and gender discrimination against her, and contributed to a culture of impunity within the SPD.**

This finding of negligence and impunity is self evident. When someone suffers as the result of sexual harassment in the workplace, there is a duty of care to provide them with the requisite professional, personal, and even emotional assistance. That has not happened. Rather, the aggressor was promoted; she was reassigned, demoted, and put on leave; and none of those who admitted acting in bad faith suffered consequences. They are free to continue working in law enforcement, and she has been forced to sue in order to regain what has been lost.

8. **Having confirmed that sexual harassment occurred by (then) Sgt. Walt Smith, there is no evidence that steps have been taken to prevent this from happening again within the SPD, nor that anyone been punished. This is the definition of impunity, both demonstrating and protecting the institutional tolerance of sexual harassment and gender discrimination within the Police Department.**

This finding of negligence and impunity is self evident, given that (then) Sgt. Smith was promoted to Lieutenant, and that the City Administrator reported no punishments in his memo

with respect to the Chief and Lt. Ewers. This after the City Administrator took over the investigation when he was meant to be an object of it. Again, only Officer Ferguson has been punished, by virtue of demotion, lost pay, and being place on leave in isolation from other members of the department. This can only have a chilling effect on the culture within the SPD and the City as whole, signaling what will happen should others come forward with similar complaints. They will get no support, they will be vilified in the press, and they will be targeted by an investigation intend to corrode their credibility and minimize City liability.

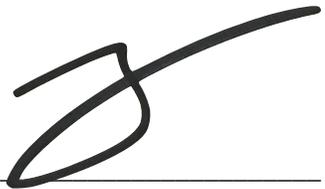
## Conclusion

It was the function of The Gearity Report to investigate sexual harassment and gender discrimination, not to allow the entire supervisory staff to explain it away - having their statements accepted almost uncritically. Having established the lack of credibility, ethics, and misconduct of those involved in Officer Ferguson's complaints, the examiners of this report find the "unfounding" portions of The Gearity Report to be in ignorance or denial of the related laws and evidence, and crafted in such a fashion as to downplay City liability.

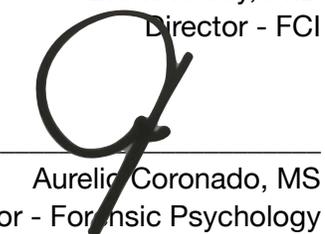
To be clear, Lt. Ewers, Chief Ankerfelt, Administrator Brady, and The Gaerity Report repeatedly and collectively demonstrate ignorance of the conceptual framework of sexual harassment and discrimination, related criminal law, and related policy. Moreover, all of them formed conclusions about Officer Ferguson's allegations without conducting a proper investigation. As such, they were forced to acknowledge the undeniable proof that she provided of sexual harassment, but lack credibility with respect to unfounding the other elements of here allegations.

The examiners strongly recommend immediate referral of this case for criminal investigation by The State Troopers; Internal Affairs Investigation by a separate agency; and a top to bottom administrative assessment of the this incident to include the leadership of the PD, and the City Administrator. This to include a review of degrees, education and training of all concerned - as negligence related to ignorance appears to be the defense here. The examiners also strongly recommend that steps be taken to ensure that Officer Ferguson is protected; that other female members of the department and other City employees feel safe coming forward with similar allegations; and that this does not happen again. At this point, it does not appear that these conditions exist.

Respectfully,



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